

The digital economy and Australia's corporate tax system

Comments of the Australian Taxpayers' Alliance (ATA)

Introduction

- 1.1. The ATA thanks Treasury for the opportunity to present comments on behalf of our stakeholders on the abovementioned discussion paper in order to inform future policy in the digital taxation space.
- 1.2. The ATA is a 75,000+ member grassroots taxpayers' advocacy group which stands for the principles of individual freedom, minimising government waste and rolling back inefficient or ineffective regulatory barriers which impede the progress and prosperity of Australia's economy and the welfare of taxpaying individuals and businesses.
- 1.3. The ATA recognises the need for sensible tax reform which appropriately recognises the changing facets of the digital economy in order to ensure fair and appropriate taxation as well as commercial certainty and Australia's international and domestic interests. However, the ATA is concerned that the proposals outlined in the Treasury discussion paper for unilateral approaches to digital taxation in lieu of a global, multilateral framework which recognises the digitalised and globalised nature of the world economy and global supply chains, will harm the interests of Australian taxpaying businesses and individuals.
- 1.4. It is submitted that while a global framework may take some time to put in practice, this is ultimately more desirable than potentially detrimental interim measures which could harm Australian interests by penalising domestic consumers and businesses, causing unfair 'double taxation' or even 'triple taxation' for some companies across multiple

jurisdictions, resulting in the calculation of new taxes based on unfair, inequitable or inaccurate metrics, and damaging Australia's foreign and trade relations while potentially triggering retaliatory measures against Australians by the home countries of the unduly affected businesses.

- 1.5. The ATA notes that any changes to tax treatment to account for the increasingly global and digitalised business environment should not only take into account the economic value generated by global, digital businesses and platforms in Australia. They should also recognise the positive contribution and innovations that these services and platforms bring to local businesses and consumers who are reliant on them to reach or target their customer base and to obtain goods and services to improve their lives. It is submitted that a failure to do so will result in disincentives for innovation, costlier advertising, marketing, and other services, for Australian businesses as well as the potential for Australians to be locked out of certain global platforms and services.
- 1.6. It is further submitted that any proposed changes to tax treatment should recognise the potential detrimental impacts for not only the generally large, international platforms and businesses they aim to target, but also smaller and local businesses and start-ups which have less resources and leverage at their disposal to bear the changes and costs. The ATA asserts that measures which unduly penalise smaller or local businesses will only result in an entrenchment of larger, international players who may already hold substantial global and local market share and who are more easily able to reduce their tax liabilities by moving to alternative jurisdictions or even exiting the Australian market which accounts for only a fraction of the global market for many of these services and platforms.
- 1.7. The ATA submits that the Australian government and treasury should work with our international partner nations through forums such as the OECD to develop a best practice international tax framework which accounts for the interests of Australian consumers, businesses and taxpayers- rather than resorting to dangerous and unprecedented unilateral interim measures.

User data taxes and digital advertising taxes

- 2.1. The ATA submits that the current international corporate tax system is correct in not applying tax measures which single out user-generated content and user data.
- 2.2. The ATA recognises that user data which informs targeted advertising and user-generated content does deliver tangible financial benefits for digital platforms or third parties that utilise this data for targeted advertising or the development of goods and services. However, it is submitted that the economic harms which are likely to be inflicted upon Australian businesses, consumers and digital platform users far outweigh the value of applying such a tax, especially if it is applied unilaterally rather than as part of a multilateral framework.
- 2.3. Under the status quo, users enjoy free or subsidised access to digital platforms as these platforms are able to monetise the data they generate with their consent. Similarly, businesses enjoy lower rates on advertising costs and the ability to access a wider pool of users drawn by free or subsidised access to the digital platforms.
- 2.4. Digital innovation and the utilisation of new, innovative algorithms also means that there is greater calibration between the demands of customers and the ability of businesses to respond precisely, efficiently and cost-effectively to the market to cater to customer demands. This ultimately benefits the Australian economy as Australian businesses reliant on these platforms are able to sell more products, grow at a faster rate, and therefore, employ more staff while paying higher tax as a result of increased profits due to the ability to access advertising services at a cheaper rate than they would with the imposition of additional taxes.
- 2.5. The ATA notes that placing additional taxes on user-generated data or content, will result in costs passed on to Australian businesses (through higher advertising fees on digital platforms) and their Australian customers (through higher costs on goods and services as the advertising costs are likely to be passed on), as well as Australian customers of international businesses.

