Taxation and the Digital Economy: The misplaced discussion in Brazil

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BIOGRAPHY

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ABSTRACT

The digital economy raised relevant challenges to the traditional tax systems, but the challenges are very different between income taxes and consumption taxes. On consumption taxes (VAT/GST), countries are focused on cross border transactions between business and consumers (B2C). There are no discussions similar to those in Brazil since there is no parallel to the Brazilian consumption tax system. The debate on whether digital services are subject to the municipal services tax (ISS) due to the legal concept of services, or if software or advertising on internet are subject to the ISS or the State Tax on Goods and Telecommunication Services (ICMS) results from Brazilian peculiarities, mainly the constitutional split of the consumption taxable basis between services and goods, and to the local tax power attributed to more than 5.000 municipalities. In fact, issues on taxation and the digital economic posed by the current Brazilian tax system are completely out of the international context since arise from old and known constitutional problems. On the other hand, there is a confusion in the Brazilian academia about the role of the Base Erosion and Profit Shifting OECD Project (BEPS). The main challenge of BEPS is how to share profits between the countries where the profits are generated, for example, where the consumers are, despite of having the firms a physical establishment, for Corporate Income Tax (CIT) purposes. This debate is not related to the Brazilian consumption taxes gaps discussion (ISS x ICMS), and has nothing to do with the difficulties in defining the digital economy and its different services. Besides that, the main BEPS challenge, related to CIT, is not as relevant to Brazil as to European or African countries since many digital services companies are physically established in Brazil. A confusion between CIT issues and consumption taxes issues in Brazil have been leading to misunderstanding conclusions, preventing the country to focus on what is really relevant to close tax gaps and level the playing field between the digital and the physical market.

Keywords

Consumption Taxes. Destination Principle. Corporate Income Tax. Digital Economy. BEPS

INTRODUCTION

Since the 1990s the Organization for Economic Cooperation and Development (OECD) and academia has been discussing the challenges and possible solutions to address difficulties in taxing the digital economy. The first discussions started due to the increase in cross-border transactions to consumers located in different countries and reached by internet – e-commerce. The development of the internet allowed firms in one country to advertise its goods and services to consumers all over the world, but there was no mechanism designed to collect taxes on imports made by individuals. On national sales, the collection of the Goods and Services Taxes (GST) is made by the seller through a Retail Sales Taxes in the United States, or a Value-Added Tax

(VAT) implemented for more than 175 countries as of 2022. In cross-border transactions between two firms (B2B transactions) the reverse charge method is usually applied, that is, the VAT collection is made by the buyer according to the rules of its country. This method is not feasible for individuals, who are not aware about consumption tax rules, and even if they were, it would be costly and inefficient to tax administration to audit each individual. Hence, the first discussions on challenges to tax the digital economy was focused on consumption taxes (VAT/GST) not on Corporate Income Taxes (CIT) as of today.

In the last six years, the discussions run by OECD, G-20 and the Inclusive Framework were focused on how to share, for CIT purposes, the big companies' profits among the different countries they sell digital services, despite of not having a physical establishment to be taxed by each country. The so-called "Pillar 1" and "Pillar 2" are a set of rules to impose a minimum CIT on the "digital companies", and to share their "residual profits" usually allocated in tax heavens or under a tax benefit granted by a specific country. The difficult in achieving a consensus between different countries, mainly between the United States, the European countries and China, delayed the delivery of Pillar 1 rules, boosting Italy, France, German and other European countries to find a solely solution by imposing a Digital Services Taxes (DST) on "big digital companies" (Big Techs). Therefore, the DST is a transitional solution led by European countries to address CIT challenges, and it is not connected at all to Brazilian domestic discussions on the taxation of the digital services by consumption taxes. Besides that, Pillar 1 rules favor countries where Big Techs are not physically stablished, and this is not the case for Brazil for Meta or Google for example.

The current Brazilian consumption tax system is very complex and raises difficulties to capture the digital economy, but the challenges do not come from the digital economy in itself but derive from the Brazilian tax system framework. The Brazilian consumption tax system is divided into three taxes at the federal level, plus one at the state level and another one at the municipal level. The federal taxes are divided into two social contributions on business revenues (turnover taxes), so-called "PIS/COFINS", and one tax on manufactured goods, the "IPI"[1]. The state tax is collected on sales of goods, electricity, telecom services and interstate and inter-municipal transportation services, the "ICMS". The municipal tax is collected on sales of services, the "ISS".

