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Analysis of the OECD and the United Nations' Approaches to Developing an International Consensus on Reforming the Rules of Taxation of Digital Services

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Abstract: The article deals with the problems arising in connection with the taxation of the digital economy, using the example of the proposals of the OECD and the EU on the introduction of a tax on digital services, as well as unilateral measures of national states in the area of taxation of the digital economy (on the example of the French digital tax). The main question for the study is whether unilateral measures imposing taxes on digital services represent a suitable solution to the tax problems that arise in connection with digitalization. Based on the analysis of current legislation and jurisprudence, the author concludes that provisions of the Tax Code of the Russian Federation on VAT and income tax do not allow to fully collect taxes on income of corporate groups that use digital business models when providing services related to Russian users. At the same time, Russian organizations that conduct similar activities face full tax burden, which allows us to conclude that Russian companies are discriminated against foreign companies. In this regard, it is advisable to consider the issue of taxation in Russia as the part of the profits extracted by foreign companies in the Russian market.

Keywords: tax law; digital economy; corporate taxation; United Nations; OECD; BEPS Action Plan; digital services tax

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I. Introduction

The development of the digital economy is significantly changing tax regulation around the world. Global digitalization has been increasing over the last century, causing a shift in cross-border business operations and stimulating companies to explore international opportunities in order to exploit and to benefit from the comparative advantages globally (Olkhovik, Lyutova, and Juchnevicius, 2022, p. 73).

The solutions proposed so far include tax measures indicating the jurisdiction of the source or destination. The taxation options for digital companies discussed at the Organization for Economic Cooperation and Development (hereinafter — the OECD), the United Nations (hereinafter — the UN) and the European Union (hereinafter — the EU) levels include solutions aimed at adapting the existing international tax system to digital reality until a globally agreed solution is reached.

These models, and namely the United Nations Model Tax Convention between Developed and Developing Countries (hereinafter — the UN Model Tax Convention)[1] and the OECD Model Tax Convention on Income and on Capital (hereinafter — the OECD Model),[2] have had a profound influence on international treaty practice, and have significant common provisions. The similarities between these two leading models reflect the importance of achieving consistency where possible. On the other hand, there are some key differences in approaches. Such differences relate to the issue of how far one country or the other should forego, under a bilateral tax treaty, taxing rights which would be available to it under domestic law, with a view to avoiding double taxation and encouraging investment.

The OECD's work on tax issues arising in connection with the digitalization of the economy goes in two directions: Pillar 1 and Pillar 2. Pillar 1 deals with the reallocation of profit of multinational enterprises (MNEs) to market jurisdictions. Pillar 2 deals with a Global Minimum Tax. As of April 2022, 139 countries have joined a new two-pillar approach to reform international tax rules and ensure that multinational enterprises pay a fair share of tax wherever they operate.[3]

The United Nations, through its Committee of Experts on International Cooperation in Tax Matters, has approved recommended language for bilateral treaty rules to address taxing rights around income arising from Automated Digital Services (ADS). The new Article 12B and associated Commentary will form part of the 2021 version of the UN Model Tax Convention. It would have an impact only when two contracting states negotiate (or renegotiate and amend) a tax treaty between them. Therefore, it may have less widespread effect than any consensus to which countries agree in discussions being led by the

[1] UN: Model Double Taxation Convention between Developed and Developing Countries 2017, New York: UN, 2017.

[2] OECD: Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing, Paris, 2017.

[3] Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy — 8 October 2021. https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf.

OECD in conjunction with the G20 and the 139 Inclusive Framework member countries.[4]

II. The OECD/G20 Pillar 1 approach to the taxation of digital services

As mentioned above, Pillar 1 deals with the reallocation of profit of MNEs to market jurisdictions. Pillar 1 deals among others with taxation of digital services.

