How to Tax the Digital Economy?

The OECD-Led Effort to Reform the Taxation of the Digital Economy

In the context of its Base Erosion and Profit Shifting (BEPS) project, the Organization for Economic Co-Operation and Development (OECD) has estimated that the loss of tax revenues from corporate tax planning strategies that “shift” profits from higher-tax jurisdictions to lower-tax jurisdictions, thus “eroding” the “tax-base” of the higher-tax jurisdictions, amounts to an estimated US$100-240 billion per year. These tax planning strategies are particularly pertinent to the digital economy and its business models that include several varieties of e-commerce, app stores, online advertising, cloud computing, high-speed trading, and online payment services. The companies often mentioned as exploiting these tax planning strategies include U.S. tech companies such as Amazon, Apple, Facebook, Google, and Microsoft. Speaking at an event in Dublin, Ireland on January 20, 2020, Apple CEO Tim Cook stated that the debate on taxing multinational companies needs to take place at a global level and that he is “hopeful and optimistic” that the OECD will strike a deal on worldwide corporation tax. And in an opinion letter in the Financial Times on February 16, 2020, Facebook CEO Mark Zuckerberg wrote that tech companies should serve society, including at the corporate level, and thus “we support the OECD’s efforts to create fair global tax rules for the internet [because] clearer rules would be better for everyone”. So what might the OECD-led multilateral effort to tax the digital economy look like? Read on….

I. Introduction

The OECD-led effort to reform the taxation of the digital economy effectively commenced in September of 2013. Following years of reported base erosion and profit shifting by multinational corporations seeking to avoid corporate taxes, the G20 at its 2013 Summit in St. Petersburg, Russia approved the proposal for the OECD to develop a plan addressing such tax avoidance strategies. This gave rise to OECD’s 2013 Action Plan on Base Erosion and Profit Shifting (BEPS), which in turn led to its BEPS Final Report in October of 2015. The 15 Actions in the BEPS Final Report are as follows:

1) Addressing the Tax Challenges of the Digital Economy;
2) Neutralising the Effects of Hybrid Mismatch Arrangements;
3) Designing Effective Controlled Foreign Company Rules;
4) Limiting Base Erosion Involving Interest Deductions and Other Financial Payments;
5) Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance;

II. OECD BEPS Action 1: Addressing the Tax Challenges of the Digital Economy

III. OECD Pillar One: Revised Nexus and Profit Allocation Rules

IV. OECD Pillar Two: Global Anti-Base Erosion (GloBE) Proposal

V. Non-OECD Initiatives

VI. Conclusion
6) Preventing the Granting of Treaty Benefits in Inappropriate Circumstances;  
7) Preventing the Artificial Avoidance of Permanent Establishment Status;  
8) Aligning Transfer Pricing Outcomes with Value Creation: Intangibles;  
9) Aligning Transfer Pricing Outcomes with Value Creation: Risks and Capital;  
10) Aligning Transfer Pricing Outcomes with Value Creation: Other High-Risk Transactions;  
11) Measuring and Monitoring BEPS;  
12) Mandatory Disclosure Rules;  
13) Guidance on Transfer Pricing Documentation and Country-by-Country Reporting;  
14) Making Dispute Resolution Mechanisms More Effective;  
15) Developing a Multilateral Instrument to Modify Bilateral Tax Treaties.

Following the issuance of the 2015 BEPS Final Report, the OECD’s top priority became Action 1 – Addressing the Tax Challenges of the Digital Economy. The OECD work here has produced several important documents, including the following milestones:

- May 2019: Issuance of Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy.  
- January 2020: Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy.

This article, published within “Novità fiscali”, reviews the OECD-led effort to reform the taxation of the digital economy as initially reflected in Action 1 of the 2015 BEPS Final Report and as then developed in greater detail pursuant to “Pillar One” and “Pillar Two” in the OECD documents listed above. Following such review, this article discusses initiatives outside of the OECD to tax the digital economy.

