



CULLEN

INTERNATIONAL

Taxation of digital platforms in Latin America

REGU session: digital inclusion, taxation and challenges in the digital ecosystem

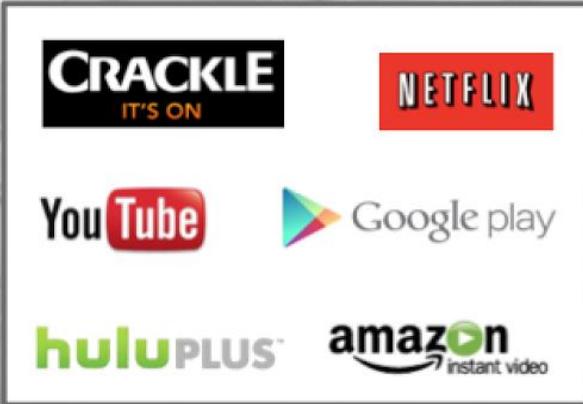
6 December 2018

Carolina Limbatto

The OTTs

Over the top service providers

TV and Video



Music



Communication



Productivity



Technology



Community

Platforms, OTT

ITU recommendation

“An over-the-top (OTT) is an application accessed and delivered over the public Internet that may be a direct technical / functional substitute for traditional international telecommunications services”

- ease international collaboration
- foster innovation and investment
- encourage mutual cooperation between OTTs and network operators
- consider the fundamental differences between traditional international telecommunications services and OTTs: incl. the cross-border and global nature of OTTs, low barriers to entry for OTTs, and integration of the markets amongst other factors

Regulatory imbalances

OTTs vs traditional carriers

Issue	Operators	OTTs
Licensing	General authorisation (or individual licence)	Often not subject to specific licensing
Accessible market	Only within the regulated jurisdiction	Any user, anywhere
Taxes	Subject to local and national taxes	Often low cost locations and tax heavens
QoS regulations	Yes	No
Interconnection & interoperability	Yes	No
Consumer protection	Horizontal & sector specific	Mainly horizontal