Pillar 1 provides for new profit allocation and nexus rules for MNEs that are in scope. These rules are embodied in "Amount A." In-scope companies are MNEs with global turnover above 20 billion euros and profitability above 10 % (i.e., profit before tax/revenue) calculated using an averaging mechanism with the turnover threshold to be reduced to 10 billion euros, contingent on successful implementation including of tax certainty on Amount A, with the relevant review beginning 7 years after the agreement comes into force, and the review being completed in no more than one year. Extractives and Regulated Financial Services are excluded.[5]

Amount A requires the development of sourcing rules and a revenue-based allocation key. Details of these rules are not contained in the statement although the statement confirms that jurisdictions from which € 1 million or more revenue are earned will receive an allocation. This is reduced to € 250,000 for jurisdictions with less than € 40 billion in GDP.

The scope aims at MNEs that perform in-scope activities, combined with a double revenue threshold that takes into account consolidated group revenues and the MNE's revenue earned outside its domestic market. The scope of Amount A is therefore based on two different elements, an activity test and a threshold test.[6]

[4] UN tax committee adopts Article 12B for model treaty rules on digital services. https://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/assets/pwc-un-tax-committee-adopts-article-12b.pdf.

[5] UN tax committee adopts Article 12B for model treaty rules on digital services. https://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/assets/pwc-un-tax-committee-adopts-article-12b.pdf.

[6] Pillar 1 p. 19.

Where the residual profits of an in-scope group are already taxed in a market jurisdiction, a marketing and distribution profits safe harbor will cap the residual profits allocated to the market jurisdiction through Amount A.

The statement confirms that jurisdictions will be subject to mandatory binding arbitration with only a limited number of less developed countries permitted to use an elective mechanism.

It also commits that no new Digital Services Taxes or other relevant similar measures will be enacted and imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the Multilateral Convention (MLC). The MLC will require all parties to remove all existing Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future.

There will be a new special purpose nexus rule permitting allocation of Amount A to a market jurisdiction when the in-scope MNE derives at least 1 million euros in revenue from that jurisdiction. For smaller jurisdictions with GDP lower than 40 billion euros, the nexus will be set at 250 000 euros.

Where the residual profits of an in-scope MNE are already taxed in a market jurisdiction, a marketing and distribution profits safe harbour will cap the residual profits allocated to the market jurisdiction through Amount A. Further work on the design of the safe harbour will be undertaken, including to take into account the comprehensive scope.

Double taxation of profit allocated to market jurisdictions will be relieved using either the exemption or credit method.

The entity (or entities) that will bear the tax liability will be drawn from those that earn residual profit.

In-scope MNEs will benefit from dispute prevention and resolution mechanisms, which will avoid double taxation for Amount A, including all issues related to Amount A (e.g., transfer pricing and business profits disputes), in a mandatory and binding manner. Disputes on whether issues may relate to Amount A will be solved in a mandatory and binding manner, without delaying the substantive dispute prevention and resolution mechanism. An elective binding dispute resolution mechanism will be available only for issues related to Amount A for

developing economies that are eligible for deferral of their BEPS Action 14 peer review and have no or low levels of MAP disputes. The eligibility of a jurisdiction for this elective mechanism will be reviewed regularly; jurisdictions found ineligible by a review will remain ineligible in all subsequent years.

The application of the arm's length principle to in-country baseline marketing and distribution activities will be simplified and streamlined, with a particular focus on the needs of low capacity countries (Amount B). This work will be completed by the end of 2022.

The Multilateral Convention (MLC) will require all parties to remove all Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future. No newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the MLC. The modality for the removal of existing Digital Services Taxes and other relevant similar measures will be appropriately coordinated. The IF notes reports from some members that transitional arrangements are being discussed expeditiously.

III. The United Nations approach and the Article 12B of the United Nations Model Tax Convention

It is important to point it out that the rules that were firstly figured out for digital companies are now designed for MNEs of different branches.

The UN Model Tax Convention forms part of the continuing international efforts aimed at eliminating double taxation.

The UN Model Tax Convention generally favours retention of source country taxing rights under a tax treaty — the taxation rights of the host country of investment — as compared to those of the "residence country" of the investor. This has long been regarded as an issue of special significance to developing countries, although it is a position that some developed countries also seek in their bilateral treaties.

However, the main characteristic of the digital economy is the reduction of the necessity of physical presence in market jurisdictions.

