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Proposals for the Taxation of a Significant Digital Presence in the European Union

Abstract

The author is searching for an answer to the question of whether the European Union needs own solutions in the area of taxation of digital economy and whether the solution offered by the European Commission, which is taxation of significant digital presence, can be effective in taxing the digital economy of the European Union. To this end, a number of references to selected standpoints of international doctrine, OECD regulations, and the draft of the Directive has been made in this paper.

Keywords: digital tax, digital economy, digital presence, European Union

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A review of solutions which serve the taxation of the digital economy allows for posing a hypothesis that many methods which could tax business activity based on digital technologies exist. One should remember, however, that there also must be consensus and political will in order to introduce them. Due to the lack of consensus at the global level, on 21 March 2018, the European Commission presented two draft directives which were to ensure the taxation of enterprises conducting business in the European Union in the area of the digital economy: the Directive laying down rules relating to the corporate taxation of a significant digital presence[2] and the Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services.[3] The drafts of the Directives presented by the Commission are the beginning of the legislative work at the Union level. One should ask the question whether the European Union needs its own solutions regarding the taxation of the digital economy. In this paper, the author attempts to evaluate whether the target solution proposed by the Commission, that is, the taxation of a significant digital presence, i.e. a digital establishment, can be an effective tool for the taxation of the digital economy in the European Union. For this purpose, subsequent references were made to selected opinions of international doctrine, OECD regulations and the draft of the Directive.

The need for the taxation of the digital economy in the international doctrine

The available rules of international taxation are considered outdated and unadjusted to the reality of modern business activity of a digital or virtual nature, that is, of a nature that does not require physical presence in another state in order to do business. In recent years, the question of legal and tax solutions which allow one to meet the digitalisation of the economy has been widely discussed both in tax law

[2] Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence of 21 March 2018, COM(2018) 147 final (hereinafter referred to as "the Directive").

[3] Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services, COM(2018) 148 final.

science and at the level of international institutions and local legislative authorities.[4] The effect of this work in the European Union is, among others, the draft of the Directive which proposes the taxation of a significant digital presence. In this regard, it should be noted that many concepts of the taxation of business activity of a digital nature were formed, therefore a critical analysis of whether the European Commission's proposed taxation model is correct, particularly whether a regional instrument can be a successful tool for the taxation of digital business activity, is necessary.

It should be noted that even when a number of models of the taxation of the digital economy was presented in recent years, a unified definition of the digital economy, or the subject of taxation, has not been presented. It is worth noting that the extensive BEPS Report, Action 1, devoted to the digital economy,[5] did not include such a definition. What is more, voices in the international debate claimed that such a thing as a digital economy does not exist because it interfaces with, or even is an element of the traditional economy. In turn, in the next Report devoted to the digital economy, the OECD[6] deviated from the concept of the digital economy in favour of the concept of digitalising the economy. In the above-mentioned report published by the OECD in March 2018, three elements define a digital economy. The first feature is the possibility of providing services remotely, without being present in a given state, in the form of a so-called permanent establishment on a large scale (scale without mass). This is possible thanks to modern technologies, however, it does not apply only to so-called digital giants, but also to smaller enterprises. The second defining feature is the meaning of intellectual property for one's business model. And the third one is the measurable value which data concerning customers constitutes, and the latter's active participation in creating the brand and the value of enterprises operating in the digital area.

The international doctrine also indicated that in order to ensure the effectiveness of the introduced solutions, determining the definition of the digital economy first is necessary. For instance, A. Baez and Y. Brauner from the IBFD Academic Task Force, in their suggestion, pointed out the possibility of introducing a withholding tax in order to tax the digital economy. For this purpose, they suggested that a definition of a legal digital transaction be added to double taxation conventions.[7] The authors suggested a wording of such a definition, based on a functional

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[4] R. Azam, *E-commerce Taxation and Cyberspace Law: Integrative Adaptation Model*, "Virginia Journal of Law & Technology Association" 2007, 12(5).

[5] *Addressing the Tax Challenges of the Digital Economy, Action 1*, OECD Paris 2015.

[6] *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS, OECD Publishing*, Paris 2018.

[7] A. Baez, Y. Brauner, *Withholding Taxes in the Service of BEPS Action 1: Address the Tax Challenges of the Digital Economy*, "WU International Taxation Research Paper Series" 2015, 14.