II. OECD BEPS Action 1: Addressing the Tax Challenges of the Digital Economy

The OECD write-up on Action 1 in its 2015 BEPS Final Report is a robust 290 pages in length!

Action 1 of the Final Report addresses the growing concern about tax planning by multinational enterprises that makes use of gaps in the interaction of different tax systems to artificially reduce taxable income or shift profits to low-tax jurisdictions in which little or not economic activity is performed. Among the OECD findings and conclusions were the following:

- The digital economy and its business models exacerbate BEPS risks. Business models include several varieties of e-commerce, app stores, online advertising, cloud computing, high-speed trading, and online payment services.
- Action 1 recommends modification to the list of exceptions to the definition of permanent establishment (PE) in Article 5 of the OECD Model Tax Convention to ensure that each of the exceptions is restricted to activities that are otherwise of a ‘preparatory or auxiliary’ character. For example, the maintenance of a very large local warehouse in which a significant number of employees work for purposes of storing and delivering goods sold online to customers by an online seller of physical products would constitute a PE for that seller under the new standard.
- Action 1 recommends modification of the definition of PE to address circumstances in which artificial arrangements relating to the sales of goods or services of one company in a multinational group effectively result in the conclusion of contracts, such that the sales should be treated as if they had been made by that company.
- Action 1 recommends an update to the OECD Transfer Pricing Guidelines to ensure that transfer pricing outcomes are aligned with value creation (per Actions 8-10).
- With respect to the indirect tax treatment of digital transactions, Action 1 recommends that countries apply the principles of the OECD’s International Value-Added Tax/ Goods and Services (VAT/GST) Guidelines. For example, VAT should be collected in the country where the consumer is located in cross-border business-to-consumer transactions.

III. OECD Pillar One: Revised Nexus and Profit Allocation Rules

A. February 2019 Public Consultation Document

Under the heading of revised profit allocation and nexus rules, this document sets out proposals for user participation, marketing intangibles, and significant economic presence. At that early stage of the discussion, the OECD thus proposed three models: the user participation model, the marketing intangibles model, and the significant economic presence model.

1. User Participation Proposal

   This proposal was premised on the notion that soliciting the sustainable engagement and active participation of users is a critical component of value creation for certain highly digitalized business. In lieu of applying the arm’s length method, it was proposed to use a non-routine or residual profit split approach. Under such approach, the profit attributed to routine activities of a multinational enterprise (MNE) would continue to be determined in accordance with current rules (i.e., arm’s length method).

2. Marketing Intangibles Proposal

   Like the user participation proposal, the marketing intangible
The Unified Approach is designed to adapt taxing rights by considering new business models thereby expanding the taxing rights beyond physical presence. Due to globalization and digitalization, there are new businesses that develop an active and sustained engagement in a market jurisdiction without having to invest in local infrastructure and operations. Articles 5, 7 and 9 of the OECD Model Tax Convention may therefore no longer be applicable. The amount of tax that will be allocated pursuant to the Amount A mechanism is over and above the arm's length return that might be allocable to in-market activities such as baseline marketing and distribution (Amount B), but is not an additional remuneration in respect to those same in-market activities.

2. New Taxing Right (Amount A)

The new taxing right imposes tax on a portion of residual profits allocable to market jurisdiction. This tax will be limited to large MNE groups which meet the new nexus test in the market jurisdiction concerned ("eligible market jurisdiction") and to the agreed quantum of profit represented by Amount A.

The January 2020 Statement describes the businesses that will fall within the scope of new taxing rights under Amount A and draws a distinction between automated digital services and consumer facing businesses. The former will include automated digital services such as online search engines or social media platforms. The latter will include individuals that are purchasing items for personal use, such as personal computing products, clothes, toiletries, cosmetics, or luxury goods.

