Tax and digitalisation

Introduction

Digitalisation is transforming many aspects of our everyday lives, as well as the way our economy and society is organised and functions. The breadth and speed of the change brought about by the digital transformation is notable, and raises a large number of public policy challenges. It is also changing the nature of policy-making itself, through the emergence of a new range of tools to support the development and implementation of policies.

Ubiquitous digital devices, connectivity and "smart" technology are bringing significant changes that are profoundly affecting relationships and markets. Information and communications technology (ICT) has become part of the foundational infrastructure for business and society, evidenced in a heavy reliance on efficient and widely accessible online communication networks and services, data, software, and hardware. An enormous amount of data is now generated by these constantly connected users and devices. This data is being collected by businesses and governments, and combined with advances in data analytics and technology diffusion, is providing the insights necessary to transform and shape the way people behave and organisations operate.

In this changing environment, the challenges for policymakers are complex. For tax matters, this means that policy development and implementation must be designed to allow for the changing environment, while being sufficiently clear to provide the certainty and clarity that facilitates sustainable, long-term economic growth.

The tax implications of digitalisation

Digitalisation has a wide range of implications for taxation, impacting tax policy and tax administration at both the domestic and international level, offering new tools and introducing new challenges. As a result, the tax policy implications of digitalisation have been at the centre of the recent global debate over whether or not the international tax rules continue to be 'fit for purpose' in an increasingly changing environment.

Digitalisation and the international tax rules

For a number of years, political leaders, the media, and civil society around the world have expressed growing concern about tax planning by multinational enterprises (MNEs) that takes advantage of gaps in the interaction of different tax systems to artificially reduce taxable income or shift profits to low-tax jurisdictions in which little or no economic activity is performed. In response to this concern, and at the request of the G20, in July 2013 the OECD developed an *Action Plan on Base Erosion and Profit Shifting* (BEPS) (OECD, 2013) which identified 15 actions to address BEPS in a holistic manner. As a result, the OECD/G20 BEPS Project was launched (See Box 1).

Box. 1. The OECD/G20 Base Erosion and Profit Shifting (BEPS) Project and the establishment of the Inclusive Framework on BEPS

The OECD/G20 BEPS Project

In 2013, the OECD launched the BEPS Project in partnership with the G20. The Project targets the gaps and mismatches in the international tax system that facilitate the shifting of profits by MNEs away from where the underlying economic activity and value creation takes place.

BEPS results in a loss of revenue for governments which is conservatively estimated at between 4% and 10% of global corporate income tax i.e. USD 100 to 240 billion annually based on 2014 figures (OECD, 2015a).

The ambitious 15-point Action Plan to tackle BEPS was structured around three key pillars:

- Improve coherence in the domestic rules that affect cross-border activities.
- Reinforce substance requirements to ensure alignment of taxation with the location of economic activity and value creation.
- Enhance transparency and certainty for businesses and governments.

The final package of BEPS measures was delivered in October 2015, providing a comprehensive toolkit for governments, consisting of four new minimum standards on: (i) country-by-country reporting; (ii) treaty shopping; (iii) harmful tax practices; and (iv) effective mutual agreement procedures. It also revised the existing *Transfer Pricing Guidelines* (OECD, 2017b) and the *OECD Model Tax Convention* (OECD, 2017d), and set out a series of common approaches and best practices to guide governments committed to introducing measures to prevent BEPS in their domestic laws.

The Inclusive Framework on BEPS

With the delivery of the BEPS package, the G20 called for its timely implementation and requested that the OECD develop a more inclusive framework with the involvement of interested non-G20 countries and jurisdictions, including developing economies. As a result, the Inclusive Framework on BEPS was established in June 2016 to monitor and support the implementation of the BEPS package and take forward any ongoing work arising from the Project, including on the international tax implications of digitalisation.

Now with more than 115 countries and jurisdiction members, working together on an equal footing, the Inclusive Framework carries out its mandate to:

- Complete the remaining follow-up work required under the BEPS Action Plan.
- Review the implementation of the four BEPS minimum standards through a peer-review process.
- Monitor new developments relating to the other BEPS measures and gather data on the impact of those measures.
- Support jurisdictions in the implementation of the BEPS package, working with them to develop further guidance as well as practical toolkits that target the BEPS priority issues identified by low capacity developing countries.

