The Current Results and Legal Instruments of the Tax Environment affecting the Digital Economy in the European Tax Law*

Éva Erdős**

1. Introductory thoughts – antecedents

The present study primarily discusses and analyzes the results and instruments of tax harmonization for digital taxation, and the judgements of the Court of Justice of the European Union, taking into account the recent decision of the Tribunal in the APPLE case and another case: the Hungarian advertising tax fine related to the Google ruling. The activities of digital businesses and companies of the digital economy and commerce produce huge profits and revenues in the European market, but their taxation is neither easy nor fair due to the current tax rules, as the tax rules do not apply to dot.com companies operating online across virtual borders, and thus they were tailored to businesses with little or no physical presence. Proposals concerning taxation are currently based on several pillars, including the Commission's activities, the OECD BEPS Action Plan, the reform of the concept of location of premises, the EU Council's proposal for a temporary Digital Services Tax or a long-term corporate tax on significant digital presence.

The fast development and the spread of digitalism are necessary for technological progress, we can state that it has brought many innovations and joy into our lives, making our everyday lives easier, but the taxation of the digital economy is definitely one of the key issues in the tax harmonization and tax policy of the European Union and that of international organizations. The problem is very diverse, so reducing the the spread of digital tax avoidance techniques and aggressive tax planning is a key goal in the tax harmonization at both European international level. The fight against digital tax evasion is a multi-stage process, and tax harmonization has taken on a

* Kedves András, kedves Professzor Úr! Jelen tanulmány tiszteletem és a 34 éve tartó kollegális barátságunk jeléül íródott a 65. születésnapodra készülő Ünnepi Kötetbe. Mivel a digitalizmus témája mindig is közel állt Hozzád, ezért remélem szívesen fogadod jelen tanulmányomat a digitális gazdaságra ható adójogi eredmények aktuális állásáról. Kívánok sok szeretettel Boldog Születésnapot, sokáig tartó jó egészséget, további szakmai sikereket, és még további közös nemzetközi és hazai munkákat!

** Intézeti Tanszékvezető, egyetemi docens, Miskolci Egyetem Állam- és Jogtudományi Kar, Államtudományi Intézet, Pénzügyi Jogi Intézeti Tanszék.

larger scale, however, it also faces a number of obstacles. Direct taxation, including matters related to corporate tax, falls primarily in the competence of the Member States, which means that the institutions of the Union may intervene in the tax policy of the Member States solely on the basis of the principle of subsidiarity. The challenge is great, and there are many issues to be resolved: whether there is a need for separate taxation in the context of a single digital tax, or corporate taxes shall be harmonized and reformed at EU level, whether there shall be an unified, single European tax in digital taxation or the Member States shall solve this problem independently. Shall online companies of the digital economy be taxed in absence of a physical presence or only in the case of a simulated physical presence, but it is also a great question, where the boundary of fair competition and taxation is, when does the violation of fiscal autonomy happen when the EU bodies, namely the Commission, intervene?

An example of this shall be the – not finalized but long-awaited – decision of the Tribunal of the European Union in the Apple case in which the Commission was charged concerning tax allowance as state aid that was prohibited and incompatible with the internal market. In the case, Ireland and the subsidiaries of Apple seem to win at first but the decision is not final yet because the judgment can be challenged and appealed. The stakes are a huge budget shortfall of around 12,5 billion euros in the form of unpaid taxes from Apple subsidiaries, and the question of whether Apple has used a new kind of tax avoidance technique or whether its activities are not illegal; how far can Member States go about individual tax arrangements for digital companies, has the tax autonomy in Ireland been violated by the Commission's intervention? These questions are going to be examined in the light of the fact that the transparency, fair and equitable taxation and fair, non-discriminatory competition are the aims of tax regulation and harmonization.

2. Remarks on the margin of the judgement of the Tribunal of the European Union in the case Ireland and Apple's subsidiaries (others) contra European Commission[1] - the Apple case

Until this time, the practice of Ireland and the Apple group could be mentioned as examples of digital tax avoidance, since the subsidiaries of Apple in the city of Cork – as a result of the tax allowance – did not pay a sum of more than 13 billion euro to the Irish budget, based on a tax arrangement concluded individually.

