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CHALLENGES FACING THE EUROPEAN UNION IN TAXING THE DIGITAL ECONOMY

Abstract. The world of the digital economy is constantly evolving and will be the main vehicle for global trade in the future. The transfer of transactions to the Internet requires appropriate tax regulations that, on the one hand, prevent tax fraud and abuse, and, on the other hand, facilitate e-commerce by removing tax obstacles. International institutions are taking initiatives to regulate these issues on a global basis. The article attempts to examine to what extent global initiatives have been implemented in the European Union and what challenges the European Union faces due to the limited success of these global initiatives. This required a recasting of current EU regulations and the prospects facing the European Union in relation to the need for the effective taxation of the rapidly growing digital economy, in which digital platforms play a particular role.

Keywords: digital economy, digital platforms, DST, value added tax

WYZWANIA STOJĄCE PRZED UNIĄ EUROPEJSKĄ W OPODATKOWANIU GOSPODARKI CYFROWEJ

Streszczenie. Świat gospodarki cyfrowej nieustannie się rozwija i w przyszłości będzie stanowił główne narzędzie światowego handlu. Przeniesienie transakcji do Internetu wymaga odpowiednich regulacji podatkowych, które z jednej strony zapobiegałyby oszustwom i nadużyciom podatkowym, a z drugiej strony ułatwiałyby handel elektroniczny likwidując przeszkody podatkowe. Międzynarodowe instytucje podejmują inicjatywy uregulowania tych zagadnień na gruncie globalnym. W artykule podjęto próbę zbadania w jakim stopniu inicjatywy globalne zostały wdrożone w Unii Europejskiej oraz przed jakimi wyzwaniami Unia Europejska stoi w związku z ograniczonym powodzeniem inicjatyw globalnych. Wymagało to przedstawienia obecnych regulacji unijnych oraz perspektyw przed którymi stoi Unia Europejska w związku z potrzebą efektywnego opodatkowania szybko rozwijającej się gospodarki cyfrowej, w której szczególną rolę odgrywają platformy cyfrowe.

Słowa kluczowe: gospodarka cyfrowa, platformy cyfrowe, podatek DST, podatek od towarów i usług

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1. INTRODUCTION

Rapid technological change and the associated exponentially increasing digitalisation of world trade is raising speedily the importance of global e-commerce. The concept of the digital economy has taken shape in the literature. It is very broad and evolving all the time. It is possible to identify certain characteristics that have been recognised as specific to the digital economy. These include the power of digital technology, the turn to virtual reality, novelty, working online, and the correlation of different areas of the economy (Tapscott 1998, 52–85). The notion of the digital economy is associated with the activities of major bigtechs: e-commerce (H&M, Walmart, eBay), the provision of payment services (PayPal), the sale of mobile applications (Google, Apple), the provision of online advertising services (Facebook, Google), the provision of cloud-related services (Microsoft Azure), high-frequency trading (Two Sigma Securities, Virtu Financial), and social media platforms (Facebook, Instagram) (Morawska 2022, 88–89). The small physical presence of digital companies at the point of delivery or service creates a mismatch between where profits are taxed and where value is created. Digital companies may achieve their business goals in areas where they have no or minimal physical structure. A significant role in the value creation of digital companies is played by the users of digital platforms, who can be either domiciled or based outside the territory of the country in which the digital company physically operates. User data becomes the main value of companies, as it shapes sales and marketing strategies (Wiatrowski 2024a, 2).

This requires new tax solutions for both income and VAT. While the rationale for changes in income taxes is the need to change the place of taxation, in VAT it is important to ensure correct collection.

2. SOURCES OF INSPIRATION FOR EU SOLUTIONS

2.1. The BEPS initiative

The EU's initiatives on the taxation of the digital economy are primarily inspired by the efforts of the G20 and the OECD, which are leading the negotiations on the international taxation of digital activities to build a consensus on a long-term global tax solution. This is done primarily through an initiative called the OECD/G-20 Open Framework on Tax Base Erosion and Profit Shifting (BEPS). Some 140 countries and jurisdictions are already participating in the initiative.

On 8 October 2021, an agreement was reached through the OECD/G-20 Open Framework on BEPS on key aspects of the reform of the international rules on the taxation of profits of multinational enterprises. The agreement is contained in the Statement on a Two-Pillar Solution to the Tax Problems Arising from the

Digitisation of the Economy (“the October 2021 OECD/G-20 Open Framework for BEPS Statement”).¹

The BEPS initiative is related, among other things, to the need to change the place of taxation in connection with transactions that are carried out through digital platforms. The current tax reality – namely that on income tax grounds, taxation is based on the concept of a permanent establishment – is not compatible with the rapidly changing digital economy.