Value is created through user interaction and is concentrated in intangible assets, which are easily transferred to tax havens in order to minimize taxable profits. At the same time, corporate taxation systems are still based on the economic reality of the 1920s, when the rules of taxation according to territorial and resident principles were laid down. In the absence of consensus, many states have begun to formulate unilateral rules for taxation of the digital economy. Inconsistency of these rules will increase the tax burden of multinational enterprises, taking into account the fact that each state seeks to protect its interests (Ponomareva, 2021).

The transfer of intellectual property from high-tax jurisdictions in which such intellectual property was created and developed to low-tax states can contribute to the tax base erosion and profit shifting. Such a trend leads to a decrease in royalty receipts relative to the costs of creating intellectual property (R&D expenses) in the country where such intellectual property was developed, and a higher royalty receipt for the amount of R&D expenses in countries to which intellectual property was artificially transferred for the purpose of tax optimization (Berberov and Milogolov, 2018, p. 52).

Therefore, the latest revision of the United Nations Model Tax Convention continues an ongoing review process intended to ensure that the contents of the Model keep up with developments, including in country practice, new ways of doing business and new challenges. This review process led the Committee to address concerns expressed by both developing and developed countries with respect to the tax treaty treatment of digitalized services. The Committee established a Subcommittee on Tax Challenges Related to the Digitalization of the Economy, which drafted a new Article on Income from Automated Digital Services, together with its Commentary. That Article (Article 12B) and its Commentary, which were adopted at the twenty-second session of the Committee (April 2021) constitute a main part of the changes included in this new version of the United Nations Model Tax Convention.[7]

Under Article 12B, "income from automated digital services (ADS) arising in a Contracting State, underlying payments for which are made

[7] Paras 21–22 of the Introduction to the Commentary.

to a resident of the other Contracting State, may be taxed in that other State;" however, the rate of tax that may be imposed on such income is generally limited to an agreed percentage of the gross amount of the payment. In other words, Article 12B contemplates that a Contracting State may subject income from automated digital services paid to a non-resident of such Contracting State to a withholding tax, subject to a rate limitation to be agreed between Contracting States. The UN Tax Committee recommended a "modest" rate of between 3 and 4 percent for income from such services.[8]

Article 12B contemplates that the beneficial owner of income from automated digital services can request that its "qualified profits" from automated digital services be taxed at the rate provided under the domestic laws of the Contracting State.[9] In effect, this is designed to permit the beneficial owner of the automated digital services income to declare a limited permanent establishment in the jurisdiction where the payer is located in order to be subject to tax on such income at a net income basis.[10] Specific rules are provided for determining the amount of "qualified profits" from automated digital services income by applying the overall (or ADS segment where available) profitability ratio of the beneficial owner (or its group where relevant) to the gross amounts.[11]

The approach taken in Article 12B is significant in that it is a model that countries may consider adopting in domestic law to address concerns with respect to the taxation of automated digital services. In jurisdictions where there is an existing income tax treaty, the adoption of the Article 12B approach in domestic law generally would not be expected to affect the application of the existing treaty unless and until

[8] Commentary to paragraph 2, UN Model Tax Convention, Article 12B, paragraph 18.

[9] UN Model Tax Convention, Article 12B, paragraph 3.

[10] Article 12B would not apply in situations where the automated digital services income is earned by, and effectively connected with, an actual permanent establishment of the taxpayer. See UN Model Tax Convention, Article 12B, paragraph 8. Article 12B also does not apply in the case of payments that constitute "royalties" or "fees for technical services" under Article 12 or Article 12A, effectively giving priority to those provisions of the treaty in the taxation of such income.

[11] UN Model Tax Convention, Article 12B, paragraph 3.

the treaty is renegotiated to include Article 12B. But, in non-treaty jurisdictions such laws would have immediate implications for the provision of cross-border automated digital services.

