THE SHARING ECONOMY PART 2: GOVERNMENTS STRIKE BACK

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THE TROUBLE WITH THE SHARING ECONOMY

The current international tax system was established at a time when the sharing economy did not exist and was not foreseeable. As business models evolve, governments are struggling to keep up using laws designed for brick-and-mortar stores. Ultimately, tax laws must be updated to account for the new economic realities.

Sharing economy companies, like Uber and Airbnb, use the internet to connect suppliers with consumers. The combination of new technology and careful cross-border structuring allows these companies to enhance the old brokerage business model to generate substantial profits while paying very little tax.[1]

With sharing economy structures cutting deep holes in a source jurisdictions' tax revenues, how do local governments try to obtain their fair share?

HOW ARE FOREIGN GOVERNMENTS STRIKING BACK?

Governments around the world are taking various approaches – to more or less success – to tackle the challenges of the digital economy, in general, and the sharing economy, in particular. These approaches fall into one of three categories:

- **The Income Tax Approach:**

  This approach involves (i) imposing a penalty tax in case of diversion of profits, (ii) introducing withholding tax on digital services, and (iii) redefining the concept of Service permanent establishment ("P.E.") (so as to create a taxable presence without a physical presence).

- **The Indirect Tax Approach:**

  Here, business models are qualified based on the ultimate services provided (*e.g.*, transportation or hospitality services, as opposed to internet (platform) services), thereby creating liability to V.A.T. and sales tax.

- **Regulatory Crackdown:**

  Under this approach, governments use regulatory rules to crackdown on new business models that are outside the scope of taxation.

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1 For more on the sharing economy and the business models used by Uber and Airbnb see "The Sharing Economy Part 1: New Business Models + Traditional Tax Rules Don't Mix," *Insights* 10 (2017).

The Income Tax Approach

Thus far, the income tax approach has successfully generated revenues from online businesses. However, it has not been particularly effective in tackling issues related to the sharing economy.

The U.K. Diverted Profits Tax

The diverted profits tax ("D.P.T.") was implemented in the U.K. in 2015 in an effort to crack down on multinational companies engaged in tax avoidance by shifting profits generated in th U.K. Originally, the main target was Google, hence its nickname, the "Google Tax."

For most taxpayers subject to D.P.T., a punitive 25% tax is imposed on diverted profits (compared to the standard 20% corporate tax rate for 2016), plus interest.[2] The D.P.T. regime is focused on two key scenarios where a diversion of profits may arise: (i) lack of economic substance and (ii) avoidance of a U.K. P.E.[3] A broader aspect of D.P.T. is that it targets profit stripping by U.K. companies that have previously been more profitable and, perhaps, owned I.P. before being integrated into a carefully planned supply chain.

The amount of tax collected under the regime and due to related changes in behavior has been impressive.[4] Yet, some initial targets may ultimately "escape" the Google Tax, as companies that could be subject to D.P.T. can often amend transfer pricing arrangements to ensure profits are not diverted. This result is not entirely unintended, as one of the key aims of D.P.T. is to influence taxpayer behavior.

Somewhat ironically, Google has itself avoided being "caught" by the Google Tax. In January 2016, Google settled a long-running transfer pricing enquiry with the U.K. tax authority to the tune of £130 million. In a statement, Google declared that it would apply revised transfer prices from 2015 onwards.

Sharing economy giant Uber also seems to have escaped these rules. In 2015, Uber's U.K. tax liability was reported to amount to only £411,000 while the revenues of the same year that ended up in the Netherlands reportedly reached $520 million, yet no D.P.T. was due.[5] Since then, Uber has not made headlines in connection with D.P.T., but its U.K. activity has been targeted on other fronts, in particular, as it

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[2] Guidance introduced on November 30, 2015, emphasized the government's position that D.P.T. is consistent with the goals of the O.E.C.D.'s B.E.P.S. Project, a position that U.S. Treasury officials have questioned.

