### **EUCOTAX Series on European Taxation**

## VAT/GST in a Global Digital Economy

Edited by

Michael Lang Ine Lejeune





Editor	s			v		
Contri	butors			vii		
Prefac	e			xxi		
List of	Figur	es and '	Table	xxiii		
CHAPTI The N VAT S France	ew Mo ystem	3	the Digital Economy and New Challenges for	1		
§1.01	Intro	duction	1	1		
§1.02	Background and Most Recent Developments					
	[A]	~	Ottawa Conference	2 2		
	[B]	The E	E-Commerce Guidelines	3		
	[C]	The C	Consumption Tax Papers	3		
	[D] Recent Developments					
		[1]	The BEPS Project	4		
		[2]	The EU Report on Taxation of the Digital Economy	5		
§1.03	New Business Models and VAT-Related Problems					
_	[A]	Context				
	[B]					
		[1]	Business-to-Business	6 6		
		[2]	Business-to-Consumer	7		
		[3]	Consumer-to-Consumer	8		
	[C]	Payment Services and Virtual Currencies				
	[D]					
§1.04	A Case Study: Newspaper Subscriptions					
-	[A] Introduction and Facts					

§1.05	[B] [C] [D] Concl	The EU New Zealand Australia	11 12 13 13			
CHAPTER The Tre	2A eatmen	t of 'Digital Products' and Other 'E-Services' under VAT	15			
\$2A.01 \$2A.02 \$2A.03 \$2A.04	101 Introduction 102 Characterizing and Defining Digital Products and E-Services 103 Place of Taxation and Assessment Rules for Digital Products and 104 E-Services 105 Applying Reduced VAT Rates to E-Supplies: The Case of Books 105 Versus E-Books 106 Conclusion					
Neutrali <i>Ine Leje</i> Снартег	nts on ity: Ru <i>une</i> 3	Chapter 2: View of the Court of Justice on Rates and ling in <i>K Oy</i>	41			
VAT and VAT Pu <i>Oskar H</i>	rposes		45			
§3.01 §3.02 §3.03	Introd The V Treatr		45 46 50 55			
Operatio	diated on of V	Delivery and Third-Party Billing: Implications for the 'AT Systems around the World ns & Tom Corbett	59			
§4A.01	Introd		59 59			
§4A.03	VAT v [A] [B] Differe [A]	nges Involved in Identifying the Business Liable for the where Digital Services Are Delivered through Intermediaries Are Sales to, or through, the Intermediary? Why Is It Important? Int Business Scenarios and Their VAT Applications One Digital Content Service, Multiple Intermediaries  [1] Intermediated Delivery: Above-the-VAT-Line Billing	61 63 64 64 65			

§4A.04	EU V [A] [B]	When Taking	ective Does g Part	rmediated Delivery: Below-the-VAT-Line Billing Provisions and Implementing Provisions Article 9a Apply? in the Supply versus Carrying Content and/or Payments	67 70 71			
§4A.05	[C] Conc	Condi	_	for Rebuttal of the Presumption	75 77			
Chaptei Comme 1042/20	ents or	n the Di	scussi	ion of Article 9a of Implementing Regulation				
Duy Ng	guyen				79			
§4B.01	Intro	duction			79			
				e: Too Many Captains?	79			
	-			rs Exemption Exemption as a Consequence?	80 81			
34D.U4	rinan	iciai sei	vice E	exemption as a Consequence:	01			
-	ng the	Potent lobal Ed		nkages Between Income Taxes and VAT				
Walter	_			•	83			
§5.01	Introd	duction			83			
§5.02	Juriso	Jurisdiction to Tax in the Digital Global Economy: Linkages between Income Taxes and VAT						
	[A]	Jurisdiction to Tax: Substantive Jurisdiction and Enforcement Jurisdiction						
		[1] [2]		tantive Jurisdiction and Enforcement Jurisdiction Relationship between Substantive Jurisdiction	85			
		and Enforcement Jurisdiction			86			
	[B]	•		and Enforcement Jurisdiction for Income Taxes and	88			
		(1)	VAT in the Digital Global Economy [1] Substantive Jurisdiction for Income Taxes and VAT					
		[1]		d on Digital Activity	88			
			[a]	Substantive Jurisdiction to Tax Income Based				
				on Digital Activity	88			
			[b]	Substantive Jurisdiction for VAT Based on Digital Activity	92			
		[2]		rcement Jurisdiction for Income Taxes and VAT	93			
			[a]	d on Digital Activity The VAT Reverse Charge Mechanism and B2B	93			
			լայ	Digital Supplies	94			
			[b]	Virtual Presence as a Creating Enforcement				
				Jurisdiction for Income and VAT Purposes	94			