The effects of such a mismatch were to be remedied by Pillar One. Pillar One concerns a new, fairer distribution of taxing rights through new profit attribution rules and new tax presence rules. Indeed, the main premise of Pillar One is to reallocate profit from the home country of the multinational enterprise (MNE) to the countries/markets where the MNE sells its goods and services through digitally-run businesses. Pillar One was intended to result in multinational digital businesses paying taxes in the jurisdictions where their users and customers are located.

2.2. The implementation of global solutions in the European Union

On 21 March 2018, the European Commission presented two draft directives that would introduce the possibility of taxing the digital economy within the European Union. The first directive provided for the taxation of legal persons with a significant presence in the digital market (European Commission Proposal 1).² The second directive concerned a common system of tax on digital services, levied on revenues arising from the provision of certain digital services (European Commission Proposal 2).³ However, the above initiatives were concluded at the meeting of the Economic and Financial Affairs Council (ECOFIN) on 12 March 2019, where it proved impossible to reach a Community agreement due to the opposition of some member states. However, this work was abandoned in favour of common international solutions (Mozgiel-Wiecha 2021, 175).

¹ OECD. *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*. October 2021. <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> (accessed: 23.12.2024).

² European Commission. Council Directive Laying Down Rules for the Taxation of Legal Persons with a Significant Digital Presence. COM(2018) 147 final. Brussels, March 21, 2018. <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=COM:2018:0147:FIN> (accessed: 28.12.2024).

³ European Commission. Council Directive on a Common System of Digital Services Tax Levied on Revenue Deriving from the Provision of Certain Digital Services. COM(2018) 148 final. Brussels, March 21, 2018. <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52018PC0148> (accessed: 28.12.2024).

The status of Pillar One remains uncertain. The participation of the United States in this endeavour is crucial⁴, as it will surpass the “critical mass” necessary for the effectiveness of a multilateral convention on the first action related to the digital economy. The majority of corporations covered by Pillar One are US corporations. Moreover, it is estimated that almost 70% of the total relocated profit comes specifically from US companies.

The OECD is not laying down its arms in 2024 and has published further documents on Pillar One. In particular, on 19 February 2024, the OECD/G20 Inclusive Framework on BEPS (IF) published a report on the B-quota (Pillar One), which outlines a simplified and streamlined approach to applying the arm’s length principle to core marketing and distribution activities, with a focus on small jurisdictions (2024 Report).

However, despite the extended deadline of 30 June 2024, the OECD has not reached a consensus on Pillar One, which puts the entire Pillar One journey into question. As a consequence, EU regulations on Pillar One also remain in limbo all the time.

The situation is different with regard to Pillar Two. On 15 December 2022, the European Union adopted Council Directive (EU) 2022/2523.⁵ The objective of the global minimum tax is to ensure that large multinational enterprises (MNEs) pay at least 15% tax on income earned in each jurisdiction in which they operate.

The minimum tax is attributed an anti-abusive function. It is intended to prevent a “race to the bottom”, i.e. competition by states to grant ever more far-reaching tax breaks in order to attract investment from other jurisdictions (Bammens, Bettens 2023, 256). As a result of the new regulations, large multinationals that fall within the scope of the new rules will set an effective tax rate (ETR) for each jurisdiction in which they operate. The determination of the effective rate will be made at the country level and will be based on a calculation of the proportion of taxes paid by the entities in the jurisdiction to the income of those entities. In this regard, Directive 2022/2523 provides detailed calculation rules for both income and tax. The effective tax rate thus determined will be compared to the 15% minimum rate. However, a company will be able to avoid paying the minimum tax, even if the effective tax rate is lower than 15%, if it has a sufficiently high asset-personality substrate. The determination that the top-up tax is due will be linked to a settlement by the entity to which it is allocated. In line with Directive 2022/2523, member states will be able to opt, in addition to the application of the indicated rules, for the

⁴ According to the chairman of the European Parliament’s Subcommittee on Taxation, Paul Tang, political polarisation in the USA ahead of the November elections threatens to “derail” the two-pillar solution, which the *Financial Times* reported after discussions on the issue at the G20 summit (Majdowski 2024, 62–63).

⁵ Council Directive (EU) 2022/2523 of 15 December 2022 on Ensuring the Global Minimum Level of Taxation of Multinational Enterprise Groups and Large Domestic Groups in the Union. OJ EU L 328, December 15, 2022, p. 1, as amended.

introduction of a national top-up tax aimed at ensuring the collection of a minimum tax within the jurisdiction. Companies within the scope of the tax will be required to report regularly (Kondej, Stępień 2023, 31–32).

