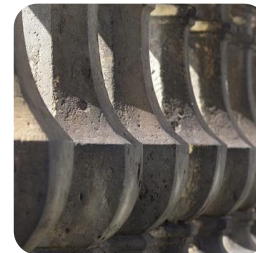




e-Commerce and Transfer Pricing

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de Nederlandse Orde
van Belastingadviseurs



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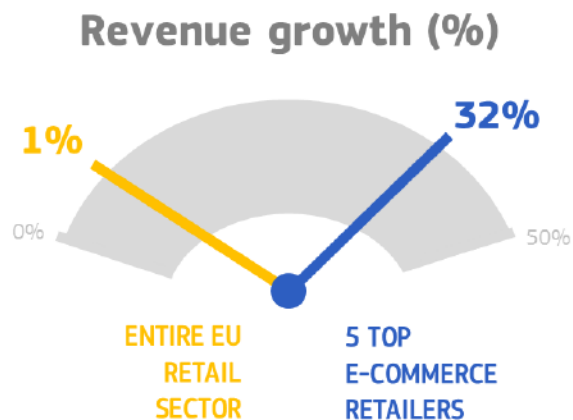
- The digital economy
- Corporate Tax: what is the issue?
- Google and Amazon
- EU Commission Communication
- Existing rules
- Longer Term and Shorter term solutions
- Issues and concerns
- Final statements





The digital economy is here to stay

They have critical mass in the top 20 of companies with the largest market cap. And dominate it.



e-Commerce is growing faster than regular business.



TECH COMPANY NON-TECH COMPANY



Key characteristics of e-Commerce

- Limited physical presence
- Conduct business activity remotely
- Exponential growth
- Winner takes all
- Volatility
- Start-up losses



Value per employee

25m per employee



Instagram

77m per employee



345m per employee



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What is the corporate tax issue of e-Commerce?

Base erosion

e-Commerce companies
avoid taxation via
aggressive tax schemes

*A business driven by
intangibles can 'opt' for
double non-taxation*

Non-ability to tax

e-Commerce companies cannot
be taxed where they do business

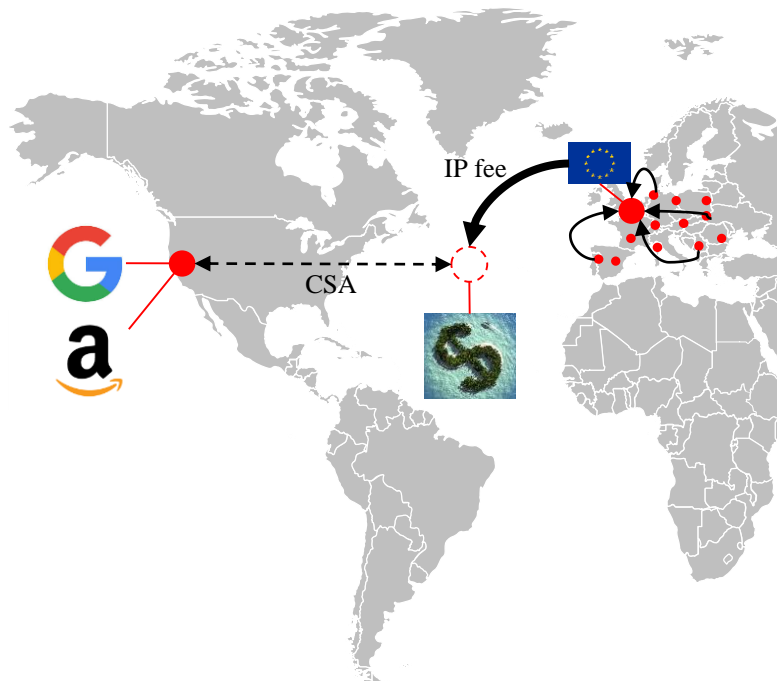
*Without physical presence
in the end market, taxation
rights do not exist*