§5.03		neating the Tax Base in the Digital Global Economy: Linkages				
	betw [A]	een Income Taxes and VAT The Fundamental Linkage between Income Tax and	101			
	[A]	Consumption Tax Bases	101			
	[B]	Attribution of the Tax Base: Commonly Controlled and				
		Multiple Location Entities	102			
		[1] Commonly Controlled Entities	102			
		[2] Legal Entities with Multiple Locations	104			
		[a] The Income Tax Rules	105			
		[b] The VAT Rules and the OECD VAT/GST				
		Guidelines	106			
ST OA	C	[c] Linkages	109			
§5.04		cluding Observations regarding the Linkages between Income s and VAT in the Digital Global Economy	116			
	Taxe	s and VAT in the Digital Global Economy	110			
Chaptei VAT Co		on and Compliance in the Digital Economy: Challenges and				
Opport						
Christo	phe W	'aerzeggers	119			
§6.01	Intro	duction	119			
§6.02		ghts on the VAT Collection Mechanism	120			
§6.03	The Digital Economy: Anything New?					
§6.04	Collecting VAT in the Digital Economy: Things That Don't Work					
	That		127			
	[A]	VAT Self-Assessment by Final Consumers Low-Value Goods Relief and VAT Collection by Customs	127			
	[B] [C]	Disproportionate Compliance Burdens on Non-resident Sellers	129 131			
§6.05	-	cting VAT in the Digital Economy: Things That Might Work	131			
,0.00	Better					
	[A]	Relying on Indirect VAT Collection, but with Appropriate	131			
		Simplification and Modification	132			
		[1] Simplified Supplier Registration	132			
		[2] Dealing with Intermediaries in the Digital Supply				
	fm1	Chain	135			
	[B]	Simplified Supplier Registration May Also Be a Useful	105			
	[C]	Alternative to Low-Value Goods Relief Administrative Cooperation	137			
	[C]	Administrative Cooperation	138			
CHAPTER Digital 1		my International Administrative Cooperation and Exchange of				
nforma	tion i	n the Area of VAT				
Thomas	Eckei	r	141			
7A.01	Grow	ing Need for Dispute Prevention and Resolution in the Area of				
	VAT		141			

