

# The Digital Economy and Online Advertising Services: Policy Approaches and Case Law Analysis

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The views expressed are solely those of the author and do not necessarily reflect the views of the European University Institute.

In this article, the author discusses some of the general concerns underlying efforts to tax cross-border digitalized transactions, including how these transactions affect both developed and developing jurisdictions. She then focuses more specifically on taxing digital advertising services by reviewing case studies and suggesting possible solutions.

As we move into 2019, many of the issues that dominated international tax policy debates in 2018 remain unsettled. One of the hottest issues is how to effectively and fairly tax the digital economy — a topic that only becomes more important with the passage of time.

At first glance, questions about digitalization may seem quite narrow. In reality, however, the debate encompasses some fundamental principles of cross-border taxation, including questions

about the fair treatment of developing and developed countries and how those concerns inform the key concepts underlying the international tax system such as source and nexus. The unique characteristics of digitalized transactions mean that developed countries are suddenly facing concerns previously confined to the developing world, forcing these concerns — previously the domain of the U.N. — onto the agenda of the OECD, EU, and individual jurisdictions worldwide.

The debate regarding taxing digital goods and services includes several subtopics that inform the larger policy questions. One of the most notable of these topics is the taxation of digital advertising services. Looking at case studies about this issue helps clarify the complexities involved in the debate about taxing digitalized businesses and gives rise to some potential solutions, at least for the near term.

### U.N. Tax Group Considers Digitalization

At the biannual meeting of the 17th session of the U.N. Committee of Experts on International Cooperation in Tax Matters (Committee of Experts, or the committee) in October 2018, the committee released an important paper — one it had originally restricted to its members' eyes only — to the wider public.<sup>1</sup> The paper is the work of the Subcommittee on Tax Challenges Related to the Digitalization of the Economy. Notably, because of the political sensitivity of its topic, the group is the only subcommittee within the Committee of Experts that is open exclusively to

<sup>1</sup>U.N. Committee of Experts on International Cooperation in Tax Matter, Subcommittee on Tax Challenges Related to the Digitalization of the Economy, E/C.18/2018/CRP.12 (Oct. 2, 2018). A list of subcommittee members is available on pages 3 and 4 of the report.

committee members. Almost all committee members participate in this subcommittee, which operates behind closed doors.

### October 2018 Subcommittee Paper

Most of the paper addresses recent international and country-level developments and regulatory approaches taken in response to the digitalization of the economy. What is striking is that the paper only covers developments involving the OECD, European Commission, and United States — clearly demonstrating whose interests have dominated the debate thus far. The paper offers important insights that put the objectives of each of the three entities into perspective. It specifically notes that the European Council's focus is "guaranteeing the level playing field in a single European Market, including by countering tax avoidance and evasion." Likewise, the OECD's Inclusive Framework is focused on "remov[ing] obstacles for international trade with measures to avoid double taxation and creating an effective tax system by avoiding tax avoidance through base erosion and artificial profit shifting." Finally, the U.S. government's responsibility is, especially in this moment, confined to the country's own economy.

It is noteworthy that the paper does not, for instance, discuss India's introduction of a significant economic presence test into its tax code.<sup>2</sup> In the 2018 Finance Bill, the Indian government proposes that for domestic Indian tax purposes, "significant economic presence" shall mean:

- (i) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or
- (ii) systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

<sup>2</sup>Income Tax Act, section 9(1)(i) (with effect from April 1, 2019).

The activities will constitute substantial economic activity in India regardless of whether (i) the parties entered into the agreement for the stated transactions or activities in India; (ii) the nonresident has a residence or place of business in India; or (iii) the nonresident renders services in India. The explanatory memorandum released with the Finance Act clarifies that the government plans to introduce the new nexus rule into its double tax agreements and intends to apply the rule without overriding the tax treaties. Indian scholars are still struggling to understand the exact implications and scope of the significant economic presence rules, which are expected to enter into force April 1.

In spite of its limited focus, the stated intent of the U.N. subcommittee paper is to bring the digital economy debate closer in line with the interests of developing countries and the problems that they face. To do so, the subcommittee proposes using an initial questionnaire to investigate whether developing countries agree that the existing international tax rules, as framed, inhibit the allocation of taxing rights to the country where value is created. The questionnaire also inquires about the problems that developing countries face as to taxing digital activities and asks the countries what measures, if any, they have implemented to address those problems. The subcommittee intends to update the paper to include the experiences of developing countries and report on their concerns, the merits of coordination and coherence, the preferred characteristics of any long-term solution, and the risks and advantages of interim measures.