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test: "A withholdable digital transaction is the sale or purchase of goods or services of any type, conducted over computer networks or affected over platforms such as the Internet, mobile and sensor networks." The authors rightfully pointed out that defining a payment or a transaction precisely is necessary for the mechanism of the withholding tax to be effective, and the definition itself should be clear enough to be useful. The authors assessed the suggested definition as too broad or having the potential to cover too many transactions, hence they indicated the necessity of introducing exemptions to selected taxable persons. Apart from this, they pointed out that the dynamics of development in the digital area may soon require the adjustment of the scope of the definition to new models of business activity.[8]

In turn, P. Hongler and P. Pistone, also operating within the IBFD Academic Task Force focused on the possibility of the taxation of digital enterprises on the basis of the concept of an establishment. They suggested changes in the definition of a permanent establishment by introducing the construction "digital presence" into Article 5 of the OECD Model Convention. In their opinion, thanks to introducing the new scope of the concept of a permanent establishment, it will be possible to deviate partially from connecting an establishment with a physical presence on a given territory, and to shift to the element of the creation of the value that is created by a digital enterprise under a given jurisdiction. In this context, value creation does not mean only the supply side, but also the value of an enterprise which is increased by the market itself and its users.

Hongler and Pistone's previously mentioned proposal involves the introduction of Article 5(8) into the OECD Model Convention with the following wording: "If an enterprise resident in one Contracting State provides access to (or offers) an electronic application, database, online market place or storage room or offers advertising services on a website or in an electronic application used by more than 1,000 individual users per month domiciled in the other Contracting State, such enterprise shall be deemed to have a permanent establishment in the other Contracting State if the total amount of revenue of the enterprise due to the aforementioned services in the other Contracting State exceeds XXX (EUR, USD, GBP, CNY, CHF, etc.) per annum".[9]

In order to avoid problems with the interpretation of the indicated definition, the authors of the proposal point out that the Commentary to the OECD Model Convention should include definitions of some statements included in the definition itself, and in this regard, it is the Commentary, not the Convention that should

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8 Ibidem, p. 12.

9 P. Hongler, P. Pistone, *Blueprints for a New PE Nexus to Tax Business Income in the Era of the Digital Economy*, "WU International Taxation Research Paper Series" 2015, 15, pp. 2–3.

be updated, for instance, in terms of the concepts: "provides access to (or offers)", "users".

According to Hongler and Pistone's concept, the fulfilment of four requirements: (i) providing digital services and exceeding the thresholds of (ii) the number of users, (iii) time of providing a service, (iv) minimum revenue, is necessary, according to the proposed definition, for a digital establishment to be installed. As far as the definition of digital services is concerned, according to the researchers, it should be included in the presented form in Article 5(8) of the OECD Model Convention, and by means of using this provision in bilateral international agreements, it should be subject to interpretations of authorities and courts in individual jurisdictions.

The criterion of exceeding the threshold of the number of users is connected with the fact that in Hongler and Pistone's opinion, the number of consumers is the most essential factor of a company's importance and growth in a given state. In spite of the fact that a very important measure of a company's existence in a given state is the time spent on using a given platform, the creator of the company's value is, to a greater extent, the number of users, which consequently justifies using taxation in the source state. It is also important to make additional commentaries and interpretations of the sole concept of users, so as to be certain whether it is about users who have access to services available free of charge, or only about users who are subscribers. In turn, the requirement for exceeding the time of providing a service is mostly connected with the very fast-growing potential of companies of the digital economy. That is why an establishment in a given state should occur 12 months after reaching a given threshold of the number of users, or after a given threshold of the number of users has been reached. When it comes to the threshold of revenue, its purpose is to exclude small and medium businesses operating in the digital economy from taxation because it would cause significant administrative burdens. On the other hand, this threshold should not necessarily be the same for every country, while it may be calculated in the proportion of the economic "power" of a given jurisdiction.[10]

Due to the existence of the requirement for exceeding the threshold of the number of users, the new scope of the definition of a permanent establishment would most probably cover more B2C transactions than B2B ones. It should be noted, however, that the biggest category of B2B transactions, or e-commerce, most frequently leads to forming a permanent establishment on a given territory on the basis of the existing provisions of Article 5 of the OECD Model Convention. It seems that it was the model of the taxation of a significant digital presence, which was discussed by Hongler and Pistone that the European Union based its proposed target solution on.