- 2.6. It is further submitted that this may result in an actual decrease of revenue for the government as well, through a reduction in GST receipts from Australian consumers. In other words, the imposition of a tax on the data and content produced by Australian users of digital platforms would be akin to placing a fine on services which deliver overwhelmingly positive benefits for Australian consumers and businesses.
- 2.7. It is submitted that the innovative use of user-generated data and content that comes with the consent of the user, is a positive development for the Australian economy which should be encouraged rather than effectively discouraged through the use of effective fines that are likely to be passed on to Australian users, consumers and businesses.
- 2.8. The provision of targeted advertising, market research and other services through the utilisation and monetisation of user data and user-generated content is also overwhelmingly a positive benefit to Australian taxpaying businesses and consumers as it assists in narrowing the information gap common in markets which is responsible for preventing their efficient operation and facilitating uninformed purchase decisions. A new, unilateral tax on these services or the value of user data will hence hurt Australian businesses and consumers by discouraging innovative tech services or making them costlier to use.
- 2.9. The ATA submits that incentives rather than disincentives should be provided through the tax system for such innovative services and that the current profit attribution rules serve as a such an incentive by effectively subsidising such services for Australian businesses and consumers in a global market, without spending taxpayer funds to do so.
- 2.10. Given the rationale of utilising digital taxation as an instrument to prevent hardworking Australian taxpayers from shouldering an unfair burden relative to multinational companies, it is therefore submitted that taxing user data is likely to be counterproductive in this regard as those who are likely to be harmed by the tax are Australian users, consumers and businesses who already pay tax in Australia.

2.11. By contrast, large digital platforms possess immense leverage in that users, consumers and businesses are often unable to shift to alternative platforms to obtain the same benefits due to their existing, immense market share should the cost of advertising services or the goods or services advertised itself increase.

Unilateral vs Multilateral Approaches

3.1. Unilateral and interim measures aimed at the digital economy would represent a significant, unprecedented shift in the allocation of value across the supply chain of a multinational enterprise. This has the potential to modify tax principles such that jurisdictions that 'consume' rather than 'generate' value are seen to claim taxation rights in respect of that value. It is hence likely that Australian consumers and businesses will be damaged by retaliation from foreign countries whose businesses are impacted by the change in what they see as an unfair, inequitable or disproportionate way.

3.2. The ATA, therefore, further submits that any approach to introducing new taxes on digitised, globalised, platforms and businesses should occur as part of a harmonised, multilateral approach. This will minimise perverse market distortions which place Australian consumers and businesses at an unfair disadvantage against our international counterparts through increased prices on goods and digital services (such as advertising), as well as the potential of Australians being 'locked out' of certain international platforms and services impacted by the tax changes.

3.3. For example, the extension of the GST to low value imports in 2018 with a mandate for online marketplace platforms to collect revenue on the Australian government's behalf, resulted in Australians being denied access to the international portals of US-based online marketplace platform, Amazon. As a result, Australians were denied access to over 500 million products and were only permitted access to the Amazon Australia portal which featured about 4 million products.¹ Recently, Amazon has reopened access

¹ Naaman Zhou, "Amazon to block Australians from using US store after new GST rules" *The Guardian* 31 May 2018. <https://www.theguardian.com/australia-news/2018/may/31/amazon-to-block-australians-from-using-us-store-after-new-gst-rules>

to its US-based portal for Australian shoppers.² However, Australians continue to be denied access to the platform's other international portals and the products offered there.

- 3.4. Another potential consequence of imposing a tax on user data is the flow-on effect of tariff retaliation from countries whose businesses will be disproportionately affected. The United States has in recent years, demonstrated a willingness to engage in retaliation when its businesses become the targets of taxes or tariffs in foreign markets.³ Major social media and other digital service platforms, including Facebook, Google and Uber, are based in the United States. Retaliatory measures would ultimately undermine Australia's foreign relations and trade interests. Taking a multilateral approach to digital taxation will avoid these issues while ensuring sensible tax reform which takes into account Australia's interests.
- 3.5. For example, proposals outlined in the Treasury Paper, including taxes on digital services, marketing intangibles or the use of user data by major online platforms, function effectively like a tariff in that a vast majority of these major companies are based in the United States. It is therefore likely that under U.S. law, these taxes would fit the definition of "unreasonable, discriminatory or unjustifiable" under Section 301 of the *Trade Act 1974*.⁴ This clause is a cause for concern for Australia as it empowers the United States government to investigate the allegedly unfair trade practice and to seek retaliatory avenues against Australia which will inevitably damage Australian economic and trade interests as well as our foreign relations and the wellbeing of taxpaying individuals and businesses here.

