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INTERNET AND TAXATION IN THE EUROPEAN UNION: A PRIMER

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Internet and taxation in the European Union: A primer

By

Luigi Bernardi

Abstract

The purpose of this paper is to offer a primer on certain important features and issues concerning Internet and taxation in the European Union. After a general introduction concerning the origins of the matter, the paper discusses why a tax on the huge profits made by the big US digital MNEs in Europe was not substantially reflected in the tax policy of EU members, notwithstanding the large tax gap among EU countries resulting from the shift in profits by the (US digital) MNE towards lower or no taxation countries. Then the main directives on Internet and taxation introduced by the EU (and also by the OECD) since the late 1990s are discussed: the EU especially focusses on establishing the due place of taxation on electronic commerce, while the OECD (more recently together with the G20) has placed the emphasis on regulating Transfer Prices and contrasting Base Erosion and Profits' Shifting (BEPS).

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Keywords: Web Tax; E-commerce; Profits shifting, Europe; OECD

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1. *Introduction**

Since its beginnings during the 1980s, Internet has grown exponentially in terms of the number of accesses, the amount of information transmitted and the application made possible (for all: Bidgoll 2004 and OECD, 2013). As the dimension of the web and of the traffic became remarkable, the question arose whether a specific tax (additional or substitutive of the existing levies) should be imposed on this new potential tax handle made up by Internet transactions (and eventually with which features). We are not going to examine this general, widely-debated issue here (see for all, Gooldsbee and Zittrain, 1999, and, for a historical perspective, Mc Lure, 1996-97), but we shall offer a few examples of the proposals which have been made regarding the possible taxation of Internet use: taxing access to the Internet, applying a rate similar to that levied on telecommunications services, and levying franchise taxes like those applied to cable television. The most innovative proposal, however, was to tax Internet traffic, *i.e.* the quantity of bits transmitted and/or received (Bit Tax). It was claimed that the Bit Tax might replace VAT on all information and communication services, with a transmission-based service, whereby the tax is levied as a proportion of the information or communications transmitted. It was suggested that the amount of Bits/Bytes could be a better indicator of the entity of a transmission than time or distance is. Moreover, the Bit Tax might play the field between individuals and/or firms which make different use of electronic transmission systems, thus contributing towards equity in an information-based society. This proposal has been widely debated[1]. Despite its fashionable nature, the Bit Tax has not been widely adopted.

The Internet and taxation debate then shifted from proposals for new taxes to the challenges that Internet raises for existing taxation systems, a debate held during the final decade of the last century. Especially at OECD level, some basic principles were established for e-commerce taxation: neutrality (equitable, non-distorting taxation in terms of the various forms of traditional trade and e-commerce); efficiency (minimizing compliance costs); certainty and simplicity[2]. Particular attention was paid to the principle of neutrality *i.e.* that Internet service providers and governments should treat all data on the Internet equally, and thus should not differentiate charges depending on the type of user, the content, site, platform, application, type of attached equipment, or mode of communication. Subsequently, at the end of the 1990s the basic foundations of Internet taxation were established in the EU and also in the USA[3].In the EU, the main levy on e-commerce was the existing form of VAT, although as we shall see, several adjustments to such were needed and subsequently made.

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[1] For a strong supporting argument with reference to the EU, see Soete, 1996, whose arguments have been criticized, nevertheless, in http://www.telelavoro. rassegna.it/bittax/bittax2.htm). For a theoretical assessment of the political pros and cons of the Bit Tax, see J. MacKie-Mason, S. Shenker and H.L. Varian (1996) and, once again, Soete (1999).

[2]These rules were established at the Ottawa OECD Ministerial Conference of October 1998. (OECD, 1998).

[3]A basic step in US Internet legislation was taken with the introduction of the 1998 Internet Freedom Act (IFA), which regulated the power to tax Internet transactions at Federal and State levels. Broadly speaking, the IFA states that no tax may be imposed at the level of federal Government, while the States are banned from charging Internet providers direct tax and discriminatory sales taxes. The IFA, variously emended, is still in force. See, for all, Gordon-Murmane. 2000.

