TAXATION OF DIGITAL PLATFORMS
technological, economic and sociological insights

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Issues overview in the digital economy

✓ Taxation of the intangibles and digital economy raises many hurdles.
✓ Heavy reliance on tangible elements to attribute jurisdiction to tax
✓ Jurisdiction to prescribe on the Internet:
  ○ Presence of servers
  ○ Substantial economic presence
  • Data storage, workforce presence, advertising, etc.
  ○ URL use (very criticized, although see e.g. Belgium Constitutional court, decision n°129/2017: URL as a “place” not a trade name)
✓ Taxation of digital economy subject to important mobility of intangibles
✓ Traditional approach: value from tangible vs intangible
✓ Digital value creation benefits from networks effects
✓ OECD - BEPS – Action 1
  ○ Significant economic presence
  ○ Users-based factors (MAU, contract conclusions, data collected)
✓ European Commission: turnover of digitalised companies, withholding tax on digital transactions or advertising
✓ No consideration for social construction of digital platform intermediation systems

1. Platforms, Market Places and Collaborative economy

Collaborative economy platforms sell access to a software (or, more broadly, an algorithm) which enables the matchmaking between offer and demand for a single or a series of identified services, products or contents through a digital community system (created for instance by a bilateral rating or other forms of trust building mechanisms)

2. Value creation

✓ Three main sources of value: physical capital, human capital, and social capital.
✓ Social capital has a value (function of the transaction cost decrease – underexplored in legal scholarship)
✓ Social capital can provide a new base for establishing the nexus
✓ Issue: Social capital does not diminish with use but with disuse
✓ Issue: Taxation of social capital might impact social interactions, and reduce them.
  ➔ Need to only tax for lack of use & on gains

3. Digital platforms taxation

✓ Hypothesis 1: Revisiting corporate income tax principles (e.g. application of ’agency theory’?)
✓ Hypothesis 2: Equalization levy based on network effects
✓ Hypothesis 3: Considering the sociological role of the platform for establishing an improved nexus

Table of secondary sources

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