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FEATURED Q&A

Should Digital Businesses Expect New Tax Policies?



Digital businesses that offer goods and services but lack a physical presence have sparked debates over taxation. // File Photo: pxhere.com.

Q Global consensus remains elusive on whether and how to tax businesses with a substantial digital footprint but no physical presence in a jurisdiction, the OECD said in a report last year. New business models have created what many countries see as a mismatch between taxation and value creation for digital activities, leading to a number of digital tax proposals that have made headlines. What issues are driving the debate over taxation in the digital economy? Have Latin American governments started to take the right steps? What proposals and practices from other parts of the world might best inform Latin America's plans for a new era of digital taxation?

A Juan de la Cruz Higuera Ornelas, senior associate at JCH Abogados and professor in international tax law at Universidad Panamericana in Mexico: "Media outlets' and politicians' statements that digital companies are not paying their 'fair share of taxes' in places where there is economic activity and value is created are the main driver of the taxation debate. However, these concepts are undefined and, in any case, the problem is not limited to digital businesses. Some Latin American countries such as Chile, Argentina, Uruguay and Colombia, have proposed or implemented unilateral reforms to tax the digital economy, either directly or through indirect taxes. However, these uncoordinated attempts to ring-fence digital activities potentially create uncertainty, double or multiple taxation, unfairness and serious administrative burdens. Besides, frequent alterations to the legal framework generate a hostile environment for investment. Following the BEPS Project, the OECD recently published a public consultation document that

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TODAY'S NEWS

POLITICAL

Russia Defends Sending Troops to Venezuela

Russia's government said its troops have every right to be in Venezuela, where some 100 Russian military personnel were reportedly sent last weekend. U.S. Secretary of State Mike Pompeo condemned the move.

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BUSINESS

Roche to Halt Drug Production in Rio de Janeiro

The Swiss pharmaceutical company said it would stop producing medicines at its plant in Rio de Janeiro. The company said the factory is not financially sustainable.

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ECONOMIC

Argentine Peso Hits Record Low Against Dollar

The Argentine currency fell 1.34 percent to 42.65 per dollar. Argentine President Mauricio Macri's government has struggled with a currency crisis and high inflation.

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Macri // File Photo: Argentine Government.

POLITICAL NEWS

Russian Government Defends Sending Troops to Venezuela

Russia's government late on Tuesday defended its decision to send troops to Venezuela last weekend, saying the military personnel have the right to be in the South American country, CBS News and the Associated Press reported. In a statement, Maria Zakharova, a spokeswoman for Russia's foreign ministry, said Russia had sent the troops "in strict accordance" with Venezuela's Constitution and a bilateral accord on military cooperation. While she did not specify how many troops were sent to support the government of President Nicolás



Zakharova // File Photo: Russian Government.

Maduro, sources told CBS News that estimates from U.S. intelligence agencies suggest that some 100 people were aboard Russian planes that landed in Venezuela last weekend. Russia has previously sent military personnel, technicians and advisors to the Andean nation, but 100 personnel was seen as a larger number than usual. The arrival of Russian troops, who were reportedly accompanied by intelligence officers, led U.S. Secretary of State Mike Pompeo to warn his Russian counterpart, Sergey Lavrov, in a phone call "that the United States and regional countries will not stand idly by as Russia exacerbates tensions in Venezuela." Pompeo added, "The continued insertion of Russian military personnel to support the illegitimate regime of Nicolás Maduro in Venezuela risks prolonging the suffering of the Venezuelan people who overwhelmingly support interim President Juan Guaidó,"

according to the State Department. Lavrov responded that he had told Pompeo "that Washington's attempts to organize a coup d'état in Venezuela and threats to its legitimate government are a violation of the U.N. Charter and blatant interference in the domestic affairs of a sovereign state." Meantime, Venezuela's government on Tuesday told workers to stay home from work and children not to attend school amid a blackout that affected Caracas and many other parts of the country, Reuters reported. The widespread power outage began Monday night and stretched into Tuesday. Power had been restored to many parts of Caracas by noon on Tuesday, but few pedestrians were seen on the capital's streets, and businesses remained shut down. Cities including Maracaibo and Barquisimeto remained without power on Tuesday. Venezuela's oil export terminal of José and the four upgraders that prepare the country's crude oil for export were shut down by the blackout, Reuters reported, citing oil industry workers. The blackout followed another four-hour power outage that affected much of the country on Monday afternoon. Another massive power outage that began March 7 left many areas in the dark for days. That blackout led to looting, including in Zulia State, where hundreds of businesses were destroyed. On Monday, Venezuelan Information Minister Jorge Rodríguez blamed the outages on an attack on the Guri hydroelectric dam, which affected three transmission lines. Critics of Maduro's government say the outages have been the result of corruption as well as a lack of maintenance and underinvestment in the country's electrical grid.