The questions discussed in Brazil on the taxation of the digital economy are linked to our already-existing problems, and are neither new nor a result of new forms of consumption of goods and services. This conclusion can be reached not only by analyzing the problems of the Brazilian system before the digital economy, but especially because these are problems that are not even debated by international organizations or in other countries.

The tax challenges raised by the digital economy over the world are completely different than those discussed in Brazil. Since the 1990s OECD and non-OECD countries are discussing how to tax e-commerce and digital services and are dedicated to find a feasible solution to cross-border transactions between business and consumers (B2C commerce). This is relevant issue faced commonly by countries. In Brazil, the debate was focused on digital services being taxed by the ICMS or the ISS, or not being taxed at all due to the legal concept of services. Since Brazil has a completely different consumption tax system in comparison to all countries in the world, its challenges are peculiar. Almost all countries in the world adopts a VAT/GST to tax supplies of goods and services (except Unite States which adopts a Retail Sales Tax). Therefore, their challenges on consumption taxes after the expansion of the digital economy are basically the same: B2C cross-border transactions.

Brazilian challenges are different because the legal and constitutional consumption tax system designed in 1988 is completely unusual and rapidly became outdates. The difficulty to tax software and e-books, tax cloud computing services etc. is only one more example of the same problems already existed. It is expected that the ICMS x ISS discussions, and the debate on how to tax digital services under ISS discussion to finish in 2032, after the VAT implementation, due to the Constitutional Amendment n. 132, approved by the Congress in December 2023. Hence, challenges related to VAT and the digital economy, similar to those faced by the other countries, could be treated under the new rules.

BEPS Project CIT challenges, on the other hand, has been misunderstanding in Brazil. DST and BEPS Pillar 1 are discussions that concerns mainly European and African countries in which the Big Techs are not physically established. Amazon, for example, sells goods, directly or indirectly (as a marketplace) to all European customers, but has no establishment in Portugal or Switzerland. Despite of voluntarily collecting the VAT for the imports made by consumers from those countries, Amazon is not subject to taxation in there. No CIT will be collected by Portugal or Switzerland, once Amazon is not resident on those countries. The same situation is applicable to other digital companies, which reach customers in countries where they do not have – and do not need to have exactly because of the digital economy evolution – physical presence. This does not seem to be the case of Brazil, where many big techs are physically established: Meta, Netflix, Amazon, Google.

BEPS Pillar 1 is a set of rules to share profits between countries in which big techs have no physical presence, but "explore" their market. It is a very complex arrangement Brazil may be benefit from or not, depending on which companies are not established and do not pay CIT here. Pillar 2 is much simpler and have been adopted for several countries. It imposes an effective CIT rate of 15% to be paid by Big Techs in the countries where a company is established. For obvious reasons, all countries are implementing this rule, once the profit not taxed under this minimum rate in one country will be taxed in another.

[1] It also works as an excise tax at the federal level.

It is also a minor problem under current CIT Brazilian rules, despite being for other reasons not linked to the physical presence of Big Techs. Our statutory CIT rate is 34%, one of the highest in the world, which means that a company has to enjoy several and/or high tax benefits to be below a 15% effective rate. This legal framework can change if the CIT rate is reduced in Brazil, as has been proposing the federal government, but with no bill up to date.

THE DISCUSSION ABOUT TAXATION AND THE DIGITAL ECONOMY IN BRAZIL

A literature review on the discussions about the taxation of the digital economy in Brazil lead to the conclusion that the challenges in this country are related to its unique consumption tax constitutional design, with no parallel in the world (ALVES, 2021; PISCITELLI, 2018a, 2-18b, 2018c, 2019), or are misplaced when consider that the BEPS challenges on CIT are related to the difficulties in define the new services and products under the digital economy (FERNANDES, LOPES, ARANHA and GOMES, 2023).

Three characteristics turns the Brazilian indirect tax system absolutely peculiar: (i) the split of the consumption taxable basis between manufactured goods (at the federal level), goods in general and some services (at the state level), and services (at the municipal level); (ii) the application of the origin principle and not the destination principle to collect the state tax on goods (ICMS) and the municipal tax on services (ISS); and (iii) the cascade effect of the ISS, since it works like a turnover tax and no input tax credit is allowed.

