TAXATION IN AN AGE OF DIGITAL DISRUPTION

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Proposed Activities

The research project "Taxation in an Age of Digital Disruption" is a new research project. It will focus on the topical subject of worldwide challenges of taxing the digital economy with a special focus on Chinese e-commerce multinationals. The digital economy in China is booming at an unprecedented speed. Chinese consumers have shown themselves to be both early adopters of new technologies, and vociferous consumers of e-commerce products and services. As a vivid example, on the recent Singles Day (11 November, 2018) in China major online provider Alibaba recorded sales of USD 14.3 billion in just one day. That sale number was equivalent to the entire gross domestic product (GDP) of many Caribbean countries for an entire year. Moreover, China is increasingly shifting from a cash-based society towards an economy dependent on very large traditional payment providers such as China UnionPay, as well as newer payment mechanisms offered by Alipay, WeChat, Sina Weibo and Tencent's Tenpay. In addition, there is an array of other virtual currencies, not to mention substantial growth in credit card usage. Furthermore, the Chinese tax authorities officially announced their interest in applying the blockchain technology in the field of tax administration and the digital invoice system. Moreover, research in China has been conducted on projects related to the BRI, for example, big data decision/analysis support system for BRI.

The main purpose of the "Taxation in an Age of Digital Disruption" project is to identify the potential tax challenges that the current international tax rules fall short in order to tax the digital economy. However, by identifying new solution to tax the digital economy, it is not supposed to hinder the innovative development and economic growth of the digital economy in China and elsewhere. The project will be a joint collaboration with partner institutions in China.

The first field of research is in the context of tax treaties. While the current international concept of source taxation strongly relies on physical presence, non-residents no longer need to have outlets shops in place in in order to carry on economic activities in the source states owing to the use of high technologies. The research therefore aims to develop a new nexus concept to capture the digital economy, and the new nexus concept aims at being incorporated into the treaty network of China. To be included in tax treaties may help to create a stable investment climate related to the digital economy taking place in China. A tax treaty may contain a number of provisions that contribute to this climate and increase the confidence of a foreign investor, creating more certainty in relation to the tax treatment. Whilst China - like most of other countries in the world - has a broad network of treaties, those treaties in place fail to reflect current economic trading patterns driven by high technologies.

Research will identify areas where governments need to change existing tax treaties in order to adapt them to the current economic realities and ensure stable and sustainable growth of the digital economy. Moreover, the final proposals of the OECD, the UN and the EU in the post-BEPS era on the taxation of the digital economy to be published will be analyzed.

Another essential focus area of the project will be transfer pricing, both in the context of tax treaties and concerning domestic legislation, as this research area is of the most importance to the development of a sound taxation system towards the digital economy and was particularly strongly affected by the OECD BEPS proposals. When it is identified that nonresidents have sufficient digital presence in China, the next step is to calculate the amount of profits to be allocated to the digital presence and the corresponding amount of tax to be levied in China. Therefore, it is very important that the transfer pricing rules are harmonized in the field of digital economy to ensure fair tax treatment of the digital economy vis-à-vis the traditional economy. China, like most countries around the world, has rudimentary transfer pricing experience with respect to the digital economy. When developing new transfer pricing rules, the new rule should look into the international development on this topic and a deviation from the international standard (though the international agreement has not been reached so far) will create double taxation and inhibit global trade. Therefore, during the process of this research a great level of coordination with research projects at international level, e.g. the OECD, the UN and the EU, and a great level of consistency with international standards will be required. Therefore, the project's aim is to propose transfer pricing legislation that will facilitate growth of the digital economy and be in line with the current international standard. Tax administrations will be assisted in their capacity building through courses on transfer pricing and international taxation taught by WU staff.

Tax challenges to the international trade in goods and services operating through digital means can arise from both direct and indirect taxation. In the area of indirect taxation, the project will take a closer look at the China's value added tax (VAT) system. The growth and expansion of the digital economy will have profound changes on how indirect taxes are managed, administered, collected and enforced. The issues affect the most fundamental aspects of how China's indirect tax system currently operates. This is very important to the China's tax system especially considering the influence of the recent VAT reform in China. The project will therefore propose improvements to the VAT legislation that accurately reflect the economic realities of the digital economy and help facilitate the fair taxation in the digital economy instead of constituting a barrier to it. It will also identify the lessons that can be learned from the European legislation in the fields of tariffs and indirect taxation.

