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BIG TECH AND DIGITAL TAXATION REFORMS IN THE EU AND MENA

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Digital taxation has gained attention on the international agenda, especially after major technology companies saw profits surge during the COVID-19 pandemic crisis, while many countries suffered from an economic crisis that called for a search for new financial resources. The cross-border nature of the business carried out by big digital companies has also prompted national and regional governments to discuss policies and legal frameworks to better adapt to the new age of business. In the first week of June 2021, the G7 countries agreed to impose a global tax rate of at least 15% regardless of where the companies' headquarters are based. In this unprecedented agreement, countries would apply a new tax to companies with profit margins exceeding 10%, applied to at least 20% of said profits, meaning it would be the largest and most profitable companies facing this levy. Recent developments have exposed legislative, administrative and knowledge gaps facing digital taxation and the need to examine the impact of growth of the digital economy and the potential benefits of EU-MENA partnerships.

Tax regulation in the digital era

The development of an information infrastructure, which has improved the speed of the Internet, in addition to the presence of smartphones, social networks and other digital platforms have brought about transformations in the field of e-commerce. As the activities of the digital

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economy grow, technology companies benefit from the expansion of the market size among millions of users globally and experience economic growth and an escalation in profits.

Digital activities move from one place to another and from one medium to another. The physical and legal components of digital service providers are often separate, as companies deliver their activity in foreign markets. This allows companies to conduct their cross-border business without having a physical presence or headquarters within the country, and to manage their international activity easily and cheaply, which contributes to achieving huge profits and returns that are not subject to the application of the traditional tax treatment. The cross-border scope of the activities along with the intangible nature of users' transactions, jobs and commercial activities call for a review of traditional taxation systems for commercial activities.

The concept of digital taxes, a new type of tax such as value-added tax (VAT), stamp tax, income tax and e-commerce tax, has emerged. Some governments are starting to advocate for the imposition of a tax on technology companies based on the results of their sales or returns derived from digital sources such as the Internet and from users within the country in which they are located.

Countries are struggling to impose their sovereignty over commercial digital activities. Some have taken steps such as forcing companies to establish headquarters within the country, threatening to block the services, adopting a policy of providing national alternatives to digital services or taking measures to impose a digital tax on cross-border technology companies, an issue that has attracted the attention of developing and developed countries alike.

Europe leads global interest

Over the past three decades, the issue of taxes on the digital economy has been a priority both at regional and international level, with governments working together to set tax rules for economic activities that are compatible with the rapid development of the technological revolution. Imposing taxes on cross-border companies has become a global interest. At European Union (EU) level, efforts have focused on achieving more tax equality. In 2018, the EU put forward a new set of rules compiled in the Fair Taxation of the Digital Economy proposal to level the playing field between digital businesses, paying an average of 9.5% of taxes, and traditional businesses, subject to 23.2% taxation. This distortion has negative economic impacts, including the retreat of the national sector in the field of digital advertising, a monopoly of large tech companies on digital services, it has created a non-competitive environment for local companies, calling for the infusion of national capital, and tax evasion. The rise of the digital economy has exacerbated the problem of global tax avoidance by big technology companies.

The OECD estimates corporate tax avoidance costs anywhere from $100-240 billion annually, or from 4-10% of global corporate income tax revenues. Developing countries are affected because they are suffering from the shortage of financial resources and tend to rely more heavily on corporate income taxes than advanced economies.

The Independent Commission for the Reform of International Corporate Taxation ("ICRICT") estimates that a staggering 40% of foreign corporate profits are shifted to tax havens. Losses from profit shifting surpass $500 billion annually according to IMF data, with $200 billion missing from the coffers of developing countries.

United States' (US) big technology companies are exploiting loopholes in global tax rules to avoid paying as much as $2.8 billion tax a year in developing countries and are accused of inflating their stated tax payments by almost $100billion over the past decade. The world's largest economies also are losing up to $32 billion. In 2012, tax evasion schemes by Apple, Amazon and Google were revealed, which aroused the interest of the G20 and the OECD to work to reform the global tax system and look for frameworks to deal with technology companies.

In 2015, the G20 established rules to combat Base Erosion and Profit Shifting (BEPS), while the OECD adopted a Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The OECD participated, along with developing countries, in the discussion of the reform process, where 132 of its 139 members agreed on a way forward to address digital taxation under the Inclusive Framework, aiming at sharing country reports on the profits and tax payments of companies. Notwithstanding, the instrument was limited to large companies only, and these reports were not available to the public, which limits the role of civil society in enhancing transparency.

Further efforts are needed to face legislative, political, and commercial challenges that prevent a deeper transformation of taxing digital activities to establish how to tax multinational digital companies. Countries such as India, Italy, Spain, and France have taken steps towards implementing digital tax. The United Kingdom (UK), for example, has announced the adoption of a tax system based on total sales linked to the participation of users based in the country as a temporary action to increase revenues. However, these unilateral actions towards businesses prove insufficient. Imposing uniform taxes on companies may influence transfer pricing policy as companies can transfer profits of services to another country that may have a lower tax rate, known as safe harbor. In addition to geographical aspects, taxation should consider other objective factors such as the company's sales, functions, resources, market size and users.