More details on the BEPS package and the Inclusive Framework is available at www.oecd.org/tax/beps.

The final package of BEPS measures, which was delivered in October 2015, consisted of a comprehensive toolkit for governments to tackle. With the delivery of the BEPS package, the G20 called for its timely implementation and requested that the OECD develop a more inclusive framework with the involvement of interested non-G20 countries and jurisdictions, including developing economies. As a result, the Inclusive Framework on BEPS was established in June 2016 (see Box 1).

From the perspective of the digital transformation, an important component of the BEPS Project included the work carried out under Action 1 on *Addressing the Tax Challenges of the Digital Economy*. In delivering the 2015 BEPS Action 1 Report, the Task Force on the Digital Economy (TFDE)[1] built upon previous work on this topic, including the 1998 "Ottawa report on Electronic Commerce: Taxation Framework Conditions" (OECD, 2001) and considered the challenges raised by digitalisation for both direct and indirect taxation (see Box 2).

Notwithstanding the progress made in tackling profit shifting as part of the BEPS package, ongoing concerns around the ability of the existing tax rules to meet the needs of a rapidly digitalising economy led the G20 Finance Ministers, at their meeting in Baden Baden in March 2017, to request that the TFDE deliver an interim report by early 2018 (G20 Finance Ministers, 2017). Drawing on consultations with business, academia and civil society, the TFDE has been working to identify the key issues and possible solutions.

In March 2018, the Inclusive Framework responded to the G20's request and issued the "Interim Report on the Tax Challenges Arising from Digitalisation" (OECD, 2018). Building on the 2015 Action 1 Report, the Interim Report presents an in-depth analysis of value creation across different digitalised business models, and describes the main characteristics of digital markets. These have significantly evolved, especially for some enterprises. In particular, it identified three characteristics that are frequently observed in certain highly digitalised business models: (i) scale without mass; (ii) reliance on intangible assets; and (iii) data and user contributions (see Box 3). Further, it was acknowledged that these characteristics are expected to become common features of an even wider number of businesses as digitalisation continues.

Box 2. The 2015 BEPS Action 1 Report: Addressing the Tax Challenges of the Digital Economy

The 2015 BEPS Action 1 Report, *Addressing the Tax Challenges of the Digital Economy*, was released in October 2015 and recognised that digitalisation and some of the business models that it facilitates present important challenges for international taxation. The report also acknowledged that it would be difficult, if not impossible, to "ring-fence" the digital economy from the rest of the economy for tax purposes because of the increasingly pervasive nature of digitalisation (OECD, 2015b: 11).

The 2015 Action 1 Report identified a number of key features of digitalisation that are potentially relevant from a tax perspective. There was recognition that digitalisation has also accelerated and changed the spread of global value chains in which MNEs integrate their worldwide operations. More specifically, the report observed new phenomena such as the collection and exploitation of data, network effects and the emergence of new business models, such as multi-sided platforms, as exacerbating the challenges to the existing tax rules.

The Report concluded that digitalisation presents no unique BEPS issues, but that some digital business models can exacerbate BEPS concerns. As such, there was a clear expectation that the consistent and widespread implementation of the BEPS package would substantially address many of the double non-taxation concerns raised by digitalisation.

In addition to BEPS issues, the 2015 Action 1 Report also identified a number of broader tax challenges raised by digitalisation, notably in relation to "nexus, data and characterisation". These challenges were acknowledged as going beyond BEPS and were also recognised as relating to the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among countries.

In the area of indirect taxation, the 2015 Action 1 Report recognised that new challenges arose in particular with respect to the collection of value added tax/goods and services tax (VAT/GST) on the continuously growing volumes of goods and services that are purchased online by private consumers from foreign suppliers. To address these indirect tax concerns, it was recommended that countries implement the OECD's *International VAT/GST Guidelines* (OECD, 2017a), and in particular the destination principle for determining the place of taxation of cross-border supplies, and consider implementing the mechanisms for the effective collection of VAT/GST presented in the Guidelines. The 2015 Action 1 Report also identified a number of possible approaches for a more effective VAT/GST collection on the significantly growing volume of imports of low value goods from online sales.

