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Via e-mail: TFDE@oecd.org

OECD Task Force on the Digital Economy

Request for Input on Work Regarding the Tax Challenges of the Digitalised Economy

Dear Sirs,

We would like to thank you for the extensive work aimed at identifying issues raised by the digital economy and detailed options to address them. Moreover, we would like to thank you for the opportunity to submit our considerations on the Request for Input on Work Regarding the Tax Challenges of the Digitalised Economy released on 22 September 2017. In particular, since proposing new tax policies is outside the scope of our work, with our input we will focus on questions B.1, C.1 and C.2 of the request, with the aim of providing you with our perspective on the current Italian tax practice in the context of the digital economy.

1. Question B.1

With the Final Report on Action 1 of the BEPS Action Plan ("Action 1 Final Report"),[1] the OECD addressed the main areas for aggressive tax planning that may arise from digital business models and discussed different options to mitigate BEPS risks in the area of direct taxation,

[1] OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (OECD 2013).

namely (i) a new nexus in the form of a significant economic presence, (ii) a withholding tax on certain types of digital transactions, and (iii) an equalisation levy. However, in such document the OECD did not recommend any of those options, leaving States with the decision to implement domestic actions for taxing digital businesses.[2] Such approach might clearly reduce international coordination and consistency and may affect legal certainty for the global (digital) players, which is among the major issues that one can experience with the current international taxation framework.

Against this background, Italy has repeatedly tried – without a concrete success – to legislatively address the tax issues raised by the digital economy.

Between 2013 and 2014, a "web VAT tax"[3] was introduced (and then repealed) which required Italian companies to purchase online advertising services[4] exclusively from suppliers registered in Italy for VAT purposes. This measure, which could have been regarded as contrary to the EU VAT Directive, was purported at monitoring the magnitude of advertising services provided in Italy by non-resident companies.

In 2015, a law proposal was issued[5] aimed at introducing a "virtual permanent establishment" provision, under which non-resident e-commerce providers are deemed to have a permanent establishment ("PE") if they carry out their business in Italy on a continuous basis through

[2] Id., pp. 111-117.

[3] Article 1(33) of Law No. 147/2013, subsequently repealed by article 2(1)(a) of Law Decree No. 16 of 6 March 2014. Law No. 147/2013 also introduced a new transfer pricing provision according to which companies engaged in online advertising and in the provision of related ancillary services have to determine the income derived from intercompany transactions using profit indicators other than the cost-plus method, unless those companies enter into an advance pricing agreement with the Italian tax authorities (Article 1, paragraph 177 of Law No. 147/2013). Differently from the web VAT tax, this provision was not subsequently repealed and is therefore currently still applicable.

[4] Such as online advertising spaces or sponsored links appearing in the results pages of search engines.

[5] *See* Camera dei Deputati, Law proposal No. 3076 of 27 April 2015.

online activities.[6] Where a virtual PE is deemed to exist, a withholding tax ("WHT") should be applied to any digital transaction incurred between non-resident e-commerce providers and Italian customers.[7]
A second law proposal[8] was issued in 2016, with a view to introduce a "digital PE" notion for corporate tax purposes. Under the proposal, non-resident enterprises are deemed to have a PE in Italy whenever they carry on their business in Italy on a continuous basis through qualified "dematerialized" digital activities.[9] Where the digital PE is deemed to exist, the Italian tax authorities ("ITA") shall request the foreign enterprise to regularize its tax position.[10] [11]

If either of such pending proposals were approved, it is maintained that their practical effects would be limited, as taxation in Italy would generally be prohibited by the tax treaties in force with the residence State of the foreign enterprises. Those unilateral measures would, at the same time, increase the level of uncertainty and complexity of the Italian tax system. The two combined effects support the view that the introduction of such unilateral measures should be avoided.

