Carpe Scientiam
Lomonosov Moscow State University
Moscow
November 13-16, 2018

TAXATION OF REVENUE FROM DIGITAL BUSINESS AT EU LEVEL

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Abstract. In this paper, the author discusses a forthcoming European Union directive that the European Commission wants to adjust to the new rules on the taxation of digital business and financial operations. At the time of the digital economy, this issue is highly topical, yet still raises many questions. The proposal of this Directive includes, among other things, the possibility for Member States to tax the profits of a corporation that arises within its territory, even if the taxable person is not physically present. Under certain conditions, a 'significant virtual presence' would be created in each Member State in which it derives income from its business activity. The aim of this paper is to confirm or rebut the hypothesis that the introduction of the 'significant virtual presence' of legal entities carrying out profitable activities in several Member States of the European Union is a desirable step towards a fairer and easier distribution of taxation, while providing readers with an overview of the directive.

Keywords*: digital economy, digital tax, European taxation regulation*

INTRODUCTION

We live in the times of the Fourth Industrial Revolution and the boom of the digital economy, frontiers between countries are beginning to be overcome. Business activities developed abroad are not unusual, but rather the opposite, and it is necessary for the legal regulation to meet this trend. For the last few years, the European Union has adopted several measures for its territory that contribute to the development of international private law. Examples include the termination of roaming charges on telephone services within the European Union, the introduction of cross-border portability of prepaid online products, such us Netflix or HBO GO programmes, or a grand ban on so-called geo-blocking, which means banning certain customer discriminatory techniques based on residence or nationality (e.g. unjustifiably different prices or business terms) when shopping online from traders based in a Member State other than that where the customer is located.

Mentioned novelties are further steps towards the Single Market and bring a number of facilitations and improvements in the procurement of goods and services for customers, and new rules on consumer protection, copyright, data protection, cyber security and protection against hacking attacks, the fight against international crime and terrorism. However, the single market also entails a new administrative burden for both business and government authorities. On the side of the merchants, it is primarily about being aware about all their responsibilities associated with their activities in each individual country where they operate, including the tax ones, while on the part of state authorities there is always the duty to search for, compile information, and to supervise and enforce compliance with the obligations of the subjects, while administering the relevant taxes is their very important task.

The European Union has long been striving to facilitate these activities for both parties. The planned directive is intended to help it. According to the drafting document, the current adjustment based on double taxation treaties between countries is appropriate for the traditional market and its organization but is far from sufficient for its current functioning and does not correspond to the fact that the real presence of traders or physical money is not necessary anymore. It introduces an important concept of significant virtual presence, which implies the harder traceability of entities and information important to identify their responsibilities.

In this paper, the author aims to make the directive characterized as a whole with a focus on the issue of the virtual presence and its impact on the tax obligations of commercial entities in individual countries. The question of their positive contribution is the main hypothesis of this article, which the author attempts to confirm or refute in the end. Further significant aspects of the Directive will be defined, and its future impacts assessed. From the methods, there will be used mainly the descriptive, comparative and interpretative. In the end, abstraction will be used to evaluate possible future developments and synthesis to summarize the findings.

CURRENT STATE

What the income tax on business affects, for the Czech Republic, and probably for most of the Member States of the European Union, is currently the so-called registration principle for legal persons and the principle of tax residence for physical persons. Thus, so-called unlimited tax liability is established on the territory of the state. This means that if a natural person who is a tax resident of the Czech Republic or a legal person whose registered office is registered there is a profit from his business or he obtains another taxable income, the tax is calculated and paid according to Czech law to his local administrator taxes in the Czech Republic, regardless of the country of origin.

For cases of conflict of laws where the law of one country would have to pay tax on the basis of tax residence or registration principle while the latter would require income taxation at the place of origin, are these relationships are usually governed by so-called Double Taxation Treaties that determine the conditions and the rules of levies so that neither of the parties to the contract is abbreviated to tax and, at the same time, that the taxable entity is not subject to excessive tax burdens and is not made more difficult or impossible to carry out its business, which, of course, will also involve the participating states. Determining who is and who is not a tax resident is not that simple in practice since this is determined by the number of days spent in the territory of the state, and the entity must at the same time meet certain criteria such as flat-rent or permanent income. Again, these are the rules laid down by the laws of each country, which again can cause problems in the conflict between two different legal regulations or a disagreement with the provisions of international treaties to prevent double taxation or others.

The European Commission, in its summary for the media, highlights some of the main problems of the current regulation that it wishes to change. Those are:

- The unfairness of the tax system and the lack of a level playing field for new types of digital companies, and those traditional, which imposed a greater tax burden.
- Threat of loss of tax revenues in the public budgets of Member States that do not have the necessary tax regulation. This is linked to the above-mentioned risk of disruption of the Single Market of the European Union by the fact that some states are taking unilateral measures, creating loopholes in the European law and opening up room for tax evasion.

  As an example, we can mention the well-known case of 2014, when Google paid on the revenue tax an amount thirty times lower than the Czech competing platform, Seznam.cz, in the Czech Republic. Google has attributed significantly lower revenues on the Czech market than Seznam.cz, but the industry's Internet Development Association estimates that the two companies had approximately the same share in the online search advertising market that accounts for the bulk of their revenue. The difference was reached by signing contracts with Czech end customers by Google Ireland. In this way, Google transfers profits from most European countries to countries with a more favourable tax regime. In these situations, the future regulation should help prevent it.
- The need for a stable and competitive environment for digital companies that grow much faster than traditional ones. For example, the Czech Union of Industry and Transport believes that even a solution at the level of the European Union will not be enough as it is still of a very local nature and could have a negative impact on the competitiveness and development of modern forms of business at level of the OECD.