In Ireland, foreign-owned companies were subject to preferential tax rules until 2015.[2] Ireland operated as a preferential tax regime, as foreign-owned companies had to pay only 2% tax instead of the normal 12.5% corporate tax rate, but they could also be exempted if the foreign subsidiary did not have an Irish owner or

[1] Decision of the General Court (15 July 2020). Ireland and others contra European Commission in cases no. T-778/16. and T-892/16. ECLI:EU:T:2020:338

[2] See for example the case of Double Irish Dutch Sandwich Tax Saving, https://www.offshorecompany.com/company/ireland-corp/tax-savings/, and https://www.investopedia.com/terms/d/double-irish-with-a-dutch-sandwich.asp (2019.01.14.)

manager. The 12.5% corporate tax rate was counted as low in Europe in 2015, even nowadays it is relatively low, however, the corporate tax allowance of 2% completely fulfills the critera of the practice of harmful tax competition.[3] Even though the Irish Minister of Finance abolished the loophole regarding tax allowance, due to the pressure of a possible infringement proceeding, the allowances could be used temporarily even until 2020 based on the acquired rights.[4]

In the case of the Apple group, Ireland granted Apple an unjustified tax advantage of nearly13 billion euros, but Member States cannot grant tax relief to selectively chosen companies, which is – according to the Commission – illegal under EU State aid rules. The Commission had been examining the Irish subsidiaries of the Apple group and the conditional tax agreement practice of the Irish government for several years. ,,According to the Commission, Ireland has given Apple an illegal tax allowance, so for many years it had paid significantly less tax than other businesses. As a result of this selective treatment, in 2003 Apple actually paid a corporate tax of 1% on the revenues coming from Europe, while this rate reduced to 0.005% by 2014."[5] Based on the facts of the case, the European Commission had been examining Apple since 2003, and after the detailed State aid examination of June 2014, the Commission concluded that the two advanced tax rulings of Ireland sigificantly and artificially reduced the tax paid by Apple since 1991. The Apple Sales International (ASI) and the Apple Operations Europe (AOE) are two corporations registered in Ireland that are the 100% property of the Apple group and are under the supervision of the parent company registered in the United States. Ireland therefore, through the conditional tax rules approved that two Ireland-based companies of the Apple group (ASI and AOE) determine the amount of taxable profit using a cost-sharing technique that does not correspond to economic realities: almost all of the sales profits of the two companies have been shown internally as profits of the „head office". According to the Commission's investigation, the „head offices" existed only on paper and could not have produced such a profit. The sum indicated as the profits of „central offices" were not taxable in none of the countries due to the specific Irish taxation rules which are not in force anymore. As a result of the allocation method approved by the conditional tax assessment, the effective corporate tax rate paid by Apple on Apple Sales International's profits decreased from just 1% in 2003 to 0.005% in 2014.[6]

---

[3] In a report adopted at the Strasbourg plenary session, the European Parliament described 7 EU countries, including Hungary and Ireland, as well as Malta, Cyprus, Belgium, the Netherlands and Luxembourg, operating as a tax haven and allowing aggressive tax planning. In: EP: Magyarország adóparadicsomszerűen működik,Adó online, 2019. március 26, Wolters Kluwer, https://ado.hu/ado/ep-magyarorszag-adoparadicsomszeruen-mukodik/ (2019.május 20.)

[4] https://www.investopedia.com/terms/d/double-irish-with-a-dutch-sandwich.asp (2018.05.05.) This technique was applied by Google, Amazon, Apple, Microsoft. See: CSABAI Róbert - dr.CZOBOLY Gergely: A digitális cégek adóztatásának kihívásai – nemzetközi válaszkísérletek, pp.84-87.

[5] Press Release of the European Commission: State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion, Brussels, 30 August 2016. http://europa.eu/rapid/press-release_IP-16-2923_hu.htm (2020.08.08.)

[6] Press Release of the European Commission: Ireland gave illegal tax benefits to Apple worth up to €13 billion, Brussels, 30 August 2016. http://europa.eu/rapid/press-release_IP-16-2923_hu.htm

The Commission has examined Apple's activities under competition law and found that this selective tax treatment granted to Apple by Ireland is unlawful under EU State Aid rules, as it confers a significant advantage on Apple over other companies that are subject to the same national tax rules. In its decision, the Commission classified the tax allowance as a discriminative and distortive State aid, thus obliging Ireland to impose Apple the reimbursement of the unpaid tax, given the fact that the tax agreements – conditional tax agreements – gave Ireland an economically unjustified competitive advantage. The decision of the European Commission[7] had also been challenged[8] by Ireland and Apple, as a result the Tribunal concluded a judgement in case T-778/16 on 15 July 2020 and in case T-892/16.

