Taxation of Digital Services

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Abstract – **The Digital Agenda for Europe aims to maximize the growth potential of the digital economy by promoting high-performance digital skills and computing, digitalizing industry and services, developing artificial intelligence and modernizing public services. The digital economy is well recognized as an important source of growth and jobs for the European Union, especially given the use of a high level of research, innovation and qualified staff. Tax policy should focus on supporting the growth of the digital sector and protecting the integrity of the European Union's single market. This means encouragement a favorable business environment and removing tax barriers that could discourage investment and growth, prevent aggressive tax planning, and preserve national tax bases. On the other hand, the digital sector must make a fair contribution to public finances.**

Keywords – **European union; digital services; taxation; corporate income tax; value added tax**

I. INTRODUCTION

One of the most important technological changes that have influenced fundamental transformations in the socio-economic environment at the end of the 20th century is the emergence of the internet or digital services in every day relations, including business ones, in which physical persons, legal entities and public entities participate [1].

Rapid development in information and communication technologies (ICT) over the last few decades has led to far reaching changes in the way business is done. In contrast to traditional companies which produce material goods or services at certain physical locations, more and more companies produce non-material digital services such as social platforms, online stores with internet advertising and transmit and process data gained from internet users in various parts of the world [2].

Large digital companies such as Apple, Facebook, Amazon, Google and Airbnb use outdated legal norms in order to avoid paying tax. Even though they do business in all EU Member States, mainly register their profits in Member States with low taxation rates such as Ireland or Luxembourg and in that way avoid paying tax in countries where they make profits and earnings. According to research initiated by members of a special board TAX3 GUE/NGL of the European parliament for financial crime and tax evasion of 2018, Apple, one of the biggest and most profitable companies in the world, probably only paid 0.7% tax on profit in the European Union between 2015-2017 [2].

The European Commission is considering a comeback in European plans for taxing digital services in order to finance the great plan for economic recovery of the European Union caused by the consequences of the corona virus pandemic. It is estimated that about 750 billion Euros will be earned from taxing digital services [3].

So, finances have become an active area in the area of applying digital technologies. As a result, new institutions are emerging and existing ones are being modernized, propelled by the new technological inroads made by humanity which undoubtedly impact on already existing institutions and which are under the influence of change [4].

In this paper, the problem areas of taxing digital services with corporate income tax and value added tax (hereinafter: VAT) will be analyzed. There will be more emphasis on VAT in the Republic of Croatia because the Republic of Croatia has implemented in its legislation the Directives and Regulations of the European Union concerning the taxation of digital services with VAT, as well as Member States of European Union. In the taxation of digital services with corporate income tax, the emphasis will be on OECD recommendations and proposals for European union's directives because the Republic of Croatia, nor most Member States of European Union, do not have a prescribed taxation of digital services profits with corporate income tax, and therefore such rules are not harmonized at European Union level.

II. TAXING THE DIGITAL ECONOMY WITH VALUE ADDED TAX

Cross-border trade in goods, services and intangible assets (which include digital acquisitions for VAT purposes poses challenges to VAT systems, especially where such products are procured by private consumers from suppliers abroad. The digital economy increases these challenges, as the evolution of technology has dramatically increased the ability of private consumers to buy online and companies capable of selling to consumers around the world without having to be physically or otherwise present in the consumer's country. This often results in no or an inappropriately low amount of VAT being levied on these flows, with adverse effects on countries VAT revenues and on the level playing field

between resident and non-resident vendors. The main tax challenges related to VAT in the digital economy relate to (i) imports of low value parcels from online sales which are treated as VAT-exempt in many jurisdictions, and (ii) the strong growth in the trade of services and intangibles, particularly sales to private consumers, on which often no or an inappropriately low amount of VAT is levied due to the complexity of enforcing VAT-payment on such supplies [5].

In accordance with the provisions of Council Directive 2006/112 /EC of 28 November 2006 on the common system of value added tax (hereinafter: Directive 2006/112) [6], the distance sale of goods within the European Union is taxed according to the country of origin principle. This means that it is subject to VAT of the supplier's Member State until the delivery threshold is exceeded [7]. For the Republic of Croatia, this threshold amounts to HRK 270 000,00 [8]. This means that a supplier from another Member State who delivers goods at a distance to end users in the Republic of Croatia calculates VAT in its Member State until the total amount of goods delivered in the previous or current exceeds HRK 270 000,00. When the supplier exceeds the specified threshold, he must register for VAT purposes in the Republic of Croatia and charge Croatian VAT on the deliveries made [9]. Also, Directive 2006/112/EC prescribes the acquisition threshold for the purchase of goods from the European Union to the Republic of Croatia, which amounts to HRK 77 000,00 when the buyers are special acquirers in the Republic of Croatia who are not in the VAT system [8].