Income from automated digital services is deemed to arise in a Contracting State if the underlying payments for the automated digital services income are made by a resident of that State or are attributable to a permanent establishment of a non-resident in such state. Correspondingly, if the expenses of the automated digital services are attributable to a permanent establishment of the payer in the Contracting State in which the recipient is resident, Article 12B would not apply. Thus, payments for automated digital services are sourced to the jurisdiction in which the services are used.

However, there would be excluded payments that are regarded as:

— royalties (subject to withholding tax (WHT) under Art. 12 MTC) or fees for technical services (subject to WHT under Art. 12A MTC)

— amounts in excess of the arm's length principle (ALP), the application of Art. 12B being limited to that ALP amount (although the excess may be taxed under other provisions).

Article 12B is directed specifically at tax considerations related to the digital economy, which is also the focus of the OECD's Inclusive Framework efforts. The OECD's two pillar approach has focused on new profit allocation rules for digital and potentially all consumer facing businesses (pillar one), as well as agreement on a global minimum tax (pillar two). An objective of the OECD's efforts is to eliminate the proliferation of unilateral digital services taxes, which present a risk for double taxation. It is unclear whether the approach taken by Article 12B can be reconciled with the OECD approach.[12]

The approach in Article 12B is intended to simplify administration allowing greater adoption, particularly by developing countries. A frequent criticism of the OECD's proposals is that they are complicated to apply, and that the global minimum tax rules disadvantage developing jurisdictions. If the approaches taken by the OECD and the UN ultimately cannot be reconciled, it increases the risk for double taxation.

[12] First to finish: UN approves Article 12B for taxation of automated digital services. https://www.jdsupra.com/legalnews/first-to-finish-un-approves-article-12b-5835006/ [Accessed 19.08.2022].

IV. Issues of correlation of the UN Model Tax Convention and the OECD Model

There are many questions risen by scholars due to issues of correlation of the UN Model Tax Convention and the OECD Model. They are still to be solved.

For example, the conceptual base for taxing business income under the UN Proposal rests on the "supply — demand" logic in the sense that both production countries and market countries are entitled to tax business income of a global enterprise. This represents a departure from the view of the OECD States who have chosen to tax corporate income based on the "supply" framework. The question now arises as to why would OECD Member States agree to this conceptual base? Pillar 1 seems to be compromise in the sense that the competing views of both "supply" countries and "supply — demand" countries are taken into consideration in its design (Chand, 2021).

Concerning the scope of the new Art. 12B, the UN has chosen to limit the scope to ADS only compared to the OECD Pillar 1 proposal where both ADS and Consumer Facing Businesses (CFB) are included (Chand, 2021).

The general definition of ADS provided in Art. 12B states the following: "The term 'income from automated digital services' as used in this Article means any payment in consideration for any service provided on the internet or an electronic network requiring minimal human involvement from the service provider. The term 'income from automated digital services' does not, however, include payments qualifying as 'royalties' or 'fees for technical services' under Article 12 or Article 12A as the case may be. In the Commentary, a list of services and activities that are considered ADS is provided and includes: Online advertising services, Sale or other alienation of user data, Online search engines, Online intermediation platform services, Social media platforms, Digital content services, Online gaming, Cloud computing services; Standardized online teaching services."[13]

Article 12B also states that payments qualifying as royalties or fees for technical services are excluded from ADS. Another list is provided

[13] UN Model Tax Convention, Article 12B, paragraph 6.

in the Commentary of services and activities that cannot be considered as ADS and includes: "Customized professional services, Customized online teaching services, Services providing access to the Internet or to an electronic network, Online sale of goods and services other than automated digital services, Revenue from the sale of a physical good, irrespective of network connectivity ('internet of things')." It should be noted that some of these exclusions could be covered by the definition of CFBs under Amount A of Pillar1 under the OECD/IF project.

The definition of ADS and its related Commentary are similar to the one found in the OECD Pillar 1 project. Well, it is obvious that the UN has been inspired by the work of the OECD. This is not a new phenomenon as the UN Commentary on Tax Treaties and UN Transfer Pricing Manual is heavily inspired from the work of the OECD (Chand, 2021).