### Interplay Between the U.N. and OECD

Notably, considering the context of and time frame for this investigation, which the committee expects to complete by its next meeting in April 2019, the subcommittee (at least indirectly) is opting to wait for the OECD's 2019 status update on the digitalization of the economy, have the policy debate under that framework, and have a developing country survey ready to release only when it is certain that the subcommittee's output will not conflict with any of the decisions made at the OECD level.

One might hope that the subcommittee's work would instruct the OECD's 2020 final report, but

there is no assurance that this will be the case seeing as the U.N. and the OECD workflows run parallel to each other.

### **Evolving Debates on Source and Nexus**

It is true that when it comes to international tax policy development, there is sometimes a lack of awareness regarding the issues that developing countries face. However, the digitalization of the economy may be one of the few debates in which the interests of both developed and developing economies coincide because capturing rent from digital activities means allocating taxing rights to the source state.

Under the traditional international tax framework, the allocation of taxing rights to a source or resident state is almost always synonymous with conferring taxing rights on a developing or developed country, respectively. But the digital economy has changed that. Arguably, this is the first time that industrialized economies have faced difficulties taxing economic rent: a problem that was almost always restricted to developing economies in the days of brick-and-mortar businesses. Being capable of capturing rent from digital activity in a country's consumer market on a source basis is in the interest of every state, so all countries — developed and developing alike — have a sudden interest in behaving like source states. That is with the exception of those countries that harbor digital enterprises but do have significant consumer markets — countries that profit from inadequate regulation.

The digitalization of the economy has sparked a new debate about the establishment of nexus and economic substance in a source state. It is in establishing these new criteria for allocating the taxation rights over the business profits of digital enterprises that input from developing countries would be most helpful. Developing countries should be proactive in informing these policy debates and helping establish new international tax rules that are fair and equitable to all states.

### **Recent Case Studies on Digital Advertising**

Because the U.N. questionnaire aims to get input from real-world practices, this article will now examine three recent cases involving the digitalization of the economy: two court decisions

and one tax settlement. The two court proceedings began after an assessment by France, undisputedly a developed country. However, the issues France faces and the structures it questions are consistent with those one usually sees when considering the erosion of the tax base in developing countries. The issues are the same regardless of the countries where they take place. The third case study involves the United Kingdom's tax settlement with Google involving tax liabilities from 2005 to 2015.

It is worth pointing out that the push toward new rules for taxing the digital economy has, in many respects, been driven by the French government, at both the EU and OECD levels. For example, it is striking to note the similarity between many of the findings in the Collin and Colin report,<sup>3</sup> which was prepared at the request of the French Parliament in 2013, and the findings in the 2016 OECD Interim Report on the Digitalization of the Economy. The Collin and Colin report was arguably the first report to actually raise the problem of how to efficiently tax value creation in a multi-sided market through the use of data tracking techniques and to discuss whether collecting data in a country could de facto create a permanent establishment of the firm in that country.

The French case law reported below follows similar lines, highlighting some of the issues that tax authorities are facing as they try to collect the rent associated with the digitalization of the economy. All of the case studies focus on the online advertising business. Notably, the tax administration's pleas were unsuccessful in both cases — largely because of the existing international tax legislation's inability to handle the unique characteristics of the digital businesses.

<sup>3</sup> Pierre Collin and Nicolas Colin, "Task Force on Taxation of the Digital Economy," Report to the French Minister for the Economy and Finance, the Minister for Industrial Recovery, the Minister Delegate for the Budget, and the Minister Delegate for Small and Medium-Sized Enterprises, Innovation, and the Digital Economy (Jan. 2013).

## The Google Case

*Google Ireland Ltd.* (1505178/1-1)<sup>4</sup> concerns the taxation of the profits Google derived from its AdWords program (also known as Google Ads) in France. The court case before the Administrative Tribunal in Paris (Tribunal Administratif de Paris) involved a corrective assessment of Google Ireland Ltd.'s activities in France based on a series of requests for information that the French tax authorities sent to their counterparts in Ireland, the Netherlands, and the United States. In the corrective assessment, the French authorities held that Google Ireland obtained a significant amount of profit from French customers' use of the AdWords program in addition to the profits Google France, a fully owned subsidiary of Google Ireland, reported. Based on the information they obtained from the other countries, the French tax authorities concluded that Google Ireland was selling online advertisement space using an agency PE arrangement in France. Under the terms of article 2(9)(c) in the France-Ireland tax treaty, they contended that profits from the sale of advertisement space in France by means of the agency PE were subject to French tax.