[3] D.P.T. was initially targeted at I.P. structures. However, it was found to have a much broader impact on entities operating internationally, particularly multinational groups where the profitable company haves limited functions, such as computing and other support functions (*e.g.*, finance, legal, etc.).

[4] In September, the U.K. tax authority released key D.P.T. statistics. From its introduction in April 2015 to April 2017, the government collected £138 million in D.P.T. and an estimated £174 million in additional corporation tax as a result of related behavioral changes. The latter is a low estimate, only accurately reflecting situations already under inquiry. In total, the U.K. tax authority raised £281 million from D.P.T. and resulting behavioural changes for the year ending March 31, 2017, according to its 2016-17 annual report.

[5] See "Uber's Main UK Business Paid Only £411,000 in Tax Last Year," *The Guarduian*, October 10, 2016.

relates to V.A.T. and employment law, as described below.

The Australian Diverted Profits Tax

Not long after D.P.T. came into being in the U.K., Australia introduced its own version of the regime. On March 27, 2017, the Australian Parliament enacted a D.P.T. labeled as the most expansive cross-border tax change in more than a decade.

"The Australian D.P.T. has a retrospective element and can apply to arrangements entered into before July 1, 2017."

The Australian D.P.T. is even more punitive than its U.K. equivalent: a 40% penalty tax (compared to the Australian corporate income tax rate of 30%), plus interest, on profits diverted offshore through related-party arrangements. This regime applies to tax years starting on or after July 1, 2017, irrespective of whether the particular arrangements were entered into before that time.

The broad impact of this D.P.T. relates to the fact that any Australian cross-border arrangement, including financing transactions (which are excluded from the U.K. regime), is affected provided that two criteria are met: (i) At least one foreign associate taxpayer is involved, and (ii) total group-wide global income (broadly, revenue) is at least A$1 billion (approximately $750 million). The only exemptions apply to certain investment vehicles.[6]

The D.P.T. regime is incorporated into Australia's existing anti-avoidance rules. These rules require an objective conclusion that there was a tax purpose associated with the arrangements under examination. The D.P.T. regime adopts a "principal purpose" test, clearly an intentionally lower hurdle compared to the "sole or dominant purpose" test within the "original" Australian general anti-avoidance provision. Significantly, principal purpose is determined not just on the basis of a principal purpose to obtain an Australian tax benefit but also to obtain both an Australian tax benefit and reduce foreign tax liabilities.

Because the Australian D.P.T. has a retrospective element and can apply to arrangements entered into before July 1, 2017, it will impact existing positions that may have even been considered and accepted by the Australian Taxation Office ("A.T.O.") (*e.g.*, through a tax ruling, Advanced Pricing Agreement, or tax audit).

Another consequence is that recourse to double tax relief under Australia's tax treaties or arbitration mechanisms anticipated by the O.E.C.D.'s multilateral instrument are not available to challenge assessment of the tax. The only avenue for objections (beyond the A.T.O.) is the Australian Federal Court.

A D.P.T. assessment can be issued at any time within seven years of the original income tax return assessment. The harshness of the rule is aggrevated by the fact that taxpayers are required to pay a D.P.T. assessment in full before the assessment can be contested or a settlement reached with the A.T.O. Similar to the U.K. model, the Australian D.P.T. is designed to deter taxpayers from shifting profits. When faced with the threat of D.P.T. and its upfront tax collection process, it is assumed that taxpayers will more readily provide to the A.T.O. with information regarding earnings and taxation across global value chains.

Overall, the Australian D.P.T. is extremely broad and has the potential to affect a

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[6] *I.e.*, managed investment trusts, certain foreign collective investment vehicles, entities owned by foreign governments, complying superannuation entities, and foreign pension funds.

significant number of multinational groups. The Australian government estimates 1,600 entities must asses their D.P.T. exposure and 130 taxpayers are high risk.

