A New Nexus Based on the Concept of Significant Economic Presence: The Digital Permanent Establishment

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Abstract

The traditional concept of EP status is obsolete and enables digital companies to enter a foreign market jurisdiction without having a minimal physical presence. These companies usually do not reach the threshold required to establish the necessary taxable nexus to attribute the profits to that jurisdiction. For the purpose of realigning corporate taxation with the location of actual business activities, Action 1 Final Report relaunches the debate of a new nexus based on the concept of significant economic presence.

Keywords

permanent establishment; virtual permanent establishment; digital economy; fair taxation

1 Introduction

Nowadays, there is a new way for carrying business and a non-resident company can operate in a State without having physical presence at all in the country. Under the current tax legislation, in most cases this leads to zero taxation in the source State because there is not a substantial physical presence established in that territory. So, the absence of coherent source rules has created opportunities for profit shifting that have been compounded by the phenomenon of globalisation and the fast growth of digitalisation. The problem is heightened where such companies adopt certain strategies that eliminate taxation also in the State of residence.

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Following these premises, the OECD/G20 has launched the Action Plan on Base Erosion and Profit Shifting (BEPS) in an attempt to realign corporate taxation with the location of actual business activities. Particularly, Action 1 deals with the challenges of digital economy. Among the four available options mentioned in BEPS Action 1 Final Report to address the broader direct tax challenges of the digital economy,[2] the Task Force on the Digital Economy (TFDE) only recommends the introduction of modifications to the exceptions from PE status (basically, changes on the preparatory and auxiliary exceptions and amendments on the agency-PE definition). But the fact is that as long as the physical presence requirement within the PE concept remains, the proposed changes on Arts. 5(4) and 5(5) OECD MC will not contribute to the attainment of a fair allocation of taxing rights between the State of residence and the market jurisdiction.

Chapter 7 of Action 1 BEPS Final Report addresses the issue of the nexus and the ability of a company to have a significant economic presence in a market jurisdiction without being liable to tax. At this point, some authors argue that despite not having a physical presence in a territory or a dependent agent therein, a digital company can have a *significant economic presence* in the market jurisdiction. The new nexus based on a significant presence goes beyond the PE concept. Actually, the new nexus is not aimed at strengthening taxation at source, but to restore taxation at the market jurisdiction when activities are linked to its territory. In this sense, in order to avoid an unfair erosion of sovereignty in the market jurisdiction in terms of value created by companies, taxing rights should be recognised to whenever the digital or physical presence of business in a country gives rise to value creation.

The significant economic presence is an undefined legal concept that will be determined on a basis of factors that reveal a permanent interaction with the economy of a country via technology and other automated tools. These factors will be combined with a revenue factor, in order to ensure that only cases of significant economic presence are covered.

2 The Significant Economic Presence Test

2.1 The revenue-based factor

The single significant digital presence does not symbolise the existence of a PE at the market jurisdiction if it is not considered cumulatively with other quantitative elements, such as the volume of income obtained by the non-resident in that jurisdiction that exceeds specific thresholds.

[2] Namely, 1. the introduction of changes in the concept of permanent establishment; 2. the introduction of a new tax nexus based on the concept of significant economic presence; 3. a withholding tax on certain types of digital transactions; and 4. the implementation of an equalisation levy on non-taxed or insufficiently taxed profits obtained by non-resident digital companies.

Revenue obtained within a country is certainly one of the strongest indicators of the existence of a significant economic presence in the country concerned. Revenues cannot be considered in isolation to establish nexus; however, in combination with other factors[3] can be used to establish nexus in the form of a significant economic presence in a country's market.

In defining a basic revenue factor, it would be preferable to include all revenue generated by operations concluded remotely by a non-resident company with in-country customers. The expression "all revenue generated" covers online transactions – where ordering, payment and delivery of intangible goods and/or services take place in digital form, and offline transactions – where there is an electronic order of tangible goods than can only be delivered by traditional means. Besides, the threshold should be based on the amount of gross revenue generated, in absolute terms and local currency. Additionally, in order to minimise the administrative tax burden for tax authorities, just as the compliance burden and level of uncertainty for the taxpayer, the threshold should be set at a high enough level. For that matter, the size of a country's market can be relevant in setting the level of the revenue threshold. This is important in order to comply with the principles of neutrality and proportionality. Also, in order to prevent any risk of artificial fragmentation of foreign affiliated entities, the amount of gross revenue should be calculated on a related-group basis rather than on a separate-entity basis. The aggregation rule could be implemented as a rebuttable presumption, allowing the taxpayer to demonstrate that there was no artificial fragmentation of activities. Apart from that, the Final Report suggests the introduction of a mandatory registration system containing sufficient information on determining factors of a significant economic presence.