Note that what this article calls "the *Google* case" is actually a series of five lower court rulings involving Google. The first set of cases (1505178/1-1 and 1505113/1-1) involves the application of French corporate income tax to Google's business activities in France. The second set of cases (1505147/1-1 and 1505126/1-1) concerns the presence of immovable property or assets in France that were at the disposal of the (alleged) French PE and could give rise to the *taxe professionnelle des entreprises* (in digital parlance, this might be equivalent to an infrastructure use tax). The last case (1505113/1-1) in the set concerns the application of French VAT to Google's services.

To understand this dispute, it helps to have some general knowledge about the AdWords business model in addition to the facts included in

the ruling. Broadly, advertisers pay Google to display advertising content to targeted web users and, in return, Google allows this content to pop up on the targeted users' screens. Targeting occurs through the sale of pre-defined keywords. Advertisers pay to have their content — banners, homepage address, product listings, and so forth — associated with the keyword searches that Google users enter into the search engine. Google typically gets paid every time a user clicks on the online advertisement material. Google sets the price for keywords using an auction-based marketplace: The minimum price for a keyword is 5 cents, but in highly competitive categories Google could make up to 1,000 times more per click. The price depends on the level of market interest for that particular keyword. Some of the most expensive keywords are "lawyer," "insurance," and "loans," for example. The advertiser that pays the highest price for a keyword receives the highest level of association with that keyword across all of Google's online platforms including the search engine, advertisements, private website banner spaces, and online shopping spaces that use Google feeds.

According to the court, Google provides AdWords services under two modalities. The simplest option is the online sales organization modality, geared toward clients who prefer to independently manage their online advertising activities. This is a cheaper service that does not offer any tailor-made solutions to the clients. Advertisers gain access to an online AdWords portal and set up their own advertisement campaigns. These advertisements probably will not hold the top spots since these clients do not maximize the algorithm's capabilities. The second option is the direct sales organization modality, which provides customers with more commercial assistance and account management services, thus maximizing the potential of the algorithm.

In the case at hand, employees of Google France, on behalf of Google Ireland, provided this second type of services to Google Ireland's top clients in France. The French tax authorities contested this second modality of the AdWords product.

As structured, the activities that Google France performed were for the benefit of Google Ireland, and they were exclusively rendered

<sup>4</sup> France: Tribunal Administratif Paris, No. 1505178/1-1 (June 12, 2017); summary by Bob Michel, Tax Treaty Case Law IBFD. The author thanks Bob Michel for summarizing the details of the case. See also Alexander Lewis, "Google Does Not Have PE in France, Court Holds," *Tax Notes Int'l*, July 13, 2017, p. 207.

under a marketing and services agreement that Google France and Google Ireland, its parent company, entered into in 2002. The agreement remunerated the subsidiary on a cost-plus basis with a profit markup of 8 percent.

From documents seized during the tax audit, it appeared that Google France assigned some of its employees recruiting missions to prospect for new clients with a goal of increasing the operation's turnover. Internal communication records between employees showed that some employees were involved in managing client portfolios and charged with the task of negotiating contracts with clients. Some of the documents that the tax authorities uncovered referred to Google France as "the seller" or "responsible for sales." Lastly, it appeared that Google France had hired an in-house lawyer to advise on the negotiation and drafting of contracts with French clients.

The court's analysis included the following questions:

- Did Google Ireland have either a PE in France under article 4 of the France-Ireland tax treaty or an agency PE under article 2(9)(c), and, therefore, was it liable for corporate income tax and withholding tax on royalties?
- If the PE existed, was French VAT due on advertisement services provided via the PE?

The tax authorities lost on all accounts, and ultimately, the court held that there was no tax due to be paid in France. In its decision, the court did not rely on the facts of the case, but instead focused on the contractual agreement between Google Ireland and Google France. The tax authorities have filed an appeal with the Administrative Court of Appeal (Cour Administrative d'Appel) contesting the lower court's ruling. A decision is expected in 2019.

