



# Tax in the Digital Age

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# Introduction



Advances in technology have led to radical changes in existing business models and the creation of radically new ones. With the advent of the internet, many corporations no longer need physical establishments or proximity to customers to do business. This new digital age has encouraged the emergence of an enormous variety of new products and services, easily accessed online.

However, there has been a growing sentiment within some governments that the reach and accessibility of new digital channels poses a challenge to the long-standing principles of taxation. In response to these concerns, the OECD has established a Task Force on the Digital Economy to seek to develop a global consensus and is due to report in 2020. But some countries want to move faster, and several jurisdictions are now considering new unilateral taxes targeting digital activity.

The emergence of digitalisation is of course not unique to any one country, and there are many different perspectives on how digitalisation changes the way we think about taxes – or even whether it should at all. In Malaysia, the previous government was actively looking into ways to raise revenue from digital activity; Second Finance Minister Datuk Seri Johari Abdul Ghani stated in January 2018 that the government had sought out “feedback from the OECD” on potential methods for imposing a new digital tax in Malaysia (The Malaysian Reserve, 2018). As the new Pakatan Harapan government develops its first budget, they too may consider targeting the revenue of digital companies. With this in mind, this Brief Ideas considers the main issues, domestically and globally, in the debate over digital tax.

## The case for digital tax

Those countries arguing for new tax measures targeting digital activity often advocate two arguments in favour of this course of action:

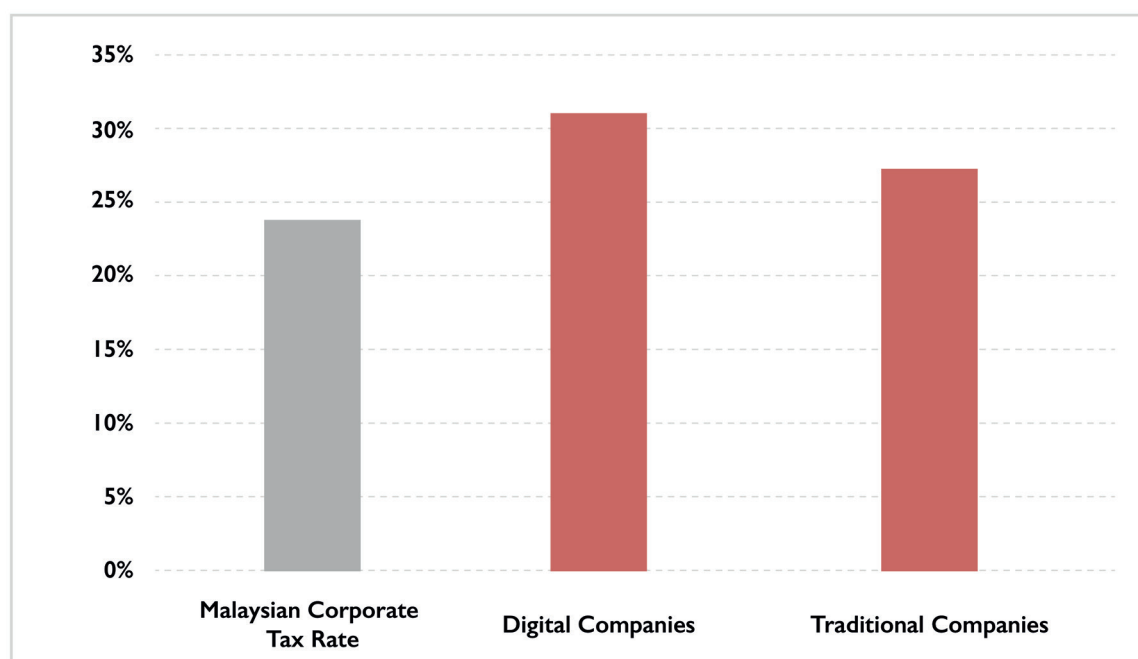
- First, that digital companies pay less tax than non-digital companies;
- Second, that digitalisation has fundamentally altered the way value is generated.

