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Intertax dedicates its second issue of 2019 – another special issue – to taxing the digital economy, with seven articles contributing to the scientific and policy debate at the highest level. They are the outcome of again excellent and multidisciplinary research on the topic, by economists and lawyers, with international and European Union insights (see my editorial note).
Our guest editorial has been written by Daniela Hohenwarter, Georg Kofler, Gunter Mayr and Julia Sinnig. They are the authors who supported the Austrian Presidency of the Council of the European Union, with an earlier version of this article. The authors discuss the "Qualification of the Digital Services Tax under Tax Treaties" in the European Commission Proposal, by putting forward several arguments in support of the conclusion that the digital services tax in the aforementioned Proposal is not an income tax, and is therefore allegedly compatible with tax treaties.

Besides this guest editorial, seven articles discuss the digital economy from varying angles: tax competition for investment in digital business models; the relevance of user contribution and *sustained user relationships* (SURE) to value creation; the qualification of the digital services tax; the compatibility of the digital services tax in the EU Proposal for a Directive with the fundamental freedoms of goods and services; and a regulatory framework for the taxation of virtual currency transactions.

In their article "Measuring and Interpreting Countries' Tax Attractiveness for Investments in Digital Business Models", Marcel Olbert, Christoph Spengel and Ann-Catherin Werner analyse the tax attractiveness of locations for investments in digital business models. They identify and assess relevant tax rules affecting domestic and cross-border digital business models across 33 countries. The computation of average effective tax rates is based on the neoclassical investment model of Devereux/Griffith.

Their results help to evaluate tax-related location factors in the digital economy by combining the most relevant tax parameters and rules for taxable nexus in an objective measure. The authors find that investments in digital business models face generally lower average effective tax rates than those in traditional business models since a high share of investment costs is immediately expensed and a higher share of activities falls within the scope of countries' tax incentives for R&D input and/or output.

While more generous depreciation rules for digital investments such as software make countries relatively more attractive, the authors' results are mostly driven by statutory tax rates, special incentive schemes such as IP Boxes, R&D credits, and super-deductions. Overall, the authors acknowledge an increasing trend in tax competition for digital businesses.

Johannes Becker & Joachim Englisch ("Taxing Where Value is Created: What's 'User Involvement' Got to Do With It?") offer a pragmatic and contextualized analysis of the new 'value creation' paradigm and examine its implications for international tax policy in the era of digitalization. In particular, they critically discuss the role of users that are said to contribute to value creation, for example by forming valuable networks, providing data or posting online content. The authors reject the argument that, due to user involvement in a firm's value creation, the location of user groups and networks should give rise to taxation rights. They conclude that a better option is to recalibrate the international tax system based on the concept of sustained user relationships (SURE) which aligns itself with the rationale of a consistently defined notion of 'value creation'.

Nadine Riedel and Patricia Hofmann were invited to comment on the article by Becker and Englisch. Riedel and Hofmann still rely on current international tax principles, including the arm's length principle, and do not acknowledge SURE as a tax nexus connected to user relations, unless it were to be related to country-specific investments. Accordingly, in the absence of local country-specific investments, ownership of the user base asset is plausibly with the country where the digital firm undertakes its core operations.

Georg Kofler and Julia Sinnig ("Equalization Taxes and the EU's Digital Services Tax") discuss equalization taxes, their potential disadvantages and shortcomings, including their negative impact on growth, innovation and productivity, non-neutrality, double taxation, and problems in compliance and administration.

They also highlight that equalization taxes are seen as a politically feasible way to address perceived 'unfairness' in the territorial allocation of taxing rights in a digitalized economy. In any event, however, the authors recall that equalization taxes have to comply with international obligations (e.g., EU and tax treaty law), administrative simplicity, and be designed with a scope that is not overreaching.

Their contribution also addresses the general background of 'equalization taxes', the fundamental objections raised against it, and the relevant design features, both on a general level and specifically with regard to the proposal for an EU 'Digital Services Tax'.

In "The Digital Services Tax and Fundamental Freedoms: Appraisal under the Doctrine of Measures Having Equivalent Effect to Quantitative Restrictions", Christina Dimitropoulou focuses on the evaluation of the European proposal for a common system of a digital services tax (DST) on revenues resulting from the provision of certain digital activities, specifically in light of its compatibility with the guaranteed free movement of goods and services. The compatibility test targets the whole set of taxable services falling under the scope of the DST proposal. The reason of the examination stems from the current co-exercise of traditional and digital similar services in the digital single market and the impact that the DST could have on market competition. A high risk is found for the DST to run counter the aim of the digital single market itself. The analysis points out the possible restrictions on the guaranteed free movement of goods and services by the imposition of DST on the taxable services falling under its scope in the framework of the doctrine of measures having equivalent effect to quantitative restrictions (MEQR) and the relevant ECJ case law (including possible justifications for the identified restrictions and proportionality assessment). Pursuant to the above, the article proposes that digital intermediation services be excluded from the scope of the DST until a comprehensive solution is reached.

Aleksandra Bal, in her article entitled "Developing a Regulatory Framework for the Taxation of Virtual Currencies", reviews virtual currency regulations in five selected countries (Australia, Germany, the Netherlands, the United States and the Unites Kingdom), develops a methodology for creating an effective regulatory framework for the taxation of virtual currencies, and makes recommendations for the improvement of certain characteristics of the existing income tax systems that currently struggle with the enforcement of tax compliance obligations regarding transactions in virtual currencies.

The author advocates the use of legislation to clarify the fundamental aspects of virtual currency transactions together with more detailed non-binding interpretative guidance that can be quickly adapted to changing circumstances. Enforcement and monitoring measures by tax authorities should not target an infinitely large number of unidentified individuals but a much smaller number of operators providing exchange services and wallet providers. A third-party reporting regime for virtual currency intermediaries should be aligned with the existing reporting obligations for anti-money laundering purposes.

This issue also includes two book reviews. Anne van de Vijver reviews the 5th edition of "Schwartz on Tax Treaties" by Jonathan Schwarz, while Marcos Lívio Gomes reviews "The OECD Multilateral Instrument for Tax Treaties: Analysis and Effects", edited by Lang, Pistone, Rust, Schuch and Staringer.