² Frank Chung, "Amazon international to resume shipping to Australia after controversial online GST ban" *news.com.au* 22 November 2018. <https://www.news.com.au/finance/business/retail/amazon-international-to-resume-shipping-to-australia-after-controversial-online-gst-ban/news-story/6df54143018fd8cfd0e8d8f3bea71c97>

³ See for example: Alan Rappeport and Jack Ewing "As Trump threatens car tariffs, Europe prepares to strike back" *New York Times* 14 November 2018. <https://www.nytimes.com/2018/11/14/us/politics/trump-car-tariffs-europe.html>

⁴ Gary Clyde Hufbauer and Zhiyao (Lucy) Lu, "The European Union's Proposed Digital Services Tax: A De Facto Tariff," Peterson Institute for International Economics, Policy Brief 18-15, June 2018, <https://piie.com/publications/policy-briefs/european-unions-proposed-digital-services-tax-de-facto-tariff>

- 3.6. A final consequence of taxing user data, will be to damage innovative Australian small business, including tech start-ups, who rely on this data or formulate innovative mechanisms for deriving utility from user content/data. Such businesses are likely to be impacted far more severely than their better-resourced international counterparts who already hold immense market share and are more capable of bearing new taxes, passing on the aforesaid new taxes to their customers without losing customers or who are capable of pulling out of the Australian market or no longer doing business in Australia by simply moving operations to a more tax-competitive jurisdiction. In this manner, a unilateral move to tax user data/content will only serve to entrench global and domestic market share of large, foreign tech companies while severely damaging Australian small business who either rely upon or compete against foreign platforms.
- 3.7. The potential for businesses to go overseas to more tax-competitive jurisdictions under an Australian unilateral approach to digital tax, also applies to Australian companies. This will result in a loss of technical knowhow, innovation and valuable skill in the economy. Developing a multilateral framework is a far better alternative as skills, knowhow and innovation should be retained in Australia for the benefit of our economy.

Marketing Intangibles

- 4.1. It is submitted that appropriate taxation already applies to the value of 'market intangibles' through the GST levied on purchases of branded products acquired in Australia.
- 4.2. It is further submitted that the rationale of applying a tax on the basis that these 'market intangibles' are subject to protection under Australian intellectual property laws is a weak and non-applicable one, as it is not customary to levy special taxes for the protection of property rights under legislation. While administrative fees may be levied in respect of court actions, trademark registration, and other distinct functions designed to enforce legal property rights protections, these are not levied as taxes and reflect a 'user pays' system for the enforcement of property rights rather than the existence of

these rights.

- 4.3. Strong property rights are a cornerstone of Western liberal democracies such as Australia and deliver their own returns to the Australian economy as intellectual property protections provide certainty to foreign investors, whereby Australia especially benefits due to foreign investment accounting for a high degree of cashflow into the country by world standards, both traditionally as well as today.^{5 6}

Category-based taxes, turnover taxes and estimation difficulties

- 5.1. The ATA submits that the “estimates” in terms of taxable value connoted by the proposals outlined in the digital paper, such as tax levies based upon generalisations based on dividing companies by categories such as field/industry in which the taxed business is involved, as well as taxes based on turnover/revenue (that is raw revenue instead of net profit), number of employees etc. risk the application of unfair, punitive or uncertain tax levies.
- 5.2. For example, turnover-based taxes fail to take into account the business’s actual profitability and will disproportionately damage smaller and innovative businesses/platforms who tend to reinvest any profits accrued back into their business for the sake of growth and innovation. This stems from the inherent inequity of applying the same rate of tax to both profit and loss-making businesses which results from a turnover-based tax.
- 5.3. Historically, turnover taxes have been eschewed as bad tax policy as they are inefficient, produce barriers to economic growth, and are regarded as unfair. This is why Europe rejected taxing turnover in favour of value-added tax in the 1960s.⁷

⁵ <https://dfat.gov.au/trade/investment/Pages/the-benefits-of-foreign-investment.aspx>

⁶ Yang, Jeannie Yih Yun, Nicolaas Groenewold, and Moonjoong Tcha. "The determinants of foreign direct investment in Australia." *Economic Record* 76.232 (2000): 45-54.