2.2 Digital factors

A *local domain name* is the digital equivalent of a local physical address. It is fairly common that a foreign enterprise doing substantial cross-border business uses a generic domain name (.com) at its home country and local domain names in each market jurisdiction. The use of local domain names is completely optional but recommended, as it makes easier for users in that country to locate the website and reduces the reputational risk from domain squatting and trademark infringement.

The use of a *local website or other digital platform* including relevant linguistic and cultural peculiarities of target audiences is a good way of connecting with local users and customers.

The same applies to *prices* of products or services, taxes, duties and fees that usually *appear in local currency* with the option of using a local form of payment – the last option

[3] These factors shall be selected considering the features and characteristics of the particular market.

is relevant in countries that have strict banking regulations, currency controls or limited penetration of international credit cards.

All in all, these digital factors reflect the contribution to value a closer and more intense customer relationship in the digital economy.

2.3 User-based factors

Due to the importance of network effect in the digital economy, factors based on users may reflect the level of participation in the economy of a country. The following alternatives are suggested in Action 1 Final Report.

The *number of monthly active users* (MAU) in a country reflects the level of penetration in a country's economy. This expression refers to the number of registered users who access to a digital platform in a 30-day period. However, it is still difficult to interpret the meaning of an "active" user and identify them adequately. Besides that, the reliability of this indicator decreases when multiple accounts or bot accounts come into play. Hongler and Pistone also suggest that the time spent by users on a specific online platform reflects the level of use of the infrastructure in the market jurisdiction (Hongler and Pistone, 2015).

The *regular conclusion of online contracts* is another factor that reflects the level of participation of a foreign entity in the economic life of a country. In the context of digital economy, contracts are usually concluded through a digital platform, without the intervention of a dependent agent in the market jurisdiction. On this basis, the regular conclusion of contracts with residents in a given country might be a factor to consider when applying the significant economic presence test.

Finally, the TFDE suggests to consider the *volume of digital content collected* via a digital platform from users and customers habitually resident in the market jurisdiction. The variety of data collected includes personal data, as well as user created content, product reviews or search histories. This said, difficulties might arise in the application of this indicator because data collected and stored by businesses are not usually classified on a country-by-country basis.

3 Income Attribution to the Significant Economic Presence

3.1 Suggestions of the TFDE

Once the new nexus is established, the determination of income attributable to the significant economic presence is a key aspect. Existing principles and rules for allocating profits – currently based on an analysis of the functions, assets and risks of the enterprises concerned – require substantive reformulation in the context of the digital economy. Although the current PE definition was amended and even if a new nexus based on the concept of significant economic presence were implemented, if allocation rules rely on a physical presence threshold and there is not a major change of the rules for the attribution of profits, no reallocation of income will take place in the digital economy (Hongler and Pistone, 2015).

The TFDE's Final Report analyses the alternative use of methods based on fractional apportionment and modified deemed profit methods.

3.2 The new PE nexus as proposed by Hongler and Pistone and Avi-Yonah and Halabi

Following the publication of Action 1 Final Report, Hongler and Pistone came forward with an innovative proposal supporting the introduction of a new Art. 5(8) of the OECD MC. The aim of this new provision is not to strengthen taxation at source or replace the existing rules on the allocation of taxing powers, but to allow the market jurisdiction to preserve its sovereignty on taxation of business profits that have arisen in connection with activities effectively linked to that territory. In other words, it is just about adapting the PE concept to the new era of digital economy and taking into consideration the evolution of the PE towards a new PE nexus based on digital presence, while respecting the essence of the existing principles of international tax law.