To tackle the broader direct tax issues raised by digitalisation, the TFDE analysed a number of options. None of these options were ultimately recommended, however, it was concluded that countries could introduce any of them, provided they respected their existing international obligations, including those set out in their tax treaties. Further, it was recognised that the measures developed in the BEPS Project would mitigate some aspects of the broader tax challenges and that the implementation of the measures to address the VAT/GST challenges would lead to a more effective and efficient collection of these taxes in the market jurisdiction.

It was agreed to continue to monitor developments in respect of the digital economy, with a further report to be delivered to the G20 by 2020.

Reviewing foundational concepts in international tax policy

The Interim Report highlighted the importance of considering the implications of these three characteristics for the international tax system. They raise important issues concerning the allocation of taxing rights between jurisdictions (the "nexus" rules) and on the determination of the relevant share of the MNE's profits that will be subject to tax in a given jurisdiction (the "profit allocation" rules).

There is a question whether the existing nexus rules, which govern the extent of a jurisdiction's right to tax a non-resident enterprise, may be outdated as an enterprise can now be heavily involved in the economic life of a jurisdiction but with a presence that under existing tax rules that attracts only minimal or no taxing rights for that jurisdiction.

The rules relating to "profit allocation" are based on the "arm's length" principle, described in the *OECD Transfer Pricing Guidelines* (OECD, 2017b), and focus on the functions performed, assets used and risks assumed by each entity. There is a question whether, and the extent to which, the existing profit allocation rules continue to produce appropriate results, including in cases where some or all of the three characteristics are present.

Box 3. Three factors frequently observed in certain highly digitalised business models

1. Cross-jurisdictional scale without mass. Digitalisation has allowed businesses in many sectors to locate various stages of their production processes across different countries, and at the same time access a greater number of customers around the globe. Digitalisation also allows some highly digitalised enterprises to be heavily involved in the economic life of a jurisdiction without any, or any significant, physical presence, thus achieving operational local scale without local mass (referred to as "scale without mass," hereafter).
2. Reliance on intangible assets, including intellectual property (IP). The analysis also shows that digitalised enterprises are characterised by the growing importance of investment in intangibles, especially IP assets which could either be owned by the business or leased from a third party. For many digitalised enterprises, the intense use of IP assets such as software and algorithms supporting their platforms, websites and many other crucial functions are central to their business models.
3. Data, user participation and their synergies with IP. Data, user participation, network effects and the provision of user-generated content are commonly observed in the business models of more highly digitalised businesses. The benefits from data analysis are also likely to increase with the amount of collected information linked to a specific user or customer. The important role that user participation can play is seen in the case of social networks, where without data, network effects and user-generated content, the businesses would not exist as we know them today. However, the degree of user participation does not necessarily correlate with the degree of digitalisation: for example, cloud computing can be considered as a more highly digitalised business that involves only limited user participation.

In assessing the implications of the digital transformation for the international tax rules relating to "nexus" and "profit allocation", the Interim Report considered the relationship between the three characteristics frequently observed in highly digitalised businesses and value creation in new and evolving business models. With respect to the first two characteristics, scale without mass and reliance on intangible assets, there is broad agreement amongst members of the Inclusive Framework that they exist and that they are relevant for tax purposes. Equally, however, it is recognised that they can also be found to varying degrees in more traditional business models and have gained greater prominence as a function of globalisation more generally.

In contrast, with respect to the third characteristic (i.e. data, user participation and their synergies with IP), there is no consensus on whether, and to what extent, this factor should be considered as contributing to a firm's value creation. In this context, there were divergent perspectives on whether the presence of this third characteristic requires any amendments to the international tax rules. Additionally, since the degree of user participation may not closely correlate with the degree of a firm's digitalisation, a pure focus on data and user participation without reference to other factors may imply that the tax challenges affect only a specific, more limited group of digitalised businesses.

In describing the potential implications for the international tax rules, the Interim Report identifies in Chapters 2 and 5 the positions that different countries hold, which drive their approach to possible solutions. These approaches range from those countries that consider no action is needed to those that consider there is a need for action that would take into account user contributions, through to others that consider that any changes should apply to the economy more broadly.