⁷ Tax Foundation, “Tax Harmonization in Europe and U.S. Business,” Tax Foundation, Research Publication No. 16, <https://taxfoundation.org/tax-harmonization-europe-and-us-business/>, Aug. 1, 1968.

- 5.4. Turnover taxes are also problematic as they produce multiple, inequitable layers of taxation due to their ‘cascading’ effect in that they are applied at each stage of production involved in a transaction – thereby resulting in potential double or triple taxation for the same transaction.⁸ This difficulty and inequity is exacerbated by the increasingly complex and global nature of world supply chains.
- 5.5. A turnover tax would also negate or undermine the tax benefit of capital expenditure, potentially discouraging companies from expanding operations and services through spending. For example, Amazon has purposely maintained smaller profit margins in order to try to capture a larger share of the market by lowering the costs its consumers face.⁹ This is ultimately a beneficial outcome for Australian consumers which will be discouraged if a turnover tax is adopted. Independent policy experts such as Julian Jessop, Chief Economist at the Institute of Economic Affairs, have noted that the 3 percent turnover tax proposed by the European Commission for example, would result in some companies on thin profit margins experiencing marginal tax rates of up to an inequitable 50 percent.¹⁰
- 5.6. Start-ups also tend to run into losses during the initial years of their operation and a turnover tax will therefore increase the difficulties faced by these businesses while putting the livelihoods of their workers at risk. This is contrary to the stated ‘innovation’ agenda of the Australian government.¹¹
- 5.7. An additional difficulty posed by turnover taxes is that despite the evidence which attests to their likely detrimental impact for the economy and businesses, they may be

⁸ Turnover taxes are comparable to taxes on gross receipts. For more analysis of the economic impact of these taxes see Justin Ross, “Gross Receipts Taxes: Theory and Recent Evidence,” Tax Foundation, Oct. 6, 2016, <https://taxfoundation.org/gross-receipts-taxes-theory-and-recent-evidence/>.

⁹ Diego Zuluaga ‘Why Corporation Tax should be scrapped’ Institute of Economic Affairs Discussion Paper No. 74, September 2016, p. 24. <https://iea.org.uk/publications/why-corporation-tax-should-be-scrapped/>

¹⁰ Julian Jessop, “Why the EU’s digital turnover tax is a bad idea,” European Policy Information Center, <http://www.epicenternetwork.eu/wp-content/uploads/2018/09/Why-the-EU%E2%80%99s-digital-turnover-tax-is-a-bad-idea-1.pdf>.

¹¹ Australian Government Department of Prime Minister and Cabinet, “A More Innovative and Agile Australia” <https://www.pmc.gov.au/domestic-policy/more-innovative-and-agile-australia>

politically difficult to repeal once instituted.¹² This connotes the need for further caution against proceeding with a turnover tax.

- 5.8. Generalised tax levies based on field/industry will also disproportionately hurt smaller players while entrenching the market share of larger, multinational platforms and businesses who are more easily able to cope with additional costs or to pass these on to their consumers with lesser risk of losing consumers to competitors.
- 5.9. As noted in the discussion paper, the difficulty of estimating appropriate tax levies is also enhanced by the increasing complexity of global supply chains for individual businesses.

