Author: Giulia Giaimis, PhD student,

Affiliation: University of Brescia

Title: Fair taxation in the digital economy era

Long abstract

Fair taxation in the digital economy era

The present paperwork investigates digital economy taxation and aims at identifying an innovative standpoint of view, useful to tackle the challenges raised by digital business models. Driven by the need for achieving a fair taxation in order to fulfil the Sustainable Development Goals (SDGs) related to the sustainable economy, the present work will analyse the importance of data, as a company's resource as well as a source of knowledge for the State (tax collector).

Technology has been redefining traditional business models for the past fifty years, but it is with the creation of a global virtual market that the topic has become relevant to policymakers in terms of taxation. The debate that arose on how countries should be able to tax the revenues of digitalised multinational businesses keeps politicians, journalists, consumers and, obviously, entrepreneurs all over the world busy.

Before addressing national and international responses to the issue, briefly recalling what the digital economy concept comprehends is required. As a matter of fact, an official definition of digital economy does not exist. However, according to the European Commission it *"encompasses businesses that sell goods and services via the Internet, and digital platforms that connect spare capacity and demand"*[1]. A more specific notion will be used in the present work, since the OECD[2] and the European Union are targeting digital activities in order to fight against tax avoidance behaviours put in place by MNEs[3] relying on intangible assets. In this respect, digital service's definition given in article 3 of the European Council Directive proposal comes in help since it states that *"digital service is a service that is delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention"* [4]. Using such a terminology, the digital economy would eventually comprehend the Sharing Digital Economy (SDE), where the user is the main character himself, since he can make a profit too.

At international level, the OECD's current plan aims at reducing incentives for the so-called aggressive tax planning set up by multinational companies. In 2022 the Inclusive Framework released an implementation package relating to Pillar Two. In February this year, the OECD published a technical guidance for implementation of the global minimum tax. During the last G20 Summit, the 138 *"Inclusive Framework members have agreed to refrain from imposing newly enacted digital services taxes (DSTs) or relevant similar measures on any company before 31 December 2024"*[5]. The Inclusive Framework aims to prevent the proliferation of different Digital Service Taxes (DSTs) or other similar measures, among the States, because of the needfulness of stability and certainty in the international tax system.

In point of fact, the Agreed Administrative Guidance for the Pillar Two, the GloBE Rules, and what came before them represent a ground-breaking shift in international taxation

---

[1] EurWORK (2018), *Digital Economy*, European Observatory of Working Life.

[2] Organisation for Economic Co-operation and Development.

[3] Multinational Enterprises.

[4] Brussels, 21.3.2018, COM(2018) 147 final.

[5] OECD (2023), OECD Secretary-General Tax Report to G20 Leaders: India, September 2023, OECD, Paris, www.oecd.org/tax/oecd-secretary-general-taxreport-g20-leaders-india-september-2023.pdf.

dynamics. Nevertheless, it is important to always keep in mind that the last years have been characterised by the challenge of the pandemic of COVID-19, which overwhelmed every aspect of human life and society. With reference to this, the European Commission's recovery plan for COVID-19 introduced, as one of the recovery revenues, a digital tax, which takes its cue from the OECD's proposal. In December 2022, the Council completed a proposal for a directive which aims at implementing Pillar Two, within the European legal system[6]. More recently, on June 30th, the European Commission published the Report on Pillar One, reaffirming the EU's commitment to the OECD's tax policies.

Besides the many aspects in common between the OECD's and the EU's paths, a few differences of approach exist. In fact, the Directive had to address specific challenges, such as freedom of establishment and the need for protecting States' tax sovereignty. The recalled directive proposal has been creating a lot of arguments around the taxation topic, thus scholars have been writing both in favour and against such a measure. The focal point is represented by the fact that implementation of Pillar Two made by member States in their own power, adhering to the G20/OECD, could directly affect the functioning of the European internal market. Therefore, the solution stays in the capability of a non-discriminatory way of implementation.

At national level, in 2018 Italy decided to move alone anticipating the EU's regulation adoption, through the introduction of the so-called web tax[7]. It has been modified and adjusted since then, seeming to be coherent with the Council's directive proposal. The Italian legislator's choice, tough, could either be a winning reasoning or bringing up more challenges in the future.

However, since the digital economy and the related tax system are elements of the global economic system's gear, paying attention to the all-encompassing problem that humanity is currently facing, which is climate change, is needed. Sustainability is the only efficient response to the issue, therefore a sustainable economy must be restored or created.