It is also widely discussed that the UN proposal ringfences the digital economy: It requires appreciation that Article 12B while purportedly seeking to address the issue of "taxation of digitalized economy," limits its scope only as regards ADS services while leaving outside the scope other businesses which may also demonstrate lack of territorial nexus, but deserving to be taxed in the source country (Ayush et al., 2021). The proposal covers automated digital services and ringfences specific digital business models. Such a narrow scope of application leaves open several other business models that could be taxed. This may then result in giving governments an opportunity to unilaterally impose tax measures for business models outside the scope of ADS (Ayush et al., 2021).

Due to the fact that Article 12B ringfences specific business models, it does not cover the wider set of business models which benefit on account of increasing digitalization. Any global tax reform meant to accommodate the possibilities of the global digitized economy as a whole should be based on economic factors that could apply to unforeseen new business models and changes in the global supply chain of goods and services.

Additionally, the Article 12B does not provide any revenue thresholds. This may lead to disproportionate administrative burdens for both taxpayers and tax administrations and may create an unbalanced

playing field for small and medium-sized enterprises with cross-border activities, as they may not have sufficient resources to meet this burden compared to larger MNE groups.

On the other hand, the OECD Pillar 1 proposal provides a global revenue threshold (which may possibly decrease over a period of time) and a de minimis foreign in-scope revenue test. Moreover, the Pillar 1 proposal requires a revenue threshold also for each specific type of activities to trigger nexus to the local jurisdiction. Additionally, as compared to the UN proposal, the Amount A proposal put forward a one stop shop type of mechanism wherein the taxpayer will have to register only with the tax administration of the Ultimate Parent Entity (and this tax administration is required to transmit the tax revenues to the respective market countries).

Professor V. Chand evaluates the UN proposal is "less" neutral, inefficient, simple on the face of it but complex when you get into the details, ineffective to collect taxes in several situations (weak sourcing rules as well as non-applicability of withholding taxes in a B2C scenario) as well as non-flexible due to its narrow scope. Moreover, by staying within the existing international tax framework, it creates room for tax uncertainty (Chand, 2022).

At the same time, it seems that the proposal is not really in the interest of developing countries because i) in many situations developing countries will not be able to collect the much-needed revenues from the digital economy; ii) it relies on bilateral negotiations which could be time consuming and perhaps not leading to the desired outcome; and iii) it is clearly not in the interest of OECD Member States who will surely be reluctant to introduce this provision in their tax treaties due to the various issues surrounding it. However, the IMF and World Bank show support for this proposal from a developing countries standpoint.

V. Recommendations and Practical Proposals for Improving the Mechanisms of Taxation in the Era of Digital Services in Russia

Currently, active work is underway on changing of Russian tax legislation in connection with taxation of digital services.

The point of the current study is also connected to the OECD Action 1 which are important for Russian tax legislation. Some other BEPS Actions have already been studied by scholars (Berberov and Milogolov, 2018). However, we should figure it out it there are risks for Russia in this context.

It should be noted that international cooperation in the area of taxation is not a qualitatively new phenomenon and has been actively developing in recent years in many countries, including Russia. Here are three examples of such cooperation:

1) the mechanism of VAT payment in the EU when importing digital services to the Single Market;

2) the mechanism for the provision and exchange of country reports of the CRS (Country-by-Country Report) within the framework of the Action 13 of the BEPS Project;

3) the International Compliance Assurance Program of the OECD. ICAP[14] is a voluntary program that allows multinational corporations to eliminate uncertainty and ensure predictability of taxation of transactions and business activities in the participating States of the program (Milogolov and Ponomareva, 2021).

Despite the rather high degree of detail of the dispute prevention and resolution mechanisms proposed by the OECD Pillar 1, there are still unresolved issues about how such an international cooperation mechanism will work in practice. A key source of tax risks for taxpayers and potential tax disputes between countries is associated with the inability to isolate Amount A from other CRS tax obligations (related to the application of transfer pricing rules, the determination of Amount B, *etc*.). It will require an unprecedented level of international cooperation and the speed of decision-making from the tax authorities of different countries in order for the mechanism of the distribution of global profits of the MNE to work in practice.