The premise of Pillar Two is, therefore, that multinationals should pay a minimum effective tax rate of at least 15% in each jurisdiction in which they operate (Kondej, Stępień 2023, 31).

The main objective of Pillar Two and, consequently, of Directive 2022/2523 is to reduce harmful tax competition, although they also aim to reduce corporate tax competition both in cases of harmful (i.e. artificial) profit shifting and actual investment shifting (Liotti, Ndubai, Ruth, Lazarov, Owens 2022; Chen, Chow 2024, 309).

3. THE FUTURE OF THE INCOME TAXATION OF DIGITAL ACTIVITIES IN EUROPE

3.1. The DST return

In terms of income taxes, the failure to implement Pillar One could end in tax chaos, with individual member states seeking individual solutions within their own tax autonomy, and in particular that of DST (Wiatrowski 2024a, 4). Part of the Pillar One agreement is the abolition of DST (Digital Services Tax) in some countries. The abandonment of Pillar One will translate into a return to DST.

Although DST is not an income tax, the rationale for introducing DST taxes in different countries is very similar and is based on the same argument initially made for Pillar One, namely that digital companies were not paying enough income tax while the greatest value is in the users (*The OECD/G20 Pillar 1 and Digital Services Taxes: A Comparison*, Congressional Research Service). DSTs are more similar to sales and excise taxes, because they are levied on *revenue* rather than *profits* (income). DSTs are similar to sales taxes – they are in addition to sales and value-added taxes.

DST is already in place in a number of countries. These taxes vary, but can be levied on advertising revenue from digital companies, sales on online marketplaces, data sales, and digital product sales. As an example, India adopted a tax on online advertising by non-residents in 2016 and extended it to a general tax on e-commerce in 2020. “India Has Significantly Expanded Its Equalisation Levy” (RSM). Canada has approved the implementation of DST from 28 June 2024 retroactive to 1 January 2022. Canada’s DST is levied on revenue generated from certain digital services that rely on engagement, data, and contents contributed by Canadian users, and also the sale or licensing of Canadian user data (the Government of Canada).

Also in favour of further expansion of DST is the fact that this tax is endorsed in the CJEU case-law. On 3 March 2020, the CJEU in its judgments in Cases

C-75/18 (*Vodafone Magyarország Mobil Távközlési Zrt*, ECLI:EU:C:2020:139) and C-323/18 (*Tesco-Global Áruházak Zrt*, ECLI:EU:C:2020:140) held that EU law does not preclude legislation introducing a strongly progressive turnover tax, the actual burden of which is borne predominantly by foreign companies (by virtue of obtaining the highest turnover in a given market). According to the CJEU, progressive taxation can be based on turnover, as the amount of turnover is a neutral criterion of differentiation and also an important indicator of taxpayers' ability to pay. On the other hand, the fact that the greater part of such tax is borne by foreign entities cannot in itself constitute discrimination. By contrast, in the judgment in the Case C-482/18 (*Google Ireland Limited*), the CJEU held that the obligation for foreign entities to register for advertising tax (while exempting domestic entities from this obligation) is compatible with EU law.

The judgments in question may be relevant to the assessment of digital taxes in individual EU countries. Based on them, there seems to be no obstacle to such digital (turnover-based) taxes in EU member states.

3.2. The implementation of Pillar Two

With regard to Pillar Two, it is essentially the process of the implementation of the Directive 2022/2523 in the European Union countries that is nearing completion.

What is questionable, however, is the actual effectiveness of this tax. A number of loopholes in the minimum tax are pointed to as the main threat to the effectiveness of the global minimum tax, and they diminish its potential value as a regulation that implements tax justice. As a result of these loopholes, the global minimum tax has been drastically weakened with respect to its initial intentions. Indeed, the effect of the identified loopholes is that the global minimum tax would generate, at least in the short term, only a fraction of the tax revenue that could be expected from it based on the principles set out in 2021 (GLOBAL TAX EVASION REPORT 2024). The effectiveness of a minimum tax is also undermined by the fact that not all countries have signed up to the initiative. The United States has not ratified the agreement and may not do so in the foreseeable future, given Congressional opposition to the agreement (GLOBAL TAX EVASION REPORT 2024).

3.3. The UN initiative

Both pillars also undermine initiatives that remain in competition with activities initiated by BEPS. The United Nations has launched an initiative to amend the Model UN Convention.⁶ One of the amendments to the UN Model Convention concerns the withholding tax on digital services, Article 12B of the UN Model Convention.