Withholding Tax on Online Services

In accordance with the O.E.C.D.'s B.E.P.S. recommendations on taxing the digital economy, the Indian government introduced an equalization levy on Indian-source online advertising revenue earned by nonresident companies. The provisions are effective as of June 1, 2016, and provide that Indian residents and nonresidents with a P.E. in India must withhold a 6% tax on amounts paid to nonresidents who do not have a P.E. in India, for specified services. The specified services include online advertising, any provision for digital advertising space, or any other facility or service for the purpose of online advertising.

While targeting the digital ecomony, this approach does not capture business models that operate via local subsidiaries, as in the cases of Uber and Airbnb. This approach also raises the question of whether a withholding tax on services can be justified if, at the same time, the sale of goods is typically not subject to a similar tax.

Service P.E. Without a Physical Presence

In a recent case involving a U.A.E. L.L.C., the Bengaluru bench of the Indian Income Tax Appellate Tribunal (the "Tribunal") reached an interesting conclusion: Physical presence in the source state is not necessary to constitute a Service P.E. in India.[7] Moreover, the services can be rendered through virtual presence. Noting the 183-day threshold under the India-U.A.E. tax treaty, the Tribunal held that services rendered for more than 183 days in a 12-month period can constitute a Service P.E. in India, even if the company does not have physical presence there.

Although the existence of a Service P.E. without the physical presence of employees in the source country is an enormous deviation from generally accepted international tax standards, it is not totally unheard of. The U.N. Committee has acknowledged this minority view, and in 2016, it was formally adopted in Saudi Arabia. The question remains, how can multinational businesses operating via local subsidiaries be captured under these rules? At this time, they are definitely outside the scope of virtual P.E. rules and able to play their "tax games."

The Indirect Tax Approach

The common element found in jurisdictions using the indirect tax approach is the attempt to tax sharing economy businesses (*i.e.*, brokerage businesses) based on the character of the ultimate service provided.

Governments have had greater success using this approach to tackle the sharing economy, as can be seen in the cases of Uber and Airbnb – whose activites are being reclassified as transportation and hospitaltity services, respectively:

- Taiwan deemed Uber a transportation company and asserted in 2016 that Uber (together with other e-commerce businesses) was subject to a 5% sales tax. As a result, Uber briefly suspended operations there from February to

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[7] See in detail "The Changing Face of Service Permanent Establishments," *Insights* 10 (2017).

April 2017,[8] and re-entry into the Taiwanese market came at a cost: Uber was allowed to hire only licensed commercial drivers.

Uber subsequently announced that it is an internet-based technology company that will partner with licensed transport companies. In response, Taiwan's highway bureau announced that it welcomed the move but would continue to supervise Uber's operations in Taiwan to ensure it did not pair up with unlicensed individual drivers.

Allegedly, Uber's fines were an estimated T$328.59 million (approximated $10.57 million) of which only T$68.25 had been paid, according to a February 2017 statement by the Ministry of Transportation and Communications.[9] A later quote from the National Taxation Bureau of Taipei alleged that Uber had not paid over T$51.24 million ($1.66 million) in business taxes dating back to 2015.[10]

- In the U.K., a V.A.T. case is currently pending against Uber to challenge its position that it is not subject to V.A.T. because it merely serves as a agent for self-employed drivers rather than a service provider. Uber allegedly collects an estimated £1 billion a year in U.K. fares, meaning if the company loses, it could be liable for £40 million a year (or more) in V.A.T.[11]
- In Berlin and Barcelona, a crackdown on Airbnb resulted in concessions in its business models. Confronted with a parallel market for online private bookings of €6.1 million and 30.2 million overnight stays in 2015, Berlin introduced a law that would limit the renting of private residences to rooms (as opposed to entire apartments or houses).[12] Offenders may face up to €100,000 of fines. In 2016, Barcelona fined Airbnb €600,000 for continuing to advertise unlicensed flats on its platform. Efforts to scrutinize illegal rentals were increased, and next year, the team of inspectors will be more than doubled from 40 to 100 persons.[13]
- In France, as another example, landlords renting furnished apartments, other than their principal residence, through Airbnb and other online platforms must now register with their municipality before offering lodging.[14] This resulted, *inter alia*, in the collection of tourist taxes in Paris, and in 2016, AirBnB paid back €7.3 million ($8.3 million) in tourist taxes in 2016 to French authorities.