The new PE concept, as a nexus for the exercise of taxing powers on business income in the context of digital economy, is grounded in both the sourcing theory and the benefit theory. In this manner, for Hongler and Pistone, the new PE nexus should consist of four main elements: 1. digital services; 2. user threshold; 3. a certain time threshold; and 4. a *de minimis* revenue threshold (Hongler and Pistone, 2015).[4]

The authors consider that this new threshold shall be drawn upon the following elements: a user-based threshold (instead of a customer-based threshold), a certain time threshold and a *de minimis* revenue threshold. However, Hongler and Pistone recall that such a proposal would require further clarification. More specifically, the terms "database", "online marketplace", "storage room", "advertising services", "website", "per month" or "domiciled" shall be adequately defined by the OECD in the respective Commentary. Additionally, customer location is a key element in determining where value creation occurs. At this point EU VAT rules could be used as a model for an

[4] The suggested new paragraph to be added to Art. 5 OECD MC would be worded as follows: *"If an enterprise resident in one Contracting State provides access to (or offers) an electronic application, database, online market place or storage room or offers advertising services on a website or in an electronic application used by more than 1,000 individual users per month domiciled in the other Contracting State, such enterprise shall be deemed to have a permanent establishment in the other Contracting State if the total amount of revenue of the enterprise due to the aforementioned services in the other Contracting State exceeds XXX (EUR, USD, GBP, CNY, CHF, etc.) per annum."*

adequate legal definition of a PE in the customer's jurisdiction (Hongler and Pistone, 2015).

There is common ground between the proposal presented by Hongler and Pistone and the suggestions submitted by Avi-Yonah and Halabi. The latter authors presented two alternatives to deal with the challenges of the digital economy.[5] As stated above, in order to avoid practical difficulties at the time of attributing profits to a virtual PE, Avi-Yonah suggested levying a withholding tax at the corporate tax rate on the income obtained in the source countries that exceeds the said threshold (Avi-Yonah and Halabi, 2014).

Then, once the nexus is established, Hongler and Pistone suggest the application of a modified split method, combined with an upfront allocation of a partial profit (one third) to the market jurisdictions fulfilling the PE nexus. The other two thirds of the profits would be allocated according to the current transfer pricing standards, which most likely would lead to the allocation of the remaining profit to the State of residence. Regarding the enforcement of the profit attribution method, the authors suggest that just one or several jurisdictions collect the tax due on behalf of the others, while being aware that this may require a great degree of consensus among the countries concerned. Apart from that, other issues such as determining the taxpayer – particularly, in cases where the entity collecting the revenue is not a qualifying company but a mere shelf company –, the interaction with other treaty provisions – especially, Arts. 5(1), 6, 10, 11 or 12 OECD MC – or a multilateral implementation shall require substantial further development. Nonetheless, some questions arise regarding the tax treatment of companies relying on both digital and physical presence, as well as the interaction of the new digital nexus with the PE provisions for traditional businesses and distributive rules (Hongler and Pistone, 2015).

The new PE nexus is not incompatible with the use of withholding taxes; but, according to Hongler and Pistone, the introduction of a new PE nexus would be

[5] The first alternative was adding a new Art. 5(3) to the OECD MC as follows: *"Notwithstanding the preceding provisions, a remote seller constitutes a permanent establishment in a Contracting State if it has gross annual receipts in total remote sales in a Contracting State in the preceding calendar year exceeding $1,000,000, whether such a remote seller satisfy any other definition in this Article 5 or not."* The second alternative suggested by Avi-Yonah and Halabi was making an amendment to Art. 7 OECD MC in the following terms: *"(1) Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein, or unless the income is of a remote seller, in whatever capacity, which has gross annual receipts in total remote sales in the other Contracting States in the preceding calendar year exceeding $1,000,000. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2, or the profits of a remote seller, may be taxed in the other Contracting State. (2) For the purposes of this Article and Article 23A [exemption method] -23B [credit method], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise."*

a preferable option than a standalone gross-basis final withholding tax (Hongler and Pistone, 2015).