Before we consider these two arguments, we should note the challenge in specifying a company as “digital” for the purpose of taxing it. Many, if not most businesses, will seek to use digital channels to some extent, including for sales and advertising. This includes many traditional “brick and mortar” companies that have adapted to the innovations provided by the internet and digital technology, but these cannot be classified as “digital companies”. Of course, many new predominantly digital business models have also emerged over the past few years, such as social media platforms, but even among these, there remains an enormous variety in size and function. In recognition of this, the OECD concluded that “because the digital economy is increasingly becoming the economy itself, it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy for tax purposes.” This difficulty in defining exactly what it is that is going to be taxed makes policy development significantly more challenging and risks new taxes being unfairly targeted, which can in turn create market distortions. Any new digital tax would almost certainly have an inadvertent impact on traditional companies.

## Are digital companies paying enough tax?

Much of the debate has centred on the claim that digital companies are paying insufficient tax. In the EU, where the European Commission has progressed significantly with new tax proposals, the Commission argues that “[o]n average, domestic digitalised business models are subject to an effective tax rate of only 8.5%, less than half compared to traditional business models” (European Commission, 2017). In fact, this claim has been disputed by the authors of the paper the European Commission relies on for this figure, who issued a statement clarifying that it is incorrect to represent their figure as being an average tax rate for digital multinationals.

The idea that digital companies are paying less tax has also been brought into question by research from ECIPE, who used industry data to conclude that effective tax rates (ETRs) for a range of different categories of digital business models were in fact higher than the European Commission suggested, higher than the amount paid by traditional companies, and higher than the average Asian tax rate (ECIPE, 2018). The results are displayed below, alongside the standard corporate tax rate in Malaysia, to provide the Malaysian perspective.

**Chart 1: Tax rates across traditional and digital companies** (ECIPE, 2018)

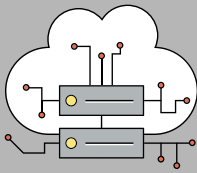
## Where is the value generated?

The long-standing, internationally agreed principle of taxing business income is that tax should be paid in the jurisdiction where value is generated. Some have argued that digitalisation has challenged the way we think about value creation, as intangibles – such as assets, data and knowledge, have become significantly more important but also much more dispersed. Taking the example of a social media company, the European Commission argues that value is generated by the data collected from users, which is in turn used to allocate advertising space, but that the profits generated from advertising revenue are not taxed in the same jurisdiction in which the users are located.

However, the use of customer feedback to inform product development has been common for decades in traditional industries. While some argue the scale of this is greater in digital technology, others hold that the value created by raw user data is grossly overestimated. Indeed, the OECD Task Force on the Digital Economy notes that some countries “explicitly reject the suggestion that data and user participation should be considered value creation by the business in the user’s jurisdiction. According to this view, user data and user contributions should be viewed in the same way as other business inputs sourced from an independent third party in the business’ supply chain” (OECD, 2018).

In his recent blog for Kluwer International, Werner Haslehner argues that in order to create value, a “firm needs to add something to existing inputs it acquired in the market; this can be conceivably assigned to the place where the firm exercises its value-creating functions, uses assets and, arguably, assumes risks” (Werner Haslehner, 2018). Applying this approach to the case of the social media company, advocates of this approach would argue that the data on its own does not hold value, but rather the tools used to analyse the data and develop an advertising product generates value. And the human capital and intellectual property required to create and operate these tools can be captured for tax purposes in the jurisdiction in which they operate.

As we noted above, there are also a variety of different digital business models aside from social media platforms, and the importance of user participation varies significantly across these business models. In the examples below, the role of user generated content is arguably minimal:



**Cloud computing services,**  
such as Amazon Web Services, connect users with a software and remotely accessible hardware;



**Online retail platforms,**  
such as Lazada or eBay, connect buyers and sellers across borders;



**Subscription based services,**  
such as iflix or Spotify, provide consumers with digital content, such as movies or songs.

## Future policy

Disagreements on these issues have resulted in a lack of consensus internationally on whether global tax rules need to be updated to reflect digitalisation. The OECD Task Force on the Digital Economy is considering proposals to address this and will produce its final report in 2020 (OECD, 2018). However, a number of countries have taken or are considering unilateral measures to raise more tax revenue from digital companies before the Task Force concludes:



Countries including Israel and India have sought to broaden the definition of a permanent establishment, the traditional basis for taxation of business profits, to include a digital “**significant economic presence**” (SEP) based on a company’s local revenue or user count. The SEP threshold would allow source countries to demand a proportionate share of digital companies’ profits, regardless of whether said companies keep physical operations within those countries. However, it would require other countries to amend their double tax treaties with India so as to divert money from their own tax base to India instead.