Among experts opinions, we can also mention a viewpoint of Tomáš Sejkora from the Department of Financial Law and Financial Sciences of the Faculty of Law of the Charles University in Prague, who says that the debt of the public budgets of the Member States, which has an increasing tendency, contributes to the need for regulation, therefore, in the absence of political support to reduce mandatory spending, he said, the search for the new or increasing of profitability of existing sources could be expected.

In order to prevent Member States from losing profits for public budgets from the sums earned by foreign entrepreneurs on their territory and from their citizens, some of them are starting to adopt their own rules governing the taxation of revenues generated in the digital sphere. These measures are quite unilateral and, according to the Commission, this can lead to fragmentation of the Single Market and its existence and functionality of which is essential for the European Union. The challenge, therefore, is to create a friendly environment for the development of the digital economy under the fairer and more efficient tax system.

UPCOMIG CHANGE

Last March, the Commission submitted several facts to the European Parliament and the Council, highlighting the urgency of adopting new measures. The report states that 20 billion emails are sent every day in the European Union, 150 million articles are written on social networks and 650 million online searches are cared out. These statistics show how much the world is changing and how the need for physical presence in a place is gradually losing its essence. Online business is creating new values, and for Europe's economic growth, it is a great opportunity, but it seems to have been a bit ‘lazy on laurels.’ The rules are quite outdated and do not completely react to current developments.

What creates values in the digital economy is no more tangible goods or services with real results but the interplay of vast amounts of knowledge, algorithms, user data, and internet functions, and digital money is also worth mentioning. Today, there are companies that exist only in digital form and as such provide their services, such as social media companies, collaborative platforms and online content providers. The above-mentioned report also shows an interesting fact that, on average, digitalized businesses have an effective tax rate of only 9.5%, compared to 23.2% for traditional business models. She also spoke of a situation where the states try to fight tax evasion, but it is not easy under the current regime for these companies. In this context, the results of a Public Communication were presented, which showed that three quarters of respondents agreed that the current international tax rules allow companies with digital business models to benefit from certain favorable tax regimes and push down their tax contributions.

The European Union first came up with a proposal to introduce a Common Consolidated Corporate Tax Base directive. The Common Consolidated Corporate Tax Base for the European companies would mean that the income of commercial corporations would be taxed collectively for all its branches in different Member States. The calculated tax base would then be apportioned between the countries where the entity is registered and where the most significant interaction with the user occurs and taxed according to the jurisdiction concerned. This possibility is further discussed at the time. Another option is the adoption of the Digital Outline Principles and Profit Principle Directives with adjustments to the Common Consolidated Corporate Tax Base alone, or with the recommendation to change the rules to third countries, which is currently preferred by the relevant institutions.

With regard to the adopting of legal regulations by individual states, the Commission considers that it is also necessary to adopt a temporary measure, which would only apply to some of the digital activities for the time being: (a) the sale of advertising space on the Internet, (b) digital mediation activities enabling users communicate with each other and facilitate the exchange of goods and services; and (c) the sale of user data. At the same time, companies with a minimum annual global income of € 750 million and € 50 million within the EU. The Commission thus wants to prevent the adopting of unilateral adjustments by the states while protecting small businesses from the sudden heavy tax burden. In

fact, on a longer-term basis, the new arrangements should benefit middle, small and micro-enterprises through the establishment of a level playing field.

CONCLUSION

In order to evaluate the benefits or negatives of the proposed adjustments, the issue of competence of the European Union must also be considered. In general, tax policy, particularly as regards direct taxes, is exclusively in the hands of individual countries. Some even speak of a breach of the principle of subsidiarity of Community law. Denmark, the Netherlands or Malta argue that the primary purpose of tax extensions under the proposed directive is not to ensure a better functioning of the Single Market, but to simply increase tax revenues, which is left to national governments. Other countries, such as Ireland, Sweden and Estonia, have rejected the proposal for a directive altogether, while, for example, France or Germany strongly support the idea of the proposed directive. In contrast, as mentioned above, the Commission takes the view that the adoption of the Directive will enhance the protection of integrity and the proper functioning of the Single Market. An important aspect of course is keeping tax revenues in public budgets and establishing a level playing field and a healthy competitive environment in the market. Another Commission's argument is that, while the generally preferred option for adopting an OECD regulation, if the directive were adopted by 2020, Europe could be a leader in shaping global regulation of the issue. However, unfortunately, to date, this has not been explained in detail, but it can be assumed that such a situation could contribute to Europe's stronger economic position on the global market.

The author herself agrees with the Commission's view that fragmented national regulation is not appropriate in this case. Digital business goes beyond traditional national borders, yet it is not still allowed to get rid of real nationality. If each country has different income tax rules from the above-mentioned activities based on different criteria, it will not actually be possible to focus on companies' tendency to attempt tax optimization or even tax evasion. The potential conflict between one or more national adjustments in terms of jurisdiction may also be problematic. It is obvious that such a situation would significantly increase the administrative costs of both the tax administrator and the obligated subject, which is of course not desirable, and this could become a barrier to entry the market for some businesses.

In conclusion, the author is convinced that the adoption of the regulation for the taxation of revenues from digital activities is necessary at transnational level, but at a higher level than the European Union itself. Therefore, the hypothesis provided in the introduction of the article cannot be confirmed neither refuted. However, it is necessary to note that somewhere there must always be a start, and the mentioned directive can be a good first step towards achieving all these goals.

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