Therefore, until these thresholds are exceeded, suppliers, the delivery threshold, and the acquirers, the VAT acquisition threshold is calculated at the place where the delivery starts, and not in the Republic of Croatia. In both cases, the delivery must be made to a non-taxable person (Business to Costumer; B2C) [10].

The One Stop Shop taxation procedure for the distance sale of goods within the European Union, for supplies of goods within a Member State by electronic interfaces enabling those supplies and for services supplied by taxpayers established in the European Union but not established in the Member State of consumption may apply a taxpayer who has his registered office, permanent establishment, domicile or habitual residence in the territory of the European Union but does not have a domicile, permanent establishment, domicile or habitual residence in the territory of the Member State of consumption. The Member State of return is the Member State in which the taxable person has his registered office, domicile or habitual residence, and if he does not have one, then the Member State in which he has a permanent establishment. In the event that the taxpayer has more than one permanent establishment, the Member State of declaration shall be the Member State with a permanent establishment specified by the taxpayer as the State in which the One Stop Shop will apply in the current calendar year and during the following two calendar years. However, if the taxable person does not have a permanent establishment in the territory of the European Union, the Member State of declaration is the Member State in which the dispatch or transport of the goods begins. In the event that the dispatch or transport of goods begins in more than one Member State, the taxable person shall indicate which of those Member States is the Member State of declaration, and that decision shall bind him in the current calendar year and during the following two calendar years. The Member State of consumption is: 1. in the case of the provision of services, the Member State deemed to be providing the service, 2. in the case of distance selling of goods within the European Union, the Member State in which the transport of goods to the customer ends, 3. in the case of that the deliveries are made by an electronic interface (hereinafter: the portal) which enables the sale by a taxpayer from a third country, and the delivery is within the same Member State, that country. Distance selling of goods within the European Union is the supply of goods transported from one Member State to another to a taxpayer or a non-taxable legal person whose acquisition of goods within the European Union is not subject to VAT, or to any other person who is not a taxpayer where the delivered good is not a new means of transport or a good which the supplier or another person, on his behalf, assembles or installs with or without trial operation [11].

From 1 July 2021, the provisions on the delivery threshold are deleted, and the place of distance delivery of goods within the European Union is the Member State where the transport of goods to the customer ends. This makes it easier for taxpayers to do business, as they will no longer be required to follow the thresholds for distance deliveries set by individual Member States, after which the taxpayer had to register for VAT in the Member State whose threshold was exceeded. However, in order to facilitate business for small businesses, a single threshold is prescribed at the level of the European Union, which amounts to EUR 10 000,00. The single threshold of EUR 10 000,00, which is converted into HRK 77 000,00, includes: telecommunications services, radio and television broadcasting services and electronically performed services to non-taxpayers in other Member States and distance selling of goods within the European Union [11]. Consequently, if the taxpayer in the previous and current calendar year achieved the value of supplies that enter the threshold of less than HRK 77 000,00, the place of taxation of these supplies is in the Member State of the supplier's registered office [8]. At the time of crossing the threshold, the place of taxation is the place of residence of the recipient of services and the place where the transport of goods to the customer ends. This procedure can be applied by: a taxpayer who sells goods at a distance within the European Union, a taxpayer (portal) that allows sales by a taxpayer from a third country, and it is a supply of goods within the same Member State and a taxpayer who is not established in Member State of consumption and provides services to a non-taxable person [11].