Ireland, ASI and AOE therefore did not accept the Commission's decision on finding the State aid unlawful and on the reimbursement of the loss of budget tax revenue and set out nine and fourteen[9] legal reasons for challenging the decision of the Commission in the proceeding at the Tribunal. They argue, inter alia, that the Commission infringed the principle of subsidiarity, exceeded its powers and interfered with the powers of the Member States, thus also infringing the principle of fiscal autonomy. According to one argument, direct taxation is a competence of the Member States in accordance with the principle of subsidiarity. In the other argument they presented that the preliminary conditional tax agreement was conlcuded by common accord between Ireland and the subsidiaries of Apple, thus the challenged decision of the Commission infringes the fundamental constitutional principles of the legal order of the EU, the division of competences set out in Articles 4 and 5 of TFEU. The Commission's argument concerning fiscal sovereignty was that "Member States enjoy fiscal sovereignty, but at the same time the tax measures adopted by the Member States must comply with EU State aid rules. Thus, Member States may not discriminate between economic operators in a similar situation through conditional tax agreements without leading to unlawful State aid which distorts the market. However, the contested tax agreements allowed ASI and AOE to reduce their taxable profits compared to the taxable profits of other corporate taxpayers in the general Irish corporate tax system, leading to unlawful and incompatible State aid."[10] The Tribunal agreed that it was the Commission's competence to examine of whether the tax measures of the Member States constituted State aid if the conditions for the classification of prohibited State aid were met. The Member States must exercise their powers in accordance with EU law and may only adopt tax measures which are not incompatible with the internal market. According to the EU Tribunal, since it is for the Commission to ensure compliance with Article 107 of TFEU, it cannot be claimed that the Commission exceeded its powers in assessing whether the Irish tax authorities granted ASI and

[7] COMMISSION DECISION (EU) 2017/1283 of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=OJ:L:2017:187:FULL&from=CS

[8] If a Member State decides to appeal against the Commission's decision, it will still have to reimburse the unlawful State aid, but may lock the amount recovered in a deposit account until the end of the EU court proceedings.

[9] There were two different issues in this joint case.

[10] Judgement T-778/16 és T-892/16. Paragraph 104.

AOE tax allowance by allowing them to reduce their taxable profits compared to the taxable profits of other corporate taxpayers in a similar situation.[11] Therefore, the Commission lawfully examined the prior tax agreements and it could not be regarded as a distraction of the competence of the Member State. However, by examining other legal foundations, the Tribunal declared that the Commission incorrectly pointed out that ASI and AOE had received unlawful State aid as a result of the tax arrangements approved by the Irish tax authorities. The Tribunal therefore annulled the contested decision of the Commission on the ground that it failed to provide sufficient evidence of the conditions for unlawful State aid in accordance with the conditions for unlawful and discriminatory State aid laid down in Article 107 (1) of TFEU.[12]

A significant factor in the Tribunal's decision was that the conditional tax agreement (advanced tax ruling) with Ireland was concluded voluntarily with the approval of the Irish tax authorities, thus, questioning these tax agreements and the intervention would already infringe fiscal autonomy, and the principle of subsidiarity could not be applied in this case. It can therefore be concluded that the conditional tax assessments cannot be regarded as aids that are incompatible with the internal market.

However, the issue has not yet been fully resolved, as the decision of the Tribunal could be subject to appeal and the Commission is likely to challenge it, presumably because the reimbursement of 13 billion euros to the Irish budget has been annulled by the Tribunal.[13]

On the one hand, the judgment may be worrying, because tax agreements cannot be discriminative nor selective, and in my view the exceptional treatment can be seen here. On the other hand, in this case the question is that, since it was not a specific legal provision covering all foreign taxpayers that allowed discrimination but a specific practice permitted by the Irish legal system and by other Member States,[14] namely, the institution of advanced tax ruling is a legal tax authority

[11] Judgement T-778/16 és T-892/16. Paragraph 109.

[12] General Court of the European Union PRESS RELEASE No 90/20 Luxembourg, 15 July 2020 Judgment in Cases T-778/16, Ireland v Commission, and T-892/16, Apple Sales International and Apple Operations Europe v Commission, The Tribunal of the European Union annuls the decision taken by the Commission regarding the Irish tax rulings in favour of Apple. https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-07/cp200090en.pdf (2020.07.20.)