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[10] Ibidem, p. 3.

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E-commerce and the digitalisation of the economy in the Commentary to the Model Convention

It should be emphasised that the issue of the digitalisation of the economy, before it was addressed in BEPS reports, has been reflected in the Commentary to the OECD Model Convention for years. In 1996, an OECD Working Group was established which started research concerning tax issues arising in connection with the development of the Internet technologies. Sections 42.1–42.10 of the Commentary to Article 5 of the MC-OECD[11] were devoted to the issues discussed. The main problems related to determining the existence of a permanent establishment in the context of the digital economy primarily concern the appropriate definition of the nature of a website, server and an Internet Service Provider.[12]

Internet Service Providers (ISP) are entities which provide hosting services by putting the websites of other entrepreneurs on their servers.[13] Some representatives of the doctrine pointed out that an ISP meets the conditions necessary to be considered a tied agent, according to Article 5(5) of the MC-OECD, which would allow one to assume that the said ISP constitutes a so-called agency establishment of a given enterprise. Ultimately, it was assumed that an ISP is not a tied agent because it is not authorised to enter into agreements on behalf of that entity. Additionally, it is indicated that an ISP may offer hosting services for the websites of many enterprises, which makes it resemble an independent agent.[14] And therefore, the concept of an establishment of an agency type also turned out to be an insufficient solution.

In turn, the topic of e-commerce in the context of an establishment was introduced into the OECD Model Convention in 2003. The OECD assumed then that there was a necessity of clarifying the understanding of the definition of an establishment in connection with the prevalence of e-commerce. One should still look for an answer to the question whether conducting commercial business via the Internet can lead to forming an establishment in the context of the traditional definition of an establishment. Therefore, it is necessary to conduct an analysis of whether one has to do with a place to which permanence can be attributed, and by means of which an entrepreneur's business is done in whole or in part.[15]

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11 *Modelowa konwencja w sprawie podatku od dochodu i majątku*, transl. K. Bany, Warszawa 2016.

12 J. Warnieło, *Międzynarodowe aspekty opodatkowania gospodarki cyfrowe*, [in:] M. Jamroży (ed.), *Opodatkowanie dochodów transgranicznych*, Warszawa 2016, p. 116.

13 K. Lasiński-Sulecki, *Stały zakład w warunkach gospodarki elektronicznej*, [in:] B. Brzeziński (ed.), *Model Konwencji OECD. Komentarz*, Warszawa 2010, p. 391.

14 M. Geurts, *Server as a permanent establishment?*, "Intertax" 2000, 28, 4, pp. 173–174.

15 A. Oktawiec, *Zakład*, [in:] M. Zasiewska, A. Oktawiec, J. Chorązka (eds.), *Umowy o unikaniu podwójnego opodatkowania. Komentarz*, Warszawa 2011, p. 104.

Before conducting an analysis of whether an institution of a foreign establishment is sufficient for the taxation of so-called e-commerce, one should distinguish between a computer/server and data/software on that computer. The possession of a computer device may lead to forming an establishment if permanence can be attributed to it. The point is that the device should be in a given place for an appropriate amount of time (at least 6 months). An entrepreneur has to conduct his or her main business in whole or in part by means of a computer device. In order to fulfil this condition, it is not necessary for users of that device to be where it is. The OECD Model Convention states that not every type of business activity requires a human being's active participation in the management of the place.

Simultaneously, according to the principle expressed in Article 5(4) of the MC-OECD, an establishment will not be formed if a server or another computer device is used for preparatory-auxiliary activities. As a rule, one has to deal with such a situation in the case of: advertising, collecting market information for the enterprise, delivering information by means of a mirror server for the purpose of security and productivity, making a connectivity channel, similar to a telephone line between suppliers and customers, available. It should be emphasised that this list is illustrative, and it should be verified every time whether a preparatory-auxiliary activity occurs in given circumstances.