What actually is a nexus that will trigger taxation? The January 2020 Statement limits itself to describing nexus without providing any definition. For automated digitalized businesses, a revenue threshold will be the only test required to create nexus. But how will this revenue threshold work in practice? The January 2020 Statement recognizes the importance of new source rules. But how will the OECD go about sourcing revenues to the respective market jurisdictions? For all these important questions, the January 2020 Statement does not yet provide any answers.

In contrast to the traditional transfer pricing "separate entity" approach, the calculation of Amount A will be based on a measure of profit derived from the consolidated group financial accounts. Public consultation has revealed that profit before tax (PBT) is the preferred profit measure for computing Amount A. Where out-of-scope revenues of a multinational group are material, segmented accounts may be required to capture only in-scope business segments in the allocation of Amount A profits.

With emphasis on new scope, nexus, and profit allocation rules, the October 2019 Public Consultation Document introduced a three-tier profit allocation mechanism, which works as follows:

- **Amount A** – a share of deemed residual profit allocated to market jurisdictions using a formulaic approach, i.e. the new taxing right;
- **Amount B** – a fixed remuneration for baseline marketing and distribution functions that take place in the market jurisdiction; and
- **Amount C** – binding and effective dispute prevention and resolution mechanisms relating to all elements of the proposal.

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After having determined the quantum of Amount A, it will be necessary to distribute Amount A among the eligible market jurisdictions based on an agreed-upon allocation key. This allocation will be based on sales of a type that generate nexus. For this purpose there will be new source rules. But how all this will work in practice nobody knows.

3. Fixed Return for Defined Baseline Distribution and Marketing Activities (Amount B)

Amount B aims to standardize the remuneration of distributors (whether subsidiary or branch) that buy products from related parties for resale, and in doing so perform defined “baseline marketing and distribution” activities. It proposes a fixed return to distributors (as defined), which is based on the arm’s length price. It is expected that this fixed return model will allow tax administrators and taxpayers to make more efficient use of resources.

Except for this notional description of what is meant by Amount B, the January 2020 Statement does not provide any specific answers. Additional work will be needed to explore how to account for different functionality levels, as well as allowing for a differentiation in treatment between industries and regions. The bulk of the work is still ahead.

4. Amount C

Originally intended as a measure for resolving tax disputes and preventing double taxation, the January 2020 Statement reveals that the scope of Amount C is still being discussed but is considered a critical element in reaching an overall agreement on Pillar One.

The January 2020 Statement reflects on the fact that a dispute between two jurisdictions over an Amount A issue is also likely to affect the taxation of Amount A in other jurisdictions. Resolving such disputes under the existing bilateral system would thus require multiple mutual agreement procedures (MAPs), the outcome of which could be uncoordinated, inefficient, and lengthy. The best way to resolve disputes is to prevent them. Work will be undertaken to fully develop the details of such a process, which would be globally applicable.

This must be backed up by a mandatory dispute resolution mechanism. This is intended as a backstop providing a strong incentive for the competent authorities involved to resolve disputes in a timely way under MAP. Although not mentioned in the January 2020 Statement, it seems clear that the “last best offer” method as described in Article 25 of the OECD Model Tax Convention (November 2017 version) is the very best method to resolve quantitative issues under dispute. As the arbitrators (usually a panel of three) can chose only between the two proposals made by the parties involved, unreasonable offers are likely avoided (both parties fear that the offer of the other one will be chosen) and the competent authorities have a strong incentive to engage in settlement discussions without having to revert to the mandatory dispute resolution mechanism.

E. International Taxation

While concentrating on the architecture of a new tax system, little is said on the changes affecting domestic and (especially) treaty law. How would Amounts A, B, and C fit under the OECD Model Tax Convention (version November 2017)?

While the February 2019 Public Consultation Document looks at amendment of Articles 5 and 7 of the Convention, the January 2020 Statement suggests a new multilateral instrument which would be apply to all in-scope MNEs to ensure that all jurisdictions can implement the Pillar One standards consistently and at the same time. However, what this new multilateral instrument would look like is not explained in the January 2020 Statement.