[13] The European Commission will not give up the fight or stop examining the tax avoidance practices of multinationals. "The fight against aggressive tax planning is a marathon, not a sprint, and there are a lot of uphills in this marathon." The Commission will first assess the judgment and only then decide on the next step.
https://hu.euronews.com/2020/07/15/brusszel-ismet-nekifut-az-adoelkerules-elleni-harcnak
https://hu.euronews.com/2020/07/16/az-eu-folytatja-az-adoelkerules-elleni-harcot (2020.07.20.)

[14] In Hungary, the institution of advanced tax ruling is also allowed, the taxpayer may request a conditional tax assessment from the Minister responsible for tax policy, who requests the establishment of his (existing or future) tax liability or lack of tax liability on the basis of the information provided in the application. The Minister determines the taxpayer's tax liability or the absence thereof on the basis of the information contained in the application, thus concluding a tax agreement between the two parties. The application is accompanied by an administrative fee and the tax authority is bound by the terms of the agreement. Government regulation p.456/2017. (XII. 28.) Chapter VIII., 49. Article 102-108. See on advanced tax ruling: SZABÓ Ildikó: *Feltételes adómegállapítás hazai és nemzetközi szabályozása,*

agreement, therefore the subsidiaries of the Apple group actually exercised the legal option to pay less tax under the legal circumstances. This is a different situation than when the law directly regulates the payment of a much lower tax imposed – specifically – on foreign taxpayers, and a specific legal provision infringes EU law, thus the conditions of discriminative, selective and distortive State aids shall be analyzed and evaluated by the consideration of these circumstances. Should the European Court of Justice come to a different conclusion in a possible appeal by the Commission, the institution of advanced tax ruling would probably cease to exist, even though they also generate revenue for the budget, albeit to a lesser extent than the actually payable tax. The stakes are high and the question is how far the Member States could go in terms of tax relief and exemption: is sovereignty and fiscal autonomy or the tax payment of locally generated profit and therefore the prevention of tax evasion have more importance? It is also a question whether Apple's activities can be classified as tax evasion at all. The present judgment ruled on this point that the tax autonomy of Ireland would be infringed if Ireland was required to reimburse unpaid tax to Apple subsidiaries despite the tax agreement, and the Commission's decision to that effect was annulled by the Tribunal.

3. The Hungarian Google Case

Concerning tax harmonization, it can be seen that the decisions of the European Court of Justice play a significant role in the interpretation and the elimination of loopholes. It can be seen that guiding judgments of the European Court of Justice have also been issued in Hungarian cases, such as the judgement of the General Court regarding the Hungarian advertising tax[15] or the judgment in the Google case which found the advertising tax fine incompatible with EU law.[16] In the case T-20/17 of the General Court, the Hungarian advertising tax was not found incompatible with EU law either as regards to the progressivity of the tax or as regards to the possibility of reducting limited deficit, since it did not confer a selective competitive advantage on undertakings. The judgment in Case C-482/18 of 3 March 2020 in the case of Google stated, on the one hand, that it is not contrary to EU law for non-resident advertising providers established in another Member State to comply with the obligation to register in respect of their advertising tax, since it does not conflict the principle of freedom to provide services set out in Article 56 of TFEU. On the other hand, the judgment found that the system of penalties for advertising tax, that is to say, a provision which imposes fines under the law on advertising tax against service providers established in another Member State for failure to comply with their obligation to register, is contrary to EU law.[17]

Wolters Kluwer Kiadó, Budapest, 2017., pp.1-227.

[15] Judgment in Case T-20/17, Hungary v Commission, 27 June 2019, General Court 84/19. Press release: General Court annuls Commission decision declaring Hungarian advertising tax incompatible with EU state aid rules.

[16] Judgment in Case C-482/18 (3 March 2020) in the case of Google Ireland Limited v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vámigazgatósága. ECLI:EU:C:2020:141

[17] According to the facts of Case C-482-18. the company Google Ireland which engages in advertising

The decisions of the Court of Justice of the European Union can therefore be seen as an important device for European tax harmonization, and their legislative effect is indisputable.