Another trend we have noted in the last few years is the new audit practice of the ITA, which has focused on non-resident digital enterprises by applying with hindsight the conclusions reached by the OECD in the Final Report on Action 7 of the BEPS Action Plan ("Action 7 Final Report"),[12]

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[6] Continuing online activities are deemed to exist if the period of online activity of the non-resident e-commerce providers is not less than 6 months and if the income generated in the same period is at least EUR 5 million.
[7] In particular, a 30% WHT on business-to-consumer transactions and a 25% WHT on business-to-business transactions. In both cases, the financial institutions processing the payments would have to directly apply the WHT.
[8] *See* Senato della Repubblica, Law proposal No. 2526 of 14 September 2016.
[9] In particular, the foreign enterprise, during a semester, should (i) conclude more than 500 digital transactions and (ii) those transactions should generate income flows for an amount not lower than EUR 1 million.
[10] If the foreign digital enterprise does not regularize its tax position within 30 days, the ITA requests the financial institutions processing the payments on the e-transactions to apply a 26% WHT.
[11] It is worth mentioning that the 2016 Stability Act introduced a mechanism similar to the diverted profit tax in respect of taxable persons operating in the gambling and digital betting industries.
[12] OECD, *Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7: 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (OECD 2015).

for instance with regard to auxiliary and preparatory activities. This new practice creates significant uncertainties, as regards the existence of a PE in Italy. In this context, foreign digital enterprises have been repeatedly labelled as "tax evaders" by the media, a fact that could provoke reputational damages to such enterprises. In addition, the assessment by the ITA of the existence of a PE in Italy often triggers criminal procedures against the directors of the foreign enterprises for not having declared the PE existence. Both the risk of a reputational damage and the uncertainty connected with the outcome of the criminal procedure have induced some non-resident digital enterprises to opt for quick settlements with the ITA in order to minimize those issues.

In order to avoid these drawbacks, the government has recently passed a law decree aimed at providing legal certainty on the application of the current tax rules on PEs.[13] As a result, large multinationals ("MNE"), not necessarily operating in the digital business, may now enter into a consultation procedure with the ITA aimed at establishing whether their past activities created a PE in Italy. If this is the case, taxpayers may pay the relevant taxes under a regularisation procedure, which also prevents the criminal authorities from punishing the failure to file the tax returns.

2. Question C.1

2.1 BEPS Action 3

BEPS Action 3 was aimed at strengthening domestic CFC rules in order to make them more effective in counteracting BEPS.[14]

In this respect, we believe that a large part of currently untaxed digital MNE profits would bear their fair amount of taxes if the home countries of those MNEs applied stricter CFC rules.

Although this would not solve the issue of the proper allocation of taxing rights between the different countries where MNEs operate, particularly

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[13] Article1-*bis* of Law Decree No. 50 of 24 April 2017.
[14] OECD, *Designing Effective Controlled Foreign Company Rules, Action 3: 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (OECD 2015).

the market countries, which would require a revision of the current nexus rules, it would at least avoid MNEs structuring their business in order to reduce taxation in their home States.

2.2 BEPS Action 7

With Action 7 Final Report[15] the OECD proposed to expand the PE definition included in Article 5 of the OECD Model Convention[16] ("OECD MTC"), with a view of tackling more effectively BEPS. Some of the proposed changes can also prove relevant with reference to the tax challenges raised by the digital economy.

a) *Artificial avoidance of PE status through commissionaire arrangement and similar strategies*: The new concept of the "principal role leading to the conclusion of contracts" may also be used to counteract certain structures adopted by companies operating in the digital business, where the local presence of employees in the source Country is relevant for the solicitation of potential customers. Indeed, the example included in para. 32.6 of Action 7 Final Report describes a situation where the employees of SCO – a company resident of State S – send emails, make telephone calls to, or visit, large organizations in order to convince them to buy the advertising services supplied by RCO, a company resident in State R. In the above situation, State S' Tax Authorities may challenge the existence of an agency-PE of RCO in State S;

b) *Artificial avoidance of PE status through the specific activity exemptions:* The proposed amendments may also be relevant for digital enterprises. For example, with reference to e-commerce players, the proximity to the customers and the need for a quick delivery are important success factors, so that the maintenance of a local warehouse might be regarded as a core activity for those enterprises (see para. 22 of Action 7 Final Report);

[15] OECD, *Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7: 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (OECD 2015).
[16] OECD, *Model Tax Convention on Income and on Capital* (2014).

c) *Fragmentation of activities between closely related parties:* By addressing this issue, proposed Article 5(4.1) OECD MTC is also relevant for digital enterprises, in case they spread their value chains across several business entities.