Below is a short summary of the findings.

### Corporate Income Tax

The Administrative Tribunal in Paris observed that the obligations that the marketing and services agreement conferred on Google France prevented the conclusion that it was independent from Google Ireland, even if the facts of the case indicated that Google Ireland did not directly control Google France in practice. Specifically, the agreement provided that:

during the provision of the assistance to the sale of the services, Google France agrees that it does not have the power to bind Google Ireland, nor to act as its mandatory or authorized representative mandated to acting for the account or in the name of Google Ireland or to sign contracts in the name of the latter. More specifically, Google France will not negotiate service or license contracts for the account of Google Ireland nor will it accept such orders.

Therefore, the court rejected the argument that Google France was an "agent of an independent status" under the terms of article 2(9)(c) of the treaty.

Based on the same contractual arguments, the administrative court found that Google France did not have the authority to conclude contracts in the name of Google Ireland, even if it might be considered a dependent agent of the latter.

### VAT

Using the same reasoning, the court concluded that Google Ireland did not have sufficient technical equipment in France for it to autonomously provide advertising services in France. As a result, it did not have a fixed base in France for VAT purposes.

### The Valueclick Case

During the taxable years at issue in this dispute (2009 to 2011), Valueclick (now Conversant) was one of the leading companies operating an advertisement display network — that is, a collection of privately owned websites that the ad network company pays to display specified advertisements when users visit the websites. While Google's AdWords program is both a display network and a search network (that is, advertisements are based on search engine results), self-standing display networks often specialize in niche areas. For instance, a display ad network that specializes in high-end travel would bring together multiple quality travel websites and use advertisements from high-end travel providers to monetize user visits. By using specific websites, they target the advertised content at a specific audience interested in those products.

The similarities between the *Google* and *Valueclick* (17PA01538)<sup>5</sup> cases are astounding, especially the corporate structures used to provide online advertising services. Valueclick International Ltd. (Valueclick Ireland) was a subsidiary of Valueclick Inc., a U.S. company (Valueclick U.S.). Valueclick Ireland set up local subsidiaries in various EU member states to provide marketing services. Valueclick Ireland signed all of the contracts that the subsidiaries concluded. This dispute focused on Valueclick France and the marketing services it performed in accordance with the intercompany services agreement between the French and Irish affiliates. The contractual definition of marketing services included the:

prospection of potential clients, management services, back-office services, administrative and accounting services, human resources management, treasury management and the management of information technology.

The agreement expressly provided that the contracting parties were independent and that the contract did not create an agency relationship or constitute a relationship between partners in a joint business. The agreement expressly excluded representation rights that would allow one party to bind the other party to agreements with third parties, and denied each party authorization to sign contracts in the other party's name. Finally, like in the *Google* case, Valueclick Ireland remunerated Valueclick France for its services on a fixed 8 percent cost-plus basis.

Both the issues that the tax administration raised during the tax assessment and the outcome of the *Valueclick* case are nearly identical to the *Google* case. The proceedings focused on several related issues:

- the presence of a PE of Valueclick Ireland in France in the form of the subsidiary's fixed place of business under article 2(9) of the France-Ireland tax treaty;
- the presence of a dependency relationship between Valueclick Ireland and Valueclick France, including whether the French

subsidiary was a dependent agent of the Irish entity; and

- the existence of a fixed establishment in France, such as would allow France to charge VAT on the online advertisement services provided in France.

Much like the administrative tribunal in *Google*, the court of appeal in *Valueclick* applied and interpreted the agreement between the French and Irish entities, focusing on the language and scope of the agreement and overlooking the tax administration's arguments stemming from the fact-finding investigation and documents it seized during the assessment phase. Thus, given the broad scope of the intercompany services agreement, which covered all aspects of marketing including prospecting for clients, the court found that Valueclick France did not provide services beyond its mandate in a manner that could create a PE of Valueclick Ireland in France.

Since the agreement expressly excluded the ability of the French and Irish entities to engage in an agency relationship, the court held that the findings did not support a dependent agent status. The fact that Valueclick France employees could negotiate the terms of the contracts with French clients — and that the French staff even presented themselves as employees of Valueclick Ireland — was not enough to create an agency relationship.