The purpose of this paper is to offer a primer on Internet and taxation in the European Union, and as such it covers their main features, issues and development over the intervening period. We will not be analyzing such issues in any great depth[4], but shall be remaining at a more general level[5]. Thus the following section is devoted to EU member countries' measures to tax US digital Multinational Enterprises (MNEs from now on) on their European profits. Section 3 considers EU regulations on e-commerce (with the focus on the place of taxation in cross-borders transactions), while section 4 the OECD/G20 action plan to combat "Base Erosion and Profits Shifting (BEPS)", started in 2013. Section 5 concludes.

2. *Collecting more revenues from digital US MNEs operating also in the European Internet market*

It is commonly agreed (also see below) that in EU countries there is widespread unease due to the fact that American digital MNE giants shift profits made in Europe to other lower taxation or tax-free jurisdictions. Therefore it has been suggested that Europe should introduce taxation on these profits. However, until now very few European countries have tried to introduce such a tax (or other levies with the same aim): just France, Germany, Italy, Hungary, Spain, and the United Kingdom. Moreover, in more than one of the aforesaid countries, the tax on MNEs' local profits ("Profit shifting tax-PST" from now on) has merely been proposed, without any effective implementation, or was repealed shortly after its introduction. The expected EU directives on this specific question of Internet and taxation have not been forthcoming. This limited diffusion of the tax is often attributed to lobbying by US MNEs and by Internet users. However, it should also be pointed out that the pros (increased tax revenue, the combating of international fiscal evasion, the elimination of the distortion penalizing national companies), are counterbalanced by a series of significant cons (reduced freedom of public disclosure, unpopularity, technical difficulties, the disincentive to use Internet, conflict with EU legislation, complications in the VAT system).

Of the aforesaid countries, the case of Italy may be taken as a good example. The draft version of the Italian PST was first introduced in the Government's 2014 budget plan ("*Legge di stabilità 2014*") at the end of 2013, and consists of three principal provisions[6]. Firstly, in order to sell goods and services in Italy, foreign companies must possess an Italian VAT number[7] and must collect VAT on their sales in Italy. Secondly, e-commerce payments must be made by means of 'traceable' items (such as bank transfers, credit card transactions or checks), and never in cash. Thirdly, the Revenue Agency may assess companies' profits on the basis of *ad hoc* criteria and not only on accounting records (Chiusi, 2013).The bill was passed by Parliament (with the requirement of a VAT number restricted to the selling of advertising); however, it only remained in force a few months, and then it was repealed by Prime Minister Renzi's new cabinet (Viviani, 2014a). The Italian VAT number requirement was eliminated for all companies and services, and the matter was

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[4]A discussion of many of these issues at the turn of the century is contained in McLure, 2002.

[5]Moreover, we shall not discuss the question of the abuse of dominant position, which the EU has charged Google & Co. with, because strictly speaking it is not a tax-related issue (De Biase, L., 2015).

[6]No serious attempt has been made to forecast the possible yield of PTS. Rough calculations range from €10-20 million to one billion, depending on the specific country, the bases and the rates adopted. The most common estimates are of about €200 million for a "normal" country. See below for estimates of the tax gap caused by the tax-elusive behavior of US digital MNEs.