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8 "Uber Will Suspend Service in Taiwan After Being Slapped With Over $10 Million in Fines," *Forune*, February 2, 2017; "Uber Resumes Ride-Hailing Service in Taiwan After Talks with Authorities," *Reuters*, April 13, 2017.

9 *Id.*

10 "Taiwanese Govt Raids Uber Office Over Unpaid Business Taxes," *e27*, March 17, 2017.

11 "Uber's £40m Tax Loophole: Taxi Firm Registers Each of Its Drivers as a Separate Business to Avoid Paying V.A.T. on Booking," *Daily Mail*, June 7, 2017.

12 Zweckentfremdungsgesetz; see "Berlin's Government Legislates Against Airbnb," *The Guardian*, May 1, 2016.

13 See *e.g.*, "Barcelona Cracks Down on Airbnb Rentals with Illegal Apartment Squads," *The Guardian*, June 2, 2017.

14 Article L324-1-1 of the French Tourism Code. See the registration mechanism in Paris.

Regulatory Crackdown

The third sword being swung by foreign governments seems to be the most efficient in the battle against sharing economy companies that lie outside the tax rules. Regulatory has been effective both on its own and when combined with the (indirect) tax measures discussed above.

Numerous regulatory actions have been taken against Uber:

- Germany, for example, referred a case against Uber to the European Court of Justice.[15] In its brief, Germany argued that Uber was not just an intermediary but was also involved in financial management and marketing for its luxury car-hailing business, which would constitute an infringement of competition laws.
- In another case brought before the European Court of Justice by the Barcelona taxi association,[16] Advocat General Szpunar concluded that the ride-hailing app is providing transportation services and not merely connecting drivers to passengers via technology. Therefore, Uber cannot claim the freedoms provided under E.U. law for digital services. Instead, its operations fall within the scope of transportation, which is governed by national laws.
- Shortly after his opinion in the Barcelona case, Advocat General Szpunar had to opine on a case brought before the European Court of Justice dealing with criminal law proceedings against Uber France. Uber France was allegedly organizing, by means of the UberPop service, a system for putting customers in touch with non-professional drivers who transport passengers for consideration using vehicles with fewer than ten seats. The advocat general took the view that because UberPop is not an information service but rather a transportation service, irrespective of whether that service falls within the scope of the directive, Member States may prohibit and punish the illegal exercise of such transport activity without having to notify the Commission of the draft law in advance.[17]
- While not binding, it is to be noted that in most cases the judges of the European Court of Justice followed the advocat general's opinion. Only in rare cases was a deviating conclusion reached. Final decisions in these cases are expected later this year.
- Another argument made by Uber – that its drivers are self-employed – has been rejected by a U.K. employment tribunal.[18] The tribunal ruled that the drivers were "workers" and therefore entitled to sick pay and paid holiday. It stated that "the notion that Uber in London is a mosaic of 30,000 small businesses linked by a common 'platform' is to our minds faintly ridiculous."[19]

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15 German Federal Court (Bundesgerichtshof), I ZR 3/16 (May 18, 2017).

16 *Asociación Profesional Elite Taxi v. Uber Systems Spain SL.*, C-434/15 (May 11, 2017).

17 *Uber SAS*, C-320/16 (July 4, 2017).