⁶ United Nations. Model Double Taxation Convention between Developed and Developing Countries. New York: United Nations, 2017 and 2021. https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf; https://financing.desa.un.org/sites/default/files/2023-05/UN%20Model_2021.pdf (accessed: 23.12.2024).

This is effectively a posted tax in tax treaty law, which, unlike the digital services tax, is designed to guarantee eligibility for tax credits in the company's country of residence. This provision is seen as contradictory to the approach agreed in the two-pillar solution, particularly Pillar One (De Goede 2023, 33).

The UN's initiative in the area of international tax policy development, which resulted in the United Nations General Assembly adopting a resolution on the UN Framework Convention on International Tax Cooperation in December 2023, is significant.⁷ The main thrust of the convention, which should be relevant in the coming years, is for the United Nations to play a key role in the development of international tax policy, including in the area of international profit taxation. The vote on the resolution, however, drew a dividing line whereby the EU countries and the USA and a number of other most developed countries in the world voted against the resolution, while the rest of the world, from Brazil to India, voted with a significant numerical majority (de Wilde 2024).

4. VALUE ADDED TAX

4.1. The liability of digital platforms to tax certain supplies

More promising is the future of VAT taxation of digital platforms. In response to a legislative initiative by the EC, a package of amendments to the EU VAT rules on e-commerce was adopted (the VAT e-commerce package⁸), which regulates, among other things, the new tax obligations of digital platforms. The new Article 14a of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁹ provides explicitly for the liability of electronic platforms for the collection of VAT on certain supplies. It introduces

⁷ United Nations General Assembly. Resolution 78/230: Promotion of Inclusive and Effective International Tax Cooperation at the United Nations. Adopted December 22, 2023. https://financing.desa.un.org/sites/default/files/2024-01/A.RES._78.230_English.pdf (accessed: 23.12.2024).

⁸ The pieces of EU legislation that make up the aforementioned package:

1) Council Directive (EU) 2017/2455 of 5 December 2017 Amending Directive 2006/112/EC and Directive 2009/132/EC as Regards Certain Value Added Tax Obligations on the Supply of Services and the Sale of Goods at a Distance. OJ EU L 348, December 5, 2017, p. 7, as amended.

2) Council Directive (EU) 2019/1995 of 21 November 2019 Amending Directive 2006/112/EC as Regards the Provisions on Distance Selling of Goods and on Certain Domestic Supplies of Goods. OJ EU L 310, November 21, 2019, p. 1, as amended.

3) Council Implementing Regulation (EU) No 2019/2026 of 21 November 2019 Amending Implementing Regulation (EU) No 282/2011 as Regards Supplies of Goods or Services Facilitated by Electronic Interfaces and as Regards the Special Schemes for Taxable Persons Supplying Services to Non-Taxable Persons, Distance Selling of Goods and Certain Domestic Supplies of Goods. OJ EU L 313, November 21, 2019, p. 14, as amended.

⁹ OJ. EU. L. of 2006. No. 347, p. 1 as amended.

a legal fiction for VAT purposes by recognising that the taxable person operating the electronic platform has received the supply of goods and has made the supply themselves. Indeed, pursuant to Article 5d of Council Implementing Regulation (EU) No. 282/2011, a taxable person who is deemed to have received and made a supply of goods in accordance with Article 14a of Directive 2006/112/EC shall, unless they have information to the contrary, regard the person selling the goods through the electronic interface as a taxable person and the person acquiring the goods as a non-taxable person. According to Article 5b of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax¹⁰, the possibility to overturn this legal fiction exists when the identity of the original supplier is clearly established and the digital platform does not specify the general terms and conditions of the supply of services, does not allow the supply of digital services, and does not allow the customer to be charged.

Thus, there is a presumption in the European Union that platforms buy services from the original supplier and resell them to the final consumer (Wiatrowski 2024, 52).

4.2. The taxation of services provided through platforms

On 8 December 2022, rules on the sharing platform economy were published by the European Commission as part of the VAT in the Digital Age reform package – the so-called “VAT in the Digital Age” (ViDA). The proposed rules¹¹ provide for the introduction of a new Article 28a into Directive 2006/112. According to this provision, “Notwithstanding Article 28, a taxable person who facilitates, by means of an electronic interface such as a platform, portal or similar means, the supply of short-term accommodation rental as referred to in Article 135(3) or the transport of passengers shall be deemed to have received and supplied those services himself...” Following the entry into force of the ViDA, the model of “entities deemed to be the supplier” is intended to apply also to services provided via digital platforms – short-term accommodation services and passenger transport services – in cases where the supplier is an entity not required to account for VAT on these transactions (i.e., *inter alia*, a natural person or a small business covered by the VAT entity exemption).