As for potential VAT liability, the court concluded that Valueclick France did not have sufficient infrastructure to operate autonomously. According to the court, the main IT infrastructure that Valueclick France used was located outside France (namely, in the Netherlands, Sweden, and the United States) and the information and connection technology available in France was the minimum needed to allow the company to access the main infrastructure abroad. Therefore, no VAT was due.

The tax authorities have appealed the decision of the court of appeal in *Valueclick* to the Council of State (Conseil d'État). A decision is expected in 2019. Observers expect that the ruling will clarify the rules regarding PEs in the online advertisement business and may also apply to the *Google* case, which is pending before the appellate court.

<sup>5</sup>The author thanks Bob Michel for summarizing the details of the case in IBFD's tax treaty case law database.

## Google's Tax Settlement in the U.K.

The next case study concerns a U.K. tax settlement, the details of which are confidential, through which Google settled tax liabilities for the tax years 2005 to 2015. The settlement, in the amount of £130 million (of which £18 million were interest) was later considered by the House of Commons, during a parliamentary review, to be “disproportionately small when compared with the size of Google’s business in the UK.”<sup>6</sup> According to the parliamentary report, “the UK is Google’s second largest market (after the U.S.), contributing to US\$7 billion in revenue in 2015 alone, or around 10 [percent] of Google’s worldwide income.”

Tax settlements in the United Kingdom are not transparent; therefore, the only information available to the public is that contained in the House of Commons Committee of Public Accounts report. HM Revenue & Customs formally opened an investigation into Google’s tax affairs in 2010 following a tax assessment of the company. The main issues under dispute in the investigation were the transfer pricing method and the value of Google’s economic activities in the United Kingdom. At stake were how much value Google’s activities in the United Kingdom created (namely, advertising services like those at issue in the French court cases as well as research and development activities), how those activities would have been remunerated on an arm’s-length basis, and which transfer pricing methods should apply. Another pending question was whether a foreign Google company — once again, Google Ireland — should be considered to have a PE in the United Kingdom. Unsurprisingly, all these issues are similar to those in the later French cases.

Notably, a committee report from June 2013 had previously concluded that to avoid U.K. corporation tax, Google relies on:

the deeply unconvincing argument that its sales to UK clients take place in Ireland, despite clear evidence that the vast

majority of sales activity takes place in the UK.<sup>7</sup>

The 2013 report includes a summary of evidence that Google provided when the committee invited a company representative to comment on the business activities taking place in the United Kingdom. The representative emphasized that Google’s local subsidiary did not engage in sales in the United Kingdom — a key point for determining PE status — and said that Google Ireland directly executed all advertising sales contracts. Former Google employees, identified as whistleblowers in the report, contested this information and asserted that the U.K. staff carried out the substance of the work that led to contracts with major U.K. clients. Similar to what was later described in the French cases, the Google U.K. representative eventually conceded that the top 1 percent of Google’s clients in the United Kingdom — the clients with “higher value prestige accounts” — did have close, direct relationships with the U.K. staff and met with them regularly. The U.K. staff would discuss account details and statistics with these prestige clients and, as the Google representative admitted to the committee:

UK clients would feel they were being sold to by UK staff. . . . However, while [the representative] accepted that UK staff could agree a sale, he stated that they did not have the ability to commit Google UK Ltd to any contracts, or to conclude a transaction, and that no money changed hands within the UK.

Based on oral statements from Google representatives, the 2013 report also concluded that although Google’s engineers in the United Kingdom were not developing new products, they were contributing to the development of products, and that the engineering work performed in the United Kingdom was creating economic value.

Although the 2013 report instructed the 2016 HMRC investigation, there is no evidence to suggest that it influenced the settlement between

<sup>6</sup>U.K. House of Commons Public Accounts Committee, “Corporate Tax Settlements,” HC 788 (Feb. 23, 2016).

<sup>7</sup>U.K. House of Commons Public Accounts Committee, “Tax Avoidance — Google, Ninth Report of Session 2013-14,” HC 112 (June 2013).



HMRC and Google. Nonetheless, it provides valuable insights into Google's operations in Europe — insights later confirmed by the cases in France.

The 2016 report also discloses that HMRC and HM Treasury were working with five other countries — the so-called E6 — to share information about digital multinationals and gain a better understanding of how these enterprises act in different jurisdictions. This initiative is part of the OECD's base erosion and profit-shifting project.

