

Examination of “Digital Service Tax” Suggestion in Turkey - I

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Introduction

First of all, the digital economy has a very wide structure in terms of its scope and this structure is still expanding. At the present time, seven technology giants are among the top ten publicly traded companies at market value (these giants regionally include Microsoft, Apple, Amazon, Alphabet, and Facebook in the US, and Alibaba and Tencent in China). As of June 7, 2019, the total market value of these giants reached approximately \$4,806 billion; compared to its value on the same date 3 years ago (approximately \$2,531 billion), it has increased by about 90 percent (Meeker, 2019). In addition to this, the value of transactions facilitated through digital platforms is foreseen to increase by 35 percent annually in 10 years (between the 2015-2025 period) in Europe (Dondena et al., 2017: 33).

Besides, whereas the top five e-commerce retailers maintained annual revenue growth rates of around 32 percent between 2008 with 2016 years; the whole retail sector of the European Union grew by 1 percent on an average as annalistically in the same period¹ (European Commission, 2017: 4). There are three reasons for our study to include these developments: (i) the digitalization of the global economy is spreading to almost all areas of society and it materializes on a fast and large scale (European Commission, 2017: 4), (ii) radical changes are taking place in matters that matter such as trade-related payment way and methods, manufacture and marketing (Bülbül and Ülkü, 2019: 30), and (iii) through digital platforms, individuals (users) are experiencing interactions and in this context, we need to emphasize or examine value creation.

The rise of digital business models clearly sets out the main constraints of traditional tax systems and by extension may have some implications for national tax revenues. Because tax rules have traditionally been based on the principle of permanent establishment (Iacob and Simonelli, 2019). Taxation is linked to the place where all or part of the business activities is physically performed² (OECD, 2017: 31, Article 5). At the same time, the framework for reconciliation on economic activities subject to taxation remains imperfect in the digital age for at least two reasons³ (Iacob and Simonelli, 2019): (i) given that digital business models allow the provision of digital services with a minimum physical presence in a given tax jurisdiction,

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¹ In question figures are based on the Bloomberg and Eurostat databases.

² For more information see Ülkü (2019: 831-840).

³ For a more general discussion see Budak (2017), Bülbül and Ülkü (2019: 31-36).

it becomes increasingly difficult to determine the tax presence of particular companies⁴, (ii) it questions how and where value is created in relation to intangible assets that characterize users' roles and new digital business models with data. In this context, the European Union, in particular, emphasizes the role of users as of data content producers and value creators in the digital economy (European Commission, "Fair Taxation of the Digital Economy").

On the other hand, as shown in a recent study, digital enterprises benefit from better incentives such as more favorable depreciation rates and R&D (Research and Development) loans. This can reduce effective tax rates compared to more traditional physical companies. In respect to this, it can be argued that the growth of the digital economy, coupled with existing tax planning strategies, may seem to increase tax avoidance (Devereux and Vella, 2017).

On the other side, the challenges of taxing digital companies are a global problem. Since the international and local tax rules in force against the digital business models that allow these companies to operate in a cross-border country without a workplace are based on the physical presence, the fact that the source countries cannot receive their share through taxes constitutes is the reason for the creation of a new tax (Kahraman, 2019). In this direction, along with several country practices, in order to tax the incomes of digital companies in Turkey, it emerges as a country that is willing to engage in unilateral action.

In this study; initially, the conceptual framework for Digital Services Tax (the DST/"DHV")⁵ will be drawn. Secondly this tax will be explained in general terms. Thirdly a comparison will be made between other country practices.

Development of Digital Tax Transformation in Turkey

With regard to the taxation of digital services, some amendments have been made with the Law No. 7061 published in the Official Gazette dated 05.12.2017 and numbered 30261. With Article 41 of this Law, the Value Added Tax Law Article 9/1 a new provision has been added. Now let's try to explain this change briefly. This arrangement the domicile, the establishment, the legal center, and the business center in Turkey covers those not available. If these persons provide services in the electronic platform to real persons who are not value-added taxpayers, the value-added tax for this service will be declared, and paid by these service providers. The Ministry of Treasury and Finance is authorized to determine the scope of the services provided in the electronic platform and the procedures and principles regarding the implementation. This regulation entered into force as of 1 January 2018.

⁴ See for a wider discussion Olbert and Spengel (2017).

⁵ Hereinafter, the abbreviation for digital services tax includes the "DST" for the European Commission and other countries; the "DHV" will use for Turkey.

In response to these changes, for instance, Amazon has demanded from customers Turkey Taxpayer Identification Number, and asked them to pay an 18% value-added tax for the digital services they provide for those who do not have any obligation. On the other hand, it is stated that the users of the AdWords service, which constitutes the pillar of advertising services of Alphabet (Google), will be considered as commercial accounts in its own right (Eroğlu and Aksu, 2019: 569).