[7]L'Agenzia Italiana delle entrate (The Italian Revenue Agency) (2013) drafted a simplified procedure for the assignment of an Italian VAT number to non-Italian companies.

deferred to future EU regulation (Iozzia, 2015). On the other hand, the provision concerning payment methods remained on stand-by, within the framework of a planned tax reform bill, which is currently being examined by Parliament. Just one year later, the bill rejected a year before was substantially resubmitted as part of the 2015 draft budget; however, it was once again rejected (Pennisi, 2014). The reasons for this double rejection are, broadly speaking, the aforementioned cons of the PST; however, the main reason given was the desire not to run counter to the EU's thinking and rules (freedom of circulation of services and freedom of establishment; coordination with existing VAT, requiring just one VAT number; the uniformity of taxation within the internal market; the risk of disapplication by the Court and of an infringement procedure (Mameli 2013, Gambaro & Puglisi 2013, and Nieddu 2014)[8]. The deferment to the EU of any adoption of the PST and of its design -especially with regard to rates - was also justified by the aforesaid rumors and official statements concerning the forthcoming adoption of an EU PST, which has not been introduced so far, however (Robinson, 2015)[9].

As already seen, a series of other European countries besides Italy have attempted introducing a PSTand/or other levies on US digital MNEs operating in Europe, with various degrees of success. Hereafter we shortly report the main cases in question.

France, considering that American companies dominate its digital economy, is going to address what the French see as tax avoidance by Internet companies like Google, Amazon and Facebook. A new levy has been proposed consisting in an Internet tax on the collection of personal data. This is part of the Hollande Government's plan, which includes various other measures[10]. The French government is also encouraging agreements between Google and French online publishers who ask the search engines to pay them for creating links to their contents (Pfanner, 2013 for all).

In Germany, Amazon.com Inc. paid income tax of just 3 million euro in 2012, after the group had realized sales to German customers of $8.7 billion via its Luxembourg units. The consequent massive tax avoidance saw the issue placed at the top of the political agenda in 2013 (Bergin, 2013). Moreover, the German Parliament has passed a controversial law forcing search engines to pay publishers royalties for providing extracts from their articles (Mayer, 2013; Puglisi 2014). This "ancillary copyright" however may reduce the number of Internet accesses and thus the divulgation of news from the original publisher.

Mass protests forced the Hungarian Government to abandon a tax on Internet data traffic. The draft law aimed to levy a fee on each gigabyte of Internet data transferred. Protesters not only opposed the financial burden in question, but also feared that the law would restrict free access to information. The levy was set at 150 florins (£0.40; €0.50; $0.60) per gigabyte of data traffic. Following the protests, government decided to cap the tax at 700 florins per month for individuals and 5,000 florins for companies. However, this did not placate the protesters (BBC News Europe, 2014, for all).

Spain passed a law that taxes any site with links to articles published by members of Spain's Newspaper Association. It came into effect on **January 1st, 2015**. The law has been nicknamed the "Google Tax" because it specifically targets Google News, as well as other news aggregation systems. The law says that editors have an "inalienable right" to tax any site that links to their news

[8]In support of an Italian PST, see on the contrary Pezzi, 2013, for all.

[9]However, the introduction of a European PST was not contemplated in the EU Commission's 2015 action plan. See below (EU Commission, 2015).

[10] France and Luxembourg also introduced a rduced VAT rate for e-books. The measure was rejected by the European Court, on the grounds that reduced VAT rates may be imposed on goods but not on services (Bronzo, 2015).

(see, for all, Donero, 2014). However, the law has been subjected to the same criticisms already witnessed in the German case.

Finally, the British Government has drafted a bill designed to combat tax avoidance by MNEs which make profits in the UK but pay taxes in the country of residence of the parent company. This tax (already called the "Google Tax" by the media) has been in force since April 2015. It entails a levy of 25% on the profits produced by a branch within the UK, regardless of where the head office of the company is located. This rate is higher than 21% the rate charged on the profits made by national companies (British Government, HMT, 2013).

3. *E-commerce: the EU's directives mainly concerning the place of taxation*[11]

It is clear to see that the EU's legislation on Internet and taxation was, and is, mainly focused on the question of VAT, and in particular (albeit not only) aims to determine the due place of taxation in the case of cross-border e-commerce transactions, in order to avoid double taxation or no taxation at all, together with compliance with the principle of neutrality (the same tax rate within a country regardless of where the suppliers are located, and also in regard to traditional commerce).The foundations of a comprehensive EU regulation on e-commerce taxation may be found (Basu, 2007) in a report published in 1998 (EU Commission, 1998).