Some jurisdictions, such as Italy, have already interpreted some of the current provisions of the OECD MTC in line with the changes proposed by the OECD in Action 7 Final Report. With reference to the above let. a), already in the 2002 Philip Morris case[17] the Italian Supreme Court stated, inter alia, that the participation of representatives or employees of a domestic entity to the negotiation of contracts between a foreign company and another resident entity might fall within the concept of "authority to conclude contracts in the name of the company", even where no power of representation is granted. As from that moment, Italian case law and practice followed the Philip Morris case as a leading precedent. Accordingly, Italy registered an observation in the 2005 OECD Commentary on Article 5 (para. 45.10), regarding the participation to contract negotiations, according to which "*Italy wishes to clarify that, with respect to paragraphs 33, 41, 41.1 and 42, its jurisprudence is not to be ignored in the interpretation of cases falling in the above paragraphs*".

Similar considerations apply to the above let. c) ("*Fragmentation of activities between closely related parties*"). For instance, in 2011 the Italian Supreme Court affirmed that it is of no relevance whether activities are carried out in Italy via several distinct entities, rather than by a single entity, for the purpose of ascertaining whether non-resident parent companies have a PE in Italy. What is relevant is the fact that the entities carrying on their business activities in Italy, though formally distinct, are economically and substantially integrated into a unitary structure, the aim of which is to achieve the business purpose of the non-resident parent company in Italy. [18]

[17] Italian Supreme Court judgments Nos. 3367, 3368 and 3369 of 7 March 2002 and Nos. 7682 and 7689 of 25 May 2002.

[18] Italian Supreme Court judgment No. 20597 of 7 October 2011. The Supreme Court affirmed that "*the productive organization in Italy of the foreign company - rather than be composed of a single legal entity - was divided into a multitude of companies: formally*

That said, the amendments to the OECD MTC proposed in the Action 7 Final Report 7, while extremely relevant for “traditional” businesses (also known as “brick-and-mortar” businesses), could prove less effective in tackling the tax challenges raised by pure digital enterprises in terms of taxable presence in a country, as BEPS Action 7 targets structures with – at least – a minimum physical presence in the source country. This approach reflects the traditional distinction between an enterprise that participates in the economic life of a country and one that merely interacts with the economic life of a country.[19]

The measures developed within BEPS Action 7 may certainly be used to challenge, for instance, traditional e-commerce business models, in which (i) sales of physical goods are carried out through internet platforms, (ii) the seller is a non-resident company, and (iii) marketing, sales, clients' support and warehouse functions are often carried out in the customers' country. However, such measures would have a limited effect when dealing with MNEs operating through fully dematerialized structures, as also noted by the OECD,[20] the European Commission[21] and several scholars.[22]

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distinct but economically integrated into a unitary structure, aimed at achieving the commercial purpose in Italy of the foreign parent company”.

[19] This goes back to the work of the Technical Experts group of the League of Nations in 1927-1928 and the policy at that time advocated by T.S. Adams, the US representative. As explained by Adams' assistant, Mitchell Carroll, the US delegation was concerned with protecting the interests of US businesses operating abroad, at a time when the United States was a major net exporter of goods. In response, Adams successfully advocated the PE threshold, which prevented taxation unless the business was conducted through a branch, factory, agency, warehouse, office, or depot (*See* Graez/O'Hear, *The “Original Intent” of U.S. International Taxation*, Faculty Scholarship Series (1997), Paper 1620).

[20] OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report*, pp. 51-75.

[21] European Commission, *Communication from the Commission to the European Parliament and the Council – A Fair and Efficient Tax System in the European Union for the Digital Single Market*, COM(2017) 547 final.

[22] See, inter alia, Brauner/Pistone, *Adapting Current International Taxation to New Business Models: Two Proposals for the European Union*, 71 Bulletin for International Taxation 12 (2017); Olbert/Spengel, *International Taxation in the Digital Economy: Challenge Accepted?*, 9 World Tax Journal 1, pp. 3-46 (2017); Schreiber/Fell, *International Profit Allocation, Intangibles and Sales-Based Transactional Profit Spli*t, 9 World Tax Journal 1, pp. 1-17 (2017); Hongler/Pistone, *IBFD Blueprints for a New PE Nexus to Tax Business Income in the Era of the Digital Economy - Working paper 20 January 2015* (IBFD 2015); Baez/Brauner, *IBFD Withholding Taxes in the Service of BEPS Action 1: Address the Tax Challenges of the Digital Economy* (IBFD 2015).