Section 42.2 of the commentary to Article 5 of the Model Convention of the OECD explicitly states that it is impossible to attribute any location which could be considered a place to a website. In this case, no material space is involved, i.e. rooms, machines or devices. On the other hand, a server on which a website is put as a fixed element may constitute a "fixed place" for the entity that makes the server available to other entrepreneurs (server operator) or conducting business of another type via that server. When it comes to an entity that uses a server, while not being its owner, using the memory of the server does not constitute forming an establishment due to the lack of material space. It means that making part of the space on the server available does not constitute making the place available.[16]

It should be emphasised that business activity within the digital economy seems to be impossible without using computer servers. A server is an automatic device which shares resources among other devices connected to a given network. The resources indicated may be, among others, webpages or e-mail. As set out by the OECD, if a server is a specific device with a physical location, it may constitute a fixed place through which business activity is conducted. Relatedly, if a server is used regularly by an enterprise to do business, and it is at the disposal of the enterprise for this specific purpose, it may constitute an establishment. It should be noted

[16] Ibidem.

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that in this case, the functions of the server should constitute an "essential" or the "basic" part of the activity of the enterprise.[17] Nevertheless, considering the fact that a website in itself does not constitute a foreign establishment, it should be assumed that the current definition of a foreign establishment based on the concept of a place is not sufficient.

It should also be noted that the question of the taxation of a server itself as a foreign establishment was a controversial issue for member states of the OECD. For instance, in section 45.5 to Article 5 of the MC-OECD, Great Britain reserved that a server used by an entity that is a so-called e-tailer in total or without websites does not constitute an establishment. In turn, up until the update from 2010, there was a reservation submitted by Greece and Spain that until the development by the OECD of a final opinion on the tax treatment of e-commerce, they are not obligated to comply with the guidelines included in the Convention (section 45.6 to Article 5 of the MC-OECD prior to the update from 2010). With the 2010 update, Spain renounced the above-mentioned reservation, whereas Greece and Chile explicitly reserved that they would not comply with the OECD's guidelines concerning the treatment of e-commerce, included in sections 42.1–42.10 of the Commentary (section 45.6 as numbered in the update of the MC-OECD from 2010).[18] It seems that the multitude of business models and different approaches to the protection of one's own fiscal interest are barriers which block reaching a consensus not only at a global level, but also at regional ones.

The update of the Commentary to the MC-OECD in 2010 covered, among others, the question of the understanding of the definition of an establishment in the context of business activities conducted by satellite operators. The OECD's opinion was that neither a satellite in space nor the surface of the Earth, where satellite signals are sent, create a fixed place for the satellite operator. Therefore, the existence of a satellite does not lead to the forming of its operator's establishment.

OECD's concepts post-BEPS

On institutional grounds, the OECD's work should particularly be taken into account. Although the subject of this paper is the solution proposed by the European Union, referring to the OECD's analyses is necessary for placing that solution in

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[17] J.-P. Chetcuti, *The Challenge of E-commerce to the Definition of a Permanent Establishment: The OECD's Response*, "Inter Lawyer" 2002, p. 3.

[18] A. Oktawiec, op. cit., p. 105.

the concept of a foreign establishment. Three concepts related to a foreign establishment were considered in those analyses.

The first one provides for adding the definition of a "virtual fixed place" through which an enterprise does its business. In view of this concept, a "virtual place" could lead to forming an establishment if an enterprise maintains a website on the server of another enterprise located in a given state, and does business via that website. On the grounds of this proposal, a website constitutes a place of the activity of an enterprise of a virtual nature. Therefore, according to this proposal, the necessity for an enterprise to have material factors in the form of rooms or devices would be eliminated. The second proposal provides for devising a "virtual agency establishment" as an electronic equivalent of a classic tied-agency establishment. According to this proposal, the concept of an agency establishment could be extended by other circumstances, in which contracts are customarily concluded on behalf of the enterprise by persons in the source state, to the electronic conclusion of agreements without the necessity of the participation of "the human factor". For instance, the website through which agreements binding for an enterprise are customarily concluded could be treated as a tied agent of the enterprise, regardless of the physical location of the servers on which this website is put.[19] The third proposal provides for a completely new presence and activity threshold for an enterprise, which could lead to forming an "establishment based on local economic presence" which would not depend on the existence of a fixed place of the enterprise, the place that is at the latter's disposal. According to this proposal, the threshold of the activity and the presence of a foreign enterprise in a given state should be analysed in a situation in which the enterprise provides electronic services in the legal domicile of its customers. The threshold should be constructed in such a way that it covers enterprises with significant economic activity, and it could be, according to the OECD, based on both the time criterion and the revenue one.[20]

