Digital Taxation

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#AALL19
France Approves Tax On Big Tech, And U.S. Threatens To Retaliate

France approves digital tax on American tech giants, defying US trade threat

France, Britain push ahead with new taxes on tech industry

France Moves to Tax Tech Giants, Stoking Fight With White House

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How did we get here?

• Background to digital tax work: BEPS Project
• Unilateral measures
• EU-level proposals
• U.S. tax reform
Where are we going?

• Recent developments: France’s DST, UK’s budget proposal
• OECD digital tax work program
What is digital taxation?

• No clear definition

• Taxation meant to target the “digital economy”
  – Income/revenues earned by GAFAs/FAANGs
  – An economy where companies can make money without being in the country or selling tangible goods
What is digital taxation? (cont.)

• Different types of taxes:
  – Taxing income where it “should” have been earned
  – Taxing something other than income: gross revenue (turnover) taxes
  – Minimum taxes
How did we get here?

- Base Erosion and Profit Shifting
- 44 countries working on 15 Action Items
- Most Action Items focused on rules to prevent tax avoidance
- Action 1 created the Task Force on the Digital Economy (TFDE)
Unilateral measures after BEPS

• United Kingdom: diverted profits tax
• Australia: multilateral anti-avoidance law
• India: substantial economic presence test
• Many other proposed and implemented rules: Israel, Italy, New Zealand, France…
EU-level proposals after BEPS

• EU proposed a two-step digital tax package in 2017/2018
• First step: digital services tax
• Second step: substantial economic presence test
U.S. tax reform

• December 2017 – U.S. tax reform adds new international tax provisions
  – GILTI – worldwide minimum tax
  – BEAT – extra tax on related party payments
Similarities between all of these

• International tax system is outdated
  – Reliance on physical presence
  – Focus on source and residence and tangible goods

• Tweaks to individual tax rules are not enough
Where are we going?
Recent developments

• 2018 – UK Treasury announces plans for 2% digital services tax in 2020
• March 12, 2019 – EU fails to get unanimous votes for digital services tax
• July 11, 2019 – French Senate votes in favor of 3% digital services tax
OECD digital tax work program

- Continuing work of TFDE with 131 countries
- Looking at coordinated solutions: user contribution tax, marketing intangible tax, significant economic presence test, GILTI-like minimum tax, BEAT-like tax
- Goal of consensus by end of 2020
Possible next steps

• More unilateral measures like France’s and the UK’s
• More international cooperation
• History leading up to this suggests countries are demanding a change in some form