Certain federal countries, like Canada and India, used to split their consumption tax basis between services and goods, but not in a so broad and radical way as in Brazil. In Canada, specific goods could be taxed by the federal government and also by the states in the past. After the consumption tax reform in 1993, old taxes were abolished, and a modern Value-Added Tax (VAT) was introduced. In India, the VAT was introduced recently to merge federal taxes on goods and state taxes on services.

There is no other country where consumption taxes were or are ruled and collected at the municipal level. The constitutional decision of having a tax on goods and some services at the state level, and a tax on services at the local level induced the application of the problematic origin principle. The collection of the ICMS and the ISS to the states and municipalities where the firms are located was the only feasible way to allow compliance, since it would be impossible to calculate and collect those taxes according to different rules in the states and the municipalities where the consumers would be (destination principle).

The main distortion of the ISS, the cascade effect, is directly connected to its collection at the municipal level and to the origin principle. The frustrating experience in applying the input tax credit at the state level – in the ICMS, confirms that it is impossible to have neutrality in interstate and inter municipalities transactions. Since the tax is collected to the municipality where the seller is located (São Paulo, for example), it is not reasonable to expect the municipality where the buyer is located (Rio de Janeiro, for example) to accept that tax (collected to São Paulo) as a credit to offset its tax (to be collected to Rio de Janeiro), avoiding the cascade effect on business-to-business (B2B) transactions.

The discussion about the collection of the ICMS or the ISS on "digital" goods and services, like software and e-books, is not a result of the increase of the digital economy, but it is only one more problem resulting from the split of the consumption tax basis between the states and the municipalities. There is no other country in which this kind of challenge came out due to the challenges of taxing the digital economy.

Moreover, the uncertainty surrounding the collection of the ISS on digital services is a consequence of the need to have a federal "list" of services subject to taxation in order to have a minimum degree of harmonization among municipalities. Since services could be taxed by the municipalities and they are more than 5.500, a national law was constitutional requirement to impose some certainty and reasonable compliance costs over taxpayers. The list firstly enacted in 1968 and then updated in 2003 is under a national law only changeable by the absolute majority of the Congress. This legal status becomes impossible to have regular updates and proper changes according to business evolution. Once again, the difficulties to tax the digital economy in Brazil is immediately linked to our unique constitutional consumption tax design: split the consumption taxable basis between goods and services, attribute the power to tax general services to the municipalities, hence imposing the need of having a national list legally hard to be changed, and resulting in ambiguous and uncertain interpretations every time new services are released to consumers. In fact, rules shall be adapted to the world evolution and not the opposite, and having a long and detailed list of taxable items is the worst way to deal with that. Finally, the list of the services could be updated in 201X intending to describe the digital economy functioning and subjecting it to the ISS. Despite the potential for ambiguous interpretation, since it is an inglorious task to freeze a concept in the law which is able to cover all kind of present and future digital services, there is no evidence companies involved in rendering these services, like Netflix, Meta, Airbnb etc., are contesting the payment of the ISS.

All of these discussions would be almost irrelevant if ISS would do not work like a turnover tax, bearing business and not the consumption as in other countries. The ISS is paid by firms and included in the price of inputs, resulting in higher costs to business, and ultimately in higher prices of goods and services to final consumers, although not visible. For example, when a toy manufacturer acquires a cloud computing service for $100, the price is increased by the ISS in $3, and the total cost of the input is $103. This higher cost will obviously pass to toys' prices and paid by the consumers, despite of legally goods are

subject only to ICMS. It means that in the ICMS taxable basis there is an ISS included, resulting in the so-called 'cascade effect'. This effect is serious to economic development once it creates allocation distortions, but the important lesson from this example is that: business do not pay taxes. Taxes are paid by shareholders (income taxes), employees (income taxes and taxes on wages) and consumers (taxes on goods and services). If the ISS worked like a VAT, all B2B transactions would be out of discussion, because this tax paid by the seller is a credit to the buyer, therefore turning into unnecessary using legal loopholes. Only B2C transactions would be contested, but resulting in a tax burden on consumers, not on firms.