The Report underlines that the rules contained in article 9 of the Sixth Directive regarding the place of e-commerce taxation "*are based on a number of different criteria*" and in particular "*do not always ensure taxation at the place of consumption*". The Report then states that new rules are needed "*in an attempt to ensure (...) that services are taxed in EC where they are enjoyed or used*". A *caveat* is however introduced, by remarking that "*there is little evidence that effective control is capable of being exercised over the supplies to private individuals*".

A further basic step towards the modification of the current tax system (substantially VAT) to make it better applicable to radio and television broadcasting services and other electronically supplied services, was taken by the fundamental 2002 Directive (EU Council, 2002). This was conceived as an adjustment of the 1977 sixth Directive to e-commerce, and through a series of amendments it was the basis for subsequent EU directives in the field. The main points of such directives are summarized below (EU Commission, 2014a).

The 2002 Directive first qualifies direct e-commerce as an exchange of services, and locates the places of taxation for intra EU cross-border deals in the destination countries for business-to-business (B2B) transactions, and in the countries where the suppliers have a VAT number for those sales to non-taxable persons (B2C)[12]. Furthermore, in the constant pursuit of tax neutrality, the 2002 Directive, by removing a significant competitive handicap for EU suppliers, also establishes that EU suppliers are no longer obliged to levy VAT when selling in markets outside the EU, as had previously been the case. Another existing competitive distortion was eliminated by the Directive, when it required non-EU suppliers to charge VAT as EU suppliers when providing electronic

[11]It is interesting to recall that in August 1996, the EU Commission produced the paper "*The BIT TAX: The case for further research*" (EU Commission, 1996). One of the many recommendations of that paper was that the European Commission should undertake research to find out whether a Bit Tax can actually contribute towards a more equitable distribution of the benefits of the Information Society among winners and losers.

[12]The difference between the two regimes may be justified as a consequence of the effectiveness of controls in the two cases, as we have seen above.

services to EU non-taxable persons. There is no doubt that these new rules created a more competitive and tax-neutral environment in EU e-commerce, also in regard to non-EU countries. Finally, it established that non-EU operators may benefit from simplified registration and reporting procedures, allowing them to deal with a single European revenue agency of their own choice.

The process of updating the 2002 Directive started with the Council Directive 2006/58/EC (EU Council, 2006) which extended the period of application of the 2002 Directive to 31 December 2008. Moreover, in 2008 the 2008/8/EC Directive (EU Council Directive, 2008) further extended application of the 2002-2006 Directive to the end of 2009, whilst awaiting a final, stable EU regulation of the matter, as proposed by the EU Commission. Two important changes have been made to this set of rules in the intervening years. Firstly, the 2002-2008 Directive was made permanent on January 1, 2010. Furthermore, the process suggested by the 1998 Report (see above) has reached a crucial point. As of January 1, 2015, VAT on telecommunications, radio and television broadcasting and electronic services provided by a supplier established within the Community, to non-taxable persons also established within the Community, shall be charged in the Member State where the customer belongs[13], regardless of whether the customer is a business or a private consumer, and regardless of whether the supplier is based within or outside the EU (EU Commission, 2015a). Innovations in the legislative system have been accompanied by the continuous updating of administrative procedures, the most important of which being a 2008 Regulation (EU Council Regulation, 2008) specifically aimed at extra-EU suppliers and concerning their VAT registration. Table 1 below reports the main changes made from 2014 to 2015 regarding the most important situations of internal and cross border e-commerce, in terms of the place of taxation for sales to final consumers[14].