In order to supersede such difficulties, new nexus rules could be introduced specifically for the digital economy, based for example on the notion of "significant economic presence" (see BEPS Action 1). Under such rules, the taxable presence in a country of non-resident digital companies ("Digital PE") would be triggered by unconventional factors, such as the revenues remotely earned from customers situated in a country, the presence of a local digital platform, the frequency of digital transactions, and the number of users.

Finally, it would be advisable that any measure agreed at the OECD level be, in any event, coordinated with the expected EU developments, as announced in the press release of the European Commission of 21 September 2017.

2.3 BEPS Actions 8-10

Even if the rules for establishing a taxable presence were modified as outlined in Action 1 Final Report, criteria used to attribute profits within multinational groups would need to be adapted, in order to properly address the tax challenges raised by digital economy. Indeed, the amendments to the OECD Transfer Pricing Guidelines ("TPG") brought about by Actions 8-10, while useful to clarify certain aspects of the arm's length principle[23] and of transactions involving intangibles[24] – which may be relevant also in the context of the digital economy – still rely on rules mainly developed for traditional business models.

This is particularly true with reference to the rules governing the attribution of profits to PEs under Article 7 of the OECD MTC.[25] A Digital PE would be characterized by little or no physical presence in terms of personnel and/or tangible assets, generating income through fully

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[23] OECD/G20, *Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10: 2015 Final Reports*, OECD/G20 Base Erosion and Profit Shifting Project (OECD 2015) pp. 13-50.
[24] Id., pp. 63-139.
[25] *See* Article 7 and related Commentary in OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2014* (OECD 2014).

dematerialized activities.[26] This clearly might jeopardize an orthodox application of the Authorised OECD Approach (“AOA”),[27] which relies on the (physical) allocation of significant functions, assets and risks to the PE. In this respect, it would be necessary either (i) to establish a new profits allocation rule, which should not rely on the physical performance of the significant functions in the PE State, or (ii) to introduce a deeming provision, which would deem certain functions – strictly connected with the economic presence factors used to set the Digital PE threshold – to be performed at the Digital PE, which would attract the related assets and risks.

For these reasons, we share the position of the European Commission[28] and a number of authors[29] that adjustments to existing transfer pricing rules are needed in order to properly apply the arm’s length principle within digital business models. Hereafter, we focus on the aspects that, in our opinion, are of particular importance.
First, the TPG should examine the technological features of the digital economy that must be taken into account when performing a transfer pricing analysis. This should include a detailed description of those “new” functions, assets and risks deemed to play a significant role in the value creation process of digitalized enterprises.[30] As observed by scholars,[31] such new value-drivers could comprise, for example, functions associated to content creation, data collection and customer support. With reference to the intangible assets to be considered within a functional analysis, the TPG should also clarify whether, and under which circumstances, the

[26] OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report*, p. 111.
[27] OECD, *Report on the Attribution of Profits to Permanent Establishments* (OECD 2010).
[28] European Commission, *Communication from the Commission to the European Parliament and the Council – A Fair and Efficient Tax System in the European Union for the Digital Single Market*, COM(2017) 547 final, p. 9.
[29] See, inter alia, Olbert/Spengel, *supra* n. 22 and Hongler/Pistone, *supra* n. 22, at p. 34.
[30] As observed by the TPG, value creation is a fundamental aspect of the functional analysis. In particular, according to the TPG (OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD 2017), para. 1.51), “*it is important to understand how value is generated by the group as a whole, the interdependencies of the functions performed by the associated enterprises with the rest of the group, and the contribution that the associated enterprises make to that value creation*”.
[31] See Olbert/Spengel, *supra* n. 22.

market jurisdiction – including consumer-related data – may autonomously represent a value driver that has to be remunerated in the hands of the local enterprise. Since technological developments affect to a certain degree almost all businesses, when identifying these new value-creating drivers the TPG should ensure equality at an international and cross-sector level. Thus, on the one hand, it should fit with pure digital business models and, on the other hand, it should also apply to non-pure digital enterprises, regardless their level of digitalization.

Second, if future works converge on the need to assess, for transfer pricing purposes, the value created by the market jurisdiction in digital businesses, a clear guidance should also be provided on whether and how to apply such principle to traditional business models. This argument is particularly significant considering that some countries – e.g. Brazil, Russia, India, China and South Africa ("BRICS") – in the last years have consistently argued that, also with reference to traditional business models, the market jurisdiction should have the right to tax at least part of the income of the profits of a MNE based on the consideration that the demand side creates value.