Tax fairness represents only one aspect of the sustainable economy, as reported in the UN 2030 Agenda goals no. 8 and no. 10[8]. The OECD[9] has shown how taxation is an important tool to reduce inequality, which is one of the making factors for unsustainability. In this respect, according to the OECD's studies, redistribution is pivotal. In fact, those countries that obtain the largest redistribution will more likely be the ones with the lowest inequality after taxation. As it can be observed in *our world in data's* charts[10], developing countries obtain less revenues than developed countries, even when the type and coefficient of tax systems are similar. Therefore, the digital economy also embodies an opportunity to make people (as taxpayers) understand the importance of fair taxation.

As seen above, in the digital economy an important role is played by users, because their contribution might produce an economic value for the companies involved in digital activities. Not so many scholars are considering human contribution as a factor of value making in terms of market power. In fact, retrieved data can be thought of as a sort of trade goods.

Considering that the more relatable to people's daily life taxes are, the more welcomed and justified they can be perceived, an analysis of the users' contribution should be conducted.

---

[6] COM/2021/823 final, *Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union*.
[7] Legge 27 dicembre 2017, n. 205.
[8] Goal n. 8: Decent Work and Economic Growth; goal n. 10: Reduced Inequalities.
[9] See among others: E. Ortiz-Ospina, M. Roser (2016), *Taxation*, OurWorldInData.org, OECD Income Distribution Database (IDD).
[10] OurWorldInData.org.

Therefore, investigating the role of the user, considered as a citizen, as a taxpayer and, even more, as a consumer appears to be mandatory.

A one-to-one approach, where instead of a lump-sum levy system related to the companies' revenues amount, a tax based on the data chain can be hypothesised. Moving from the concept of the so-called data mining[11], the consumer's data protection scheme could be applied to the case in order to achieve a two-fold advantage. Firstly, the user would become conscious of his power. Secondly, a payback mechanism could be introduced and developed in the future, due to the user's participation in the profit creation. Data driven businesses would be, in this way, forced to calculate the value of the users' contribution for their own interests, as digital assets, hence this could create the unwanted positive bias of cutting out all the negative and false values added by fake users or upscaling social media entrepreneurs.

Treated as an opportunity, data's traceability becomes a resource to link and lock the relationship between a company and the State where data comes from. The positive connection among States, taxpayers and companies is pivotal to realise a sustainable economy and consequently a sustainable society. To the scope, building trustworthy relationships between the parties involved appears to be needed. As Stiglitz reminded recently, a "progressive capitalism" can be the evolution of the present capitalism. A conception of the market economy that offers the *"promise of a prosperous economy in a just, free, and inclusive society"* [12] should be embraced if we want to live on this planet any longer.

<u>References</u>

- OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en.
- AP. Dourado (2022) *Debate: Is There A Need for A Directive on Pillar Two?,* Intertax, 2022, vol. 50.
- G. Corasaniti (2022), *L'imposta sui servizi digitali: una vera rivoluzione, oppure il messaggio in una bottiglia gettata in mare per i posteri?*, Diritto e pratica tributaria 1/2022, VOL. XCII - N. 1, CEDAM.
- Council of the European Union, 8778/22, Council Directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.
- V.P. Vishnevsky, L.I. Goncharenko, V.V. Dementiev, A.V. Gurnak (2022), *The Principles of Taxation for Digital Economy*, Terra Economicus 20, no. 2, doi:10.18522/2073-6606-2022-20-2-59-71.
- O. Fedirko, N. Fedirko (2023), *Digital Economy Taxation Reform in Ukraine Under Conditions of Military Threats*, Emerald Publishing Limited, doi:10.1108/978-1-80455-566-820231014.

[11] M.Olbert, C. Spengel, (2019), *Taxation in the Digital Economy - Recent Policy Developments and the Question of Value Creation,* International Tax Studies 2019, no. 3 (2019): 2-[ii].

[12] J. E. Stiglitz, 24/05/2023, *An economy for a just, free, and prosperous society*, Lectio Cathedrae Magistralis, Università Cattolica del Sacro Cuore, Milano.

- R. Khanna, (2023), *Progressive Capitalism: How to Make Tech Work for All of Us*, Simon & Schuster, ISBN: 1982163356.
- OECD (2023), OECD Secretary-General Tax Report to G20 Leaders: India, September 2023, OECD, Paris, www.oecd.org/tax/oecd-secretary-general-taxreport-g20-leaders-india-september-2023.pdf.