The proposed Pillar 1 mechanism for dispute resolution through international arbitration does not correspond to the position of Russia.

[14] OECD (2021), International Compliance Assurance Programme — Handbook for tax administrations and MNE groups, OECD, Paris. www.oecd.org/tax/forum-on-tax-administration/publications-and-products/international-compliance-assuranceprogramme-handbook-for-tax-administrations-and-mne-groups.htm.

Thus, none of the tax agreements in Russia has provisions on mandatory dispute resolution. In addition, Russia did not accept the relevant provisions of the BEPS MLI when joining it. This position of Russia is connected with the fact that in the current political conditions and in the current conditions of intense international competition, the authorities of the Russian Federation do not consider it possible to transfer part of the national tax sovereignty to the supranational level. It is the factor (rejection of the mandatory dispute resolution mechanism) that may cause Russia to refuse to adopt the Pillar 1 approach discussed in the framework of the BEPS Project.

The other side of the coin is the national tax regulation of activities of IT companies. Currently, the state pays special attention to the development of the IT industry and it should be expected that interest will be increasing.

Various government preferences and benefits, including tax incentives, are important tools for the development of the IT industry.

In the Russian Federation, the beginning of the transformation of the legal regulation of taxation to the conditions of digital reality is associated with the appearance of the so-called Google tax (Article 174.2 of the Tax Code of the Russian Federation). These rules have been significantly criticized by law enforcers, since they have a number of shortcomings related, for example, to the ambiguity of the wording of the list of electronic services, the ambiguity of the mechanism for eliminating double taxation, as well as the procedure for paying such a tax and the lack of a real mechanism for ensuring the universality of tax payment. The main number of disputes from the point of view of law enforcement was caused by the list of services provided in electronic form to identify certain actions of taxpayers for their compliance with the closed list provided by Article 174.2 of the Tax Code of the Russian Federation.

It is worth noting that the Google tax was provided for foreign companies, which led to imbalance in the taxation of foreign and Russian companies in Russia, which also discouraged taxpayers.

In 2020, the state took a serious step towards the IT industry. The tax maneuver in relation to taxation of the IT industry in the Russian Federation is provided by Federal Law No. 265-FZ dated 31 July

2020 "On Amendments to Part Two of the Tax Code of the Russian Federation," the provisions of which have come into force on January 1, 2021 and assume:

— reduction of the corporate income tax rate from 20 % to 3 % while meeting three conditions: accreditation of the organization with the Ministry of Communications, the average number of employees of at least 7 people and receiving at least 90 % of income from digital activities with the establishment of a list of such activities;

— reduction of the insurance premium rate from 14 % to 7.6 % with the simultaneous observance of the conditions established for IT companies to receive a reduced income tax rate;

— exemption from VAT of exclusive rights to computer programs and databases included in the unified register, as well as rights to use these programs and databases.

The key condition for applying the VAT benefit is that the program must be included in the register of domestic software. At the same time, the legislator removed IT companies engaged in advertising activities or activities as integrators from the scope of these benefits.

Despite the fact that the tax maneuver provides, at first glance, exclusively preferential tax conditions for those taxpayers to whom the relevant rules are addressed, representatives of the IT sphere express opinions that the total tax burden will increase as a result of such a maneuver (Lyutova, 2021, p. 269).

At the same time, the manipulation led to the establishment of additional restrictions on the application of VAT benefits, in connection with which it was criticized by industry representatives. Thus, on the basis of Federal Law No. 265-FZ dated 31 July 2020, not all taxpayers can receive such a benefit, but only those who carry out operations to exercise exclusive rights to computer programs and databases included in the Unified Register of Russian computer programs and databases.

In March 2022, further tax incentives for the IT industry were announced. In particular, by Decree No. 83 dated 2 March 2022 "On measures to ensure the accelerated development of the information technology industry in the Russian Federation," the President of the Russian Federation decided to take the following measures aimed at:

— establishment of a "zero" income tax rate for IT companies until 2024;[15]

— expansion of the list of companies that will be able to claim tax benefits (for income tax and insurance premiums). In particular, it is proposed to extend the corresponding benefits to companies that receive income from the distribution (placement) of advertising or operate as integrators (that is, performing work on adaptation, installation, implementation, testing and support of domestic software that does not belong to them);

— exemption of accredited IT companies from tax and currency control for up to three years.