18 *Aslam, Farrar et. al. v. Uber B.V., Uber London Ltd and Uber Britannia Ltd.*, Cases 2202250/2015 and Others, October 28, 2016, as of May 2017 under appeal.

19 *Financial Times*, "Uber Faces New Pressure from Crowdfunded V.A.T. Case," June 28, 2017. According to the *Daily Mail*, Uber accounts for 40,000 drivers (supra note 11).

INTERNATIONAL INITIATIVES: O.E.C.D. AND E.U.

B.E.P.S. Action 1 addresses the tax challenges of the digital economy, including the need to monitor sharing economy developments.[20] Action 1 points out the impact of the sharing economy on traditional e-commerce applications as follows:

> Most individuals who participate in the sharing economy do not do so mainly to make a living, but to entertain relationships with others, to serve a cause that inspires them, or simply to make ends meet. Because the supplementary income is a net benefit and often does not involve much quantitative cost-benefit analysis, amateur providers have a tendency to share their available resources at a lower price than what a professional might have billed, thus bringing down overall prices, including those of the professionals. Through time, as certain platforms attract substantial number of individuals, these platforms become the prime access point for customers on the online market and have the potential to provide substantial competition for traditional e-commerce applications operated by professionals, which may cut their profit margins further.[21]

While Action 1 does not recommend singling out the digital economy, it identifies the following co-ordinated strategies associated with B.E.P.S. in the context of direct taxation:

- Minimisation of taxation in the market country by avoiding a taxable presence, or in the case of a taxable presence, either by shifting gross profits via trading strucures or by reducing net profit by maximizing deductions at the level of the payer.
- Low or no withholding tax at source.
- Low or no taxation at the level of the recipient (which can be achieved via low-tax jurisidctions, preferential regimes, or hybrid mismatch arrangements) with entitlement to substantial non-routine profits often built-up via intra-group arrangements.
- No current taxation of the low-tax profits at the level of the ultimate parent.[22]

In order to address the above risks, Action 1 aims at fighting "stateless income" by restoring taxation on such income.[23] It does so through several measures designed to address B.E.P.S. issues at various levels:

- Measures to prevent treaty abuse and artificial avoidance of permanent establishment status in the market jurisdiction
- Measure to address B.E.P.S. issues in the ultimate parent jurisdiction

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[20] Action 1, Chapter 10, *Summary of the Conclusions and Next Steps*, p. 143.

[21] Action 1, Chapter 3, *Information and Communication Technology and its Impact on the Economy*, Chapter 3.2.5., p. 45.

[22] Action 1, Chapter 5, *Identifying Opportunities for BEPS in the Digital Economy*, Section 5.2, p. 78.

[23] Action 1, Chapter 6, *Tackling BEPS in the Digital Economy*, Section 6.2.

- Measures to neutralize the effects of hybrid mismatch arrangements, limit base erosion via interest deductions and other financial payments, counter harmful tax practices more effectively, assure that transfer pricing oucomes are in line with value creation in both the market and ultimate parent jurisdictions

Other measures, such as the mandatory disclosure of aggressive tax planning arrangements, standardized transfer pricing documentation requirements, and country-by-country reporting, are thought to enhance risk assessment processes at the level of the competent tax administrations.

In terms of direct taxation, the main policy challenges the digital economy raises can be divided as follows:[24]

- Nexus
- Data
- Characterization

A European Parliament study on the digital economy points out additional challenges that the sharing economy poses: Lack of compliance with (i) tax filing and reporting obligations, (ii) business license registration obligations, or (iii) insurance obligations.[25] Citing Airbnb and Uber as models, it states that:

- Airbnb uses jurisdictions like Ireland and Jersey to avoid paying taxes in the U.S. or elsewhere. It does so by assigning its software I.P. to a subsidiary in Jersey and shifts profits to Jersey via royalty payments from the Irish entity.
- Uber manages its operations from the Netherlands. This results in a taxable base of less than 2% in the U.S. Uber shifts its profits to Bermuda through I.P. assignments in "tax havens."