Towards a global, consensus-based solution

While acknowledging these divergent perspectives, members of the Inclusive Framework have agreed that they share a common interest in maintaining a single set of relevant and coherent international tax rules, to promote, inter alia, economic efficiency and global welfare. As such, they have agreed to undertake a coherent and concurrent review of the two key aspects of the existing tax framework (i.e. the profit allocation and nexus rules) that would consider the impacts of digitalisation on the economy, relating to the principle of aligning profits with underlying economic activities and value creation.

The Inclusive Framework, through the TFDE, has now commenced this important next phase of the work and is working towards a consensus-based, global solution by 2020, with an update to be provided by the OECD Secretariat to the G20 in 2019.

Interim measures

While work on a global, consensus-based solution is underway, a number of jurisdictions are considering the introduction of interim measures. In the Inclusive Framework, there is no consensus on either the merit or need for interim measures and the Interim Report does not make a recommendation for their introduction. A number of countries consider that an interim measure will give rise to risks and adverse consequences irrespective of any limits that may be imposed on the design of such a measure and, therefore, oppose such a measure. Other countries acknowledge these challenges, but consider that they do not outweigh the need to ensure that tax is paid in their jurisdictions on certain digital services supplied in their jurisdictions and consider that at least some of the possible adverse consequences can be mitigated through the design of the measure. This latter group of countries is of the view that a proliferation of different types of interim measures would be undesirable and, therefore, the Interim Report sets out guidance agreed by those countries on the design considerations that need to be taken into account when considering the introduction of interim measures.

Other impacts of digitalisation on taxation

Beyond the international tax rules, other elements of the modern tax system are shaped by the transformative effects of digitalisation, which bring both opportunities and challenges. From the design of the tax system through to tax administration, relevant developments include the rise of business models facilitating the growth of the gig and sharing economies[2] as well as an increase in other peer-to-peer (P2P) transactions, the development of technologies such as blockchain, and growing data collection and matching capacities. The OECD is exploring these changes, looking at areas where further work in the coming years will provide the tools for governments to better understand and harness the opportunities these changes bring, while ensuring the ongoing effectiveness of the tax system.

Online platforms

One of the major changes to the economy facilitated by digitalisation is the rapid growth in multi-sided online platforms. Online multi-sided platforms often facilitate transactions between individual sellers of goods and services to individual consumers, which occur outside of traditional business structures (e.g. in the case of marketplaces). In particular, online platforms facilitate the growth and proliferation of the sharing and gig economies. Familiar examples are the temporary rental of a spare bedroom, unused apartment or parking space, or the provision of a service such as delivery of goods, occasional household services or the provision of transport or taxi services.

The opportunities presented by multi-sided platforms as regards taxation are two-fold:

1. Facilitate integration into the formal economy. Where previously unreported transactions (in particular in the cash economy) are now carried out through multi-sided online platforms and there is greater or full reporting of income as a result, more taxpayers and economic activity will be integrated into the formal economy.
2. Drive growth and increase revenues. Multi-sided platforms often provide new opportunities for economic activity as well as encouraging movement into the formal economy. This may help to drive growth and also have some positive impacts on government revenue. The growth impacts can take place directly through enhanced economic activity as well as indirectly through positive spillover effects on other parts of the economy. The impact on growth and revenues will also depend to an extent on whether the economic activity taking place through multi-sided platforms is at the expense of existing, direct competitors. While important in all countries, the positive growth and revenue impacts are likely to be particularly significant for developing countries with large informal economies.

In order to realise these benefits, as well as to address some of the challenges arising from the operation of online platforms, there are a number of issues that must be addressed.

Understanding the tax implications of the changing nature of work

With the rise of the gig and sharing economies, changes in the mix of taxable status in the economy – for example from employee to self-employed or incorporated – can have important consequences. When changes in taxable status occur, different rules may apply for income tax purposes and social security contributions. For example, the legislation of some countries provides for lower levels of social security contributions for non-standard labour contracts. In other countries, the tax system provides incentives to offer labour services as a closely held corporation instead of as employees subject to a higher rate of personal income tax. These features of the tax system could lead to revenue losses if there are large shifts in working patterns and taxable status.