Another research focus shall be put on the issue of "Tax Uncertainty". Not only China, but also a lot of other countries in the world are seeking measures to tax the digital economy, for example the diverted profit tax in the UK and Australia, the equalization levy in India, the web tax in Italy etc. Unilateral measure at country level create great compliance burdens and risks of double taxation, which at the end of the day amounts to a great level of tax uncertainty for Chinese ecommerce multinationals. The project will explore reasons for a confrontational relationship between tax administrations and multinationals. Special attention will be paid to the tax issues that Chinese MNEs encounter when they operate in countries adopting unilateral measures on taxing the digital economy. Private investors are likely to play a key role in these projects and they will be looking for ways to ensure that tax risks associated with these investments are minimized as much as possible and that effective mechanisms are in place to resolve cross border tax disputes.

Taking into consideration the recent developments in international tax law, the introduction of new standards regarding exchange of information through the blockchain technology for example and the fact that Chinese enterprises have become global players in international tax law, the Austro-Chinese Tax Research Network is the perfect forum to research Chinese tax treaty policy with a focus on the digital economy. The past experience proves that it provides the necessary know-how and scientific synergies.In order to reach the scientific and the common objectives of the project, the project partners plan the following actions and activities:

1. **Double Tax Treaties**
   Austrian and Chinese researchers will examine the existing tax treaty network of China to identify which provisions may require modifications in order to capture the taxes of the digital economy under the current treaty notions. One prominent example that requires further study is the concept of the permanent establishment that is contained in Article 5 of the OECD Model Convention. This part of the project will be devoted to improving the existing tax treaty network between China and its contracting countries.
   The aim is to identify which provisions require modifications to facilitate trade and investment with respect to the digital economy while not giving room for base erosion. China is a country with a very broad network of treaties. However, like most other countries, its treaty network is based on the traditional international tax notions and those notions have been proved outdated when it comes to taxing the digital economy. The research will identify areas where governments need to change existing tax treaties in order to adapt them to the current economic realities and the new global standards stipulated through the BEPS project to ensure adequate and fair tax treatment and stable as well as sustainable economic growth in the field of digital economy.
2. **Transfer Pricing Rules**
   Austrian and Chinese researchers aim at designing transfer pricing legislation and guidelines to ensure that taxation levied in the digital economy is in line with current international standards endorsed by the OECD/G20 BEPS Project and the needs and capacity of China. In line with this goal, measures that could be implemented to facilitate dialogue between tax jurisdictions would be analyzed by including tools to increase transparency in the region by governments. Correspondingly, recommendations to mitigate the effects of base erosion and profit shifting should be taken into account to the extent that transfer pricing rules must be designed to align its outcomes with value creation. In this respect, it is also necessary to examine how these rules could be aligned with global developments in the transfer pricing area and have coherence in application of transfer pricing principles and the economic and administrative capacity can be ensured.
3. **Value Added Tax Systems**
   VAT, in addition to the direct tax, offers an alternative solution to tax the digital economy. This is also one of the suggestions endorsed in the BEPS Action 1 Final Report on digital economy. In light of the recent VAT reform taking place in China, China is one of those countries opting for an indirect tax solution towards taxing the digital economy. Given this particular fact, this project aims to examine the short- and long-term changes that are anticipated to occur in China's indirect tax system as a result of the digital economy.

These changes will likely arise as a result of technological developments, in the ways in which goods and services are delivered and consumed, and in the modernization of China's indirect tax system which was conceived in a pre-internet era. Within this project potential VAT problems e-commerce businesses might face when they operate in China are identified and solutions are developed.Moreover, like most taxes, VAT has its share of challenges including fraud, high compliance and administration costs, restricted tax base, thresholds, and application to cross-border transactions. Technology may offer an opportunity of tackling VAT fraud, developing a one-stop shop, and improving consistency. The current initiatives on the EU agenda on this topic are a good example. The aim of this project is to propose a joint research agenda on the application of new technologies to China's VAT system. Austrian and Chinese researchers aim to analyze the need for unilateral, bilateral or multilateral solutions to tackle these problems. The research within this project will particularly build on the OECD VAT/GST Guidelines published by the OECD in 2015, the BEPS Action 1 Final Report, the experience on VAT-harmonization in the EU and the proposal for a multilateral double tax treaty for VAT developed by T. Ecker.

4. **Tax Uncertainty**
Austrian and Chinese researchers will attempt to address risks of unilateral and radical measures, i.e. "quick fixes", that certain countries are currently taking and more countries are considering to implement to tax the digital economy, and provide greater clarity to new tax situations in keeping with various tax measures in different countries related to the digital economy and reliance on legal certainty. Moreover, the project will also explore the consequences of a confrontational relationship between tax administrations and e-commerce multinationals. Special attention will be paid to tax issues that Chinese MNEs encounter when they operate in countries adopting unilateral tax measures. Thus, international tax legislation and regulations, which target at improving the effectiveness of controls and audits of local and multinational companies carried out by the tax administrations, will be examined. Additionally, tax treaty provisions aimed at improving the international competitiveness of Chinese MNE in a post BEPS environment with multinational companies will be proposed.