Third, the new guidance should guarantee the same treatment to both enterprises operating in a country with local subsidiaries and companies operating with local PEs (both traditional and Digital PEs). Under this perspective, an update of the AOA would be strongly recommended in order to clarify how the new value-drivers identified for transfer pricing purposes should be taken into account when attributing profits to PEs.[32]

Finally, any shaping of the income tax regime applicable to the digital economy should be construed so as to avoid additional and excessively burdensome compliance requirements and also to avoid changes in the corporate structure, which would not be otherwise required in order to

[32] Indeed, as indicated in the OECD 2010 Report on the Attribution of Profits to Permanent Establishments (paras. 54 and 55), "*[o]ne issue in applying this approach is that for the purposes of Article 7, it is necessary to postulate the PE as a hypothetical enterprise that is separate from the enterprise of which it is a PE, whereas in an Article 9 case the enterprises being examined are actually legally separate. To reflect this issue, the authorised OECD approach is to apply the guidance given in the Guidelines not directly but by analogy*".

conduct the business operations in the source State. These issues come to light if one considers the possible expansion of the PE definition which would require MNEs to comply with separate burdensome additional reporting and other compliance requirements and formalities, which would go beyond taxation and include company law and accounting (e.g. creation of a branch, appointment of a legal representative of the branch, etc.). These additional compliance requirements would also trigger a proliferation of the audit activities to be conducted by the Tax Authorities and decrease the level of tax transparency, as a consequence of the fragmentation of the tax compliance procedures among different legal entities (local subsidiaries and foreign companies having PEs in the same country).

A possible solution to avoid these issues would be to shape the taxation of the digital economy through a revision of the TP rules that, as far as possible, allowed an increase in the taxing rights of the market States specifically for digitalised operators, without requiring an expansion of the PE concept.[33]

Should the shaping of the taxation of the digital economy include also the expansion of the PE concept, the new rules should provide for an election for MNEs to either (i) have the local subsidiaries to comply with the tax obligations of the PEs situated in their territories and so to determine the PE taxable income and make the connected tax payments without requiring the non-resident company to meet separate tax formalities, or (ii) attribute to the local subsidiaries the taxable income connected to the PEs, provided that the activities of the PEs and those of the local subsidiaries

[33] This path seems to have been already undertaken by the TPG. For instance, the new definition of marketing intangible includes "*customer data that is used or aids in marketing and selling goods or services to customers*". This amendment to the definition of marketing intangibles can be read in conjunction with the "*BEPS Discussion Draft on the use of profit splits in the context of global value chains*" published in 2014, where the OECD called for comments on the application of the profit split method in a case involving a multisided and integrated digital economy business model. In an example included in the discussion draft, the OECD seems to qualify as value-adding functions the activities carried out by the local subsidiary consisting in the collection and processing of data, the provision of suggestions on the development of the relevant algorithms and technologies, and their adaptation to local market features. This approach suggests that these functions performed by the local subsidiary should not be regarded as mere routine functions.

constitute complementary functions that are part of a cohesive business operation. Such a possibility should extend to the PEs income resulting from tax audits. This solution would reduce the administrative complexities connected to the attribution of profits to PEs, preserving, at the same time, the taxing rights of the source States. In addition, it would enhance consistency with the new OECD approach to the fragmentation of business activities between closely related parties. Indeed, as new Article 5(4.1) of the 2017 OECD Draft MTC entails that the presence of a local subsidiary, whose activities are complementary to those carried out in the territory of the State by non-resident companies of the same MNE, makes the latter activities lose their intrinsic character of auxiliary activities (if taken in isolation), it appears reasonable that the taxation of the income stemming from the latter activities may accrue and be levied at the level of the local subsidiary. The shifting of tax compliance on a different taxpayer would be, under a certain perspective, conceptually similar to the reverse charge mechanism which has been experienced in the VAT context, whereby tax obligations by non-resident taxpayers are shifted to their counterparts in the source State.

A last comment regards the way in which some States currently apply the TPG to intercompany arrangements concerning the development of intangibles to be used in the digital business. It is our opinion that a stricter application of the existing TP principles,[34] especially in the case of cost contribution arrangements for financing key research and development activities, would ensure most MNE profits not to escape taxation, as they would be taxed in the countries where valuable intangibles are developed and to which those profits actually belong, rather than being diverted to untaxed (or low taxed) holding companies.