These changes may either arise from individuals voluntarily choosing different work patterns or as a result of changing preferences of employers, at least in some areas of their business, or both. The growth in the use of platforms in certain sectors may already be acting to reduce the relative number of standard employment contracts.

Fostering innovation and ensuring equivalent tax treatment with similar, existing activity

Fostering nascent economic activity and ensuring appropriate tax treatment requires that governments take into account the impact of administrative burdens on users of online platforms. This issue is already recognised in many countries through simplified tax regimes for micro-businesses and small and medium sized enterprises, and for activity not primarily carried on as a business. Going beyond this, for example, by introducing special tax regimes for activities facilitated through the use of platforms may not be optimal: such activity will be in direct competition with existing activity (e.g. taxi services). This may result in different tax outcomes for substantially similar activities. On the other hand, there may be a case for considering simplified transitional measures to encourage existing and new activities into the formal economy, and for also taking into account the likely lack of experience with tax matters of some platform users.

Improving the effective taxation of activities facilitated by online platforms

Where a transaction involves payment from one individual to another, rather than being based on altruism or a cost sharing arrangement (for example contributing to petrol costs in a shared ride), then there can be tax consequences for the parties involved.

For tax administrations, the challenges raised by online platforms, particularly in the case of peer-to-peer transactions, include a lack of information about the identity of users and the amount of payments made for the activities facilitated by the platform. Difficulties with access to that information will be exacerbated where the platform is not located in the same jurisdiction as the person receiving payment for the transaction and where the tax liability is due. There are a number of options to address this challenge, including targeted taxpayer education campaigns and gathering information from the platforms themselves as well as other third parties.

i. Improving taxpayer education and self-reporting

Lack of self-reporting by taxpayers can be exacerbated by uncertainty among platform users about their tax liabilities, including whether the activity is taxable. This can be a difficult area, with particular challenges arising over determining the correct employment status, any relevant income thresholds, and whether an activity is carried on as a business. Improving taxpayer education aimed at providers of goods and services could make an important impact to ensure effective taxation of activities facilitated by online platforms. Combined with improving access to information by tax administrations, it is likely that significant progress can be made to improve effective self-reporting of tax obligations in respect of these types of activities.

ii. Obtaining tax data about transactions facilitated through platforms

Addressing the lack of information available to tax administrations about the identity of taxpayers using platforms would be an important step forward in improving tax compliance in this sector. Where such powers are not already available to the tax administration, introducing legislative measures which require platforms or other third parties to report payment and identification data of users and/or which allow information requests on group information, could provide tax administrations with information needed to improve compliance or to enhance selection of cases for audit. However, domestic legislative requirements may not be directly effective where the data is located in a jurisdiction other than the jurisdiction of the platform seller. In that context, there is a strong case for collective discussions between tax administrations and platforms about possibilities for cross-border access.

In this regard, it may also be appropriate to explore further the possibility of a multilateral agreement between countries to facilitate access and exchange of such information on a more consistent basis. Such an agreement, along the lines of the OECD's Common Reporting Standard (OECD, 2017c) for the automatic exchange of financial account information, might require all platforms carrying out particular types of activity to provide information in a standardised format on platform users, transactions and income to the tax authority in their jurisdiction of residence for exchange, through appropriate legal gateways, to the jurisdiction of tax residency of the user.[3]

Tax compliance

Technology is in fact expanding the capabilities of tax administrations in a wide range of ways, to enhance the effectiveness of compliance activities, improve taxpayer services, and reduce compliance burdens. Some potential risks arising from digitalisation have also been identified, and it will be important to ensure that tax administrations remain cognisant of these risks.

i. Enhancing the effectiveness of tax compliance activities

Recent years have seen a large increase in the amount of third-party data available to tax authorities coupled with lower storage costs and advances in analytics techniques. This data include transaction and income data, behavioural data generated from taxpayers' interactions with the tax administration, operational data on ownership, identity and location, and open source data such as social media and advertising. This data can be used as individual sources or in combination to enable partial or full reporting of taxable income and to uncover under-reporting, evasion or fraud. It can also be used to better understand taxpayer behaviour, to measure the impact of activities and to identify the most effective interventions, both proactive and reactive.