The challenge to tax the digital economy in Brazil is only one more difficult resulting from its problematic consumption tax legal system, and it can be concluded not only by the explanation above, but also from the international experience observation (item 2), and the way the recent constitutional amendment approved in December 2023 addressed the digital economy taxation (item 3).

From an international perspective the real challenges of the taxation of the digital economy are linked to the Corporate Income Tax (CIT) and not to the taxes on goods and services (VAT/GST).

The difficulties from a VAT/GST perspective are very specific and related only to B2C cross-border transactions. Since 176 countries taxes the consumption by a GST using the VAT method, B2B transactions are neutral and the acquisition of digital services or any other service abroad has the same effect if it takes place into the country. The VAT/GST levies on all goods and services and there is no debate about being the digital service subject to this tax or not. The real difficulty is how to impose and collect consumption taxes from individuals on cross-border transactions once the seller is not established in the country. It is going to be more detailed in the following item, but the focus to anticipate the matter in this topic is to demonstrate that the solutions that have been proposed by the Organization for Economic Cooperation and Development (BEPS, Pillar 1, Pillar 2) are linked or by some countries individually (Digital Services Tax, DST) are linked to CIT avoidance and are not feasible to the Brazilian legal challenges described by the national literature (ICMS x ISS, ISS and the concept of services, the list of taxable services). The legal challenges faced by the Brazilian authorities currently are linked to consumption taxes and not to CIT, therefore a Digital Services Tax (DST) is also a mistake if considered by the country.

THE DISCUSSIONS ABOUT TAXATION AND THE DIGITAL ECONOMY AROUND THE WORLD

In 1998, OECD reported for the first time a list of principles for indirect taxation in a digital context – which are, basically the general principles to all the tax systems: neutrality, efficiency, certainty, simplicity, effectiveness, fairness, and flexibility (OECD, 1998a).

In January 1999, OECD implemented a technical advisory group (TAG) focused on consumption taxes – basically on VAT, since this is the main consumption tax all around the world – in order to implement those principles considering the digital economy challenges as a whole. Between 2000 and 2001, three reports were published by the TAG to report the appropriate way to put in practice the destination principle (place of consumption) in B2B or B2C transactions involving cross-border digital supplies[2].

In 2003, OECD issued the Consumption Tax Guidance Series of 3 papers (OECD 2003a, 2003b, 2003c) and an E-Commerce Guideline (OECD 2003d) to reinforce the destination principle in B2B and B2C cross-border transactions, though the challenges to identify the place of consumption. According to the E-Commerce Guideline, on B2B cross-borders supply of services or intangibles, the destination is the country where the recipient has its business presence. For B2C transactions, the place of consumption to attend the destination principle is considered as the usual residence of the recipient. The Consumption Tax Papers aimed to detail and so enable countries to put in practice the identification of the place of taxation on cross-border transactions for B2B (business presence) and B2C supplies (customer's jurisdiction). Those papers also addressed the importance of a simplified registration for B2C cross-border transactions, in order to enable the collection of the VAT for suppliers located abroad[3]. This is the main issue raised by the digital economy, since digital services and intangibles can be sold from companies to individuals all around the world without a physical presence in the customer's country. Since individuals are not usually registered as taxpayers, VAT is not collected on imports. For e-commerce of goods, customs or delivery companies could help on VAT collection, but it is not feasible to services and intangibles.

In 2010, OECD released a guideline draft to discuss the jurisdiction empowered to tax the international supply of services and intangibles, in order to ensure the destination principle (place of consumption), based on the following VAT core features: (i) VAT is a consumption tax borne by final consumer and collected by business; (ii) business should not bear the burden of VAT whether allowing a credit or refund; (iii) it is a broad-based tax; (iv) it is a multi-staged tax in which all business in the supply chain collect the difference of the VAT paid on theirs purchases and the VAT levied on their sales (avoiding the cascade effect); (v) exports are free of tax and imports are taxed ate the same rate as local production due to the destination principle (sanctioned

[2] (i) A report by the Committee's Working Party No. 9 on Consumption Taxes: Consumption Tax Aspects of Electronic Commerce; (ii) a report by the Consumption Tax TAG summarizing progress made in the context of its two-year mandate, and proposed areas of future work; and (iii) a report by the Technology TAG summarizing, in particular, its advice on possible collection mechanism options for consumption taxes, and proposed areas of future work. Information available at http://www.oecd.org/tax/treaties/ecommercereportsandtechnicalpapers.htm.