HERE TABLE 1

The EU's extended concern for the place of (VAT) taxation of e-commerce was welcome, according to the prevailing views regarding, among other things, the neutrality principle. In particular, the OECD stated that *"The EU became the first significant tax jurisdiction in the world to develop and implement a simplified framework for consumption taxes on e-services in accordance with the principles agreed within the framework of the Organization for Economic Co-operation and Development (OECD). The OECD principles on the taxation of e-commerce were agreed at a 1998 conference in Ottawa. These principles establish that the rules for consumption taxes (such as VAT) should result in taxation in the jurisdiction where consumption takes place (the consumer belongs). The OECD also\agreed that a simplified online registration scheme, as now adopted by the Council, is the only viable option today for applying taxes to e-commerce sales by non-resident traders*." (OECD, 2002 from EU Commission, IP/02/673).

Some criticisms were also received, however. First of all, the new European regulations of EU taxes on e-commerce have raised a large number of complaints from SMEs and Startups, due to the heavy administrative burden of such taxes which require knowledge of the VAT number of all

[13] For a business (taxable person) either the country where it is registered or the country where it has fixed premises receiving the service. For a consumer (non-taxable person) the country where he/she is registered, has a permanent address or usually lives.
[14]More details are reported in EU Commission 2015a.

the countries where sales are made[15]. Subsequently, as a consequence, provisions were made enough so that it was sufficient to register in one single country and to use this number for sales in any EU country to which the EU service provider opts also to report and manage its EU VAT liability[16]. Moreover, it has been claimed that the new rules mimic the introduction of a PST (e.g. Viviani, 2014b). Finally, it has been submitted that many aspects of the new rules could be improved (Bosi e Guerra, 2014), including the non-coordination of traditional and e-commerce taxation rates, and the difficulty of discovering whether a buyer is a taxable person or not.

Finally, we should also point out that on June 06, 2015, the EU Commission (EU Commission, 2015b) submitted a proposal to the European Council, in which it suggested that a Digital Single Market -DSM- be adopted in order to improve various aspects of the functioning of Internet operations in the EU area. This strategy would be built on three pillars:

1. *Access:* better access to digital goods and services for consumers and businesses across Europe;
2. *Environment:* creating the right conditions and a level playing field in which digital networks and innovative services can flourish;
3. *Economy & Society:* maximizing the growth potential of the digital economy.

However, none of the 16 proposals set out directly concerns Internet and taxation, with the exception of certain measures designed to simplify VAT in intra-state Internet transactions.

4. *Transfer prices, base erosion and profit shifting: the main OECD/G20 guidelines*

The regulation of Internet and taxation in EU countries depends also on the guidelines set out by the OECD, which has recently assumed a prominent role in this field. In particular the OECD (Article 9 of the OECD Model Tax Convention) has suggested a rule[17] designed to address the mismatching of Transfer Prices (TPS) applied by corporations, in order to concentrate taxable income in the country where taxation is lower or non-existent. The rule[18] states that transactions among corporations' branches should be evaluated according to the so-called *Arm's Length Principle* (*ALP*), *i.e.* TPS should be set at the level they would be in transactions among independent parties[19]. The OECD's detailed guidelines (OECD, 2010) recognize that the *ALP* is more difficult to apply in the case of interest, royalties and other immaterial services[20]; however they do not make an explicit reference to the digital economy.

These references may be found at length in an OECD report from 2005 (OECD, 2005) explicitly devoted to TPS and profit shifting. The starting point is that "*The increased speed and*

[15] At http://www.retailresearch.org/eurovat.php one can find an updated list of VAT rates in EU countries, together with a short presentation of the 2015 reform also in comparison with the US sales tax.
[16] It is the so-called VAT mini One Stop Shop (MOSS). As an example, see the case of Italy in Agenzia delle entrate, 2013. It should be noted, however, that the service provider must take account of the applicable VAT rates in the country of the buyer, for the purposes of reporting and paying the VAT due.
[17] The rule has been adopted by about 60 countries.
[18] A series of OECD papers on TPS may also be found at: http://www.oecd.org/ctp/transfer-pricing.
[19] Consequently, the *ALP* reflects the price of a transaction in a freely competitive market.
[20] For items other than goods, there are rarely identical items, and instead of *ALP* certain other rules must be applied to determine the proper value of TPS.