BUSINESS NEWS

Roche to Halt Drug Production at Rio de Janeiro Plant

Swiss pharmaceutical company Roche on Tuesday said it would halt production of medicines at its Rio de Janeiro unit in Brazil, the Associated Press reported. Roche said it would stop

NEWS BRIEFS

Argentine Peso Hits Record Low Against Dollar

The Argentine peso on Tuesday hit a record low against the U.S. dollar amid worries about the country's high rate of inflation and political uncertainty ahead of the October presidential election. The peso weakened 1.34 percent to 42.65 per dollar. Over the past year, inflation has surpassed 50 percent in the South American nation. Last year, President Mauricio Macri negotiated a \$57 billion loan agreement with the International Monetary Fund.

Google to Announce Deal With Cuba to Improve Connectivity

Google is planning to announce a deal with Cuban telecommunications monopoly Etecsa on Thursday to explore ways to improve the island's connectivity, Reuters reported, citing a source. An exception to the decades-old U.S. trade embargo on Cuba allows U.S. telecommunications companies to provide services to the Caribbean nation. Cuban President Miguel Díaz-Canel has made connectivity a priority, introducing mobile Internet in December, though connection remains slow and expensive. Díaz-Canel met with former Google CEO Eric Schmidt twice last year. [Editor's note: See related [Q&A](#) in the Sept. 11 issue of the Advisor.]

Chile 'Very Interested' in China's Belt and Road Initiative: Piñera

Chile is "very interested" in China's Belt and Road Initiative, Chilean President Sebastián Piñera said Tuesday during a meeting with foreign journalists in Santiago, Chinese state-run news agency Xinhua reported. Piñera said he would attend the second Belt and Road Forum, which is scheduled for April in Beijing, adding that he would "participate in everything that is beneficial for Chile."

producing within the next five years, adding that the factory is not financially sustainable. Medicines in Brazil will be imported once the manufacturing unit is shut down, but the company will continue to operate in its administrative offices in São Paulo and Goiás, Folha de S.Paulo reported. The Rio facility produces drugs such as anti-anxiety medicines Lexotan and Valium, tranquilizer Rivotril and sedative Dormonid, the AP reported. Roche employs roughly 1,200 people in Brazil, including 440 at the factory in Rio. The company said its layoffs would begin next year. Roche is the latest international firm to announce it is shutting down at least parts of its business in Brazil, whose economy has seen sluggish growth in recent years after its worst recession on record from 2014 to 2017. On Tuesday, airline Avianca Brasil, which had filed for bankruptcy last year, announced it was closing 21 of its routes in April and closing its offices in Rio's international airport. In February, carmaker Ford shuttered its truck plant outside São Paulo, and workers at a Volkswagen facility in the same city accepted cuts in their benefits to keep their jobs, the AP reported.

Petrobras Fines Bolivia for Failure to Deliver LNG

Brazilian state-run oil company Petrobras has fined Bolivia's state oil firm YPFB after it did not deliver the volumes of liquefied natural gas, or LNG, agreed to under a contract, a Petrobras

Petrobras did not reveal the amount of the fine but said it was "relevant."

executive said Tuesday, Reuters reported. Marcelo Cruz, the executive manager of gas and energy at the Brazilian company, did not reveal the value of the fine, citing confidentiality, but said it was a "relevant" figure. Bolivia,

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includes several proposals meant to tackle the challenges arising from the digitalization of the economy in a multilateral way, primarily expanding the taxing rights of user and market jurisdictions. Even though these new proposals have not been consensually approved, they effectively alter the allocation of taxing rights, changing the international tax framework that has been agreed upon for decades. Many consider this change inevitable, but the truth is that it will unquestionably create new winners and losers. Thus, Latin American governments should analyze the consequences of any of these proposals and their benefits, but not only in revenue terms. To achieve a permanent solution, if there really is a need for one, the problem must first be clearly defined."