[3] These situations are considered an international issue only when the supplier is in a remote location and is not established in the recipient's country.

by World Trade Organization). These characteristics ensure the neutrality principle, that is, VAT does not affect local or international trade. In international trade the key issue is to define the destination principle, i.e., the place of consumption in order to avoid double taxation or unintended non-taxation (OECD, 2010). In 2011 was released the final guideline focused on neutrality principle (OECD, 2011).

In 2013, the Base Erosion and Profit Shifting (BEPS) report and its 15 Actions were published. The details of Action 1, related to tax challenges of the digital economy, had its draft released in 2014. In 2015, the first report was published – Addressing the Tax Challenges of the Digital Economy, and the basic challenges were itemed as follows: (i) the mobility of users, (ii) the acquisition of services in other jurisdictions in view of tax advantages, and (iii) the difficulties for tax administrations to collect VAT in cross-border B2C transactions. Despite these issues, OECD emphasized the destination principle in order to maintain neutrality in cross-border transactions, as previously defined.

At the same time BEPS Action 1 Discussion Draft was released (2014), the EU Commission Expert Group on Taxation of the Digital Economy Report[4] was released concluding that issues vary according to the type of supply (goods sold on-line, electronic services or other services) and the recipient (business or end consumer) in the following terms (EU, 2014a):

(i) In B2B transactions, the challenges are restricted to remote supplies to exempt business or multi-location enterprises engaged in exempt activities, once the input tax (credit) is not applicable[5];
(ii) In B2C transactions, for:
   a. E-Services, after the new rules applicable from 2015 (destination principle), the challenges are restricted to the proper functioning of the MOSS and the identification of the place of consumption (especially considering the growth of mobile devices);
   b. Goods within the EU, it is necessary to review the requirement for registering and accounting VAT in each Member State where supplies are made, once it represents a barrier to the Single European Market, especially to small and medium enterprises ("SME"). The costs of compliance to apply the destination principle justify a threshold to business with a turnover below EUR 100,000 and EUR 35,000 (depending on the country), which results in different visible prices to the customer depending on the supplier (if it is an exempt business or not);
   c. Goods from third countries: it is necessary to review the exemption for importation of small goods (between EUR 10 and 22), since the distortion in the competition between third parties (for which the exemption is applicable) and EU business.

On the other hand, the solution for those challenges should attend the following parameters, in order to preserve a simple, stable, and neutral tax system:

(i) There should not be a special tax regime for digital companies;
(ii) Tax barriers for SME operating in the Single European Market should be removed; and
(iii) Incentives and credits should be approached with caution and be carefully assessed both ex ante and ex post.

The EU Commission detailed new VAT rules for supply of telecommunications, broadcasting and electronic services ("e-services"), and they entered into force in January 2015 to allow the destination country to tax e-services in B2C transactions, that is, where the customer is located (permanent address or normally resides). For enable tax compliance, since multiple rules would arise from the destination principle, the Mini One Stop Shop ("MOSS") website was developed. It allowed the supplier to register, declare and pay the VAT via website, instead of registering in each Member State in which the customers are. The previous rules provided that the place of taxation should be the country of the supplier for intra EU transactions, while the destination principle would apply only to transactions between EU and third parties (EU, 2014b). The migration to the destination principle in B2C transactions for intra EU transactions was the last measure of the EU VAT Package, which started in 2008[6]. The destination principle was emphasized again, due to its neutrality on international taxation, ensuring economic efficiency (EU, 2014a, p. 4-5 e 31).

In April 2017, the OECD VAT/GST Guidelines consolidated the main principles in order to coordinate and ensure the collection of VAT in cross-border transactions related to services and intangibles attending the destination principle. This document supports countries in the identification of the place of taxation to ensure VAT/GST collection in cross-border supplies avoiding double taxation. This is the main document on VAT and the digital economy released by OECD up to 2024 and "*set forth*

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[4] "The Commission High Level Expert Group on Taxation of the Digital Economy has examined the best ways of taxing the digital economy in the EU, weighing up both the benefits and risks of various approaches. Its focus was on identifying the key problems with digital taxation from an EU perspective and presenting a range of possible solutions". Available at https://ec.europa.eu/taxation_customs/business/company-tax/tax-good-governance/expert-group-taxation-digital-economy_en.