IV. OECD Pillar Two: Global Anti-Base Erosion (GloBE) Proposal

Pillar Two sets out the global anti-base erosion (GloBE) proposal which seeks to address remaining BEPS risk of profit shifting to entities subject to no or very low taxation. This proposal is intended as a backstop to Pillar One for situations where the relevant profit is booked in a tax rate environment below the minimum rate. While the GloBE proposal is not limited to highly digitalized businesses, it is intended to address the BEPS challenges linked to the digitalizing economy, where the use of intangible assess makes highly digitalized business ideally placed to avail themselves of profit shifting planning structures.

The need and urgency of the GloBE proposal are stated in the May 2019 Programme of Work as follows: “The global anti-base erosion proposal is ... based on the premise that in the absence of multilateral action, there is a risk of uncoordinated, unilateral action, both to attract more tax base and to protect existing tax base, with adverse consequences for all countries, large and small, developed and developing as well as taxpayers. It posits that global action is needed to stop a harmful race to the bottom, which otherwise risks shifting taxes to fund public goods onto less mobile bases including labour and consumption, effectively undermining the tax sovereignty of nations and their elected legislators. It maintains that developing countries, in particular those with smaller markets, may also lose in such a race. Over recent decades, tax incentives have become more widespread in developing countries as they seek to compete to attract and retain foreign direct investments”.

The GloBE proposal seeks to address BEPS challenges through the development of two inter-related rules:

1) an income inclusion rule that would operate as a minimum tax by taxing the income of a foreign branch or a controlled entity if that income was subject to tax at an effective rate that is below a minimum rate; and

2) a tax on base eroding payments that would operate by way of a denial of a deduction or imposition of source-based taxation (including withholding tax), together with any necessary changes to double tax treaties, for certain payments unless that payment was subject to tax at or above a minimum rate.
The above rules would be implemented by way of changes to both domestic law and double tax treaties.

A. Income Inclusion Rule

The income inclusion rule would operate as a minimum tax by requiring a shareholder in a corporation to bring into account a proportionate share of the income of that corporation if that income was not subject to an effective rate of tax at or above a minimum rate. The rule would apply to any shareholder with a significant (e.g., 25%) direct or indirect ownership in that company and would be applied on a per jurisdiction basis. The income inclusion rule would ensure that the income of the MNE group is subject to tax at a minimum rate thereby reducing the incentive to allocate returns for tax reasons to low-taxed entities.

The income inclusion rule would have the effect of protecting the tax base of the parent jurisdiction as well as other jurisdictions where the group operates by reducing the incentive to put in place intra-group financing, such as thick capitalisation, or other planning structures that shift profit to those group entities that are taxed at an effective rate of tax below the minimum rate.

In general terms, it is contemplated that this rule would apply where the income is not taxed at least at the minimum level – that is, it would operate as a top up to achieve the minimum rate of tax. A top-up to a minimum rate increases the likelihood of the proposal resulting in a transparent and simple global standard that sets a floor for tax competition and makes it easier to develop consistent and coordinated rules. It would further increase the likelihood of achieving a level playing field both for jurisdictions and for MNEs, and reduces the incentive for inversions and other restructuring transactions designed to take advantage of low effective rates of taxation below the threshold.

The Programme of Work recognizes that a minimum tax tied to each country’s corporate income tax (CIT) rate would result in a more complex and opaque international framework given the significant variance in CIT rates across countries. Thus, the Programme of Work would explore an approach using a fixed percentage rather than a percentage of the parent jurisdiction’s CIT or a range or corridor of CIT rates. The Programme of Work would also consider other simplifications with a view to reducing compliance costs and avoiding unintended outcomes – for example, consideration would be given to the use of financial accounting rules as a basis for determining net income against which the determined minimum tax rate is applied.