The 2016 Committee of Public Accounts report also sheds light on an investigation regarding Google's activities in Italy, where investigators are reportedly seeking the equivalent of £150 million in back taxes, further illustrating how these issues are reverberating throughout the EU member states.

### Analysis

These three case studies provide valuable insight into the business model for digital advertising in the EU. When advertising in the common market, Google and other advertising companies base their operations in Ireland and then engage the whole common market through independent subsidiaries. By entering into a broad-based agreement and remunerating the local subsidiary on a cost-plus basis, these companies succeed in allocating most of their profits to Ireland, where they face a significantly lower tax rate. The tax basis in the source countries — that is, the other EU member states — is eroded because they lose the potential tax revenue derived from the activities that take place in their jurisdictions — the places where value is actually created. Whether this model is being deployed in other parts of the world is an issue that would require further research, though it may not be that difficult to uncover.

Comparing the French and U.K. Google cases, one notices significant similarities in the facts. Yet the tax administrations' investigations into the offshore provision of online advertisement services to local clients with assistance of local employees — and their approaches to taxing those services — are markedly different. The French tax authorities focused heavily on a PE approach, trying to qualify the activities of Google

Ireland in France as a PE that would create attributable profits taxable in France. This approach yielded little result. In the United Kingdom, at least from the limited information that can be found in the parliamentary documents, it seems like the U.K. tax authorities preferred the certainty of settling for a transfer pricing adjustment (which, to an industry observer, seems to be rather low) to account for the remuneration paid by Google Ireland to Google U.K. for services rendered.

In both cases, it is clear that even though the online advertisement business is a core part of the digital economy, this business model includes a few important aspects of the brick-and-mortar economy: Namely, the companies have some form of physical presence in the market countries and value can be derived from that physical presence. The real issue is that the transfer pricing allocation models cannot account for the value that the source state generates. A profit split might be a more appropriate tool to reflect value generation in each state.<sup>8</sup>

The French courts have opted to respect contractual terms and language over factual assessments, an approach that has benefited from a very broad contractual arrangement that would arguably include more than just marketing and support services in the local jurisdiction. Moreover, the argument that some of the activities performed in the local jurisdiction would constitute a PE was rooted in the idea that the activities that actually occurred in the source state went beyond what those the parties listed in and remunerated under the contract. Had the French appellate court accepted this argument, France could only tax income from the services Google Ireland provided that went beyond the scope of the services agreement.

### Moving Forward

From the foregoing case studies and the review of general principles of digital taxation, there appear to be two potential policy approaches to consider as this debate continues.

<sup>8</sup> See BEPS Monitoring Group, "Comments on the Public Discussion Draft on Revised Guidance on Profit Splits" (Jan. 2018) (filed in response to the EU's consultation on fair taxation of the digital economy).

The first and simplest option might be to apply a withholding tax such as tax on fees for technical services that follows the basic contours of the U.N. model's article 12A. Broadly, article 12A allows a contracting state to tax, at a rate negotiated by the contracting states, fees for specific technical services that a resident of one state pays to a resident of the other contracting state on a gross basis.<sup>9</sup> The contracting states could extend article 12A to apply to all services — not just fees for technical services — providing a treaty-based approach that is similar to the proposals being advanced by the EU and other select jurisdictions as interim measures to address the digitalization of the economy. In the United Kingdom, for example, HM Treasury put forward a treasury consultation on November 7, 2018, that discusses the suitability of imposing an interim tax on digital services pending international agreement on a long-term solution. Likewise, the Spanish government put out a consultation on a 3 percent DST on companies with annual turnover greater than €750 million and Spanish sales exceeding €3 million.

The second short-term policy option might be to impose a reporting requirement on digital companies with substantial and long-lasting engagement in a particular market (that is, either a user or consumer base). This requirement would apply to any activities that include:

- a user base;
- paying clients intending to explore the user base;
- technical equipment or infrastructure, even if it only has an auxiliary function; and
- employees engaging with or exploring the consumer base for the benefit of third-party entities.

Based on the case studies above, this might be a suitable approach to capture the rent derived from the provision of online advertising services. This approach would also allow tax authorities to study the market and determine the best way to allocate the disclosed income to the source and residence jurisdictions using either existing or new allocation rules. ■

<sup>9</sup> Tatiana Falcão, "The U.N. Model's New Fees for Technical Services Provision," *Tax Notes Int'l*, July 23, 2018, p. 367.

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