In an effort to address the tax challenges of the digital economy under a unified approach, both the O.E.C.D. and the European Commission have requested public comments on key issues.[26] Time is especially of the essence given that several countries have acted independently to counter the loss of tax revenues.

The suggested unified approach, also referred to as a "digital tax," raises tensions across the Atlantic and between European Member States.[27] While the European Commission, France, and Germany are pushing for a digital tax, countries such as Ireland and the U.S. see this project as highly damaging.

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[24] Action 1, Chapter 7, *Broader Direct Tax Challenges Raised by the Digital Economy and the Options to Address Them*, Section 7.2.

[25] European Parliament, Directorate General for Internal Policies, Policy Department A, "Economic and Scientific Policy, Tax Challenges in the Digital Economy," June 2016, p. 36.

[26] European Commission, "Commission Gathers Views on How to Tax the Digital Economy Fairly and Effectively," press release, October 26, 2017; "BEPS Public Consultation on the Tax Challenges of Digitalization," O.E.C.D., November 1, 2017.

[27] "European Digital Tax as Big a Threat as Brexit, Ministers Fear," *Irish Times*, October 28, 2017; "EU Tax Crackdown on Tech Giants Will Damage Growth, US Body Warns," *The Guardian*, September 26, 2017.

In the case of Ireland, a digital tax would inevitably affect its attractiveness for corporate headquarters. While in the U.S., a digital tax is viewed as a tax on tech giants like Amazon, Google, and Facebook. As a result, these companies could withdraw from the European market, resulting in economic losses for European countries and increased tensions between the E.U. and the U.S.

U.S. APPROACH

Broadly, the U.S. tax base is impacted by the sharing economy at both the Federal level, where the I.R.S. mostly faces income tax issues, and at the state level, where consumption and property tax issues also come into play.[28]

In the U.S., consumption taxes are generally regulated and levied at the state level. Consumption taxes include sales, lodging, gross receipts, and similar taxes. Hotels and taxi companies (Airbnb and Uber's competitors in the traditional marketplace) are generally subject to some or all of these taxes. Not subjecting sharing economy companies to the same taxes as their competitors is distortive and in breach with the neutrality principle.

States are working to rectify this issue through legislative reform. Rhode Island, for instance, enacted a law explicitally stating that "an entity . . . that uses a digital network to connect transportation network company riders to transportation network operators who provide prearranged rides" must register for and collect sales tax.[29] Most states have adopted sales tax legislation that specifically taxes or exempts services. New York, for instance, expressly exempts transportation network company riders from sales tax as of June 29, 2017.[30] In contrast, states such as Nevada and Pennsylvania have enacted laws that specifically tax transportation network companies.[31]

Yet, fundamental changes may be on the horizon. A pending case could reform state sales tax legislation, bringing it in line with the approach to P.E.'s in a treaty context: using nexus to establish taxation in the absence of physical presence. South Dakota's attorney general filed the first state petition asking the U.S. Supreme Court to reconsider a 25-year-old opinion that restricts states' ability to tax remote retailers, *i.e.*, retailers without a physical presence in the state.[32] While the outcome in the South Dakota case is still unclear, similar lawsuits are also pending in state courts in Alabama, Indiana, Tennessee, and Wyoming. A groundbreaking change may be imminent.

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[28] Zach Schiller and Carl Davis, "Taxes and the On-Demand Economy," Institute on Taxation and Economic Policy, March 15, 2017.

[29] R.I. Gen. Laws §44-18-7.3, as amended by 2016 H.B.7454, effective July 1, 2016, see here.

[30] N.Y. Tax Law §1101(b)(34), as amended by 2017 N.Y. A.B. 3009/2017 N.Y. S.B. 2009, Part AAA, §17, effective July 9, 2017; N.Y. Tax Law §1105(c)(10); New York TSB-M-17(1)M, (1)S.