The November 2019 Public Consultation Documents seek specific input on three technical aspects of the income inclusion rule: (i) tax base, i.e., the use of financial accounts as a starting point for determining the tax base; (ii) blending, i.e., the extent to which an MNE can combine high-tax and low-tax income from different sources and taxed from different sources in determining the effective tax rate on such income; and (iii) carve-outs, i.e., the exploration of carve-outs/exceptions, or other planning structures that shift profit to those group entities that are taxed at an effective rate of tax below the minimum rate. This rule contemplates possible modifications to the benefits available under various treaty provisions, especially with respect to interest and royalties[1].

The February 2019 Public Consultation Document provides that the income inclusion rule would draw on aspects of the U.S. regime for taxing global intangible low-taxed income (GILTI).

B. Tax on Base Eroding Payments

The second key element of the proposal is a tax on base eroding payments that complements the income inclusion rule by allowing a source jurisdiction to protect itself from the risk of base eroding payments. This element of the proposal would explore:

a) an undertaxed payments rule that would deny a deduction or impose source-based taxation (including withholding tax) for a payment to a related party if that payment was not subject to tax at a minimum rate; and

b) a subject to tax rule in tax treaties that would grant certain treaty benefits only if the item of income was subject to tax at a minimum rate.

The undertaxed payments rule denies a deduction or a proportionate amount of any deduction for certain payments made to a related party unless those payments were subject to a minimum effective rate of tax. The effective rate test would take into account any withholding tax imposed on the payment. The test for whether a payment was to a related party could be based on a 25% common ownership test, similar to that used for the application of the income inclusion rule.

The February 2019 Public Consultation Document states that this rule should apply to a broad range of payments and should cover “conduit” or “imported” arrangements, where the effect of an undertaxed payment is “imported” into the payer jurisdiction through a payment that is otherwise outside the scope of the rule.

The Programme of Work would explore a number of options and issues in connection with the design of the undertaxed payments rule, including the types of related party payments, the test for determining whether a payment is “undertaxed”, and the desire to minimize compliance and administration costs.

The subject to tax rule would complement the undertaxed payment rule by subjecting a payment to withholding or other taxes at source and denying treaty benefits on certain items of income where the payment is not subject to tax at a minimum rate. This rule contemplates possible modifications to the benefits available under various treaty provisions, especially with respect to interest and royalties[1].

[1] The specific treaty articles referenced here are Article 7 (Business Profits), Article 9 (Associated Enterprises), Article 10 (Dividends), Articles 11–13 (Interest, Royalties and Capital Gains), and Article 21 (Other Income).
The Programme of Work would explore a number of options and issues in connection with the design of the subject to tax rule, including the need to amend bilateral tax treaties, the identification of factors that would merit the extension of the subject to tax rule to payments between unrelated parties, and the identification of factors that would merit the extension of the subject to tax rule to other types of payments.

C. Rule Co-ordination, Simplification, Thresholds and Compatibility with International Obligations
The Programme of Work states that further work will be required on rule co-ordination, simplification measures, thresholds and carve-outs. In particular, this work will focus on ensuring that the GloBE proposal:

- avoids the risk of double taxation,
- minimises compliance and administration costs,
- is targeted and proportionate,
- addresses the priority in which the rules would be applied and how they interact with other rules in the broader international framework, including the interaction between this proposal and other BEPS Actions, and
- explores compatibility with international obligations (such as non-discrimination).

The Progress Note on Pillar Two in the January 2020 Statement by the OECD/G20 Inclusive Framework notes that there is ongoing work with respect to the above-mentioned co-ordination, simplification, and compatibility efforts. There are also ongoing work-streams looking into possible thresholds (such as the EUR 750 million revenue threshold used for country-by-country reporting) and carve-outs that would restrict the application of the rules under the GloBE proposal.