The extension of the third concept can be seen within the BEPS Action 1 in which the OECD presented an attitude based on "a significant electronic presence". According to the proposed option, the criterion which could be used in situations in which a foreign enterprise exclusively conducts electronic activity of a "completely dematerialised nature" on the territory of a given state, could be to maintain "a significant electronic presence" in the economy of the source state. As potential elements of the "electronic presence test", the OECD suggests the evaluation of,

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19 *Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce?*, Final report of the Technical Advisory Group on Monitoring the Application of Existing Treaty Norms for Taxing Business Profits, OECD, Paris 2004.

20 Ibidem.

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among others, whether: the main activity of an enterprise is based wholly or in a substantial part on digital goods; no physical elements or activities are involved in the value chain, except the existence and use of servers or websites; agreements are entered into exclusively via the Internet; payments are made exclusively by means of credit cards or other electronic payments. Thus, it is clear that within the OECD's work, the importance of an attitude based on the actual economic participation of a foreign enterprise in the economy of a given state, as the source of its income, is increasing. It should constitute the starting point of a discussion on the new "presence and activity threshold", which would give the source state the right to tax a non-resident's income from business activity of an electronic nature, particularly trading in digital goods.

Developing ICT[21] technologies result in business activity on the territory of a given country perhaps not requiring any physical activity at all on the one hand, but on the other hand, to generate great revenue there. That is why the above-described proposals for changes should be evaluated positively as a rule. Accepting the new rules of determining a permanent establishment in the digital economy could allow for the unification of the practice of individual states. As shown by the analyses concerning the case law of states all around the world, the conditions of determining a permanent establishment differ significantly in the individual states (there is no unified case law even when it comes to the OECD member states).[22]

There is no doubt that the present legal-tax infrastructure at a global level, that is, based primarily on double taxation conventions does not ensure the effectiveness of collecting public levies, and it does not allow for the taxation of income on the territory of a state in which that income is actually generated. The review of the proposed modifications to the taxation of the digital economy, which are proposed in the doctrine, allows one to pose a hypothesis that many methods which could tax business activity that is based on digital technologies exist. It should be remembered, however, that there must also be consensus and political will in order to introduce them. It seems that introducing or even suggesting changes of a global nature seems too "revolutionary". It should be emphasised that despite subsequent changes to the Commentary to the Model Convention of the OECD, heated discussions at institutional levels and in the doctrine, the OECD did not propose for the

[21] Information and communications technologies may be defined as a collection of technologies and applications which make it possible to process, store, search for, and send data among a wide range of users or customers. G. Cohen, I. Salomon, P. Nijkamp, *Information-communications technologies (ICT) and transport: does knowledge underpin policy?*, "Telecommunications Policy" 2002, 26, pp. 31–52.

[22] J. Warnieło, op. cit., pp. 120–122.

introduction of the definition of a digital establishment into the Multilateral Convention.[23]

The commission's proposal – a significant digital presence

On 21 March 2018, the European Commission presented two draft directives which were supposed to ensure the taxation of enterprises doing business in the European Union in the area of the digital economy: the Directive laying down rules relating to the corporate taxation of a significant digital presence and the Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services. It should be indicated that the draft directives submitted by the Commission are the beginning of the legislative work at the level of the Union. The first of these directives is intended to be the target reform of provisions concerning the taxation of digital business activity. The draft of the Directive is aimed at making it possible for member states to tax profits generated on their territories, even if a given enterprise is not physically present on that territory.

According to the draft of the Directive, a digital platform constitutes a taxable "digital presence" or a virtual fixed place of doing business in a given member state if one of the following criteria is fulfilled:

- its revenues in a given member state exceed the threshold of EUR 7 million in a tax year;
- it has over 100 thousand users in a given member state in a tax year;
- the number of business contracts for the supply of any such digital service that are concluded in a tax year exceeds 3 thousand.

Apart from this, it should be noted that the proposed instrument may constitute an element of the common consolidated corporate tax base (CCCTB[24]).