OR





Google and Amazon



Structures

- Routine operations in European end-markets
- European Hub without IP (Ire/Lux)
- Non-taxed IP owner of non-US IP
- IP Cost Sharing Arrangement
- US tax deferral structure

Counter measures

- BEPS 8-10
- EU state aid claims
- UK Diverted Profit Tax ('Google tax')





Communication European Commission – 21.09.2017

“A Fair and Efficient Tax System in the European Union for the Digital Single Market”

- Existing tax rules designed for “brick and mortar” businesses
- Digital business models rely less on physical presence
- Significant economic presence:
 - Internet sales
 - Advertisement income
 - Data collection
- Two questions: “Where to tax?” (nexus) and “What to tax?” (value creation)





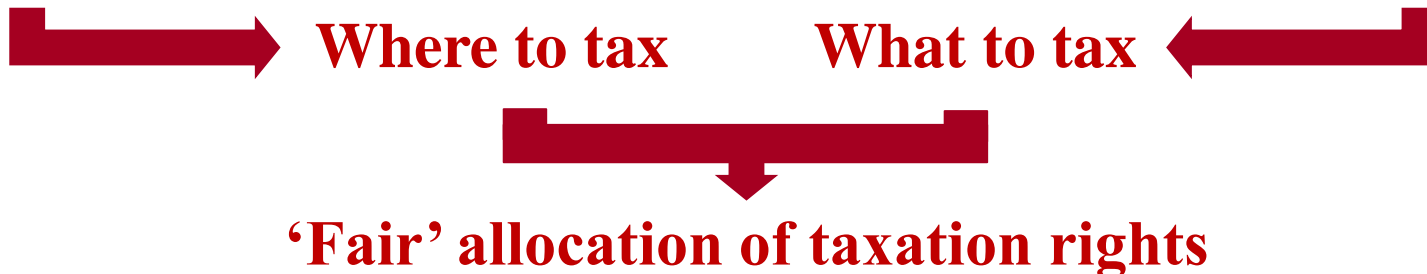
Existing rules

1. Taxable presence

- Legal entities
- Physical PE
- Agency PE

2. Transfer pricing

- At arm's length principle
- Dealings between related parties (i.e. 'entities' with taxable presence)





Existing rules

1. Taxable presence

- Legal entity

+ significant economic presence



Where to tax

2. Transfer pricing

- At arm's length
- Transactions between related parties (with taxable presence)

+ new method for intangibles



What to tax



'Fair' allocation of taxation rights

+ in a Digital Single Market





Longer term solution

Where to tax

- Introduction of Virtual PE for significant economic presence

What to tax

- Formula apportionment for hard to value intangibles

How to implement

- The CCCTB proposal offers the basis to address these challenges





Shorter term solutions

What

- Equalisation tax on turnover if insufficiently taxed
- Withholding tax on digital transactions from non-residents
- Levy on revenues generated from the provision of digital services or advertisement activity