The portal is considered to be a supplier if it allows distance delivery within the European Union by a taxpayer from a third country. The portal is also considered a supplier if it allows the supply of goods within the same Member State by a taxpayer from a third country. The portal is also considered a supplier if it allows the supply of goods within the same Member State by a taxpayer from a third country. Council Implementing

Regulation (EU) of 21 November 2019 amending Implementing Regulation (EU) 282/2011 regarding the supply of goods or services enabled by the use of electronic interfaces and special programs for taxpayers who provide services to non-taxpayers or sell goods at a distance and perform certain deliveries on the domestic market stipulates that the term "facilitates" means the use of an electronic interface to allow a customer and a supplier offering services or goods for sale through the electronic interface to enter into contact which results in a supply of goods or services through that electronic interface [11]. However, the term "facilitates" shall not cover a supply of goods or services where all of the following conditions are met: (a) the taxable person does not set, either directly or indirectly, any of the terms and conditions under which the supply is made; (b) the taxable person is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made; (c) the taxable person is not, either directly or indirectly, involved in the ordering or delivery of the goods or in the supply of the services [12].

The chargeable event for the delivery of goods performed by the portal, as well as the taxable event for the delivery of goods to that taxpayer, and the obligation to calculate VAT arise at the time of acceptance of payment. The moment of acceptance of payment is the moment when the supplier, who sells goods via the electronic interface, receives a confirmation of payment, a message of approval of payment or a commitment to pay from the buyer, whichever occurs first, or when it is received on his behalf, regardless of that is when the actual payment is made. The portal is not considered a supplier when it enables the delivery of goods at a distance within the European Union or the delivery of services to non-taxpayers by a taxpayer who has a registered office, residence, habitual residence or permanent establishment in the European Union. Import One Stop Shop taxation procedure for the sale of goods imported at a distance from third countries includes only goods in shipments whose intrinsic value does not exceed HRK 1 135,00. This procedure cannot be applied to goods subject to excise duty. The distance sale of goods imported from third countries is the supply of goods transported from third countries or third countries to the European Union to a taxpayer or non-taxable legal person whose acquisition of goods within the European Union is not subject to VAT, or any to another person who is not a taxpayer. Taxpayers can apply this procedure regardless of whether they have their registered office, residence, habitual residence or permanent establishment in the territory of the European Union, provided that taxpayers from third countries must appoint an intermediary. An intermediary is a person established in the European Union, appointed by a taxpayer who sells goods at a distance imported from third countries or third countries as the person responsible for paying VAT and for fulfilling obligations related to Import One Stop Shop on behalf and for the account of the tax taxpayer. From 1 July 2021, the Import One Stop Shop can be used for the distance sale of goods imported from third areas or third countries in consignments whose intrinsic value does not exceed HRK 1 135,00. The Member State of declaration is the Member State in which the taxpayer or intermediary has its registered office, domicile or habitual residence and, if not, the Member State in which it has a permanent establishment. If the taxpayer does not even have a permanent establishment in the territory of the European Union, the Member State of declaration is the Member State in which he chooses to declare. The Member State of consumption is the Member State in which the transport of goods to the customer ends. If a taxpayer or intermediary has more than one permanent establishment in the territory of the European Union for Import One Stop Shop, the decision designating the Member State of permanent establishment as the Member State of declaration shall bind him in the current calendar year and during the following two calendar years [11].In addition to the entry into force of the Import One Stop Shop, from 1 July 2021, the exemption from VAT on the import of low-value shipments (up to HRK 160,00) will be abolished. In order to avoid distortions of competition between suppliers inside and outside the European Union, it is necessary to abolish the exemption from VAT on imports of small value consignments. This enables taxpayers from the European Union and taxpayers from third countries to have equal business conditions [11].

III. TAXING THE DIGITAL ECONOMY WITH CORPORATE INCOME TAX

In general terms, in the area of direct taxation, the main policy challenges raised by the digital economy fall into three broad categories: 1. Nexus: The continual increase in the potential of digital technologies and the reduced need in many cases for extensive physical presence in order to carry on business, combined with the increasing role of network effects generated by customer interactions, can raise questions as to whether the current rules to determine nexus with a jurisdiction for tax purposes are appropriate.; 2. Data: The growth in sophistication of information technologies has permitted companies in the digital economy to gather and use information across borders to an unprecedented degree. This raises the issues of how to attribute value created from the generation of data through digital products and services, and of how to characterise for tax purposes a person or entity's supply of data in a transaction, for example, as a free supply of a good, as a barter transaction, or some other way.; Characterisation: The development of new digital products or means of delivering services creates uncertainties in relation to the proper characterisation of payments made in the context of new business models, particularly in relation to cloud computing. These challenges raise questions as to whether the current international tax framework continues to be appropriate to deal with the changes brought about by the digital economy and the business models that it makes possible, and also relate to the allocation of taxing rights between source and residence jurisdictions. These challenges also raise questions regarding the paradigm used to determine where economic activities are carried out and value is created for tax purposes, which is based on an analysis of the functions performed, assets used and risks assumed. At the same time, when these challenges create opportunities for achieving double non-taxation, for example due to the lack of nexus in the market country under current rules coupled with lack of taxation in the