[5] It has been recognized that this is not a problem specifically related to the digital economy but has been an issue for all kind of business.

[6] "The European Commission welcomes the adoption by the Council of legislation implementing new rules on the place of supply of services. The legal texts adopted today are a follow-up to the political agreement on the so-called VAT package reached on 4 December 2007 (see PRES/07/281). They will ensure that VAT on services will accrue to the country of consumption and will establish a new procedure for claiming VAT refunds to ensure quicker processing". Available at http://europa.eu/rapid/press-release_IP-08-208_en.htm?locale=en.

internationally agreed principles and standards for the value added tax (VAT) treatment of the most common types of international transactions, with a particular focus on trade in services and intangibles. Their aim is to minimise inconsistencies in the application of VAT in a cross-border context with a view to reducing uncertainty and risks of double taxation and unintended non-taxation in international trade. They also include the recommended principles and mechanisms to address the challenges for the collection of VAT on cross- border sales of digital products that had been identified in the context of the OECD/G20 Project on Base and Erosion and Profit Shifting (the BEPS Project)" (OECD, 2017a). Two other reports released in 2017 and 2019 complemented the guidelines to detail mechanisms for the effective collection of VAT/GST when the supplier is not located in the jurisdiction of taxation (OECD 2017b), and to address the role of the digital platforms in the collection of the VAT/GST (OECD, 2019b).

In 2018 OECD released the Tax Challenges Arising from Digitalization Interim Report, but it had emphasized income taxation issues. About VAT challenges, it was mentioned the increase in the VAT revenues in the EU as a result of the implementation of new rules (OECD, 2018a), and it basically suggested countries to continue following the recommendations from 2017 OECD International VAT/GST Guidelines[7]. Since then, OECD have released several documents for public consultation and reports, but they are focused on CIT issues (profit shifting). Actually, CIT is the key goal of BEPS.

Current national and international tax rules provides solutions to tax business profits where the production is – usually where companies have their physical establishments. Before the digital economy, the location of the company used to coincide with the customers' location. In the last 20 years, businesses are able to sale their digital services to consumers in countries where they do not have a physical presence, hence not being subject to CIT at those countries. However, even without a physical presence hence not subject to CIT, digital companies' profits derive indirectly from users abroad. In this context BEPS Project is going forward to develop solutions in order to ensure (i) that part of the CIT paid by digital companies is allocated to countries where their customers are - despite not having a physical presence (Pillar 1), and (ii) that a minimum rate of 15% is paid by multinational groups (Pillar 2).

This "Two-Pillar Solution" is completely focused on CIT. Pillar 1 is divided into "Amount A" and "Amount B". The Amount A consists in a reallocation of taxing rights to market jurisdictions where the customers are, and Amount B in a simplification of transfer pricing rules for a wide range of distribution activities. Under Pillar 2 Multinational Enterprises (MNEs) will be subject to a 15% global minimum tax on their profits (GloBE rules).

The difficulties in finding common solutions under Pillar 1, Amount A (reallocation of taxing rights), had led some countries to announce the introduction of a Digital Tax or Digital Services Tax (DST), as a transitional solution (most countries compromised to repeal it after a solution). With some variations, it consists in imposing a percentage from 1,5% to 7,5% (TAX FOUNDATION, 2024) on local gross revenues of large digital companies like Google and Meta. The key-point here is that this an imposition to deal with corporate income tax issues. The motivation has nothing to do with the VAT challenges. As mentioned above, VAT issues on digital economy are well addressed and many new developments have been observed, with relevant increase on countries' revenues. European Union countries had collected nearly USD 28 billion, Australia nearly USD 2 billion, New Zealand nearly USD 796 million, Norway nearly USD 1.4 billion, South Africa nearly USD 935 million, Chile nearly USD 775 million, and Thailand nearly USD 203 million for different periods (OECD, 2023).

It does not seem to be helpful to make a confusion between CIT and VAT issues on digital economy. Considering that the difficulties are different, also the solutions must be separate. It's one thing not to be able to tax the import of Google's cloud computing services; another, is not being able to tax Google's profit. The first one is related to the application of the destination principle (place of consumption) and challenges on enforcement and tax administration costs in B2C cross-border transactions. The second one is related to the application of the origin principle (tax incentives) and profit shifting using current transfer pricing rules and other international loopholes.