In the above cases, the platform will charge and account for VAT on the relevant sales. The inclusion of short-term accommodation and passenger transport services in the deemed-supplier model will, in particular, allow for a level playing field between natural persons (private individuals) and small businesses covered

¹⁰ Recast version – Dz.U. EU. L. of 2011 No. 77, p. 1 as amended.

¹¹ European Commission. Proposal for a Council Directive Amending Directive 2006/112/EC as Regards VAT Rules in the Digital Era. COM/2022/701 final. December 8, 2022. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0701> (accessed: 23.12.2024).

by the VAT exemption offering the above-mentioned services via platforms, as well as other traditional sellers who are active VAT taxpayers (e.g. hotels or taxi companies). In cases where the relevant service provider is not required to charge VAT, the platform will charge and account for VAT on the relevant sales (Wiatrowski 2024, 56).

On 5 November 2024, the Economic and Financial Affairs Council (ECOFIN) reached a political agreement on the Digital Age VAT package (ViDA), which will be implemented in phases between 2028 and 2035.¹² Regarding the obligations imposed on digital platforms, the new rules are expected to enter into force in January 2030.

The restriction of the impact of the ViDA package to short-term accommodation and passenger transport services only, and the fact that the package will enter into force in the future, has the effect that tax authorities are already attempting to impose broader obligations on digital platforms than those arising directly from the provisions of the directive. The fact that ViDa does not apply to many other services, e.g. household services, raises the question about what service is provided by the platform that mediates the transaction if it will not be covered by both Article 28 and, in the future, Article 28a of Directive 2006/112. This question boils down to an assessment of what role the digital platform assumes in a specific case, and, in particular, whether it is the provider (supplier). These issues have been the subject of judgments of the CJEU: of 20 December 2017 in Case C-434/15 (*Asociación Profesional Elite Taxi/Uber Systems Spain SL*, ECLI:EU:C:2017:981) and of 19 December 2019 in Case C-390/18 (*Airbnb Ireland*, ECLI:EU:C:2019:1112). These judgments, although they did not address tax issues, can be used to determine the tax status of tax platforms.

It follows from the above CJEU rulings that entities organising transactions in the sharing economy, such as electronic platforms, depending on the specific activities, may be deemed to provide only “information society services”, while at other times they may be deemed to provide a basic service. It can already be pointed out that the effects of these judgments are directly reflected in the practice of the relevant tax authorities. As a result of a dispute with the Italian tax authorities, the website Booking.com agreed to pay approximately 94 million EUR (100.25 million USD) to settle a tax dispute in Italy.¹³ The Italian tax police, after checking 896,500 property owners who worked with Booking.com, found that the company had not paid the VAT due. In another case involving the company’s responsibility for collecting taxes on behalf of the tax authorities, the Italian judiciary seized 780 million EUR from short-term rental platform Airbnb.¹⁴ As

¹² <https://www.consilium.europa.eu/pl/press/press-releases/2024/11/05/taxation-council-agrees-on-vat-in-the-digital-age-package/>.

¹³ <https://www.reuters.com/business/retail-consumer/bookingcom-pay-94-million-euros-settle-italian-taxdispute-2023-11-10/> (accessed: 10.07.2024).

¹⁴ <https://www.reuters.com/business/retail-consumer/bookingcom-pay-94-million>

another example, a dispute arose between the Italian tax authorities and the Meta conglomerate (the owner of Facebook, Instagram, and WhatsApp). The Italian tax authorities demanded 870 million EUR of outstanding VAT from Meta. The authorities considered that logging users provide the concern with personal data with a quantifiable property value, which constitutes remuneration for the service provided to them.¹⁵

5. THE FUTURE

5.1. Income taxes

The effectiveness of global solutions to the digital economy, and in particular Pillar One, is at serious risk. This is primarily due to the fact that many countries, especially developing countries, but also emerging economies, feel that the Inclusive Framework does not take their interests into account. The adopted EU minimum tax regulations may also need to be adjusted accordingly in the near future. Tackling tax competition as a Pillar Two objective has the effect of reducing tax incentives. The minimum tax has, therefore, reduced the possibilities for investors to benefit from tax incentives. The disapproval of Pillar Two by the United States and other countries that will not participate in its implementation may result in Europe losing significant investors. A limited range of tax incentives may result in investors being absorbed by other countries. Therefore, it is necessary to coordinate the incentives applied by EU member states so that individual countries do not fall victim to EU rules limiting state subsidisation (Wilde 2024).