jurisdiction of the income recipient and of that of the ultimate parent company, they also generate Base Erosion and Profit Shifting (hereinafter: BEPS) issues. Although the challenges related to corporate income tax (nexus, data and character) are distinct in nature, they may overlap with each other. For example, the characterisation of payments may trigger taxation in the jurisdiction where the payor is resident or established and hence overlap with the issue of nexus. Similarly, the collection of data from users located in a jurisdiction may trigger questions regarding whether it should give rise to nexus with that jurisdiction, and if so, whether and how the income generated from the use of these data should be attributed to that nexus. It also raises questions regarding how income from transactions involving data should be characterised for tax purposes [5] [13].

The Organisation for Economic Cooperation and Development (hereinafter: OECD) Working Group on the Digital Economy, established for the implementation of BEPS measures, is currently focused on drafting rules and guidelines in the field of taxation of multinational corporations engaged in the activities of the digital economy in the field of corporate income tax. These rules are divided into two main groups. The first group of rules, pillar one, includes the allocation of tax rights in jurisdictions where the market, users or sources are located, as well as the application of the rules on significant digital presence and the redistribution of profits and the rules on distributors [10].

An important question that needs to be answered is the definition of tax thresholds, according to the proposal under discussion, only companies whose total world consolidated revenue is above the threshold of EUR 750 million would be taken into account, and as a second condition and the application threshold would be taken the ratio of the rate of profit from digital activities to total revenues from these activities, with the application of taxation occurring if the rates of profit to revenue were higher than those that would be accepted by consensus in the OECD. Several different application scenarios are being considered and an appropriate sector-specific and industry-specific profit level indicator needs to be identified, including coordination with the existing transfer pricing system [14]. As for the second group of rules, pillar two, its focus is on correcting the level of taxation and equalizing the level of taxes in the case of using various models and systems for tax avoidance (tax havens, tax incentives, incentives ...) in a way that correct the tax base, not to recognize the tax deduction or to apply withholding tax [10]. Therefore, the introduction of new rules for taxation of digital companies as a supplement to the existing OECD recommendations is discussed within "Pillar Two", which are: 1) the rule on included income, which builds on the adopted rule on controlled foreign companies [15].

The rule on included income stipulates that the taxpayer - digital company must include in the income of its parent company the income of its subsidiary that was realized in another jurisdiction, and are taxed at a tax rate below the minimum rate. 2) The Switch over rule provision would apply as a supplement to the income tax rule to those foreign subsidiaries that are taxed at a tax rate below the minimum and are subject to exemptions under existing double taxation agreements. Thus, the transfer provision would allow the application of the rules on included income to such foreign subsidiaries as well. 3) The rule on contesting the payment of expenses within a group would apply to transactions within the group if those transactions would lead to a reduction of the tax base and the payment of a smaller amount of tax than the one that should be paid. 4) The rule on taxation provides for the application of withholding taxes and other taxes on the source of payment and challenging the application of benefits provided by contracts for certain types of income, if the payments made and income would be taxed below the minimum rate [14].

On 21 March 2018, the Proposal for a Council Directive (EU) laying down rules relating to the corporate taxation of a significant digital presence (hereinafter: the Directive) was adopted: for corporate tax purposes in all Member States to include a substantial digital presence through which to do business in whole or in part. This Directive also lays down certain principles for attributing profits to a significant digital presence or linking to it for corporate income tax purposes [16]. The proposal seeks to tax business activities he calls digital services. Digital services are defined as: “services that are delivered via the Internet or electronic network and whose nature makes their supply basically automated and involves minimal human intervention, and it is impossible to provide it in the absence of information technologies [17]. For the purposes of income tax, it is considered that there is a permanent establishment if there is a significant digital presence with which the business is conducted in whole or in part [16].