4 The UN Model Services PE Provision

It is also worth recalling that the UN Model contains a services PE provision, as a reaction of the developing countries against the obtention of a high return in the source State by foreign companies involved in the provision of technical services without having a physical presence in that jurisdiction. However, the services PE covers services in general, irrespective of their nature. In this context, Art. 5(3)(b) UN Model includes a services PE provision, with the following wording: the term "permanent establishment" also encompasses *"(b) the furnishing of services, including consultancy services, by an Enterprise through employees or other personnel engaged by the Enterprise for such purpose, but only if activities of that nature continue (for the same or a connected Project) within a contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned".* As can be seen from the UN Model service PE clause, the current services PE definition requires the existence of physical factors in the source State – a fixed place of business or workforce; so, if no personnel are used or the time threshold is not met because of the use of digital means, a service PE will not be deemed to exist under the current UN Model service PE provision. As a result, the source State will not be attributed a taxing right on business services.

Many countries have included a service PE clause on the lines of the UN Model clause: Austria, Belgium, Chile, India, Peru, Spain or the US, amongst others. In addition, when the service PE clause is included in tax treaties, it is common that countries describe the nature of services covered under the clause. Therefore, services in the nature of commercial, technical, advisory and other mediation services are covered under the service PE clause contained in the tax treaties negotiated by the Czech Republic (Skálová et al., 2014). In the case of tax treaties negotiated by India, the service PE clause shall apply only to services that do not qualify as fees for technical services or included services (Gada and Sinha, 2014). In this regard, many tax treaties based on the UN Model indicate that technical and managerial services will not give rise to a PE; however, technical and managerial services are not uniformly exempted from service PE provisions – this is the case of the US–China, US–Thailand or US–Jamaica tax treaties (Arthur et al., 2014). Meanwhile, some of the tax treaties concluded by Austria – specifically, the ones signed with China, Cuba, the Czech Republic, Greece, Hong Kong, Indonesia, Mexico, New Zealand, Singapore and Thailand, amongst others – include the service PE definition as determined by or similar to the UN Model; what is interesting in this case is that the Austrian Ministry of Finance interprets the term services as active services and therefore does not consider lease arrangements to constitute service PEs (Naux, 2014).

Although the service PE concept was initially developed under the UN Model, later it has also been introduced into the OECD Commentary. The OECD's discussion on the service PE concept suggests optional clauses which countries may include in their tax treaties to determine the existence of a service PE, specifically an additional revenue test in certain cases, which ensures that a service PE will be created only where more than 50% of the non-resident's business activities are carried on by a single individual in the source jurisdiction. Australia, New Zealand and Norway have adopted the optional service PE clause of the OECD Commentary. By contrast, other countries such as Denmark, Italy, Mexico, the Netherlands, Portugal or the UK decided not to include the service PE concept in their tax treaties, at least at the moment (Desai and Goradia, 2014).

In any case, some authors consider that the elaboration of a "digital services PE" clause would be an interesting alternative that, moreover, would allocate more income to the source country than applying the new PE nexus (Blum, 2015).

5 The New Article 12A for Technical Services on the UN Model: An Alternative to the New PE Nexus?

The introduction of a new provision on the OECD MC that regulates taxation of services could be another way of strengthening the taxing rights of the source State. In fact, this is precisely the intention of the UN with the inclusion of a *new Article 12A for technical services on the UN Model,* granting the source State the right to tax the gross amount of services fees by means of a withholding tax, without requiring any physical presence in the country of the recipient of the services, neither by the use of workforce nor by a fixed place of business. The rendering of services in another contracting State through digital means would be considered, by itself, sufficient engagement and hence nexus in that State.

Such a provision is aimed at preventing base erosion and profit shifting in the source State through the deductibility of services fees paid to non-residents. It is abundantly clear that developing countries are large importers of technical, managerial and consultancy services. Up to now, fees for technical, managerial and consultancy services in the State of the payer of the fee may be used to shift profits from a profitable group company member to another group member in a low-tax jurisdiction. The payer could deduct the service fee in the source State, reducing its taxable base. And the company receiving the fee will increase its profits, which may only be subject to a low or no tax rate. The new Art. 12A will help to address these issues by allowing the source State to levy a withholding tax on the service fees falling within the scope of this provision (i.e. those involving the application of specialised knowledge, skill or expertise by the service provider in the field of technical, managerial or consultancy services – excluding routine and standardised services).