How

- Appropriate level is deemed to be the EU
- Set example to the world





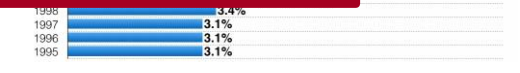
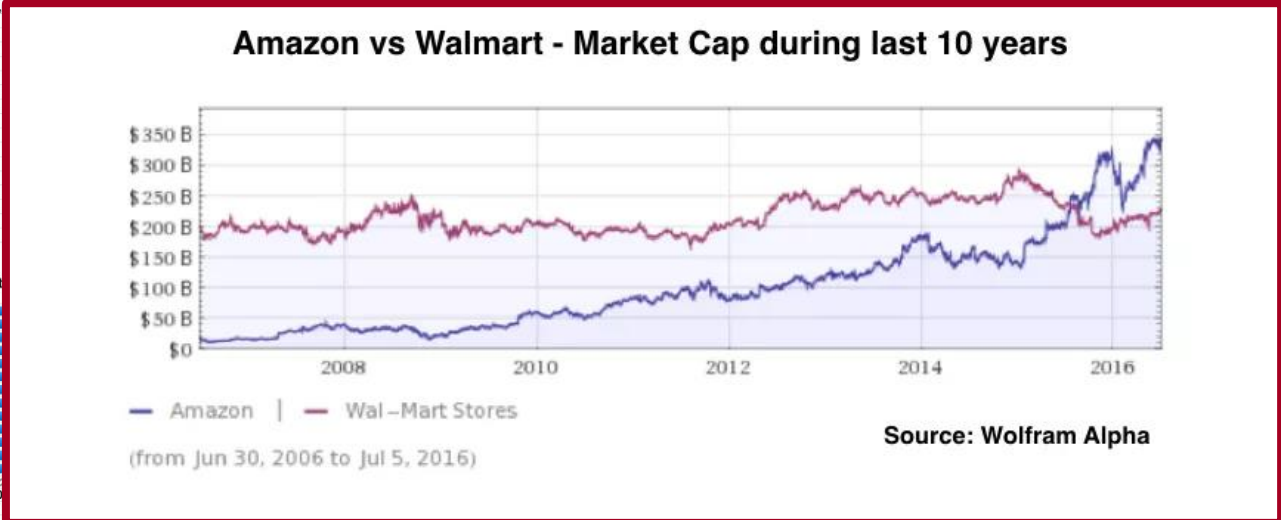
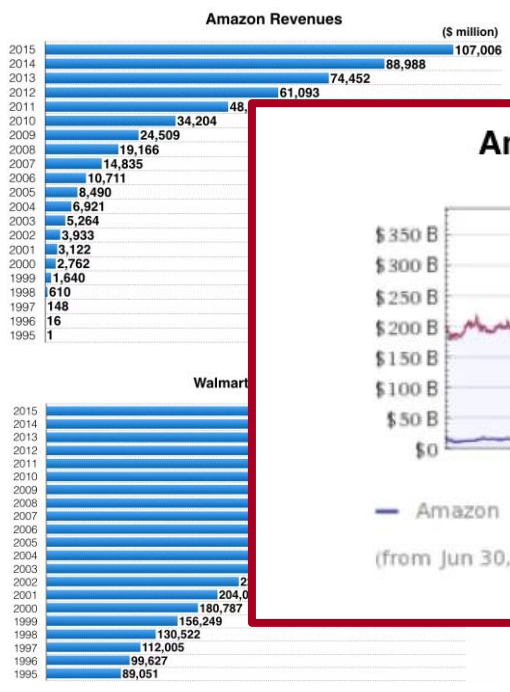
Issues and concerns

- Double taxation
 - Turnover tax and credits
 - Turnover tax and profit level
 - Virtual PE exemptions
- At arm's length principle & formula apportionment (CCCTB)
- Definition 'significant economic presence'
- Europe vs Rest of World