The second of the directives proposed is supposed to be a temporary solution for the time of working on the target reform, and to ensure a solution at the Union level in the case of the lack of consensus on the target solution. The Digital Services Tax (DST) is intended to make it possible to immediately generate income for member states, subject to mechanisms it includes, which are aimed at limiting the possibility

[23] Multilateral tax convention (Multilateral Instrument to Modify Bilateral Tax Treaties, so-called MLI convention) is an agreement signed on 7 June 2017 by over 100 states.

[24] In October 2016, the Commission suggested resuming the work on a Directive concerning a common consolidated corporate tax base, https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en (access: ...).

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of double taxation. The temporary directive is also supposed to prevent the introduction of their own solutions in this regard by some member states, which could result in the creation of national solutions, detrimental to the unified market.

According to the preamble of the Directive introducing the target solution, the European Union's goal is to tax digital income where value is created. It was noted in the preamble that "However, digitalisation is also putting pressure on the international taxation system, as business models change. (...) The application of the current corporate tax rules to the digital economy has led to a misalignment between the place where the profits are taxed and the place where value is created." Challenges of this type were also described in the Communication from the Commission, entitled "A Fair and Efficient Tax System in the European Union for the Digital Single Market", adopted on 21 September 2017. In this communication, the Commission presented its analysis of challenges in the area of taxation, which the digitalisation of the world economy is connected with. Next, in conclusions adopted on 19 October 2017,[25] the European Council emphasised the need for an effective and just tax system of the digital era, and expected that the Commission would present appropriate conclusions at the beginning of 2018. In its conclusions of 5 December 2017,[26] the ECOFIN Council also signalled that it expected the Commission's appropriate conclusions at the beginning of 2018 at the latest, "taking into account relevant developments in ongoing OECD work and following an assessment of the legal and technical feasibility as well as economic impact of the possible responses to the challenges of taxation of profits of the digital economy".

Conclusions

While it cannot be denied that the EU institutions are effective in terms of preparing subsequent solutions, it is difficult to make a positive evaluation of the perspective of implementing them and generating budget income. Firstly, it should be noted that the target solution depends on the work on the CCCTB on which the European Union started working almost two decades ago, that is, in 2001. However, even if one were to assume optimistically that the work on the Directive will be finalised in the upcoming years and that it will be supported unanimously, its constructional deficits should be noted. Firstly, the lack of the possibility of taxing the establishments of enterprises from jurisdictions with which the European Union or its mem-

25 European Council meeting (on 19 October 2017) – conclusions (doc. EUCO 14/17).

26 Council conclusions of 5 December 2017 – Responding to the challenges of taxation of profits of the digital economy (FISC 346 ECOFIN 1092).

ber states will not be able to change a proper double taxation convention. This means that essential digital activity will only lead to the taxation of enterprises of the EU, and not American or Chinese ones which are the largest enterprises of the digital area. Moreover, the issue of allocating income to a digital establishment, which should be based on an analysis in the sense of transfer prices, i.e. this attribution occurs on the basis of an analysis of functions, assets and risks in the group value chain. When it comes to allocation, there is still a discussion there, also at the OECD level,[27] on whether value should be allocated primarily where intangible assets are or where users are. Even if in the Directive it was pointed out quite outright that "this proposal sets out principles for attributing profits to a digital business. These principles should better capture the value creation of digital business models which highly rely on intangible assets", this statement seems to be exaggerated because the principles of transfer prices originated in the OECD documents and not the EU legislation, what is more, it is indicated that guidelines concerning the allocation of income to the digital sector are still to be established. Thus, it seems that the Directive presented by the Union is premature and will not allow for the taxation of the largest entrepreneurs who have their registered offices in the United States and China. Thus, the idea of justice pointed out in the preamble of the Directive would also not be possible to realise through this draft, even if it came into force. Admittedly, in the author's opinion, one should have justified misgivings about the fact that the Directive will suffer the same fate as the one which was supposed to introduce a **common system of financial transaction tax**[28] (that is, it will remain a draft, not applicable law).

27 BEPS ACTIONS 8-10 TRANSFER PRICING – Intangibles, Risks & Capital, High-Risk Transactions, OECD Paris.

28 Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC COM/2011/0594.

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