It is expected that the legislation will be supplemented with benefits announced as part of the second package of measures to support the IT industry,[16] in particular:

— accelerated depreciation. The benefit involves the introduction of an increased depreciation coefficient (coefficient 3) for the purchased domestic software, which will aloow to write off costs into expenses faster. It is assumed that it will be possible to use the benefit from 2023;

— costs with an increasing coefficient. It provides for the possibility of accounting for the costs of purchasing Russian software and equipment in the field of artificial intelligence with the use of an increasing coefficient of 1.5;

— investment tax deduction. This benefit assumes the possibility of accounting for the costs of implementing Russian software and equipment as part of the investment tax deduction, that is, if certain conditions are met, such expenses can be deducted directly from the tax amount, and not the tax base.

According to statistics (according to the results of 9 months of 2021), the tax maneuver in the IT industry provided an increase in additional tax revenues by 48 billion rubles and an increase in the volume of sales by IT companies of their solutions and services (over

[15] Federal Law No. 67-FZ dated 26 March 2022 "On Amendments to Parts One and Two of the Tax Code of the Russian Federation and Article 2 of the Federal Law 'On Amendments to Part Two of the Tax Code of the Russian Federation'".

[16] Action plan ("roadmap") "Creating additional conditions for the development of the information technology industry" dated 9 September 2021.

1.14 trillion rubles and an increase of 38 % compared to the same period in 2020). At the same time, it is important to note that the state has not exhausted the stock of measures that can contribute to the development of the industry. For example, at the moment, these benefits, as a rule, cannot be applied by aggregator companies or companies that receive revenue from using software in other ways.[17]

At the same time, the effectiveness of tax benefits largely depends on specific legislative formulations, the actions of law enforcement agencies and the general economic situation. For example, the tax maneuver in the IT industry has generated a large range of questions about the categories of recipients of such benefits, and also caused the need to qualify IT terminology for tax purposes. In this regard, the controlling and relevant state agencies were forced to send explanations regarding the application of the new provisions of the legislation. Thus, the Ministry of Finance of Russia issued the letter No. 03-07-07/111669 dated 18 December 2020, in which specific activities of IT companies subject to benefits were cited; the Federal Tax Service of Russia published answers to point questions (the Letter No. SD-4-3/20902@ dated 18 December 2020 "On tax maneuver in the IT industry"), as well as the Ministry of Finance of Russia clarified the meanings of the special terms ("adaptation" and "modification") in the Letter No. P11-2-05-200-3571 dated 27 January 2022.

Law enforcement officers also control those who want to take advantage of the available benefits. For example, in the case against Kaspersky Lab JSC (case No. A40-158523/2020), the courts supported the position of the tax authority on the possibility of qualifying the work performed as R&D for the purpose of applying an increasing coefficient to the corresponding costs.

Given the above, it should be assumed that the application of the announced benefits may be fraught with various difficulties. Let's explain by the example of a proposal to exempt IT companies from tax control. The legislation (part 4 of Article 89 of the Tax Code of the

[17] Tax incentives in the IT industry: realities and prospects. Available at: https://www.advgazeta.ru/mneniya/nalogovye-lgoty-v-it-industrii-realii-i-perspektivy/ [Accessed 21.05.2022].

Russian Federation) allows tax authorities to conduct on-site tax audits for three years (that is, in 2022, the period 2019–2021 can be checked). Does the proposed benefit mean that after the expiration of the three-year period, the tax authorities will not be able to conduct an on-site tax audit for the past period? This, as well as a lot of other questions (for example, about the possibility of sending requirements to IT companies and conducting other control measures) are still open.

The general economic situation also has a direct impact on the effectiveness of the application of benefits. Thus, the proposal to "reset" the income tax rate will not have the desired effect if the company has no profit. In this regard, during the period of economic turbulence VAT benefits seem to be more effective for business.

