

---

# Kluwer International Tax Blog

## How Much is the “Fair Share” of Taxation for the Digital Economy?

Georgios Matsos (Matsos & Associates) · Thursday, October 11th, 2018

Since the OECD started conceiving and implementing the BEPS project, the major argumentation in favour of the new policies is mainly based on the refrain that everybody should pay their “fair share” of taxes.

It is hard to find any publicly available explanation about what exactly lies behind the idea of a “fair share” of taxation. What exactly is this “fair share”, how much tax does this mean for taxpayers.

Jurists have known, since their days at the undergraduate law school that taxpayers should pay as much in taxes as is defined by law. No more, no less. The principle of legality of tax, which enjoys constitutional protection in most jurisdictions, states that the share of taxes that has to be paid by the taxpayers (fair or not, it makes no difference), is defined in the law and nowhere else.

So, if taxpayers do follow tax laws accurately but still pay less (than what?) taxes, while governments were expecting more taxes, then governments have a very simple and very powerful option: change the relevant tax laws.

And so it went: The taxpayers would then skilfully find deficiencies and gaps of the new laws, trying to still avoid heavier taxation, while complying at the same time with the law. Governments would make audits or fight in front of tax courts or, at the very end, change the law again and so on.

In this endless game between governments and taxpayers, sometimes taxpayers were the winners and sometimes governments. Sometimes both agreed on higher or lower taxation. Such interaction between governments and taxpayers is very well known in the contemporary era, since democracy, constitutionalism and the rule of law emerged in Europe and in the rest of the civilised world.

But is this no longer so? “Unwanted” (by whom?) tax privileges should not be applicable, even if a taxpayer follows the laws accurately. Why? Because everybody should pay “their fair share”. But how much is that fair share, if not the one defined by law? Just the fact that taxpayers found a way in the law allowing them to pay less, does not mean that they violated the law. It only means that a government wishing more tax revenue, should then change the law in question.

This is exactly what happens today with the issue of taxing digital economy. When G-20 and the OECD initiated the BEPS project, they probably had in mind to combat, among other, tax

avoidance of the digital economy. However, it probably became clear after some time that the BEPS project alone would not add “enough” (?) to the tax burden of this industry, which simply benefits quite a lot from the instant mobility of their products across the globe.

This confirms that the problem of tax avoidance is a question closely connected with the free movement of capital of goods and of services, which has globally boosted during the last two or three decades.

Treating the question of what is fair and what is not fair in the relation between economy as a whole and its digital branch, things are not one-sided. Digital enterprises can still avoid taxes (and not “enough” taxes), only because their work is lightly transferrable, quite mobile and can easily be developed in low tax environments. The core added value of such enterprises can be produced and sold globally away from high taxation without trouble.

But do they steal social wealth by not paying “enough” taxes?

In order to answer this question, one also has to consider if there are things that the rest of the economy gets from its digital part without paying an equivalent “fair share” to the digital economy itself.

Thus, it would be useful to consider that we do not pay anything for Google’s search engine. And still, we cannot imagine our lives without Google search engine or without any search engine (all of them are free of charge). We don’t pay for Gmail, or for yahoo! mail. We don’t pay for Google Maps, we don’t pay for basic cloud services, we don’t pay for Facebook, Twitter, LinkedIn, Instagram. And yet, we conduct a major part of our own business through such free of charge services. Governments do too.

The general usefulness of the “free of charge” digital economy is uncountable. We can read reviews for all types products and services in e-shops without being obliged to buy from them. We book hotels for lower prices and it is not us who have to pay any commission to the website. We have free of charge software for almost any need. And so many other benefits from digital economy, all of them free of charge.

It is not that such undertakings do not find ways to make a good profit out of such free of charge use of their services. They make products out of our own behaviour, of our thoughts, of our own use of their services. Their power over our lives does become dangerous, but still we have laws and strong will to protect ourselves from abuses.

But staying on a purely financial level, it is questionable whether the financial interaction between the global society and the tech giants is more profitable for the society or for the tech giants themselves. We get so many and such valuable services free of financial charges, that the legitimacy for the public treasury to request more taxes than the current financial structures allow them (not) to pay could even seem of questionable legitimacy.

Free of charges services became in the meantime a must-have for any business seeking success. All digital players have to offer certain core functions of their product free of financial charge. In this way, there is a new type of economic behaviour and a new type of financial ethics.

Once the international tax community recognises these elementary facts, the our view about the legitimacy of “tax avoidance” in the digital industry will change. It would be much easier to

preserve the valuable infrastructure of international tax law in the way that it has been developed in the last 100 years.

After all, the additional global product that technology brings to world economy, creates so much additional tax revenue, that the government should be happy anyway. Let's not put in danger the goose that lays golden eggs.

---

*To make sure you do not miss out on regular updates from the Kluwer International Tax Blog, please subscribe [here](#).*

## Kluwer International Tax Law

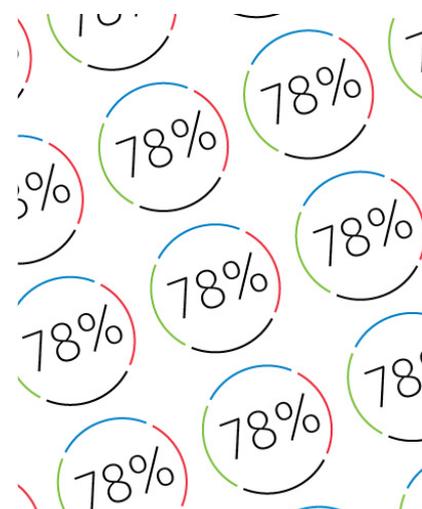
The **2022 Future Ready Lawyer survey** showed that 78% of lawyers think that the emphasis for 2023 needs to be on improved efficiency and productivity. Kluwer International Tax Law is an intuitive research platform for Tax Professionals leveraging Wolters Kluwer's top international content and practical tools to provide answers. You can easily access the tool from every preferred location. Are you, as a Tax professional, ready for the future?

Learn how **Kluwer International Tax Law** can support you.

---

78% of the lawyers think that the emphasis for 2023 needs to be on improved efficiency and productivity.

**Discover Kluwer International Tax Law.**  
The intuitive research platform for Tax Professionals.



2022 SURVEY REPORT  
The Wolters Kluwer Future Ready Lawyer  
Leading change

This entry was posted on Thursday, October 11th, 2018 at 10:16 am and is filed under [BEPS](#), [Digitalization](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.