According to Article 4 (3) of the Directive, a “significant digital presence” is considered to exist in a Member State during the tax period if its business consists in whole or in part of the provision of digital services via a digital interface and, taking into account the overall provision these services by the entity performing that activity and the provision of these services via the digital interface by each of the associated companies of that entity, at least one of the following conditions is met: (a) the share of the total revenue generated in that tax period as a result of the provision of those digital services to users located in that jurisdiction in that tax period exceeds EUR 7.000,000; (b) the number of users of at least one of those digital services located in that Member State in that tax period exceeds 100.000; (c) the number of business contracts for the provision of all such digital services entered into by users located in that jurisdiction during that tax period exceeds 3.000 [18]. The profits attributable to, or linked to, a significant digital presence in a Member State shall be taxable in respect of income tax only in that Member State. Given its design, the EU digital services tax can be characterized as a “hybrid tax” that embodies the elements of income tax and consumption tax. Although the tax refers to revenue generated by value creation in a particular Member State, it would be prone to forwarding to consumers and is triggered by the provision of services [14]. According to Article 5 (2) of the Directive, the profits attributable to or associated with a significant digital presence is the profit that would have

been generated by the digital presence had the same or a similar activity been carried out by a separate and independent company via a digital interface under the same or similar conditions, especially in its dealings with other parts of the company, taking into account the functions performed, the assets used and the risks assumed. In determining the attributable profits, due account shall be taken of economically important activities carried out by means of a substantial digital presence relevant to the development, improvement, maintenance, protection and exploitation of the intangible assets of the company. In determining the profit attributable to taxpayers, they use the profit sharing method, unless the taxpayer demonstrates that an alternative method based on internationally accepted principles is more appropriate taking into account the results of the functional analysis [16].

IV. CONCLUSION

Problems with which confront financial powers in doing business over the internet (taxation of digital services) are: 1) difficulties in determining the source of the point of taxation, 2) the problem of prescribing the profit of given services, 3) the problem of fixing the boundaries of certain taxation subjects, 4) the anonymity of participants in internet business 5) the danger of double taxation or no taxation.

In order to mitigate possible cases of double taxation of the same income subject to both corporate income tax and digital services tax, Member States of Europen Union should allow companies to deduct the digital service tax paid as a cost from the corporate income tax base in their territory, regardless of whether both taxes are paid in the same Member State or in different Member States.

Doing business over the internet (carrying out digital services) has a global scope. Therefore, not one country can independently resolve taxation problems arising therefrom, rather, cooperation at a higher, international level is necessary [19].

The European Commission in 2018 produced the Proposal for a Council Directive (EU) laying down rules relating to the corporate taxation of a significant digital presence as a long-term and all-encompassing solution for this area. Within the European Union a huge discrepancy among the place of taxation and receiving the payment of taxable income and the place where the users of digital services are was noticed. Due to this, the European Commission with its new proposed packet of long-term measures wants to implement structural taxation reform and harmonize the place of taxation and payment of tax on profit with the place where digital activities take place, that is, where the users of digital services are. Within this packet for digital taxation, the European Commission produced in 2018 a Council Directive Proposal on a common taxation system for users of digital services by which profits from providing certain digital services are taxed as a temporary solution aimed at solving this problem [14].

However, the Directive's proposal was not accepted, that is, it was opposed by Denmark, Finland, Ireland and Sweden. After that, many European Union Member States decided to introduce tax on digital services at a national level. Tax on digital services was introduced in France, Italy, Austria, Great Britain, Poland and Hungary and introducing tax on digital services is planned in Belgium, Latvia, Spain, Norway, Slovakia and the Czech Republic [2].

Therefore, for successful implementation of the proposed solutions in the stated Directives, the mutual consent of all key participants is necessary in order to achieve a harmonized approach at European Union level and for that model to be able to contribute to international discussions on solving this problem area at a world level [20].

In order to tax digital services, it is necessary to legally order in a unified way the aim of which is : 1) to maximize the potential growth of digital economy by promoting digital skills and high performance computing, the digitalization of industries and services, with the development of artificial intelligence and modernization of public services, 2) to implement regulatory conditions for innovation, investment and fair market competition, 3) trust and security – right to privacy and protection of personal data, and 4) to ensure additional budgetary means that can be used to improve the healthcare system, systems of science and education, the social welfare system and so on.

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