At the same time, there are grounds to assume the emergence of a trend of softening the approaches of the law enforcement, and an example of this is the Letter of the Ministry of Finance of Russia and the Federal Tax Service of Russia No. SD-4-2/3289@ dated 17 March 2022 "On tax advantages established for IT business." Earlier, the department adhered to the approach,[18] according to which the reorganization of business mainly in order to obtain benefits for IT companies could be considered as a scheme of "business fragmentation." In this regard, many companies were rather restrained in assessing the prospects for using the relevant benefits. However, in the new letter, the Federal Tax Service has significantly softened its position, indicating that the reorganization of an IT company in the form of separation should not be considered as a violation of Article 54.1 of the Tax Code of the Russian Federation.

VI. Conclusions

Thus, it becomes obvious that in recent years the state has made significant steps towards the IT industry in the field of taxation. At the same time, there is reason to believe that such support will expand in the future. However, the effectiveness of measures depends on a large

[18] The Letter of the Federal Tax Service of Russia No. SD-4-3/2160 dated 20 February 2021.

number of factors, some of which are beyond the will of the legislator, so it is important to monitor the development of legislation and law enforcement practice and adapt to new conditions in a timely manner.

Coming back to issues of international taxation, we should say that Russia should both use international experience and follow its own interests.

For example, the mechanism of international cooperation of tax administrations in the taxation of digital business models proposed by the OECD under Pillar 1 includes:

1) self-declaration mechanism at the level of the ultimate parent entity of the group;

2) the mechanism for preventing disputes regarding the Amount A and the instruments for involving the CIM in this mechanism;

3) binding dispute resolution mechanism affected by Pillar 1 rules;

4) simplification and unification of the rules for attributing profits to basic marketing operations and resale operations (Amount B).

The key idea of the proposed rules is to provide the possibility of a "single window" for the MNEs to access all interested tax administrations at once. We consider it expedient to implement this idea regardless of the success of the Pillar 1 initiative.

In this regard, our key recommendation for the development of tax administration in Russia is to expand and adapt, taking into account national specifics and fiscal interests, the approaches proposed by the OECD under Pillar 1 to international cooperation in the field of digital business tax administration.

We believe that the necessity to response to the challenges of the digital economy in the new conditions at the level of Russian legislation is beyond doubt. In addition, the effectiveness of the new rules can be ensured only if the measures implemented in the legislation of as many States as possible are harmonized. Otherwise, it will be impossible to ensure uniform regulation of cross-border tax relations.

The initiative of unilateral decisions limits the tax sovereignty of countries. The digital economy has no boundaries, and its taxation can no longer be carried out within the same jurisdiction. Digitalization of business significantly affects the income of states from corporate

taxes. These are the decisions that the market jurisdictions must fight for. The OECD has formed the task of developing some approaches to fair taxation of profits of digital companies, taking into account their presence on the market.

The implementation of national digital tax is accompanied by many side-effects (Milogolov and Berberov, 2021, p. 1744). It will take long time to find a unified solution. Countries should be careful with designing and implementing new tax policies.

It is obvious that Russia can gain a lot by joining the measures proposed by the OECD. In particular, it will be able to count on a part of the profits of digital MNEs as one of the sales markets in which they operate. At the same time, Russia will be able to set its own thresholds for the revenue of digital giants to recognize a company obliged to pay additional taxes in Russia because Russia is not an OECD Member State.

The experience of foreign countries shows that there is a trend of introducing national digital taxes, but these taxes have many differences from each other, which leads to double taxation, lack of legal certainty and distortion of competition.

On the other hand, the provisions of the Tax Code of the Russian Federation on VAT and income tax do not allow to fully collect taxes on income of corporate groups that use digital business models when providing services related to Russian users. At the same time, Russian organizations that conduct similar activities face full tax burden, which allows us to conclude that Russian companies are discriminated against foreign ones.

In this regard, it is advisable to consider the issue of taxation in Russia of the part of the profits extracted by foreign companies in the Russian market.

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