V. Non-OECD Initiatives
A. U.S. TCJA of 2017
The U.S. Tax Cuts and Jobs Act of 2017 (TCJA) constituted the most sweeping reform of the U.S. tax code since the Tax Reform Act of 1986. While many of the TCJA provisions were generally viewed as favorable to the corporate sector, changes were also introduced that effectively targeted the tax avoidance strategies that had previously been addressed in the OECD 2015 BEPS Final Report. Set forth below is a summary of several of the major changes enacted in the TCJA, including the “BEPS-inspired” provisions.

Rate Reduction and Transition to Quasi-Territorial System:

- The principal provision in the TCJA was the reduction of the top U.S. corporate tax rate from 35% to 21%. This constituted the first cut in the U.S. corporate tax rate since the Tax Reform Act of 1986 and the lowest corporate tax rate in the U.S. since 1939.
- To transition from a worldwide system of taxation to a quasi-territorial system, the TCJA provided for a deemed repatriation of pre-2018 undistributed earnings of foreign subsidiaries and a one-time toll charge (15.5% tax rate for earnings held in cash and cash equivalents and 8% tax rate for other earnings).

- The TCJA included a participation exemption allowing a domestic corporation to claim a 100% deduction for certain dividends from a foreign subsidiary.

BEPS-Inspired Provisions:

- The TCJA included a new tax on global intangible low-taxed income (GILTI) earned by foreign subsidiaries. GILTI is intended to capture a foreign subsidiary’s excess return from intellectual property and is calculated based on the excess of a foreign subsidiary’s net income over a 10% return on tangible assets. The tax on GILTI is imposed at a 10.5% rate (with a higher rate starting in 2026). In calculating the U.S. tax on GILTI, foreign tax credits are capped at 80%, and GILTI is subject to a new separate FTC limitation basket [2].
- The TCJA imposed a new 10% tax on multinational corporations in the form of a base erosion and anti-abuse tax (BEAT). BEAT applies where a multinational corporation has at least US$500 million of annual domestic gross receipts and there is a “base erosion percentage” of 3% or higher (2% or higher for certain banks) resulting from “base erosion payments”. “Base erosion payments” are generally defined as deductible payments (e.g., interest, royalties) paid by a U.S. corporation to a related foreign party.
- The TCJA incorporated provisions that target hybrid mismatches. The TCJA included new rule under which deductions are disallowed for interest or royalties paid to a related party when these payments are not included in income or the related party can take a deduction. In addition, the above-mentioned participation exemption does not apply to dividends that a U.S. shareholder receives from a CFC if they are hybrid dividends (e.g., the CFC was allowed to take a deduction with respect to income tax imposed by a foreign country). In effect, these provisions neutralize hybrid mismatches created from deduction/non-inclusion and double deductions.

B. Unilateral Digital Taxes
During the recent period in which the OECD has been working to develop a multilateral consensus on reforming the taxation of the digital economy, approximately a dozen countries have unilaterally implemented or proposed taxes on digital services income. These unilateral measures include the following:

- France: In July of 2019, France enacted a 3% tax on the revenue large digital companies earn from online market-places, targeted advertising, and data sales for targeted advertising [3].
- United Kingdom: In July of 2019, the UK Government published the draft legislation on a digital services tax imposed

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[2] As noted above, the OECD’s February 2019 Public Consultation Document states that the income inclusion rule of the GloBE proposal would draw on aspects of the U.S. regime for taxing GILTI.

[3] Following retaliatory threats from the U.S. to impose import tariffs as high as 100% on $2.4 billion of French imports, France and the U.S. have agreed to defer the imposition of such digital taxes and import levies until the end of 2020.
at a 2% rate on three types of digital services activities which derive value from interaction or engagement with UK users: (i) a social media platform, (ii) an internet search engine, or (iii) an online market place.