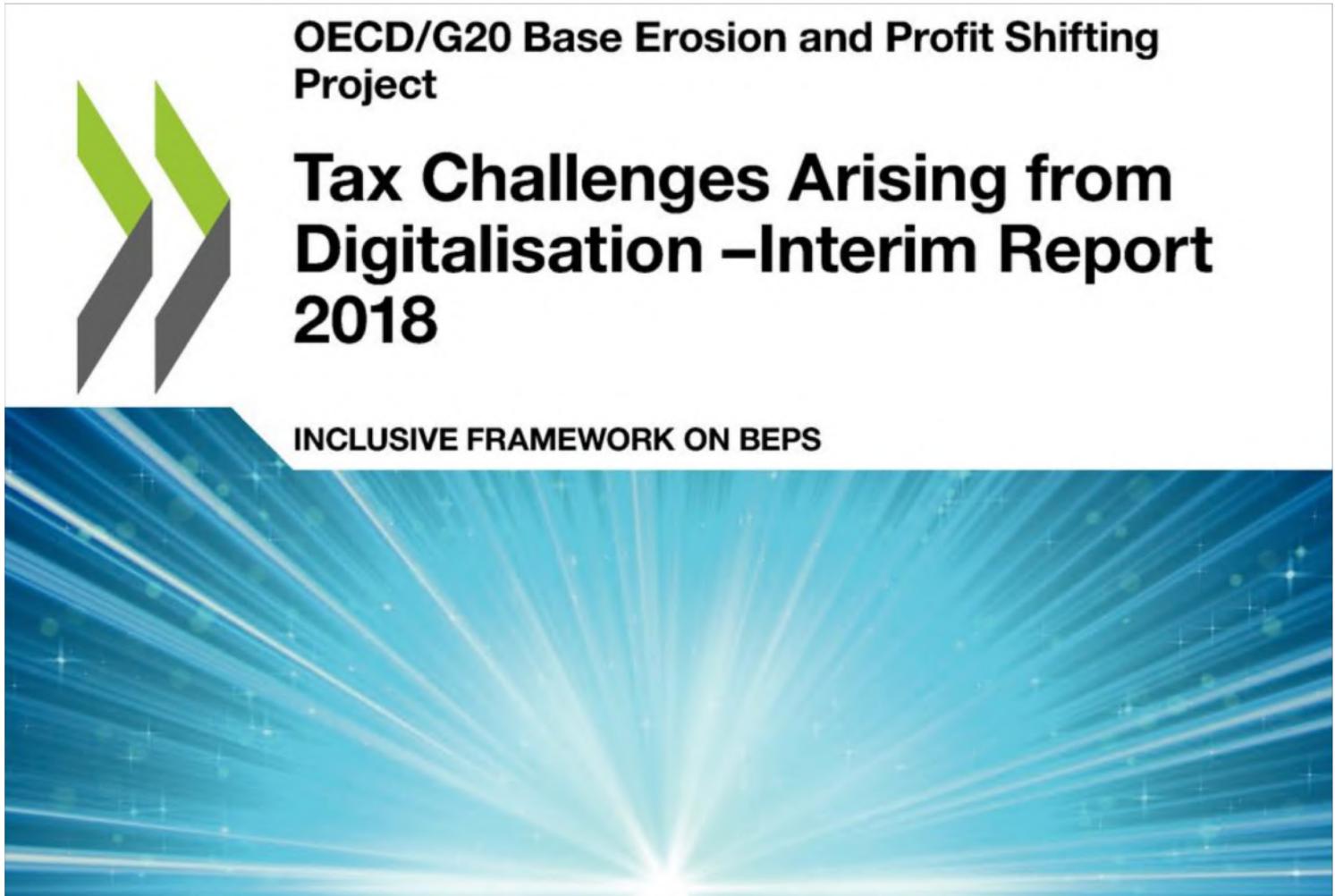
Taxing digital platforms

Questions

- National and foreign suppliers?
- VAT, income tax? Specific taxes?
- Collection mechanism: who is liable?
- Use of local payment intermediaries
- What to do in case on non-compliance?

OECD

Rule: jurisdiction of consumption



Tax reform Argentina

Fi Taxation reform in Argentina focuses on digital services

20 Nov. 2017 - Carolina Limbatto



VAT rules Argentina

Tax applicable	VAT, 21%
Start date	27 June 2018
Definition of digital services taxed	Services carried out through the internet, in general automated and requiring minimal human intervention. The definition is regardless of the device used to view, download or use the service or content.
Criteria to apply tax	<p>When the service is used or provided in Argentina:</p> <ul style="list-style-type: none"> • the digital services are provided to Argentinian IP addresses or mobile numbers; • the invoice address is in Argentina; or • the payment is made through an Argentinian bank account or credit card.
Exemptions	Download of and access to e-books
Responsible for the tax	Service/content provider
Liability for the collection and remittance	<p>Local payment intermediaries will act as perception and liquidation agents before tax authority.</p> <p>Including local credit cards, banks and payment aggregators.</p> <p>If there are no local intermediaries, the non-resident provider is liable.</p>
Collection mechanism	Tax authority publishes list of providers under tax scope. Payment intermediaries calculate, retain and pay the tax.

Tax reforms Colombia

Fi Tax reform in Colombia: new taxes for mobile services and foreign OTTs

24 Jan. 2017 - Carolina Limbatto





INTERNATIONAL

VAT rules Colombia

Tax applicable	VAT, 19%
Start date	1 July 2018
Definition of digital services taxed	<ul style="list-style-type: none"> • provision of online audiovisual services; • app stores; and • provision of online advertising services.
Criteria to apply tax	<p>When the service is used or provided in Colombia. The payment is made through a Colombian bank account or credit card.</p> <p>Besides, when the service is provided to a Colombian IP address or mobile number, the digital provider must request payment through a Colombian credit card or bank account.</p>
Exemptions	Data centres, website hosting, cloud computing, software licences, e-learning and e-books.
Responsible for the tax	Service/content provider
Liability for the collection and remittance	Service/content providers are liable for collection and remittance.
Collection mechanism	<p>Three systems:</p> <ul style="list-style-type: none"> • if local user is registered as a VAT responsible agent, they retain the VAT; • service providers to register before the Colombian tax authority (Dian) and pay the taxes; • Colombian payment intermediaries to withhold tax and pay it to Dian (system not implemented yet)

VAT and Income tax Uruguay

Tax applicable	VAT, 22% and corporate income tax (12% for foreign platforms)
Start date	January 2018 (payment from December 2018)
Definition of digital services taxed	<ul style="list-style-type: none"> • Type A: those who carry out international activities such as the production, distribution and intermediation of cinematographic films and other audiovisual transmissions - Netflix or Spotify – • Type B: those who mediate and mediate through computer means -Airbnb or Uber.
Criteria to apply tax	<ul style="list-style-type: none"> • Type A: are considered 100% Uruguayan and pay tax for all the income • Type B: pay for 50% of income if one part is located abroad. If the platform is located abroad pay 12% of non-resident income tax (IRNR) • Payment can be done in US\$ and payments per quarter (instead of \$ and monthly)
Responsible for the tax	Service/content provider. Need to register before Tax authority (DGI)
Liability for the collection and remittance	Service/content providers are liable for collection and remittance.
Collection mechanism	<ul style="list-style-type: none"> • Platforms to declare tax • DGI to cross check declarations with credit cards information • VAT is included in service invoice when applicable

Regional taxes

Brazil

Fi Members of São Paulo city council approve bill imposing local tax on streaming services

10 Nov. 2017 - Ana Carolina da Motta

On October 5, 2017, the Brazilian National Council of Treasury ([Confaz](#)) decided to allow states to tax 'downloadable digital goods and services'. The decision broadened the scope of the ICMS tax, allowing states to collect sales tax in respect of the downloading of software and other digital goods and services, such as games and apps ([Flash](#)).