Another development regarding the taxation of digital services is the Presidential Decree No. 476 (the “Presidential Decree”) published in the Official Gazette dated 19.12.2018 and numbered 30630 (Official Gazette of the Republic of Turkey, 2018). With this the “Presidential Decree”, regarding advertising services provided on the internet the payments made to the intermediaries for advertising services on the internet platform, are included in the income / corporate tax withholding as of 1 January 2019. Pursuant to Article 94 of the Income Tax Law No. 193, payments made to natural persons including non-resident persons and pursuant to Article 30 of the Corporate Tax Law No. 5520, payments to non-resident corporate taxpayers are subject to 15% withholding. In addition, pursuant to Article 15 of the Corporate Tax Law, is subject to withholding at the rate of 0% on payments made to resident corporation taxpayers.

This provision, the recipients neglect at whether the tax obligation in Turkey, and it imposes withholding obligation on made payments for cross-border online advertising services. In this context, it can be said that a digital tax (internet advertising tax) is brought with the said provision (Aydemir, 2019; Kahraman, 2019).

In addition to this tax, a tax named the “Presidential Decree” has been proposed with Legislative Proposal No. 2/2312 (Grand National Assembly of Turkey, 2019a). Thus, this proposal has been become the agenda of the Grand National Assembly of Turkey (Planning and Budget Commission) and being discussed in various circles. This proposal, which also envisages changes in some tax laws, was adopted at the General Assembly of the Grand National Assembly of Turkey on November 21, 2019, and become laws (Grand National Assembly of Turkey, 2019b). However, there was a delay in its entry into force. Because, for the purpose of reviewing this Law (Article 50) which is not suitable for publication by the President, T.C. In accordance with Articles 89 and 104 of the Constitution, it was sent back to the Presidency of the Grand National Assembly of Turkey on 2 December 2019 (Presidency of the Republic of Turkey, 2019). Eventually, this law was published in the Official Gazette dated 07.12.2019 and numbered 30971 and entered into force (Official Gazette of the Republic of Turkey, 2019).

Digital Service Tax: Practices in Turkey

Under this title and in the next study of the “DHV”; the rationale, subject, taxpayer, exempt status, exceptional services, tax base and rate, taxation period, declaration, tax assessment, and payment will be discussed in general terms. For now, we will examine the rationale for introducing this tax, and our next study will discuss situations that we consider important.

When we examine the general justification of this tax (Grand National Assembly of Turkey, 2019b: 6-7); primarily with the developments in information and communication technologies, there is an emphasis on the fact that innovations increase the speed of globalization in the economic, social and cultural spheres. In a sense, this emphasis is in the context of allowing multinational companies providing digital services to operate in countries where they do not have a significant physical presence. In other words, by virtue of these developments, these companies engage in commercial activities in countries where they are nonresident.

The second emphasis is on the general recognition that companies operating in the digital service sector should make a fair contribution to the public revenues of the countries in which they operate. As a complement to this, it is pushed forward that countries cannot respond to the rapid developments in this field at the same pace. It is also indicated that a common taxation regime has not yet been established worldwide.

Thirdly, some countries have started on taxing the digital service sector, it is stated that some countries carry out administrative [the “DSTs”] and legal studies to tax this area. In this context with the proposal is intended to taxation in revenue from digital services. Therewithal, it is stated that the opinions raised by different country practices and international institutions are taken into consideration. Then, it is stated that the general aims consist of the following: to make arrangements for the tax subject, taxpayers, tax base, tax rates, and tax exemptions and to put this tax into practice (Grand National Assembly of Turkey, 2019b: 29).

In addition, the protection of disadvantaged domestic companies and ensuring competition is expressed. In a sense, this protection and ensuring competitiveness can be explained in the context of companies that do not pay taxes (and/or pay a small amount) and operate globally. Despite the fact that it has been put forward that companies do not pay taxes here, this seems to be incomplete (unproven) in terms of concretization. Lastly, it is indicated that it may be considered in other alternative measures in order to ensure tax security.

Conclusion

Recently, developments in information and communication technologies have led to changes in many fields and relationships. These developments have eliminated obstacles, especially among individuals, and changed the nature of goods and/or services offered to society. At the same time, it has reshaped important issues such as the way organizations are organized, production techniques, decision-making processes, and marketing strategy. On the other hand, goods and/or services offered to economic decision-making units can easily reach or access larger markets, and transactions can be made quickly, easily and relatively cost-effectively has a became.

In question, the continuous change and development of these developments have also some consequences in the field of taxation. In fact, the traditional taxation rules are insufficient for the taxation of transactions due to the fact that the digital economy has many different features. In international taxation, there are problems regarding the taxation of the income obtained through these countries and the importance and effectiveness of some basic concepts that form the basis of the existing international tax rules. In return, difficulties are encountered with a relatively high level of importance in terms of taxing the situations that arise within this economy. Within this framework, a number of concrete proposals are put forward, studies are carried out and therefore the search for solutions to these problems continues.

In view of these developments, regarding the taxation of the digital economy, we may argue that Turkey is willing to engage in unilateral action. Because the current legal regulations are an indicator of this. At this point, we need to take into account every impact that these legal regulations have for the present and which are likely to have in the future.

For now, we have tried to explain the general rationale for this legal regulation. In our next study, we will examine the above-mentioned aspects of this legal regulation.

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