A **Christiaan van der Valk, vice president of strategy at Sovos:** "There are three primary issues. One is neutrality. Tax authorities want to make sure cloud-based businesses are taxed the same as companies located in their jurisdictions. While local businesses pay local taxes and create jobs, cloud-based businesses can elude taxes. The second is tax evasion. The digital economy has made avoiding direct and indirect taxes easier for local and foreign businesses. The OECD has warned about a steady increase of companies evading local taxation. The final issue is compliance. Governments around the world recognize the digital economy threatens their tax revenues, but they also recognize it provides local businesses with growth opportunities. Traditional tax compliance can

which paid the fine last week, during 2018 failed to deliver an average of 26 million cubic meters per day of natural gas through the Bolivia-Brazil pipeline, the amount the two countries had agreed to. Instead, YPFB delivered roughly 22.6 million cubic meters per day, according to official figures. Cruz said that a reduction in exploratory investments in recent years led to a drop in Bolivia's production. The Petrobras

be a burden for businesses that do not have a physical presence in other countries, so governments are changing tax compliance legislation to make it more digital-friendly. Many of the largest Latin American countries (Mexico, Brazil, Chile, Colombia, Peru) have enacted measures directed at digitizing tax

“ Traditional tax compliance can be a burden for businesses that do not have a physical presence in other countries... ”

— Christiaan van der Valk

for all businesses, local or foreign. Filing paper returns and reports is largely no longer required. In addition, a number of countries offer simplified returns directed at making compliance more manageable for foreign suppliers. Finally, in regard to the issue of tax evasion and crime, countries across the region have been deploying real-time e-invoicing compliance mandates that provide regulators with a complete picture of what's happening in the national economy. However, these obligations have not yet been extended to foreign businesses."

A **Ángel Melguizo, vice president of external and regulatory affairs at DirecTV Latin America – AT&T:** "Because aspects of increasingly internationalized and digitalized economies present challenges to existing

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executive added that the fine sought to offset possible losses for Petrobras, which had to resort to other sources for the missing LNG. "At the moment it does not deliver the gas, I end up having to go to the market and buy LNG. On average, LNG is more expensive than Bolivian gas," Cruz told Reuters. "The spirit of the fine is this: to compensate for any losses that may occur."

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business tax regimes, policymakers in Latin America and around the world are investigating whether these tax rules remain appropriate for the 21st century economy. However, to avoid inconsistent or non-neutral taxation across firms and countries—or rules that are excessively difficult to administer—any revised tax designs should be developed via broad-based multi-stakeholder processes, such as the OECD's current public consultation on the tax challenges of digitalization."

A **Guillermo O. Teijeiro, partner at Teijeiro & Ballone in Buenos Aires:** "While the income tax treatment of digital business models remains elusive for a variety of reasons—despite the OECD's efforts to find a harmonized and systematic solution on a worldwide basis through the work of the TFDE and the participation of BEPS inclusive framework countries—draconic, stone-age levy proposals in the form of digital service taxes spread among E.U. members. The question is: why are they going in this direction instead of using the income tax system that provides in itself measures to avoid multiple layers of taxation in the international context? There are, of course, technical difficulties, but beyond that, there is the fundamental issue of jurisdictional distribution of taxing powers and inter-nation equity. Why not adopt, for example, the concept of digital presence or significant economic presence? Central European countries have been carefully hiding the simple reason,

exposed in the OECD document that was opened for comments in 2019: if that were the case, there would be no reason to treat highly digitalized businesses differently from more traditional economy manifestations. So, that substantial economic presence would produce a revolution in international

“**Latin America is not taking a homogeneous position.**”
— Guillermo O. Teijeiro

income tax jurisdiction, in favor of market states, and break the current international jurisdictional equilibrium. There's much hypocrisy behind this discussion. Unless we divest ourselves of it and a sort of prevailing fiscal chauvinism, it will be difficult to find a lasting solution to taxation in the digital economy. Latin America is not taking a homogeneous position. Some economies are waiting for a final consensus on direct taxation at the OECD-level (Argentina, Brazil, Chile, Mexico). Others, such as Uruguay and Peru, have taken positions somewhat misaligned with the OECD trend. With regard to indirect taxation, Argentina, Colombia and Brazil have introduced new rules in line with OECD recommendations. Subnational taxation of digital businesses is another area to monitor in Argentina, Brazil and Mexico, among others."

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