The European Union stands at a crossroads. On the one hand, the adaptation of Pillar One is under serious threat, and on the other hand, the European Union does not see the UN initiative as a way to reach a consensus on the taxation of digital platform activities. This is indicated by the lack of support for the UN initiative. On 16 August 2024, the United Nations (UN) Ad Hoc Committee voted to endorse the Terms of Reference (ToR) to develop a UN Framework Convention on International Tax Cooperation. The ToR was supported by 110 UN member jurisdictions, with 44 abstentions, including the European Union and its member states, and eight votes against, including the United States.¹⁶

In the opinion of the author of this article, the sceptical attitude of the European Union towards the UN initiative is understandable. It can be explained by the fact that the OECD initiative under the Inclusive Framework on BEPS has been ongoing since 2015, which means that it has been ongoing for many years, has been revised many times, and is ready to be used. The UN initiative

¹⁵ <https://podatki.gazetaprawna.pl/artykuly/8671048,facebook-google-meta-problem-z-vat-podatek-zalegly.html> (accessed: 10.07.2024).

¹⁶ <https://financing.desa.un.org/sites/default/files/2024-09/2415701E.pdf> (accessed: 23.12.2024).

is only the future. Based on an analysis prepared by the OECD, it is assumed that as a result of the implementation of Pillar One, it can be concluded that low- and middle-income countries are likely to gain the most as a share of existing corporate tax revenues, highlighting the importance of rapid and widespread implementation of reforms (O'Reilly 2023, 66).

Although there are claims in the literature that the European Union in favour of the UN initiative has much to gain not only from the fiscal point of view but, above all, from its special role in a changing world (Fisher, Ury, Patton 2011, 12)¹⁷, there are serious risks associated with the UN initiative. The economic dependence of most developing countries on the developed world and powerful multinational corporations can be used to defeat any real democratisation of international tax law and policy formulation at the UN. There is also the risk of diminishing the quality of international tax law and policy principles, as the OECD may arguably have more expertise on the subject than the UN (Onyeabor 2023, 3).

The most beneficial solution for the EU member states would be the implementation of Pillar One. However, the implementation of this initiative seems increasingly uncertain. However, the European Union has no more time to lose. It should take up an initiative that will allow it to preserve adequate tax revenues while ensuring that it achieves good economic results.

The Commission should consider proposing a common digital tax that takes into account the interests of EU countries. It should also limit the operation of the top-up tax and extend the scope of services and supplies subject to VAT, where the obligations of payers are performed by digital platforms. This need is implicit in a report outlining a vision for the future of European competitiveness, commissioned by the European Commission and prepared by former Central Bank President Mario Draghi. This report concludes that immediate action is necessary to stimulate competition to achieve key strategic policy goals in the areas of, for example, energy transition, transport, or building innovative and technological strength in order to increase the economic power and strategic independence as well as resilience of EU member states. Of course, the key role in achieving these goals in the EU is played by high-tech companies and their investments (Report – The Future of European Competitiveness – A Competitiveness Strategy for Europe 2024).¹⁸

A major challenge for the European Union will be to avoid protectionism. With China and the United States opting for protectionism, the European Union's advocacy of competitiveness may not have the desired effect. The above report shows that the European Union is also betting on competition through appropriate tax incentives. In this situation, the need arises to reformulate the Directive 2022/2523 implementing Pillar Two, which limits tax incentives for the largest companies.

¹⁷ https://kluwertaxblog.com/2024/09/06/united-nations-tax-framework-convention-terms-of-reference-for-an-inclusive-and-effective-international-tax-cooperation-critical-issues/#_edn20

¹⁸ https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en

The EU must also be mindful that the implementation of national DSTs could lead to a trade war. The USA had already imposed retaliatory tariffs on countries that implemented DST, but these were suspended while Pillar One was being considered (The OECD/G20 Pillar One and Digital Services Taxes: A Comparison, Congressional Research Service).

5.2. The future of VAT

The efficiency of digital platforms in tax collection suggests that there will be a growing expectation in imposing a wider range of obligations on platforms to correctly account for VAT as a substitute for actual service providers. The potential exists to impose such obligations on platforms through which many more services than those covered by ViDa are provided. The use of digital platforms to provide services will grow rapidly. Already now, it can be pointed out that digital platforms are being used to provide many services such as, for example, text translation, professional mentoring, arranging remote working, medical advice, legal advice, online teaching, or knowledge-sharing.