3. Question C.2

The OECD document requests for input on work regarding the tax challenges of the digitalized economy considering experience from the

[34] In particular, we refer to the work done within the framework of the BEPS package on the Revisions to Chapter VIII of the Transfer Pricing Guidelines on CCA and on the hard-to-value intangibles.

implementation of collection models (e.g. compliance, impact on business operations) and some examples of best practice. This document highlights that a growing number of countries have implemented the new guidelines and mechanism relating to VAT/ GST ("Guidelines") to level the playing field between domestic and foreign suppliers of intangibles and services. Work addressing the tax challenges of the digitalized economy should explore the practical impact of developments and provide for clear guidance with reference to following matters.

3.1 VAT taxable person vs private person

The work done within the framework of the BEPS package and Guidelines argues that jurisdictions may consider adopting a requirement for suppliers to provide customers VAT registration numbers, business tax identification numbers, or other such indicia (e.g. information available in commercial registers) to establish their customers' status.

That said, the digitalized economy raises sensitive questions regarding the VAT status of the players in the market. In particular, in many jurisdictions, and in particular under harmonized VAT EU legislation, a person is considered a VAT taxable person when it exploits tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis. This principle applies irrespectively from the turnover generated by the relevant person and this raises several challenges in a variety of sectors of the digital economy (such as sharing economy, collaborative production, personal data collection, app stores and the like). In fact, application of current rules could give origin to an incredibly high number of VAT taxable persons with a low turnover.

In this context, VAT systems should be adapted to develop more substantive criteria to identify taxable persons, such as providing with the introduction of generally accepted thresholds to exclude small players from the scope of application of VAT. This would also be beneficial for Tax Authorities since they will avoid issues of characterization of taxable persons and, in particular, all the problems connected to the need to control, assess and collect VAT in the hands of an extremely high number of small taxpayers.

3.2 Permanent establishment

The work done with respect to PE status in the framework of the BEPS package was aimed to ensure that taxes are collected where essential business activities of an enterprise are carried on and preventing the artificial avoidance of PE status.

Such analysis has a lower impact in the VAT/GST field since consumption taxes are normally designed in accordance with the destination principle, that ensures that final collection of tax occurs in the place where consumption takes place, that normally coincides in the market where goods or services are supplied.

In short, the assessment of a PE could also not amount to a loss of the tax revenue of a given State since VAT has been already collected at the last stage of the distribution chain: this would still be true in all cases in which the PE is deemed to be the recipient of the services (unless that PE suffers a limitation of its right of deduction input VAT/GST).

In all such cases, in the digital economy a dual approach should be applied in order to make sure that no consequences arise if VAT has been applied in the country of destination. In any event, detailed guidelines concerning requirements needed to set up a PE in the digitalized economy for VAT purposes would be helpful. Specifically, these guidelines should take into account the impact of business developments connected to digitalized economy such as automation processes and mobile warehouses.

3.3 High volume of low-value imports of physical goods

The digital economy creates challenges for VAT systems, particularly where goods, services and intangibles are acquired by private consumers from suppliers abroad. Specifically, e-commerce and online purchases of physical goods made from suppliers in another jurisdiction imply high volumes of low-value transactions with significant administrative burden and marginal revenues for Tax Administrations.

That said, the EU allowed Member States to “exempt” imports of goods of a negligible value. However, the significant and rapid growth in the volume of low-value imports of physical goods on which VAT is not collected decreased VAT revenues and generated growing unfair competitive pressures on domestic retailers.

While we would agree in general with collection models suggested in the framework of the BEPS package and Guidelines, in our opinion, the impact of different models in order to increase benefits of harmonization should be more deeply explored.

Such an approach should also consider some model as an example of best practice. To this extent, it is our opinion that EU developments should be taken into account. Indeed, these are focused on the positive experience of VAT One Stop Shop and move forward through the registration of sellers from outside the EU giving them the chance to designate an EU intermediary (such as a market place, courier, postal operator or customs agent) to deal with VAT-related compliance.

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Please feel free to contact us at TP@maisto.it with any questions or comments concerning this letter.

Sincerely yours,

Maisto e Associati