Profit attribution rules in an increasingly digitised and globalised economy

- 6.1. It is submitted that a unilateral approach of distinguishing between digitised and non-digitised businesses for the purpose of tax treatment is undesirable as it is likely to create commercial uncertainty for businesses and investors, chill innovation and is ultimately going to impact Australian businesses and consumers across multiple industries as digitisation and globalisation has taken place and continues to take place across many industries. The ATA believes that maximisation of commercial certainty, incentivisation of innovations which benefit Australian businesses and consumers, as well as reduction of complexity for taxpayers is best supported by avoiding differential tax treatment for digitalised businesses.
- 6.2. While the ATA sympathises with the challenges posed by the development of appropriate tax frameworks for a rapidly evolving digitalised economy, The ATA submits that the rapidly evolving nature should connote caution for policy makers in developing tax frameworks which may have detrimental chilling impacts upon the aforesaid innovation. It is further submitted that this may not be appropriate, suitable or desirable

¹² Michael P. Devereux and John Vella, "Response to the EU Commission's consultation: Fair taxation of the digital economy," Oxford University Centre for Business Taxation, Jan. 3, 2018, https://circabc.europa.eu/webdav/CircaBC/Taxation%20%26%20Customs%20Union/Results%20of%20the%20open%20public%20consultation/Library/Results%20of%20the%20open%20public%20consultation/Individuals/bc31d10a-b132-41a7-8be1-6f5744bcb9ed_Response_to_EU_Consultation_on_DE_Devereux_Vella_Final.docx.

within a few years of their enactment due to rapid evolution of business practices and strategies in this space.

- 6.3. The modern economy effectively requires all companies to digitalise aspects of their business in order to remain operational and competitive.¹³ Applying new taxes in this space will therefore have detrimental effects through the passage of costs on to Australian businesses and consumers across many industries. Hence, ‘ring-fencing’ may not be appropriate.
- 6.4. The Organisation for Economic Cooperation and Development has cautioned in its own reports that “it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy”¹⁴ and that “the tax issues raised by digitalisation are technically complex.”¹⁵ The European Economic and Social Committee has stated that the entire economy is digitalised,¹⁶ and the OECD has previously stated that it would be impossible to separate the digital economy from the rest of the economy for taxation purposes.¹⁷
- 6.5. Any changes to tax treatment which are designed to prevent tax-base erosion through digitalisation, are best addressed through a multilateral framework in order to acknowledge the international and increasingly complex nature of global supply chains and transactions.

Taxing based on ‘source of value’

¹³ Michael P. Devereux and John Vella, “Response to the EU Commission’s consultation: Fair taxation of the digital economy,” Oxford University Centre for Business Taxation, Jan. 3, 2018, https://circabc.europa.eu/webdav/CircaBC/Taxation%20%26%20Customs%20Union/Results%20of%20the%20open%20public%20consultation/Library/Results%20of%20the%20open%20public%20consultation/Individuals/bc31d10a-b132-41a7-8be1-6f5744bcb9ed_Response_to_EU_Consultation_on_DE_Devereux_Vella_Final.docx.

¹⁴ OECD 2018, *Tax Challenges Arising from Digitalisation – Interim Report 2018*, p. 18.

¹⁵ *Ibid*, p. 12.

¹⁶ Krister Andersson and Petru Sorin Dandea, “Opinion: Taxation of profits of multinationals in the digital economy,” European Economic and Social Committee, July 30, 2018, <http://data.consilium.europa.eu/doc/document/ST-11484-2018-INIT/en/pdf>

¹⁷ OECD/G20 Base Erosion and Profit Shifting Project, “Addressing the Tax Challenges of the Digital Economy,” Sept. 16, 2014, <https://www.oecd-ilibrary.org/docserver/9789264218789-en.pdf?expires=1536348782&id=id&accname=guest&checksum=57267A41EF1FC1877444EA2CBE874732>

- 7.1. The notion that ‘profits should be taxed where the value is created’ is conceptually flawed and very difficult to implement in practice.¹⁸ Multiple factors contribute to the generation of income, including finance, research and development, head office functions, manufacturing, marketing and sales. Amongst multinational enterprises, these may be spread across multiple jurisdictions. All of these factors are vital for producing profit and it is practically impossible to ascertain the value a particular factor contributes to the generation of the profit.
- 7.2. The difficulties outlined above are best illustrated in relation to a ‘digital services tax’ such as that which has been proposed by the European Union as an interim measure. This would be levied on the explicit basis that ‘value’ is created for an online platform at the point where a user is exposed to an advertisement on the platform and that the failure to tax this online platform for that value is tantamount to an unfair deprivation of tax revenue for the country where the user is located.¹⁹ For example, an Australian user might see a sponsored link on a U.S.-based search engine for an Indonesian-made shirt. In this instance, a digital services tax akin to that which has been proposed by the EU, and akin to the proposals contemplated in the Australian Treasury discussion paper, would impose a tax on the search engine for the ad click even though the only transaction that is captured by the click is between the American search engine and the Indonesian shirt maker – neither of which are located in or have engaged in a transaction in Australia in the aforesaid instance. Notably, under the status quo, the transaction between the user and the Indonesian shirt maker would attract the Australian GST (provided that the value of the shirt is either above \$1,024 AUD, or is under this figure, but the sale occurs on an online marketplace platform with revenue exceeding \$75,000 per year). The Australian government would also benefit from the GST that the user pays on their electricity and internet connection relied upon to locate the advertisement and make the purchase. The ‘transaction’ between the user and the