6. CONCLUSION

An appropriate taxation of the digital economy is important not only because of the expected tax revenues from this economic activity, but also to ensure the competitive development of this sector in the European Union. The greatest challenges remain for the European Union in the area of income tax because of both the lack of prospects for the rapid implementation of Pillar One and the risks arising from the implementation of Pillar Two. Waiting for the UN initiative to develop is also not a solution. The separate initiatives of the OECD and the UN make it possible to recognise that there is still a lack of common thinking on universal issues concerning global taxation, including the taxation of the digital economy, which does not bode well for the implementation of global initiatives. In this situation, the European Union should not delay further and should show initiative in introducing regulations that keep pace with the changing digital economy. The Commission should consider suggesting a common digital tax that takes into account the interests of EU countries. With regard to a top-up tax, the EU should integrate a system of tax incentives so that member states do not accuse each other of protectionism. The EU should also extend the scope of services and supplies subject to VAT, where the obligations of payers are performed by digital platforms. The Union's priority should be to address the challenges of the digital economy and achieve fairer taxation of corporate profits.

BIBLIOGRAPHY

- Alstadsæter, Annette. Sarah Godar. Panayiotis Nicolaides. Gabriel Zucman. 2024. "Global Tax Evasion Report Accessed", *EUTax Observatory*, October 26, 2024. <https://www.taxobservatory.eu/publication/global-tax-evasion-report-2024/>
- Bammens, Niels. Dieter Bettens. 2023. "The Potential Impact of Pillar Two on Tax Incentives." *Intertax* 51: 155–169. <https://doi.org/10.54648/TAXI2023018>
- Chen, Jingxian. Wilson Chow. 2024. "Global Minimum Tax Reform and the Future of Tax Competition." *OECD International*, https://www.ibfd.org/sites/default/files/2024-03/oecd_international-global-minimum-tax-reform-and-the-future-of-tax-competition-ibfd.pdf (accessed: 6.10.2024).
- De Goede, Jan J. 2023. "The 2017 and 2021 Updates of the UN Model Tax Convention and Their Impact on National Treaty Practice." *Kwartalnik Prawa Podatkowego* 4: 9–29. <https://doi.org/10.18778/1509-877X.2023.04.01>
- De la Feria, Rita. 2024. "The Perceived (Un)Fairness of the Global Minimum Corporate Tax Rate." In *The 'Pillar Two' Global Minimum Tax*. Edited by Werner Haslehner et al. 58–83. Cheltenham–Northampton: Edward Elgar. <https://doi.org/10.4337/9781035308743.00009>
- De Wilde, Maarten. 2024. "Taxing Digital, What's Next?" *Kluwer International Tax Blog*, https://kluwertaxblog.com/2024/09/24/taxing-digital-whats-next/#_ftn2 (accessed: 22.12.2024).
- Fisher, Roger. William Ury. Bruce Patton. 2011. *Getting to Yes: Negotiating Agreement Without Giving In*. New York: Penguin.
- Kondej, Mikołaj. Michał Stepień. 2023. "Globalny podatek minimalny. O istocie filaru II międzynarodowej reformy podatkowej z perspektywy UE." *Przegląd Podatkowy* 6: 31–32.
- Liotti, Belisa. Ferreira Ndubai. Joy Waruguru Wamuyu. Ruth Lazarov. Ivan Owens. Jeffrey Owens. 2022. "The Treatment of Tax Incentives Under Pillar Two." *Transnational Corporations Journal* 29(2): 25–46. <https://doi.org/10.18356/2076099x-29-2-2>
- Majdowski, Filip. 2024. "Aktualności z Brukseli." *Przegląd Podatkowy* 4: 62–63.
- Morawska, Kamila. 2022. "Wpływ rewolucji cyfrowej na międzynarodowe zasady podziału praw do opodatkowania." *Prawo Budżetowe Państwa i Samorządu* 3(10): 87–108. <https://doi.org/10.12775/PBPS.2022.018>
- Mozgiel-Wiecha, Kinga. 2021. "Nowe ramy podatku cyfrowego." *Annales Universitatis Mariae Curie-Skłodowska, Sectio G (Ius)* 68(2): 167–181. <https://doi.org/10.17951/g.2021.68.2.167-181>
- O'Reilly, Pierce. Tibor Hanappi. Samuel Delpeuch. Felix Hugger. David Whyman. 2023. "Pillar One Economic Impact Assessment Update: The OECD/G20 Project on Tax Base Erosion and Profit Shifting." *OECD Taxation Working Papers* 66.
- OECD Report. 2024. "Pillar 1 – Amount B." February 19. https://www.oecd.org/en/publications/pillar-one-amount-b_21ea168b-en.html (accessed: 23.12.2024).
- Onyeabor, Emmanuel. 2023. "Towards a United Nations Tax Convention: Prospects and Challenges for Developing Economies." *Afronomicslaw*, <https://www.afronomicslaw.org/category/analysis/towards-united-nations-tax-convention-prospects-and-challenges-developing>
- Petropoulos, Georgios. 2017. "An Economic Review of the Collaborative Economy." <http://bruegel.org/2017/02/an-economic-review-of-the-collaborative-economy> (accessed: 23.12.2024).
- Report. 2024. "Report – The Future of European Competitiveness – A Competitiveness Strategy for Europe." European Commission. https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en (accessed: 23.12.2024).
- Sábo, Jozef. 2020. "Taxation of Digital Services from International Tax Law Perspective." *Financial Raw Review* 20(4): 64–81. <https://doi.org/10.4467/22996834FLR.20.021.13093>