- **Czech Republic**: In July of 2019, the Czech government started the formal legislative process to introduce a digital services tax that would be imposed at a rate of 7%. The new tax would be referred to as a tax on selected digital services, and the following digital services would be defined as taxable: (i) carrying out targeted advertisement campaigns, (ii) use of multi-sided digital interfaces, and (iii) sale of user data.[4]

- **Austria**: In October of 2019, the Austrian parliament passed legislation introducing a tax on digital advertising, effective January 1, 2020. The Austrian digital services tax is imposed at a rate of 5% on the turnover from advertising services rendered by service providers in Austria. Digital advertising service will be deemed to be rendered in Austria if the digital advertisement is received on a device with an Austrian IP-address and if the advertisement addresses Austrian users.

- **Italy**: In December of 2019, Italy enacted a digital services tax to tax revenues generated over the course of the year by digital services rendered to users located in Italy and identified as such by their IP addresses. The rate of the digital services tax is 3%.

- **Turkey**: In December of 2019, Turkey enacted a digital services, effective March 1, 2020. This tax is imposed at a rate of 7.5% on Turkish revenues attributable to (i) digital advertising services, (ii) sales of any audible, visual or digital content, and (iii) services for the provision and operation of a digital platform by which users may interact with each other.

- **Spain**: In February of 2020, Spain announced that it will introduce by the end this year a digital services tax to be imposed at a rate of 3% on large digital services companies. (The delay until late-2020 was done to allow the OECD to make a final push to reach an agreement on a global digital services tax).

In the February 2019 Public Consultation Document, the OECD warned that “Unilateral measures taken in response to the lack of multilateral action can lead to double taxation and may even result in new forms of protectionism”.

C. **European Union**

On March 21, 2018, the European Commission released two proposals dealing with the taxation of digital income. The first proposal provided for a temporary EU tax on digital revenues at a 3% rate to serve as a stopgap measure until an international agreement could be reached on a long-term fix to corporate tax rules applicable to the digital income of multinational enterprises. The second proposal set out the EU’s position on such a long-term fix, proposing changes to international tax rules that allocate digital income among nations and advancing new concepts such as “virtual permanent establishment” and “user value creation”.

In March of 2019, the EU shelved its digital tax proposals after they failed to receive unanimous support in the bloc.

On January 29, 2020, the European Commission issued its Commission Work Programme 2020. In this document the European Commission stated: “Technological change and globalization have enabled new business models. This creates opportunities but also means that the international corporate tax framework has to keep pace. The Commission will present a Communication on Business Taxation for the 21st Century, focusing on the taxation aspects relevant in the Single Market. This will be complemented by an Action Plan to Fight Tax Evasion and make taxation simple and easy”.

The European Commission continues to voice its support for the OECD effort to find consensus on an overhaul of global tax rules to address concerns that tech companies should pay more tax in countries where they have users. However, the European Commission also continues to indicate that it will move forward with its own digital tax plan if this OECD effort fails[5].

VI. **Conclusion**

The OECD has stated that the application of the Pillar One and Pillar Two rules could boost government revenues by about US$100 billion per year. The OECD has also acknowledged the need for coordination rules to minimize the risk of double taxation of income covered by these proposed new rules.

The OECD is seeking to reach a preliminary agreement on the framework for the taxation of digital income by July of this year and to achieve overall consensus (from nearly 140 countries!) by the end of 2020. Nevertheless, some observers believe that this is an overly ambitious timeline and that the OECD work on achieving consensus-based multilateral solutions with respect to the taxation of the digital economy could continue on through 2021 (and perhaps beyond).

[4] It has been reported that, in response to retaliatory threats from the U.S., the Czech Republic is considering a reduction in the rate from 7% to 5% as well as postponing the date when the tax comes into effect.

[5] For example, in an interview on February 25, 2020, Margrethe Vestager, Executive Vice President of the European Commission for a Europe Fit for the Digital Age, stated: “We engage fully with the OECD because a global agreement is much better than a regional agreement. But if that is not possible, we will do our best to find a European approach.” Similarly, in a speech on March 5, 2020, Paolo Gentiloni, European Commissioner for Economic Affairs, stated: “If global consensus cannot be reached, the EU will be forced to act alone. Our systems are too outdated, and the pressures are too great to ignore any longer.”