¹⁸ See Devereux and Vella, ‘Are we heading towards a corporate tax system fit for the 21st century?’ (2014) *Fiscal Studies*, Vol 35. No. 4, 449, also available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2532933

¹⁹ European Commission, “Fair Taxation of the Digital Economy, accessed December 13, 2018, https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en.

search engine which they engage for the purpose of seeking accommodation, does not attract tax because the digital service is provided to the user for free- despite the deployment of resources and labour on the part of the search engine that provides it. Therefore, penalising the search engine through a new tax for this service which is only provided for free because it obtains ad revenue from its sponsors, represents an unfair and inequitable form of taxation which singles out a beneficial and free innovation relied upon by Australian consumers.

7.3. Countries such as Finland have already noted that such proposals would likely cause a greater loss of revenue for their government than any money they raise.²⁰

7.4. Independent experts such as Joachim Englisch, a visiting tax professor at the SciencesPo Center for European Studies in Paris, have similarly noted that the tax “will cause significant costs for businesses and significant administrative costs and difficulties regarding its verification and auditing for tax administrations.”²¹

Imposing digital taxes and simply exempting businesses of a certain size is not helpful or desirable

8.1. Making exemptions from a digital tax for ‘small businesses’ or businesses that fall below certain revenue thresholds or other metrics for determining ‘business size’, will mean that companies which experience commendable success in growing their business will suddenly become subject to new taxes that undermine their growth trajectory and will have less incentive for growth. This will also result in such businesses allocating more resources or organising their activities and structure in a manner that allows them to avoid or minimise this new tax burden. Implementing a tax that has this effect on Australian businesses is not desirable or efficient.²²

²⁰ Joe Kirwin, “EU Races to Solve Issues Hampering Digital Tax Proposal,” *Bureau of National Affairs*, December 13, 2018, <https://www.bna.com/eu-races-solve-n73014482428/>

²¹ Ibid.

²² Daniel Bunn, “A summary of criticisms of the EU digital tax” *Tax Foundation* 22 Oct 2018. https://taxfoundation.org/eu-digital-tax-criticisms/?fbclid=IwAR3Rzx2Zju-GrUESZuQ-e8Xg60EI_rapLbThRd5Of1kUgBJVT8miYTZaR28#_ftnref13

Digitalised businesses do not pay less tax than traditional business – E.U. Digital Services

Tax is premised on false claims

- 9.1. In its proposal for a digital services tax, the European Commission (EC) claimed as a basis for such a tax, that that digital businesses are exposed to significantly lower effective tax rates than traditional businesses. However, the data that the EC relies upon to make this claim does not support it. The EC claims that digital corporations face average effective tax rates that are less than half of what traditional business faces. However, this is contradicted by one of the authors of the study that the commission cites for the claim.²³
- 9.2. The EC's analysis is based on hypothetical business models rather than real industry data. Analysis by the European Centre for International Political Economy (ECIPE), which instead considers real industry data, instead found that digital businesses actually pay *slightly higher* average effective rates than traditional businesses.^{24 25}
- 9.3. It is hence submitted that a digital services tax, especially on a unilateral basis, is undesirable for Australia.

Experiences in other jurisdictions

- 10.1. **Spain:** The country attempted to charge search engines a 'link tax' in 2014, which levied tax for the usage of links to news stories featuring Spanish websites. As a result of the tax, Google News Spain ceased operations and traffic to Spanish news websites and outlets fell significantly as the consumer exposure offered by the service ceased to exist.²⁶ The tax was then scrapped, although recent moves flagged by the EU to

²³ Jack Schickler, "EU Study's Author Doubts Digital Transactions Undertaxed," Law360.com, March 6, 2018, <https://www.law360.com/articles/1019073/eu-study-s-author-doubts-digital-transactions-undertaxed>.