- Sundararajan, Arun. 2014. "Peer-to-Peer Businesses and the Sharing (Collaborative) Economy: Overview, Economic Effects, and Regulatory Issues." http://smallbusiness.house.gov/uploadedfiles/1-15-2014_revised_sundararajan_testimony.pdf (accessed: 23.12.2024).
- Tapscott, Don. 1998. *The Digital Economy: Hopes and Anxieties of the Systemic Awareness Era*. Warsaw: Business Press.
- The Government. 2024. "The Government of Canada." <https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/digital-services-tax.html> (accessed: 29.09.2024).
- Wiatrowski, Roman. 2024. "Digital Platforms as a Tool to Increase the Efficiency of VAT Collection." In *VAT w erze cyfryzacji*. Edited by Marek Beldzikowski, Michał Mioduszewski, Artur Mudrecki, Roman Wiatrowski. 49–66. Warszawa: Akademia Leona Koźmińskiego.
- Wiatrowski, Roman. 2024a. "The Future of Income Taxation of the Digital Economy." *SGH Centre for Tax Analysis and Studies* 2: 1–8.

Legal Acts

- European Commission. 2018. *Council Directive Laying Down Rules for the Taxation of Legal Persons with a Significant Digital Presence*. COM(2018) 147 final. Brussels, March 21. <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=COM:2018:0147:FIN> (accessed: 28.12.2024).
- European Commission. 2018. *Council Directive on a Common System of Digital Services Tax Levied on Revenue Deriving from the Provision of Certain Digital Services*. COM(2018) 148 final. Brussels, March 21. <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52018PC0148> (accessed: 28.12.2024).
- European Commission. 2022. *Proposal for a Council Directive Amending Directive 2006/112/EC as Regards VAT Rules in the Digital Era*. COM/2022/701 final. December 8. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0701> (accessed: 23.12.2024).
- Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax.
- Council Directive (EU) 2017/2455 of 5 December 2017 Amending Directive 2006/112/EC and Directive 2009/132/EC as Regards Certain Value Added Tax Obligations on the Supply of Services and the Sale of Goods at a Distance. OJ EU L 348, p. 7, as amended.
- Council Directive (EU) 2019/1995 of 21 November 2019 Amending Directive 2006/112/EC as Regards the Provisions on Distance Selling of Goods and on Certain Domestic Supplies of Goods. OJ EU L 310, p. 1, as amended.
- Council Directive (EU) 2022/2523 of 15 December 2022 on Ensuring the Global Minimum Level of Taxation of Multinational Enterprise Groups and Large Domestic Groups in the Union. OJ EU L 328, p. 1, as amended.
- Council Implementing Regulation (EU) No 2019/2026 of 21 November 2019 Amending Implementing Regulation (EU) No 282/2011 as Regards Supplies of Goods or Services Facilitated by Electronic Interfaces. OJ EU L 313, p. 14, as amended.
- United Nations. 2017 and 2021. *Model Double Taxation Convention between Developed and Developing Countries*. New York: United Nations. https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf; https://financing.desa.un.org/sites/default/files/2023-05/UN%20Model_2021.pdf (accessed: 23.12.2024).
- United Nations General Assembly. 2023. *Resolution 78/230: Promotion of Inclusive and Effective International Tax Cooperation at the United Nations*. December 22. https://financing.desa.un.org/sites/default/files/2024-01/A.RES_.78.230_English.pdf (accessed: 23.12.2024).