Digital Taxation Challenges: Simplified Solutions and Structural Inequality

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Roadmap

- Focus on DSTs and Developing Countries
- The DST Landscape
- What is a DST?
- Can DSTs be a Solution?
- What Conclusions Can We Reach?

The DST Landscape

- BEPS Action 1 and Pillar One
  - Frustrations with the lack of taxing rights over MNE profits
- The Rise of DSTs
  - 2018 European Commission Proposal; France as First Mover (2019)
  - Austria (2020), Canada (2024); India (2016), Italy (2020), New Zealand (2023 Bill), Kenya (2021, 2024), Spain (2021), Turkey (2020), UK (2020) (examples next page)
  - Proposed by Brazil, Belgium, Czechia, Indonesia, Norway & more
  - Responses from the US: (retaliatory) tariffs

Canada (HI)	**2024 (retrospective to revenues from 1 Jan 2022)**	**Digital services relying on Canadian data and content contributions**	**Specified businesses; turnover thresholds EUR 750m (global) and CAD 20m (local)**	**Specified revenue exceeding CAD 20m**	**3%**	**?**
Colombia (UMI)	1 Jan 2024	Significant economic presence (SEP) regime in income tax, including specified levels of activity in provision of various digital services	Foreign individuals and companies	Income obtained from the SEP	3% (or 10% if taxpayer opts to apply through withholding tax)	Withholding, or filing return by non-resident, at election of non-resident
Costa Rica (UMI)	1 June 2020	Non-conventional lodgement (accommodation) provided online	Providers	Income	20%-30%	Self-assessment
India (LMI)	**1 June 2016 (NB 2% e-commerce levy repealed by enactment of 16 Aug 2024)**	**Advertisements**	**Non-residents**	**Consideration exceeding INR 100,000**	**6%**	**Non-residents required to register; collection by withholding**
Indonesia (UMI)	Approved 2020 but regs pending	E-commerce activities	Foreign traders and providers with significant economic presence in Indonesia	TBA	TBA	?

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The DST Landscape (cont'd)

- Other Relevant Developments
  - Significant Economic Presence (SEP): India, Colombia, Nigeria, Kenya
  - UN Model Article 12B
- End of Pillar One and Comeback of DSTs?

What is a DST?

- Common Features
  - Target various forms of digital supplies
  - Scope varies
    - Some tax only online advertising (Austria, Poland), online gambling (Argentina), streaming (Denmark), or Airbnb (or equivalent) (Greece), while others are much broader
  - Generally aim at some of the largest global entities
    - common thresholds: annual global turnover above €750m and a local turnover requirement
  - Often based on gross revenue

What is a DST? (cont’d)

- The Nature of DSTs?
  - A tariff (eg. UK DST, M Devereux)?
  - A location-specific (platform) rent (W Cui)?
  - Not meant to be an income tax (eg. ATAF)?
- Do not forget VAT/GSTs
  - Almost 100 jurisdictions have now implemented VAT/GST on foreign digital services

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Case Studies

- United Kingdom
  - Scope: social media services; internet search engine; online marketplaces (effective 1 Apr 2020)
  - Turnover thresholds £500m (global) & £25m (local)
  - 2% on revenue

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Case Studies (cont'd)

- Colombia
  - A standalone SEP regime (Legislation 2022, effective 1 Jan 2024)
  - Annual gross income threshold of around $340,000 & at least 300,000 local users or/and a digital presence-based threshold
  - Online advertising services, online intermediation platform services, cloud storage services & any other electronic or digital services
  - 3% on gross amount (or 10% if withholding)

Case Studies (cont'd)

- India
  - Equalisation Levey (2016): originally online advertising services at 6%; expanded (2020) to include e-commerce operators and platform providers at 2%
  - EL abolished 1 Aug 2024; the 6% advertising levy would be abolished from 1 Apr 2025
  - SEP rule introduced in 2018 Finance Act (effective 1 Apr 2022)
    - Revenue exceeding INR20 million (around $240,000) or at least 300,000 Indian users
    - 40% of profits attributed to the SEP

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Case Studies (cont'd)

- Rwanda
  - Decided by cabinet meeting in Feb 2025 to start in 2026

DSTs in Comparison

DSTs vs Amount A

- Inclusive Framework Multilateral Convention (2023)
  - Requires countries to reallocate a portion of profits above a specific threshold to be taxable in market jurisdictions (amount A) & eliminate "DSTs and relevant similar measures"
  - Applies to companies with €20 billion in revenues & profitability above 10%
  - Does not ring-fence the digital economy
  - A new nexus: at least €1m in revenue from a market jurisdiction
  - Essentially a formulary apportionment, mainly focused on sales

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DSTs vs Article 12B

- UN Model Article 12B Automated Digital Services
  - Approved in April 2021 by the UN Tax Committee
  - Applies to “any service provided on the Internet or another electronic network … requiring minimal human involvement …”
    - Eg, online advertising services, online intermediation platform services, digital content services, user data supply, cloud computing
  - Source state granted limited taxing rights on payments for ADSs
  - A maximum withholding rate on gross amount

DSTs vs VATs

- VATs
  - Target consumption (notionally at least)
  - Include cross-border supplies of services and intangibles
    - Thus can apply to digital services
  - Based on the destination principle: taxed where supplies are consumed by domestic (and private) consumers
  - Several models for tax collection & remittance by the (foreign) supplier on B2C supplies

The Overlap

- Some digital services have virtually no consumers other than private consumers (eg. streaming services)
  - A DST & a VAT might apply simultaneously; both paid by the supplier
  - Is this double taxation or does it just feel like double taxation?
- Some services are almost entirely for business consumption (eg. advertising)
  - No double taxation as the VAT does not “stick”

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DSTs As a Solution?

- Good at targeting some of the more valuable businesses in an economy
- Also good at targeting large taxpayers with the capacity to pay
- Can be relatively easy to administer
  - Few taxpayers; relatively simple calculation; relatively low rates
- Overcome the problem of a lack of physical presence while recognizing economic activity and value
- Other benefits?

Issues and Drawbacks?

- Revenue benefits?
- US retaliation
- Growth of the digital economy sector
- Administrative capacity

What Conclusions Can We Reach?

- DSTs as a legislative tool to collect tax from highly digitalized businesses (or assert greater taxing rights)
- Solve the issues of taxing the digitalized economy?
- Mitigate the gap in technological development and innovation?
- Impact on (global) tax justice?

A Postscript

- What is next?
- Growing dissatisfaction among less developed with the OECD project outcomes
- The UN framework convention
    - More likely to achieve a true multilateral solution for taxing the digitalized economy than the OECD?