mobility of business activities and cross-border transactions resulting from Internet usage has particular implications for applying transfer pricing methods and for taxing business profits" and - particularly- for adopting the *ALP* principle. Four cases of intragroup transactions are discussed: automated electronic intra-group transactions; online auctions for customer-to-customer (C2C) and business-to-business (B2B) sales; subsidiary-to-parent web hosting arrangements; and computerized transactions for airline reservations. The general conclusion is that "*it would not be appropriate to embark fundamental changes to current rules at this stage,* i.e. *based on the assumption that there is no evidence for base erosion ■ [...] there does not seem to be actual evidence that the communications efficiencies of the Internet have caused any significant decrease to the tax revenues of capital importing countries."*

This conclusion changed during the following years. In short, at present the OECD points out that digital business models have seen an exponential growth since 2005, especially for consumer retail business (B2C), and recent empirical studies seem to prove that base erosion at present is a genuine reality. The classical means of tax planning would be particularly effective in the digitalized economy, especially given that the organizational architecture is flexible compared to traditional businesses, comprising as it does the entire chain of value-creation and given the importance of mobile factors[21]. Thus the OECD (2013) concludes that *"enormous amounts are received and invested by recognized tax havens and low taxation countries, such as Ireland, Netherlands and Luxembourg".*Given this situation, it is highly probable that "*Base Erosion and Profit Shifting - BEPS" takes place, and it poses a threat in terms of tax sovereignty and tax revenue"*[22].

To avoid this exit[23], together with the G20, the OECD launched a program in 2013 (OECD/G20, 2014a), designed to counter BEPS[24] in member countries. An Action Plan was established setting out 15[25] critical aspects of the elusion of international tax rules, to be addressed by the end of 2015. A first set of deliverables (7/15) was contained in a 2014 report (OECD/G20, 2014b), while the institutional operation of the plan was evaluated at the Istanbul Meeting (02/2015) (OECD/G20, 2015).

A specific report (OECD/G20, 2014c), and the BEPS Action Plan no. 1. address the tax challenges raised by the digital economy as possible source of BEPS The analysis starts by outlining the developments, the present main features and the prospects of the Digital Economy, by emphasizing the fact that it is impossible to ring-fence it for tax purposes. According to the OECD/G20, the digital economy does not generate specific BEPS issues; however, some of its key features increase BEPS risks in terms of both direct and indirect taxation. These BEPS risks should then be addressed in other Actions constituting the BEPS Project. Particular attention should be given to: the artificial avoidance of permanent establishment status; the importance of intangibles

[21] With regard to the previously- mentioned difficulty in locating the place of taxation, the OECD is in favour of the destination principle; however, as we have seen, it may be difficult to identify the place of the final consumer.

[22]For example, with regard to a couple of European countries (the UK and Germany), estimates of total tax losses due to BEPS during the first years of the new century, amounted to £ 12bn in the United Kingdom K and €90bn in Germany.

[23]Germany and the United Kingdom adopted a common stance to the strengthening of the taxation of e-commerce, by claiming that "*International tax standards have had difficulty keeping up with multinational businesses which are able to shift the taxation of their profits away from the jurisdictions where they are being generate*" (Yahoo News, 2012).

[24]To discover the presence and relevance of BEPS, a set of quantitative indicators has been produced. For example, (indicator 6) a high concentration of royalty payments regarding R&D expenditures is considered a sign of a possible process of profit shifting through intangibles (e.g. OECD, 2015).

[25]Ranging from transfer prices to harmful tax practices and to tax Treaties.

and their impact on transfer prices; the possible need to adapt Controlled Foreign Company-CFC rules to the digital economy; the opportunities for tax planning by businesses engaged in VAT-exempt activities.