All in all, Art. 12A UN Model is not introduced to specifically address the issue of BEPS in the digital economy, but it definitely plays a part in counteracting certain cases of tax avoidance in the source State by using digital means. It must be noted that this new article provides specific advantages compared with the services PE provision included in the UN Model (Báez Moreno, 2015): 1. while the current wording of the services PE contains threshold requirements, the new Art. 12A does not include any threshold at all. However, in some cases this advantage turns into a disadvantage, due to problems of enforceability; 2. the existence of a time threshold in the services PE may give rise to an artificial avoidance of the service PE. By contrast, since there is no threshold in the new technical services article, there are not problems regarding avoidance of source taxation; 3. important difficulties exist for attributing profits to a service PE; by contrast, the new Art. 12A grants the source State the right to tax the gross amount of services fees by means of a simple withholding tax. A final WHT on a gross basis removes the need for source and computational rules; the WHT will be imposed on the full amount of the service fee paid to the non-resident service provider without the deduction of any expenses, at the time the service fee is paid or soon afterwards. In favour of simplicity and certainty, a final WHT on fees for technical, managerial and consultancy services rendered with the use of digital means is presented as a better choice than a non-final WHT on fees for technical services on a net basis, at least from the perspective of the source State. Developing countries usually do not have enough administrative capacity to administer a non-final WHT, which requires levying a non-final WHT at a first stage, creditable against the tax payable by the non-resident in the source State; later, at a second stage, the taxpayer would have to file a tax return to receive a refund for the excessive WHT paid. It is precisely for this reason that the proposed tax rate should be anywhere between 10 and 15%, in order to reach a balanced attribution of taxing rights between the residence and the source States. So, a final withholding tax on fees for technical, managerial and consultancy services rendered with the use of digital means is suggested, keeping in mind that the State of residence would grant a credit for the tax paid in the source State. In this vein, the State in which fees for technical, managerial and consultancy services arise – i.e. the residence State of the payer of the fees – has the primary right to tax those payments, and the residence State of the payee is obliged to eliminate double taxation of those fees either by granting a credit or an exemption for taxes paid in the source State (Arts. 23A and 23B of the OECD/UN Models).

Anyhow, to avoid problems of characterisation in relation to other distributive rules – such as the royalties' article, business profits' article or the service PE provision – and in order to respect the principle of neutrality, it would be advisable to delete the words "technical, managerial or consultancy" from the new services article on the UN Model, so that the new provision should be applied to services in general.

In short, a new provision on technical services (or services in general) is more desirable than a service PE approach, because the absence of thresholds and the lack of issues in the attribution of profits facilitate its enforcement.

Finally, other options should be considered as an alternative to the cumbersome methods to attribute income to the significant economic presence, such as the introduction of a withholding tax on digital transactions or the eventual introduction of an equalisation levy on non-taxed or insufficiently taxed profits (Rodríguez Losada, 2018).

6 A Common Reform of the EU's Corporate Tax Rules for Digital Activities: A New Nexus Based on the Concept of Significant Digital Presence

The European Commission was aware that the current corporate tax rules are not fit for the modern global economy. In this context, the European Commission has just launched a new package of proposals to ensure that digital business activities are taxed in a fair way within the EU. The Commission states in its Communication *Time to establish a modern, fair and efficient taxation standard for the digital economy,* dated 21 March 2018, that the EU Digital Single Market needs a stable tax framework that is consistent with the current digital business models. To this end the Commission proposes a comprehensive solution that includes three key elements: 1. a new Directive on corporate taxation of a significant digital presence; 2. integrating the provisions in the proposed Directive into the proposals for a Common Consolidated Corporate Tax Base (CCCTB); and 3. extending the solution to the global level (non-EU jurisdictions) through Member States' tax treaties.

The *Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence* provides rules expanding the concept of a PE. This is done by establishing a taxable nexus for digital businesses that are active across borders with no physical commercial presence. Once the significant digital presence (i.e. the virtual permanent establishment) is determined, the proposal sets out principles for attributing profits to a digital business. This initiative aims to protect the integrity and proper functioning of the single market, ensuring that domestic corporate tax bases are not eroded by digitalisation. Therefore, this proposal was also designed to make sure that Member States' finances are sustainable. Finally, the initiative will contribute to preserving social fairness and a level playing field between all businesses.