§7A.02	Existi	ing VAT Dispute Resolution Mechanisms	143			
	[A]	Courts as Binding Dispute Resolution Mechanism	143			
		[1] National Courts	143			
		[2] Supranational or International Courts	144			
	[B]	VAT Dispute Resolution and Prevention in the EU	145			
		[1] The ECJ	145			
		[2] VAT Committee	146			
		[3] Opinions of the European Commission	146			
		[4] VAT Cross-Border Rulings Test Case	147			
		[5] Other Measures	147			
	[C]	Income Tax Dispute Resolution Mechanisms and Their				
		Applicability to VAT	148			
	[D]	OECD International VAT/GST Guidelines, Working Party				
		No. 9 and Global Forum	151			
	[E]	Other Examples of Dispute Resolution Fora	154			
	[F]	Interim Conclusion	155			
§7A.03	Dispute Prevention Mechanisms					
	[A]	OECD Guidelines	156			
	[B]	Advance Agreements	156			
	[C]	Cooperative Compliance	157			
	[D]	Good Law and Helpful and Easily Accessible Information				
		Provided by the Tax Administration	157			
	[E]	Exchange of Information	157			
§7A.04	The Future: Binding Dispute Resolution Mechanisms Based on					
	Treati		158			
	[A]	Disputes about the Facts of a Case	158			
	[B]	Disputes about Legal Interpretation	159			
	[C]	VAT Treaty as a Solution?	159 160			
§7A.05	Conclusion					
CHAPTER						
Internat	ional .	Administrative Cooperation and Exchange of Information				
in the A	rea of	f VAT				
Björn W	lestber	rg	161			
§7B.01	Kev P	Points	161			
	-	Digital Economy	161			
	The Digital Economy  The OECD Perspective					
	The EU Perspective					
	75 Principles of Neutrality					
	Substantive Jurisdiction					
00.00	[A] Prerequisites for Efficient and Effective Enforcement					
	[B]	B2B	163 164			
	ניטן	[1] Application of Reverse Charge	164			
		[2] Consequences for Enforcement	164			

	[C]	B2C	165
	. ,	[1] Application of the One-Stop-Shop Mechanism	165
		[2] Consequences for Enforcement	166
	[D]	Different Treatment of the Substantive Jurisdiction	166
§7B.07			166
\$7B.U8	Conse	equences for Enforcement	167
Снарте			
		my: International Administrative Cooperation and Exchange	
Costani		n in the Area of VAT – EU Perspective	169
§7C.01		and Digital Economy in the EU  Electronic Commerce, Compliance and Mutual Assistance in the	169
	[A]	EU	169
	[B]	Challenges for Tax Administrations	171
	[C]	Conclusion	172
CHAPTER		d: Potential Solutions and the Framework to Make Them	
Work	5 mea	id. Fotential Solutions and the Francework to Make Them	
Rebecco	ı Milla	r	173
§8.01		luction	173
§8.02		Anything Need to Be Done?	174
§8.03		Should Be Doing It?	185
§8.04 §8.05		Should It Be Done? v Suggestions on What Should Be Done	190 194
30.03	11 1 EV	V Suggestions on What Should be Done	1 74
Снартег			
		The Future of VAT in a Digital Global Economy – Innovation	
versus '		on Sophie Claessens	107
			197
§9.01		luction	197
	[A] [B]	The Economy Is Becoming Digital	197
§9.02		Is the Current Tax Framework Fit for the Digital Environment? lace of Taxation	199 201
37.02		Direct Tax Concepts	201
	[B]	VAT Concepts for E-Commerce in the EU	202
		[1] Place of Taxation of Digital Supplies for Consumption	203
		[2] Intermediaries	205
		[3] Role of the Permanent Establishment Concept	205
§9.03		pecific Case of Bitcoins and Vouchers	206
	[A]	Electronic Money	206
	[B]	Vouchers	207

	[C]	Bitco	ins	207		
§9.04	Rates	and t	he Digital Economy: Equal Treatment and Neutrality	208		
	[A]	Intro	duction	208		
	[B]	Euro	pean Court of Justice: K Oy Case	209		
§9.05	Collecting VAT on Digital Supplies: 'Reverse Charging' versus					
	'One	Stop S	Shop Scheme'	209		
§9.06	Enforcement of VAT Collection in a Digital Environment					
	[A] Cooperation to Enforce and Facilitate Compliance and Legal					
		Certa	inty	213		
		[1]	Instruments to Obtain Certainty	213		
		[2]	Dispute Prevention by Common Interpretation Guidelines	214		
		[3]	Existing Means for Cooperation and Exchange			
		[2]	of Information	214		
		[4]	Administrative Cooperation and Enforcement	215		
		[5]	Multilateral Treaty	215		
		[6]	Protection of the Taxpayer against Claims from			
			the Government	216		
§9.07	Final	Concl	usions	216		
Index				219		