ISS application

São Paulo

Tax applicable	Local VAT (ISS), 2.9%
Start date	18 November 2018
Definition of digital service taxed	<p>There is no single definition of digital service. Specific definitions include:</p> <ul style="list-style-type: none"> • Processing and storage of data, text, image, video, websites, applications and information systems • Creating software and applications (including electronic games) for PCs, tables and smartphones • Offering content via online streaming (video, audio, text, image)
Criteria to apply tax	<p>Service provider or the end-user must be in the city</p> <p>No further details available</p>
Exemptions	<ul style="list-style-type: none"> • Books, newspapers and journals • Content distributed by pay TV service providers
Responsible for the tax	Service/content provider, directly or indirectly.
Liability for collection and remittance	<p>Service/content provider, directly or indirectly.</p> <p>No further details available</p>
Collection mechanism	Service providers (or who is liable for collection) must calculate and collect the tax

ICMS application Brazilian states

Tax applicable	State VAT (ICMS), 5%
Start date	Varies according to the state, e.g. April 2018 in the Sao Paulo state
Definition of digital service taxed	Tax applicable to any transactions involving download or streaming of digital goods
Criteria to apply tax	Acquisition or importing by end-users using website or online platform that offers or makes digital goods and services available via streaming/download where the end-user resides.
Exemptions	None
Responsible for the tax	Service provider, directly or indirectly
Liability for the collection and remittance	Each state can establish who is liable for collection, including: <ul style="list-style-type: none"> • the service provider • local payment intermediaries, including credit and/or debit card companies • the person who bought digital goods or services, if the service provider or local payment intermediary did not register with tax authorities
Collection mechanism	Service providers (or who is liable for collection) must calculate and collect the tax
Comment	The Brazilian IT association filed a lawsuit claiming that only cities can impose this tax. States imposing this tax would violate the Brazilian Constitution. There is no timing for a decision by the Supreme Court. In a separate lawsuit, a preliminary ruling issued by the Sao Paulo state court suspended this tax in June 2018.

GST, PST, HST Canada

Tax applicable	General sales tax (GST) 5% and provincial sale tax (PST), or harmonised sale tax (HST), which vary by province (from a minimum total 5% to a maximum of 15%)
Start date	January 2018 (payment from December 2018)
Definition of digital services taxed	<ul style="list-style-type: none"> • sales of "intangible personal property" to Canadian residents (this includes for example software or subscription to a website). • e-commerce services (e.g. computer technical support services, online translations, online advertising services) provided to Canadian residents. • telecommunications services provided to Canadian residents (e.g. service supply with predominant purpose to provide for the emission, transmission or reception of signs, signals, writings, images or sounds or intelligence of any nature through a telecommunications network).
Criteria to apply tax	He tax depend on the type of service, the state, the origin of the provider and wether its provided to an individual or company
Exemptions	Exemptions apply for certain types of goods and services.
Responsible for the tax	Service/content provider.
Liability for the collection and remittance	Foreign-owned digital service providers that are not producing their services in Canada (although selling to Canadian customers) are required to register for the GST/HST if total revenues from taxable supplies are over CAD 30,000 (US\$23,248)(CAD 50,000 (US\$38,747) for public service bodies) in a single calendar quarter or over four consecutive calendar quarters.

SCOTUS says US

(Slip Opinion)

OCTOBER TERM, 2017

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SOUTH DAKOTA *v.* WAYFAIR, INC., ET AL.

CERTIORARI TO THE SUPREME COURT OF SOUTH DAKOTA

No. 17–494. Argued April 17, 2018—Decided June 21, 2018

South Dakota, like many States, taxes the retail sales of goods and services in the State. Sellers are required to collect and remit the tax to the State, but if they do not then in-state consumers are responsible for paying a use tax at the same rate. Under *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U. S. 753, and *Quill Corp. v. North Dakota*, 504 U. S. 298, South Dakota may not require a busi-

sales will be taxed based on where their customers are located, irrespective of where they are physically located.

Local taxes US

At the local level. Local taxes imposed on OTT services are levied on consumers, just like for any other e-commerce or non e-commerce transaction.

- In July 2015, Chicago announced that it would impose a 9% tax rate on online streaming and cloud computing services. The tax was reportedly challenged by an ongoing lawsuit claiming that the city rules violated the Internet Tax Freedom Act
- In 2016, the Pennsylvania state expanded the 6% sales tax to cover digital downloads and subscription services.
- In 2016, Pasadena and other 45 cities in California were reportedly discussing to expand their sales tax to online services.

Announcements

Chile and Mexico

- Chile: “all digital platforms and e-commerce, regardless of establishment in the country, would pay a 10% VAT tax (details not available). Uber would be excluded from the tax since a specific bill is under discussion in Congress”
- Mexico: “Lo que se necesita es buscar el mecanismo para obtener la recaudación. El nuevo gobierno ya tiene propuestas y van a ser muy valiosas para su política fiscal. Insisto, no es crear un nuevo impuesto, ya que estas operaciones ya están gravadas en la ley, además de que no se apegarían en el discurso de López Obrador de no más impuestos”

Summing up

Different countries adopt different approaches

Depends a lot on the national laws and possibility to enforce taxation to foreign digital platforms

Some specific guidelines in OECD and European Union

What happens in case of non-compliance? Still no answer.



THANK YOU!

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