[31] §372B.140 of Chapter 372B of Title 32 of the Nevada Statutes and Regulations; Pennsylvania Senate Bill. No. 984. See here.

[32] *South Dakota v. Wayfair, Inc.*, U.S., petition for certiorari filed 10/2/17. South Dakota is appealing a September 13 state Supreme Court affirmation of a lower Sixth Judicial Circuit Court ruling, which found the state's "economic nexus" law, S.B. 106 (codified as S.D. Codified Laws Chapter 10-64) unconstitutional under *Quill Corp. v. North Dakota*. That ruling prohibits states from imposing sales and use tax collection obligations on vendors without a physical presence in-state.

For income tax purposes, companies acting in the sharing economy have been involved in high-level tax planning that results in little-to-no tax.[33] In the U.S., as in other countries, this issue centers around the question of whether sharing economy companies simply provide the service of connecting customers with suppliers willing to provide services or if they actually employ those suppliers.

For the suppliers of serivices, such as Uber's drivers or Airbnb's hosts, the income tax consequences often remain unclear. If suppliers are independent contractors, suppliers must pay their own social security and Medicare taxes through the self-employment tax regime and make quarterly income tax payments to avoid late payment penalties and interest. They may also be entitled to certain expense deductions. If the suppliers are employees, withholding obligations would fall on their employers, Uber and Airbnb.

There have been attempts to address this issue through regulatory crackdown. In a U.S. district courst case, Uber was singled out on the question of whether it provides transportation services or merely connects drivers to passengers through its service. The judge took the position that Uber misclassified its drivers as independent contractors, saying:

> Uber is no more a technology company than Yellow Cab is a technology company because it uses CB radios to dispatch taxi cabs, John Deere is a technology company because it uses computers and robots to manufacture lawn mowers, or Domino Sugar is a technology company because it uses modern irrigation techniques to grow its sugar cane. Indeed, very few (if any) firms are not technology companies if one focuses solely on how they create or distribute their products. If, however, the focus is on the substance of what the firm actually does (*e.g.*, sells cab rides, lawn mowers, or sugar), it is clear that Uber is most certainly a transportation company, albeit a technologically sophisticated one.[34]

Although the I.R.S. is working to address sharing economy taxation on its website,[35] more specific legislation and taxpayer guidance is necessary. One solution may be to establish an intermediate system between independent contractors and employees. This could allow and Uber driver's Form 1099-MISC, *Miscellaneous Income*, to reflect only net income received, while Uber would be subject to withholding obligations for income, social security, Medicare, and similar tax purposes.

STATE OF THE FIGHT

While governments around the world agree that sharing economy companies cannot be allowed to continue taking advantage of the current tax system, a unified approach still seems beyond reach.

Attempts to tackle these challenges with new local income and indirect tax rules

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33 See discussion in "The Sharing Economy Part 1: New Business Models + Traditional Tax Rules Don't Mix."

34 *O'Connor v. Uber Technologies*, 82 F.Supp.3d 1133 (March 11, 2015).

35 IRS.gov, "Sharing Economy Tax Center," last reviewed or updated November 2, 2017.

have only proven to be successful to a varying degree. An interim report on the issue is expected during the spring 2018 meetings of the International Monetary Fund and the World Bank Group.

In the U.S., explicit legislation exists at the state level, but Congress is still mute. The I.R.S. has acknowledged compliance issues at the individual level through its online resource, but further guidance is required.

At this stage, combatting companies like Uber and Airbnb on regulatory grounds (ranging from competition to employment to criminal law) seems to be the most efficient approach. With decisions by the European Court of Justice pending, Uber may soon be facing its Waterloo. If these predictions hold true, tax authorities may be relieved from immediate action – at least for a while.

"Combatting companies like Uber and Airbnb on regulatory grounds (ranging from competition to employment to criminal law) seems to be the most efficient approach."

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