

## Conclusions

### **The digital economy, its business models, and its key features**

- The digital economy is the result of a transformative process brought by information and communication technology (ICT).
- Because the digital economy is increasingly becoming the economy itself, it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy for tax purposes.
- The digital economy is in a continuous state of evolution and possible future developments need to be monitored to evaluate their impact on tax systems.
- The digital economy and its business models present some key features which are potentially relevant from a tax perspective. These features include mobility (with respect to intangibles, users, and business functions), reliance on data, network effects, the spread of multi-sided business models, tendency toward monopoly or oligopoly and volatility due to lower barriers to entry into markets and rapidly evolving technology.
- The digital economy has also accelerated the spread of global value chains in which MNEs integrate their worldwide operations.

### **BEPS issues in the digital economy and how to address them**

- While the digital economy does not generate unique BEPS issues, some of its key features exacerbate BEPS risks.
- These BEPS risks are being addressed in the context of the BEPS Project, which will align taxation with economic activities and value creation.

- Work on the BEPS Project also must examine a number of issues specifically linked to the digital economy, its business models and its key features. These include:
  - i. Ensuring that core activities cannot inappropriately benefit from the exception to PE status and that artificial arrangements relating to sales of goods and services cannot be used to avoid PE status.
  - ii. The importance of intangibles, the use of data, and the spread of global value chains and their impact on transfer pricing.
  - iii. The possible need to adapt CFC rules to the digital economy.
  - iv. Addressing opportunities for tax planning by businesses engaged in VAT-exempt activities by encouraging implementation of the OECD’s Guidelines on the place of taxation for B2B supplies of services and intangibles.

### **Broader tax policy challenges raised by the digital economy**

- The digital economy also raises broader tax challenges for policy makers relating in particular to nexus, data, and characterisation, as well as to collection of VAT.
- The challenges related to nexus, data and characterisation overlap with each other to a certain extent.
- Evolving ways of carrying on business raise questions about whether current nexus rules continue to be appropriate.
- Increasing reliance on data collection and analysis, and the growing importance of multi-sided business models raise questions about valuation of data, nexus, and profit attribution, as well as characterisation.
- The development of new business models raises questions regarding characterisation of income.
- Cross-border trade in goods, services and intangibles creates challenges for VAT collection, particularly where such products are acquired by private consumers from suppliers abroad.
- The Task Force discussed and analysed a number of potential options proposed by delegate countries to address these challenges. Options discussed regarding nexus and data in particular range from changes to the definition of PE to the introduction of a new nexus based on a “significant presence” in a market, and also include the introduction of a withholding tax on sales of digital goods and services. Because

of the overlap between the issues of nexus, data, and characterisation, the options to address each of them would inevitably affect the others.

## Next steps

Based on its discussion of these challenges and potential options to address them, the Task Force reached the following initial conclusions:

- The collection of VAT in business-to-consumer transactions is a pressing issue that needs to be addressed urgently to protect tax revenue and to level the playing field between foreign suppliers relative to domestic suppliers. Work initiated in this area by the Working Party No. 9 of the OECD Committee on Fiscal Affairs (CFA) shall be completed by the end of 2015, with the Associates in the BEPS Project participating on an equal footing with the OECD member countries.
- The work in the context of Action 7 of the BEPS Action Plan (OECD, 2013) (preventing the artificial avoidance of PE status) shall be expanded to consider whether activities that once may have been preparatory or auxiliary should be denied the benefit of the exceptions to the PE definition because they are core components of the business, both in cases where granting the exception would generate BEPS issues (i.e. when coupled with the lack of residence taxation) and otherwise, and whether a reasonable, administrable rule to this effect can be developed.
- Working Party No. 1 of the CFA shall clarify the characterisation under current tax treaty rules of certain cloud computing payments (including payments for infrastructure-as-a-service, software-as-a-service, and platform-as-a-service transactions), with the Associates in the BEPS Project participating on an equal footing with the OECD member countries.
- The staggered time frame of the BEPS Project and interaction among the various BEPS outputs makes it difficult at the time this report is delivered to analyse how effective the work on the BEPS Action Plan will be in addressing BEPS concerns in the digital economy, as well as to evaluate the ultimate scope of the more systemic tax challenges in the area of nexus, data, and characterisation and the possible options to address them. In that context, it is important for the Task Force to continue its work until the end of 2015 in order to ensure that work carried out in other areas of the BEPS Project tackles BEPS issues in the digital economy, and that it can assess the outcomes of that work, continue to work on the broader tax challenges related

to nexus, data, and characterisation, evaluate how the outcomes of the BEPS Project impact the relevance, urgency, and scope of these broader tax challenges, and complete the evaluation of the options to address them.

## *Bibliography*

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