²⁴ Dr. Matthias Bauer, "Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions," European Centre for International Political Economy, March 2018, http://ecipe.org/app/uploads/2018/02/ECI_18_OccasionalPaper_Taxing_3_2018_LY08.pdf

²⁵ Cf. Scott Hodge, "New Study Debunks European Commission Claims Justifying New Taxes on Digital Companies," Tax Foundation, March 19, 2018, <https://taxfoundation.org/european-commission-taxes-digital-companies/>

²⁶ Dominic Rushe, "Google News Spain to close in response to story links 'tax'" *The Guardian* 11 December 2014. <https://www.theguardian.com/technology/2014/dec/11/google-news-spain-to-close-in-response-to-tax-on-story-links>

reintroduce similar laws have been met with a similar possibility of service cessation.²⁷

This experience demonstrates that the value of digital services in connecting consumers with businesses without connoting additional cost for the consumer, far outweighs the benefit of directly raising revenue for governments on the flawed philosophical basis that the user is creating taxable value for the digital service/advertising provider.

10.2. **India:** India's 'digital equalisation levy has applied since 2016 at a rate of six per cent on the revenues earned by non-Indian residents providing digital advertising services to Indian businesses.²⁸ Policy experts such as Vikas Vasal, National Leader for Tax and Growth Services at Management Consulting Firm, Grant Thornton India, have noted that it is highly likely that the cost imposed by this tax will be borne by Indian customers and businesses reliant on digital services.²⁹

Conclusion

11.1. The OECD has been discussing issues of the digital economy for many years, with their Base Erosion and Profit Shifting (BEPS) project set to deliver tax proposals on the digital economy in 2020,³⁰ as part of a multilateral effort to ascertain appropriate and coordinated tax policy responses to the digitalised and globalised economy.

11.2. It is submitted that for the reasons outlined above, the unilateral 'interim' proposals such as digital services/advertising taxes, taxes on user data, turnover taxes etc. are undesirable and anathema to the interests of Australian taxpayers, consumers and businesses who rely upon the digitalised and globalised economy, platforms and services.

²⁷ Jim Waterson, "Google News may shut over EU plans to charge tax for links" *The Guardian* 19 November 2018 <https://www.theguardian.com/technology/2018/nov/18/google-news-may-shut-over-eu-plans-to-charge-tax-for-links?fbclid=IwAR3yBv65KSXbieyKTc6fyQLxtx96X0sH0raARPNsbEeOxINMYavZ1cLdnsA>

²⁸ OECD 2018, *Tax Challenges Arising from Digitalisation – Interim Report 2018*, p 142, Box 4.3.

²⁹ Vikas Vasal, "Equalisation levy: tread with caution" *The Hindu Business Line* 3 May 2017. <https://www.thehindubusinessline.com/opinion/equalisation-levy-tread-with-caution/article9679019.ece>

³⁰ See OECD, "Brief on the tax challenges arising from digitalisation: interim report 2018," <https://www.oecd.org/tax/beps/brief-on-the-tax-challenges-arising-from-digitalisation-interim-report-2018.pdf>

11.3. These services allow Australians to engage effectively and efficiently with the market to achieve growth, success and improved living standards. Poorly designed interim tax measures should not become an impediment to growth for innovative businesses which undermines the capacity for digital services to improve Australian lives.

11.4. Attempts to 'ring fence' the taxes to single out "digitalised businesses", businesses based on size, or specific large, multinationals who are perceived to not be paying 'their fair share' are also counterproductive in their practical effects which are inevitably likely to adversely impact smaller, innovative Australian business and consumers the most.

11.5. It is submitted that while it may be some time before a multilateral and coordinated framework can be devised in order to minimise distortionary effects and provide commercial certainty, this is nonetheless a significantly better alternative to pursuing flawed unilateral measures which could also undermine favourable international and trade relations.

11.6. Solid tax policy should be simple, transparent, stable and neutral. The proposed unilateral digital taxes fall far short of these standards.



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