Given the measures suggested by the OECD and adopted by member countries, it seems that the main US digital MNEs are trying to conclude a series of agreements with the National European Revenue Agencies concerning a reasonable level of taxation in EU countries (e.g. in general: Rotondo, 2015; for the case of Italy:Tremolada, 2015, Bellinazzo, 2015)[26].

5. *Conclusions*

The aim of this paper is to give an overall first-hand picture of some features and issues characterizing the Internet and taxation, with reference to EU countries. The first issue we considered stems from the fact that the giant digital (US) MNEs make a great amount of profits in Europe (and in other non-US countries) and then shift such profits to lower or zero taxation countries, thus avoiding the payment of taxes in those countries where the services are supplied. To eradicate, or at least to curb, this phenomenon, it has been suggested that a tax on the profits of US MNEs in the destination countries be introduced. This proposal has not proven very successful in the EU, as only a handful of countries have tried to introduce such a tax, and in some cases (e.g. Italy and Hungary) the tax was repealed just a short time after its adoption. The reasons are set out here; the most important of them seems to be the lobbying actions of the digital MNEs (and of Internet users), and the possible contrast with the free movement of goods and services within the EU.

We then considered the EU's actions aimed at regulating the e-commerce market, in particular in terms of the establishment of the place of taxation, particularly with regard to cross-border transactions of the B2C (Business to Consumer) type. The EU has stated that according to the sixth directive, at the end of the 1990s the place of taxation for e-commerce"*was based on a number of different criteria (...) and did not always ensure taxation at the place of consumption*" for cross-border transactions (within or outside the EU). Starting with a Directive in 2002 (subsequently updated and extended) the field was gradually played. In particular, the destination principle has been in force since January 2015, also for B2C cross-border transactions, in line with OECD guidelines and with theoretical prescriptions.

Finally, we outlined how the OECD's stance on tax-avoidance by MNEs has changed during the course of the new century. A benevolent position (and an underestimation of the entity of profit shifting) gradually gave way to the opposite view. Specific guidelines for transfer pricing in the digital sector are not considered, although particular attention is given to the question of intangibles (considering also the recognized difficulty in taxing them). Moreover, in 2013 a broad project was adopted by the OECD and the G20: the so-called "BEPS (Base Erosion and Profits Shifting)" project, which consisted of 15 Action Plans to be put in place by the end of 2015. The first Action plan is devoted to the digital economy. It is believed that e-commerce does not result in specific BEPS *per se*; however it may increase the risk of BEPS in other sectors of the economy. To avoid

[26]US MNEs seem, however, more willing to agreements in the field of taxation on profits than in that of the abuse of dominant position.

this, specific measures are suggested, in particular regarding the status of permanent establishment, intangibles and the effects of such on transfer prices, and also VAT-exempt activities.

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Table 1. EU VAT legislation before and after 1 January 2015.
Sales to final consumers

Rules until 31/12/2014 - Telecommunications, broadcasting & electronic services			
Service supplied by/to	EU consumer in EU country 1	EU consumer in EU country 2	Non-EU consumer
EU supplier in EU country 1	Taxable in EU country 1	Taxable in EU country 1	No EU VAT
EU supplier in EU country 2	Taxable in EU country 2	Taxable in EU country 2	No EU VAT
Non-EU supplier	Taxable in EU country 1	Taxable in EU country 2	No EU VAT

Rules from 2015 - Telecommunications, broadcasting & electronic services			
Service supplied by/to	EU consumer in EU country 1	EU consumer in EU country 2	Non-EU consumer
EU supplier in EU country 1	Taxable in EU country 1	Taxable in EU country 2	No EU VAT
EU supplier in EU country 2	Taxable in EU country 1	Taxable in EU country 2	No EU VAT
Non-EU supplier	Taxable in EU country 1	Taxable in EU country 2	No EU VAT

Source: EU Commission, 2015a