4. The legal instruments of European tax harmonization in the fight against digital tax avoidance

Digital tax avoidance have brought new forms of which the main feature is that profits are relocated – typically by reducing the tax base – to a country where no tax is payable at all, or even if payable, it is very low.[18] Thus, taxation, if any, does not take place at the place of value creation, but with income or profit transfer techniques, they either end up in a tax haven or in a country with a very low tax rate. The online service does not require real physical presence, so it is difficult to appoint the location of business premises which determine the status of taxation and which is mostly missing in the country of the service. As for cross-border digital services, there is no actual physical presence that would be required for the status of taxation, therefore, taxation at the place of real value creation is problematic. One of the main reasons of the difficulties is that, although there is already a consensus on many things, on cooperation certainly, the actual decision still requires unanimity from the Member States, in the tax harmonization of the Council's directives. This is, however, difficult to achieve because the protection of tax autonomy and tax sovereignty overrides the noble goal of taking action against digital tax evasion.

The instruments of tax harmonization are basically reflected in the results. However, harmonization in the field of direct taxation is much more difficult for the reasons mentioned above, and the principle of subsidiarity is less applicable. At the same time, the Member States agree on the need for cooperation, in which European tax law sources, such as directives adopted by the Council, appear as a result and a tool, as well as soft law instruments such as the actions and proposals of the Commission, OECD documents or decisions of the Court of Justice of the European Union.

activities falling within the scope of Paragraph 2 (1) e) of Act XXII of 2014, failed to perform its obligation concerning registration. In view of this, first default fines in the amount of EUR 31,000 were imposed, and then, on several occasions, for several days, additional default fines were imposed, the total value of which exceeded HUF 1 billion. (approximately EUR 3.1 million). Google Ireland disputed the compatibility with EU law of the obligation to register for non-resident service providers and the system of penalties for failure to register. The Court of Justice of the European Union ruled that the different system of penalties for advertising tax and the rules governing the related procedure are contrary to the principle of freedom to provide services (Article 56 TFEU). The system of sanctions related to the advertising tax establishes a higher amount of default fines against foreign service providers than the law sets out for the noncompliance with the rules concerning registration of resident companies. This different treatment is disproportionate and could be regarded as a limitation of the freedom to provide services laid down in Article 56 of TFEU. Press Release of the Court of Justice of the European Union, Luxembourg, 3 March 2020. https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-03/cp200021hu.pdf

[18] See for example the Double Irish and Dutch Sandwitch technique applied by Google https://www.offshorecompany.com/company/ireland-corp/tax-savings/ https://www.investopedia.com/terms/d/double-irish-with-a-dutch-sandwich.asp (2019.01.14.)

In fact, the fight against tax evasion began very soon both at national and international level. The first relevant document in this area is related to the OECD's Action against Harmful Tax Competition[19] and the ECOFIN Council's *Code of Conduct on Business Taxation*[20] which – inter alia – occured even in 1998 against offshore regulation. Offshore locations as well as tax allowances for foreigners, could be considered harmful tax competition regulations and we can talk about harmful tax competition even when a country has significant revenues from income taxation but its general tax rates are lower than those of other countries. By applying the *stand still and roll back rules*, the documents required the elimination of rules that cause harmful tax competition, and that no new legislation about this could be introduced. We consider these documents significant because they acted against the most frequently used tax avoidance techniques, such as aggressive tax planning, double non-taxation, tax haven regulation, excessive and selective State subsidies, tax allowances, and harmful tax practices. These techniques are still common in digital tax avoidance today.

In 2013 and 2015, it was already a burning question to limit the new tax evasion techniques of dot.com companies in an increasingly fast-paced economy, that is why the OECD created the *BEPS Action Plan*.[21] The BEPS Action Plan identified 15 forms of tax avoidance behavior, of which the first one addresses the challenges of the taxation of the digital economy as a key objective in the fight against tax evasion. It defines the need to change the notion of location of premises and it also provides guidance for offshore companies.

The greatest achievement of BEPS is that it declares and promotes the principle of taxation at the place where value creation, that is to say, the principle that *profits shall be taxed where the economic activity that provides the profits is carried out and where the value (profit) is actually created!* The application of this principle could also be a tool of eliminating offshore activity in the future. The BEPS Action Plan also emphasizes cooperation in the fight against digital tax evasion. Its importance is that it was the first document to define harmful tax practices and measures to combat them.