The 2018 digital tax scheme developed by the European Commission (EC) targets businesses of a specific size, such as those with 100,000 users in an EU member state, or those with a national revenue of over €7 million. However, the EU has tried to keep its tax proposals separate from other technology regulations.

On 31 May 2019, the OECD announced the approval of a road map to solve tax challenges arising from the transition to the digital economy. It also sought, in cooperation with the G20, to contribute to international efforts to reach an international consensus on tax rules and standards that would enable countries to exercise their tax sovereignty on the digital activity of major technology companies.

The EU has led international efforts to develop clear policies to deal with cross-border technology companies regarding services, content, and wealth, and, despite the US' initial reluctance to impose digital taxes, it has entered negotiations, especially since its five largest corporates are under scrutiny regarding how they have dealt with personal data and tax avoidance. In early 2021, the EU also launched a public consultation on a new digital levy aiming to better adapt legislation for a fair taxation suited to the new digital age. In mid-2021, EU leaders agreed, as a principle, to impose a digital tax, the details of which were adopted by G7 countries, which signed an agreement on 5 June 2021. These countries are committing to a minimum global corporate tax of at least 15%.

On 1 July 2021, the OECD issued a Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. As of 9 July, 132 countries joined a new two-pillar plan. The first pillar aimed at achieving the best distribution of the right to tax; more than $100 billion of profits are expected to be re-distributed. The second pillar aimed at imposing a minimum value of taxes on profits. The OECD estimates it would generate around $150 billion every year in additional global tax revenues. Although the US agreed to negotiating over digital taxes, it argues that the first pillar would suffice and that the second pillar is unfair and has threatened retaliation through import taxes. On 13 July 2021, the EU froze its digital tax plan to tax online tech giants. It came after pressure from the US, after Janet Yellen, the US Treasury Secretary, visited Brussels.

Regional frameworks in the Southern Mediterranean

Southern Mediterranean countries represent a large consumers market for technology companies in terms of the number of Internet users, the average user time spent on different platforms, and the proportion of young and adolescent users, who represent the most active consumer group. However, Arab countries face difficulties in dealing with the profits of technology companies due to the absence of standards regulating the imposition of digital taxes. Updated policies and legislation at both national and regional level are needed. A regional regulatory framework will allow countries to be in a stronger position when dealing with corporate interests.

The Middle East and North Africa (MENA) is one of the regions that has not witnessed major transformations in the field of digital taxes. Some progress has been made however in its digital transformation and financial inclusion, modernising the methods of the tax administration process as well as tax legislation, and data on digital transactions for corporates operating in the digital economy. Databases and tax procedures have been developed, relating to electronic payment methods, accounting systems and electronic billing. The region has also seen an increase in capacities in the field of digital skills and raising awareness of the importance of digital taxes.

The region can benefit from the efforts made by the OECD in Europe, especially with respect to the outcomes of the global dialogue on digital tax, the BEPS and transfer of profits, and the importance of joining the multilateral instruments (MLI). Ten Arab countries have already joined the MLI, namely the United Arab Emirates (UAE), Bahrain, Djibouti, Tunisia, Saudi Arabia,

Kuwait, Qatar, Oman, Egypt, and Morocco. Furthermore, the OECD has recommended changes in dealing with digital taxes, particularly the need to activate the VAT on digital transactions.

Towards reforming the global tax system

Dealing with digital taxes requires an international consensus that regulates the relationship between countries and major technology companies in order to address three gaps: the legislative gap concerning the absence of laws regulating relations; the administrative gap that relates to how the tax-collecting authorities deal with this new cross-border challenge; and the knowledge gap regarding the novelty of the issue and the implications of its development as far as individuals and governments are concerned, taking into account the positive effects of employment opportunities provided by digital activities for national economies.

Reforming the global tax system requires several steps. It is essential to determine which country is entitled to impose tax and on what basis, and the amount of profits that are subject to tax in each country. It is also important to work on regulating digital taxes and codifying the financial relationship between transnational digital corporates, on the one hand, and the countries from which they reap their profits, on the other. International consensus must be reached vis-à-vis distributing tax rights between businesses and countries, and between developing and developed countries, based on economic presence and value creation. It is crucial to modernise the local tax frameworks and systems, and change the rules of the global tax system, which has become incompatible with the digitalization of the global economy. There is also a need to reform internal tax systems and agreements to prevent double taxation, including the provisions of said agreements that are binding for countries. Beside this, the reform of the international tax system is needed to ensure that big technology companies pay a fair share of tax wherever they operate. The exchange of information at international level should be through the Global Forum on Transparency and Exchange of Information for Tax Purposes, which can enhance confidence in transactions within the digital environment.

Reaching an international agreement on digital taxes by October 2021, based on a compromise between the EU and the US, and between big companies and countries, would represent a step forward towards making the global tax system more equitable and would support the transition from "chaos" to a "regulated globalisation".

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