This Directive is part of a major package that includes a Recommendation to Member States for including rules on a significant digital presence and profit allocation in their tax treaties with third countries, a proposal for a Directive including an interim solution (the Digital Services Tax) and the abovementioned Communication setting the context and explaining the articulation between the proposals.

As regards the proposal for a Directive on corporate taxation of a significant digital presence, it is important to note that it affects corporate taxpayers that are established in the EU, as well as enterprises that are established in a non-EU jurisdiction with which there is no double taxation convention with the Member State where the significant digital presence of the taxpayer is identified (Art. 2). That is, in order to avoid a contravention of those tax treaties, the proposal does not affect enterprises that are established in a non-EU jurisdiction with which there is a tax treaty in force with the Member State of the significant digital presence. Anyway, there is an exception to this rule if the applicable tax treaty with a non-EU jurisdiction contains a similar provision on a significant digital presence which creates similar rights and obligations in relation to that non-EU jurisdiction.

The concept of significant digital presence is developed to establish a taxable nexus in a jurisdiction, expanding the existing concept of a PE. The three user-based factors proposed for establishing a taxable nexus of a digital business in a Member State are the following: revenues from supplying digital services, the number of users of digital services and the number of contracts for a digital service (Art. 4). It is therefore obvious the influence of Action 1 Final Report conclusions on the Commission proposal on significant digital presence. The proxies for determining the digital footprint of a business in a jurisdiction are based on the same indicators of economic activity, which reveals that both the OECD and the EU are perfectly in tune with each other. In any case, different thresholds apply to any of the three user-based criteria.[6]

Besides that, the proposal sets out rules for attributing profits to a significant digital presence (Art. 5). In this regard, the proposed rules for attributing profits to digital businesses are based on the current transfer pricing principles (taking into account the assets used, functions performed and risks assumed) and make it clear that the attribution of profits to a digital business should reflect the particular ways in which digital activities lead to value creation, through use of criteria such as data and users.

This solution is aimed at improving the perception of fairness for EU citizens by ensuring that large companies with significant digital activities do not escape taxation in the EU. The new rules would remove distortions of competition, so businesses would benefit from a more level playing field. On the other hand, this option would also have a positive impact on the public finances of national tax administrations. Conversely, the implementation of this option would lead to an increase in the compliance costs of businesses falling under the scope of this solution. Concurrently, national tax administrations would also incur costs for implementing the new tax nexus. In any

[6] A digital platform will be deemed to have a taxable digital presence (or a virtual PE) in a Member State if it fulfils one of the following criteria: 1. it exceeds a threshold of 7 million Euros in annual revenues in a Member State; 2. it has more than 100,000 users in a Member State in a taxable year; or 3. over 3,000 business contracts for digital services are created between the company and business users in a taxable year. As we argued before, the thresholds should be high enough to exclude small cases where profits attributable to a digital presence would not cover the tax compliance cost for a PE.

case, this solution would contribute to the long-run sustainability of the corporate tax system and to a fairer distribution of tax revenues.

7 Conclusion

The suggestions included in Action 1 Final Report left a bittersweet sensation in those who expected a battery of more innovative recommendations from the OECD to deal with the tax challenges of digital economy. In fact, except in the case of the changes in the OECD MC regarding the concept of permanent establishment, the OECD has not yet suggested the implementation of specific measures to address the broader direct tax challenges raised by the digital economy. Instead, BEPS Action 1 Final Report simply lists different options, being the introduction of a new tax nexus based on the concept of digital economic presence one of them. The significant economic presence is determined on a basis of digital and user-based factors that will be combined with a revenue factor. But, once the new nexus is established, some problems may arise regarding the calculation of income attributable to the significant economic presence and the collection of the tax due. In this respect, some argue that the introduction of a digital services PE clause in the OECD MC would be an interesting alternative that will contribute to allocate more income to the market jurisdiction than applying the new PE nexus. But the introduction of a new provision on technical services (or services in general) in the MC would be a better option than a service PE approach, because the absence of a threshold and the lack of issues in the attribution of profits facilitate its enforcement.

As far as it can be ascertained, the OECD and the EU are pulling in the same direction, although it seems that the European Commission has taken a decisive step towards fair taxation of the digital economy. It remains to be seen whether these proposals are successful or fall by the wayside.

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