Equally, processes to minimise the tax compliance burden are also being extended thanks to technology. Long-established for salaried employees and wage earners (through, for example, automated reporting of earnings or even withholding tax), these automated compliance processes are now being further enhanced as a result of the increasing availability of data on other sources of income, which in some countries allows the comprehensive pre-filling of tax returns. Tax administrations are increasingly looking at how such "compliance by design" approaches can be used for businesses as well as individuals.

Technology has also allowed for significant advances in tax transparency internationally as well as domestically, in particular through enhanced information exchange between tax administrations (see Box 4.)

Box 4. Using technology to deliver automatic exchange of financial account information: The OECD's Common Reporting Standard

In 2014, the OECD established a single, common global requirement – the Common Reporting Standard (CRS) – for financial institutions to share financial account information with tax authorities and then exchange that information with their foreign counterparts on an agreed, annual basis. The CRS has made available to tax authorities information on offshore transfers and accounts which was previously unknown and unknowable.

Over 100 jurisdictions including major financial centres have now begun automatic exchanges. To facilitate this process, in 2016, the OECD led the development of a Common Transmission System (CTS) to provide a single, secure connection between tax administrations through which they can exchange tax information. Originally designed to support jurisdictions to meet their commitments to implement the CRS, the CTS also allows the secure exchange of other relevant tax information as necessary.

ii. Improving taxpayer services

The increase in data availability and advancements in analytics are also leading to improvements in taxpayer services. This includes identifying ways to make it easier to understand and report tax obligations, for example by use of analytics on large data sets to identify areas of uncertainty or errors in reporting, as well as to understand where guidance and communication needs to be clearer for taxpayers, or where tax administration processes may need to be redesigned. Further, the use of such techniques can inform behavioural insights, allowing tax administrations to more effectively use "nudge" techniques designed to alter taxpayer behaviour. Many tax administrations are also now providing self-service options for taxpayers through the introduction of mobile and web-based applications, seeking to use channels of communications that are easiest for taxpayers. This has been accompanied by a shift towards user-centric design in most tax administrations, which can also be integrated into broader e-government initiatives subject to data protection limitations.

Emerging technology

Technological innovation continues apace, and tax officials across both policy and administration will need to closely follow these developments to identify new risks, challenges and opportunities. One such area is distributed ledger technology such as blockchain. The issues this nascent technology raises include determining the appropriate tax treatment of "crypto-assets", the risks such assets may pose to recent progress on tax transparency, considerations of how tax policy could be affected by a shift towards decentralised, distributed business models, and how tax administrations can use blockchain to facilitate certain functions.

Taking forward the work on tax and digitalisation

Tax policymakers are working to establish rules that offer certainty for business that promote investment and growth, while acknowledging that the world around us continues to change rapidly, and often in ways that are difficult to predict. Tax administrations have many new opportunities to simplify the taxpayer's experience of the tax system and improve efficiencies, however, the digital transformation has also given rise to a number of emerging threats.

Ensuring that our tax systems are ready to meet the changes brought about by the digital transformation, as well as to leverage its opportunities and provide protection from its potential risks, is a critical challenge. In particular, the review of the international tax rules in light of the impact of digitalisation will be a significant component of this work, and has important ramifications for MNEs and governments, as well as the future of our tax systems. An update on the OECD's work across these areas will form part of the report on tax and digitalisation to be prepared by the Inclusive Framework that will be delivered to the G20 in 2020.

Notes

1. The Task Force on the Digital Economy (TFDE) is a subsidiary body of the OECD's Committee on Fiscal Affairs in its Inclusive Framework format. The TFDE consults extensively with stakeholders from business, civil society, and academia, and led the development of the 2015 BEPS Action 1 Report and the 2018 Interim Report on the tax challenges arising from digitalisation.

2. The term "gig economy" indicates a labour market characterised by the prevalence of short-term and often non-standard contracts or freelance work as opposed to permanent jobs and standard labour contracts. The term "sharing economy" refers to a market in which assets or services are shared between private individuals, either for free or for a fee. Both the gig economy and the sharing economy have become increasingly prominent as a result of digitalisation, and in particular, the use of the Internet, which has allowed a rapid expansion of such activities on a global scale.

3. An online platform may not always have access to all of the relevant information. Other third parties, for example payment service providers, may also hold relevant information about transactions facilitated by a platform.

Further reading

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