Conclusion

All of Brazilian real issues on taxation and digital economy can be addressed using the basic features of a VAT/GST like designed by the recently approved Constitutional Amendment nº 132, from December 2023, and no other new taxes are necessary to tax these services: (i) destination principle, (ii) broad base (goods, services, intangibles etc.); (iii) one single rate with few exceptions (health, education, food, tourism, real state, financial services); and (iv) non-cascade effect (credits for all input tax).

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[7] "[…] To address these BEPS risks, the 2015 BEPS Action 1 Report concluded that the solution is provided by the OECD's International VAT/GST Guidelines (OECD, 2017). In particular, the implementation of Guidelines 3.2 and 3.4 on place of taxation for business-to-business (B2B) supplies of services and intangibles will minimize such BEPS risks and ensure that the right to levy VAT is allocated to the jurisdiction where these services and intangibles are used for business purposes, irrespective of how the supply and acquisition of these services and intangibles is structured. […] In addition, the 2015 BEPS Action 1 Report concluded that one of the broader tax challenges arising from digitalisation is the challenge associated with the collection of VAT on cross-border trade in goods, services and intangibles, particularly where they are acquired by private consumers from suppliers abroad. Digitalisation has magnified this challenge as the evolution of technology has dramatically increased the capability of private consumers to shop online and the capability of businesses to sell to customers around the world without the need to be physically present or otherwise in the consumer's country." (OECD, 2018b, p. 102-103).

VAT remains as the most important tax on consumption, despite the new technologies. There are no countries deliberating to abandon VAT. Consumption taxes are increasing its relevance because of its broad base and neutrality to business (LANG e LEJEUNE, 2015, p. xxi). According to OECD Consumption Tax Trends 2018, VAT remains as the largest source of consumption tax revenues having reached an all-time high of 6.8% of GDP. In 2016, VAT represented 20.2% of total revenue in the average of OECD countries (OECD, 2018c).

The stabilization of VAT revenues is also due to countries' effort and serious commitment in preserve this tax though the digital economy challenges[8]. In the Brief on the Tax Challenges Arising from Digitalization published last year (2018), OECD stated "over 3 billion euros in the EU alone has been collected as a result of the implementation of the new International VAT/GST Guidelines" (OECD 2018a). In the Tax Challenges Arising from Digitalization Interim Report, it has been recognized the success by available evidence of the implementation of the principles recommended in the 2015 BEPS Action 1 Report on indirect taxation, now included in the OECD International VAT/GST Guidelines 2017[9].

All these data and information about VAT in a digital economy indicates that the best option available now is to have one consumption tax using the VAT standards. By having this structure, Brazil could then share international solutions for ensuring the collection of the consumption taxes.

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[8] "With less scope to raise already relatively high standard VAT rates, countries are increasingly implementing or considering base broadening measures to protect or increase VAT revenues. This includes increasing some reduced VAT rates, limiting or narrowing their scope and curbing VAT exemptions. A growing number of tax authorities have implemented or are considering implementation of measures to tackle the challenges of collecting VAT on the ever-rising volume of digital sales, including sales by offshore vendors, in line with new OECD standards". Cf. https://www.oecd.org/newsroom/tax-revenues-continue-increasing-as-the-tax-mix-shifts-further-towards-corporate-and-consumption-taxes.htm.

[9] "In the area of indirect taxes, the success and impact of the BEPS implementation process is also evident. An overwhelming majority of OECD and G20 countries have adopted rules for the VAT treatment of business-to-consumer (B2C) supplies of services and intangibles by foreign suppliers in accordance with the OECD International VAT/GST Guidelines. Early data shows that this has led to significant additional revenue in the adopting countries. For example, the European Union (EU) has identified that the total VAT revenue declared via its simplified compliance regime in 2015 (the EU regime's first year of operation) was in excess of EUR 3 billion. […]. In the area of VAT, however, evidence is already available that countries are implementing the principles recommended in the 2015 BEPS Action 1 Report on indirect taxation, which have now been enshrined in the OECD International VAT/GST Guidelines (OECD, 2017). Not only are these measures being adopted by a large number of countries, but they are already beginning to yield substantial additional tax revenues in the market jurisdiction, where these measures have been implemented." (OECD, 2018b, p. 90-91).

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