The bodies of the European Union have also taken part in the fight against tax evasion, first with the Commission's ATAP package and then in 2016 with the adoption of the anti-avoidance directive was adopted by the Council. The above-mentioned principles are enshrined in the Council's anti-avoidance directive, *Directive ATAD (2016/1164/EU)*,[22] which also addresses double non-taxation. In order to prevent tax evasion, similarly to the BEPS report, it prescribes the revision of double taxation conventions and proposes the establishment of general tax

[19] OECD: Harmful Tax Competition an Emerging Global Issue OECD, Paris, 1998. https://www.oecd.org/tax/transparency/44430243.pdf (2018.09.01.)

[20] ECOFIN Council: *Code of Conduct on Business Taxation,* 1 December 1997, Celex No. 398Y0106 (01) (www.europa.eu.int) (2018.08.10.)

[21] BEPS Action Plan, OECD/G20 Base Erosion and Profit Shifting Project, Explanatory Statement, OECD 2015. p:9, http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf (2018.01.15.)

[22] COUNCIL DIRECTIVE (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. Official Journal of the European Union, 19.7.2016. L193/1.

evasion/avoidance rules and regulations.[23] The directive also shares the important principle that profits are taxed in the country where the value is created and the real, actual economic activity takes place.

The work has continued to strengthen through the use of tax harmonization devices. *The action of the Commission* is significant, it examines and presents proposals in order to introduce a Common Consolidated Corporate Tax Base but this proposal has not been adopted yet. It also takes action against tax measures which manifest in selective and discriminative State aids, by applying Article 107 of TFEU and competition law regulations. One of the Commission's device is to initiate infringement proceedings, and it is often enough to mention the possibility of initiating such proceedings in order to achieve that Member States eliminate the tax haven environment in their tax systems.[24] The other instrument is the detection and taking action against regulations that infringe EU law, in particular the issue of selective and incompatible State aids, for instance the Commission's action in the Apple case that is examined in this study.

The newest results of rulings of the *Court of Justice of the European Union* are also an important tool for tax harmonization, such as the judgment in the Apple case examined in point 2., that is to say, judgement in cases T-778/16 and T-892/16 of 15 July 2020 of the General Court in Ireland v European Commission. The greatest achievement in the fight against digital tax evasion would undoubtedly be the introduction of a *digital tax*, which could be an unified, single and harmonized European tax. We note that the slow pace of adoption of the achievements of tax harmonization has resulted in the fact that Member States introduced *national digital taxes* individually and independently.[25]

5. Crucial issues of digital taxation

Digital taxation would play the biggest role in tax harmonization in so far as the proposals were adopted. There are two models and pillars in digital taxation according to the *proposal* of the European Commission. One would be the introduction of a temporary Digital Services Tax,[26] the other proposal would be the indefinite digital tax included in the corporate tax, the Common Consolidated Corporate Tax Base.[27] The elaborated proposals prescribe the taxation of high-

[23] Such as the so-called GAAR (General Anti Abuse) Ruling – the introduction of a provision against general tax evasion in the legislation, see: ATAD Directive, Action Point 6.

[24] This happened with the abolition of the Irish rules concerning tax allowance for foreigners, Google and Apple – based on the already acquired rights – can benefit from it till the end of 2020.

[25] So did France, the Czech Republic and Austria. See: Elemzés a digitális gazdaság megadóztatásának aktuális kérdéseiről, a modern gazdasághoz illeszkedő új uniós adószabályokról, értékelő elemzés figyelemmel a terület ellenőrizhetőségére, Analysis of the State Audit Office, March 2020 https://www.asz.hu/storage/files/files/elemzesek/2020/a_digitalis_gazdasag_megadoztatasa_20200313.pdf?download=true

[26] 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, Brussels, 2017.9.21. COM(2017) 547 final

[27] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL: A

income digital companies.

The cornerstone of digital taxation is the question of *where to tax* and *what to tax.* For the question of what shall be taxed, the Commission proposes the following activities to be taxed in particular:[28]

- the *online retail model* where online platforms sell goods or establish relationships between buyers and sellers in exchange for a transaction or placement fee or commission. Such businesses include, for example, Amazon, Zalando and Alibaba.
- the *social media model* where network owners rely on advertising revenue generated through targeted marketing messages to consumers. This kind of business is, for example, Facebook.
- the *subscription model* in which platforms charge a fee for the continuous access to digital services (for instance, music or videos). Such businesses include, for example, Netflix and Spotify.
- the *collaborative platform model* /*social network* in which digital platforms combine spare capacity and demand, by encouraging the user side to make choices through mechanisms based on the reputation of the supply side, and allowing individuals to share the „access" instead of directly owning the devices. The platforms charge a fixed or variable fee for each transaction. Such companies include, for example, Airbnb, Uber.