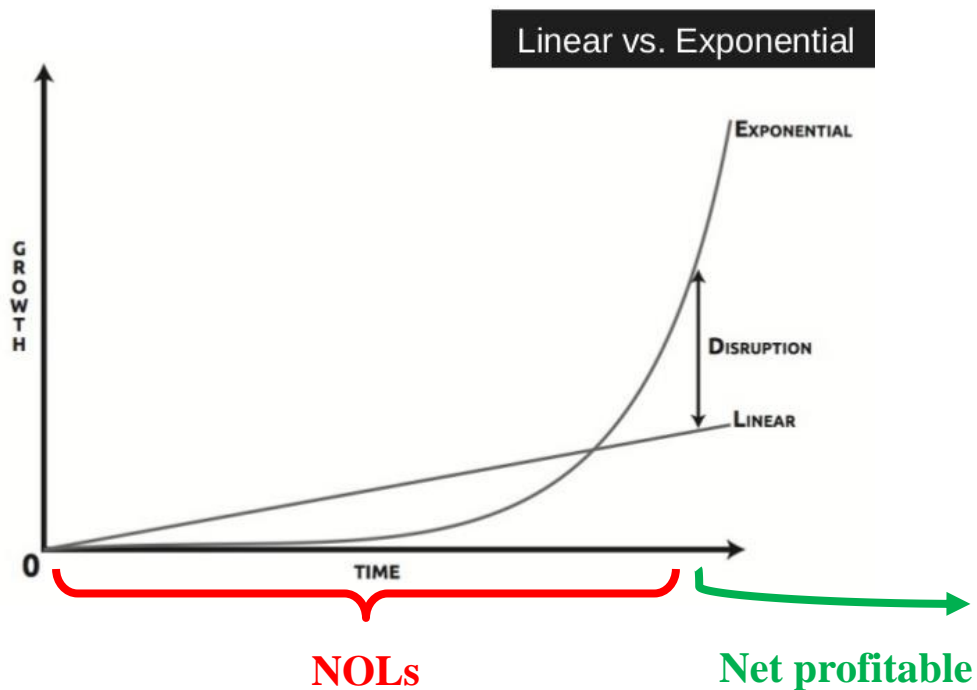


Exponential growth; profit realization vs profit expectation





Exponential growth and profitability



Key questions:

At what moment in time is it appropriate to start taxing?

- Exponential revenue growth
- Net profitable

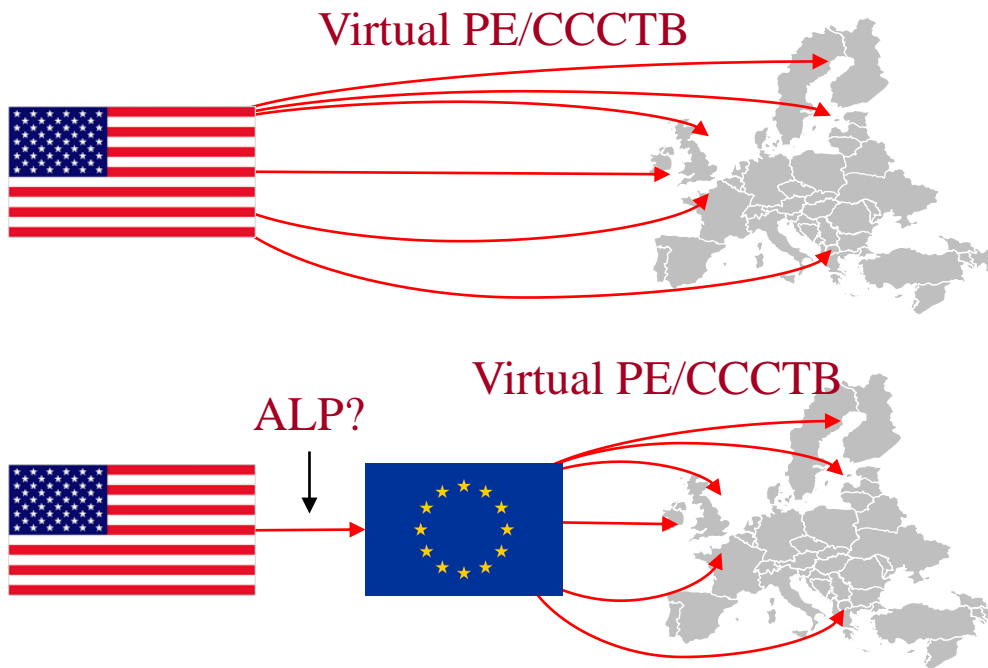
Revenue based levy

- Contingent to profit?
- Credits?





Virtual PE & CCCTB vs At arm's length principle



Key questions:

How would the principles of the 'Google/Amazon structures' work with the Virtual PE/CCCTB solution?

At arm's length principle or look-through principle?

Effective taxation in the residence state relevant?

How to deal with NOLs in light of effective taxation?





‘Significant economic presence’

- Threshold of online revenue
 - Absolute amount
 - Relative to overall revenues
- Amount of advertisement income
 - Absolute amount
 - Relative to overall revenues
- How to deal with indirect earning models
 - Data collection and resale of data outside EU





Closing statements

- Still a long way to go
- But things can move faster than expected
 - BEPS
 - Increased media attention
- And not always in the direction as expected