The results of this project shall finally be presented in a series of conferences, workshops/training sessions and lectures in China. More precisely, participating researchers will present the outcomes of the research – like in 2018 – at the 3nd International Tax Policy Forum on BRI in China that is planned to take place in spring/summer 2019. After the presentations, panel discussions will take place in order to discuss the contributions intensively. The researchers will stay for two more days after the conference to discuss and finalize their papers. All the papers will be published in a book in English language. The volume will be edited by Prof. Lang, Prof. Owens and Prof. Liu. The trip to China will also comprise dialogues with representatives of the Budget Affairs Commission of the Standing Committee of the China National's People Congress, other civil servants with tax background (e.g. SAT officials), key business leaders from Chinese state-owned entities, representatives of multinationals located in China and other practitioners. In order to be able to pass the knowledge gained from this research project also to more colleagues and practitioners in China, an international two-day conference shall also take place in summer 2019 in Xiamen. In the course of the proposed research project and the 2019 conference(s) in China, we also plan to invite Chinese academics, officials and policy makers to take part in conferences in Vienna in 2019 - like we did in 2018 - which are organized and financed by WU and the Institute for Austrian and International Tax Law. In this way, maximum dissemination of knowledge can be guaranteed.

The Austro-Chinese Tax Research Network has successfully established teaching activities for undergraduate and master students both from China and Austria over the last years. Chinese delegates visited Vienna to give lectures for students in the field of international tax law and tax policy in China. Vice versa, Austrian delegates visited China for a series of lectures on international tax treaty law. Therefore, the project partners envisage to organize another five-day lecture on international tax law in Beijing to undergraduate students and master students from PKU and CUFE in the 1st half of 2019. Furthermore, the Summer School of International Tax Law at Xiamen University is also planned to take place again – like in 2014, 2015, 2016, 2017 and 2018 – in 2019.

The envisaged project will be coordinated and supervised by Prof. Michael Lang, Prof. Jeffrey Owens, former Head of the Fiscal Affairs Division of the OECD, will support the coordination of the project intensively. The conferences in China will jointly be organised by the Institute for Austrian and International Tax Law, PKU/CUFE and other Chinese partner institutes. The introductory course on tax treaty law in Beijing and the 6th Xiamen Summer School on International Tax Law in Xiamen will mainly be organised by PKU/CUFE and Xiamen University respectively. While the expenses for the research itself, the expenses for the organization of the conferences and the lectures as well as for the language check and the publication of the book will be conducted by the cooperation partners on their own account, funding of Eurasia-Pacific Uninet is required to finance travel and accommodation expenses for the Austrian and Chinese professors, associate/assistant professors and research and teaching associates.

Sustainability of Proposed Activities

The proposed project forms a basis to create and reinforce lasting collaboration and connections between the network partners. This is important since frameworks for international taxation can only be established in an excellent manner if international coordination and cooperation concerning research in the specific field is pursued. By further promoting the already existing network of social and scientific connections, it will be possible to stay in contact and to realize scientific exchange and further collaboration also when the specific project is concluded.

Due to the fact that different regions take different approaches to international tax law, the project enables the creation of awareness and understanding of different legal and tax cultures and of the prevailing regimes. On the one hand, the proposed research project helps to perceive existing problems and weaknesses of the European and China's international tax regimes. On the other hand, the research should give each participating networking partner the possibility to show where the strengths and competitive elements in European and China's tax policy are.

Publishing the results of such a research project in a book is one important factor, but it is equally important to present and discuss them in academic conferences and in lectures and thus to make the results available for students, researchers, practitioners and policy makers.

As for practitioners and enterprises, an analysis on the tax challenge that the digital economy presents will help to cope with tax uncertainties as detailed knowledge on the tax situation in this respect will enhance legal certainty. By making the results of the research project available to practitioners and enterprises, the researchers provide them with valuable information to better assess their current tax policies towards the digital economy and to ensure the correct applications of the tax treaties applicable.

Moreover, the results of the project will prove invaluable for policy makers in China, where more funds and the expertise are needed to undertake a solid research. Having proposals for the improvement of its domestic tax laws and treaty networks at its disposal will allow China to rethink the current national and international tax policies and to adapt them to better fit a changed reality. A detailed analysis of the main provisions in tax treaties applicable to the digital economy under bilateral tax treaties will also provide clarity about the background and the underlying policies of the tax treaties applicable. That is why it is crucial that – also in the light of previous research activities – the network partners will carry out the proposed research project.