The Commission sets out two solutions in its proposals:[29] on the one hand, a common reform of EU corporate tax rules for digital corporate activities would be one of the plans. The point of this reform is that Member States could tax profits made in their territory, even if the digital company does not have a physical presence. The condition for a significant digital presence is that the company shall meet one of the following criteria:

- the revenue exceeds a threshold of EUR 7 million per year in a Member State,
- there are more than 100,000 users in the Member State in the taxable year, for example online market or sharing economy platform
- more than 3,000 business contracts were concluded due to the digital service between the company and business users in the given tax year.

The other solution of the Commission would be the introduction of *an interim tax on digital activities*,[30] which would ensure that the Member State receives immediate revenue from activities that are not currently taxed. The tax would be applied to the revenue from activities in which users play a significant role in value creation, such

Fair and Efficient Tax System in the European Union for the Digital Single Market, Brussels, 2017.9.21. COM(2017) 547 final 3.

[28] 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, Brussels, 2017.9.21. COM(2017) 547 final 6.

[29] Fair taxation of the digital economy in: https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en (2019.10.14.) COM (2018) 147: Proposal for a COUNCIL DIRECTIVE laying down rules relating to the corporate taxation of a significant digital presence, 2018/0072

[30] „interim tax"

as revenue from the sale of online advertising space or the revenue from the sale of data provided by the user. It would apply to companies with a total annual (worldwide) turnover of € 750 million and/or a total revenue of € 50 million in the EU after digital services.[31] The tax rate would be uniformly 3%. This system would be applied as a temporary measure until the comprehensive reform and the built-in mechanisms to avoid double taxation will be implemented and executed. The proposals will be submitted to the Council for adoption after consultation with the European Parliament.

6. Concluding remarks

The best solution for the conflicts of the digital single market would be the Digital Services Tax. The pro and contra arguments of it were published after the conclusion of a research study by the State Audit Office (Hungary).[32]

1.1. Arguments (pro) in favour of the digital tax:[33]
- the corporate tax regulation in force is obsolete
- the revenues of public finances would become more sustainable in the long run
- the transparency and controllability of tax revenues will improve
- the possibilities for digital sector players to avoid tax evasion would be minimised
- there shall be a solution at EU level in order to avoid tax competition

1.2. Arguments (contra) against the digital tax:
- if the digital tax is a tax on revenue, companies pay the same level of tax, regardless of whether they have higher or lower profitability
- if the digital tax is not a tax on profit, double taxation may arise if the company's home country does not allow the tax paid abroad to be taken into account,
- tax competition from individual taxation can have harmful consequences.

We can agree with the argument that incorporating the Digital Services Tax into corporate tax as a tax harmonization tool of European tax law could be be a conflict-resolving solution.

Based on the above, summarizing the steps and tools of digital taxation, we can conclude that the strengthening role and activity of the Commission is visible, and there is among Member States that the taxation of digital companies in the digital space requires cooperation and great collaboration. The proposal of the Council on Digital Services Tax is already drafted, according to it, the taxation shall clearly be

[31] Fair taxation of the digital economy in: https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en (2019.01.14.)

[32] DR. PULAY Gyula – TESKI Norbert: A digitális gazdaság méltányos megadóztatásának kihívásai, Pénzügyi Szemle, online https://www.penzugyiszemle.hu/tanulmanyok-eloadasok/a-digitalis-gazdasag-meltanyos-megadoztatasanak-kihivasai (2020.09.09.)

[33] Both arguments are published by the State Audit Office, https://www.penzugyiszemle.hu/tanulmanyok-eloadasok/a-digitalis-gazdasag-meltanyos-megadoztatasanak-kihivasai

realized in the place and country of value creation. The solution of a common European tax has several advantages and the disadvantages and counter-arguments mentioned above could, in my opinion, be eliminated. In order to adopt the proposal, qualified majority voting would be required instead of unanimity, however, this shift also requires the unanimous consent and decision of the Member States. This, as many fear, might be a way of giving up sovereignty. In any case, the EU planned to introduce an independent digital tax in the EU by the end of 2020.

This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy.The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.