A number of countries have introduced **taxes on turnover** in their jurisdictions, as opposed to final profits. These are based on the value of certain transactions (typically payments made for digital services like online advertising), not on the profit reported. Examples include Italy’s levy on digital transactions, and France’s tax on distribution of audio-visual content.

The United Kingdom and Australia have a **Diverted Profits Tax** (DPT), aimed at digital corporations and multinational enterprises more broadly. The goal of the DPT is to recoup lost tax revenue from corporate profits deemed to be artificially shifted out of the source country’s jurisdiction. Typically set at a punitively high rate, the DPT is meant as a deterrent against attempts to relocate profits to low-tax jurisdictions.

Some countries have considered the withholding tax (used on transactions with a domestic payer and a foreign payee) as a tool. Governments can use the **withholding tax** either through expanding the legal definition of royalties or by applying the tax to payments for technical services. In so doing, they can “withhold” a portion of a payment to a foreign company, even if it has no permanent establishment whatsoever in the source country, so long as the corporation paying for the services is based there.

## The Malaysian Perspective

This debate over digital tax has also gathered momentum in Malaysia, with calls for higher taxes on digital companies (The Star, 2018). In response, the previous Malaysian government confirmed it was considering measures to tax digital activity. Setting aside the broader global debate over the case for these measures, what are the risks from the Malaysian perspective?

### Legal perspective

The first issue that arises is whether these measures might result in cases of double-taxation, where two or more countries are taxing the same income. Multiple treaties and international agreements have been agreed, precisely to avoid double taxation emerging. In recognition of this, the unilateral measures to redefine significant economic presence in both India and Israel have stated explicitly that should conflict with international commitments arise, then those agreements must take precedence over the new law. This raises the question of whether such a measure would be effective, because it is hard to imagine other countries agreeing to voluntarily hand over portions of their tax base.

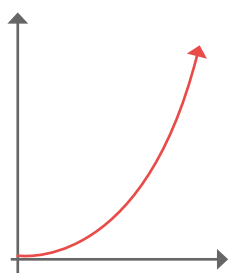
In the case of Malaysia, the government holds Double Tax agreements with 74 countries (Inland Revenue Board, 2018), which could severely constrain the options for taxing foreign-based digital business income. In theory, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS might provide a vehicle for managing this.



### Economic perspective

From a fiscal perspective, new tax measures targeting digital activity would of course increase government revenues – at least in the short term. But no tax is neutral and as we have noted above, defining a tax on digital activity is highly complex. Below, we identify two sets of issues, firstly the direct economic impact of Malaysia implementing a unilateral tax on digital activity and second, the broader indirect impact of this action prompting further adoption of unilateral measures by other countries and contributing to the global call for more tax to be collected from digital activity.

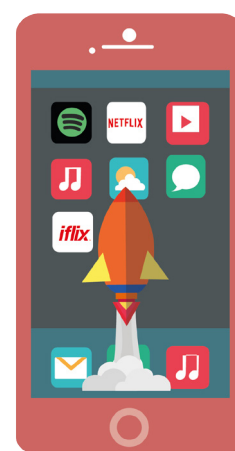
## Direct impact



**The costs of digital goods and services will likely increase.** Firms supplying digital goods and services to Malaysia will treat any new tax as an additional cost, either by reducing operating costs and investment, reducing returns to shareholders or increasing prices. Given that many digital goods and services are supplied in multiple different countries, it is unlikely that firms would look to reduce operating costs in response to increased tax in any one country. Therefore, firms are likely to increase prices and reduce investment in response to additional taxes, at least to cover some portion of the additional cost.

### **The price of digital goods and services will likely increase for consumers.**

As a consequence, the price of digital goods and services of the end-user will likely increase. Consumers' use of the internet is high in Malaysia. A survey by the Malaysian Communications and Multimedia Commission (MCMC) found that of the 32 million people in Malaysia, 24.5 million (76.9%) have access to the internet (MCMC, 2017). Of these, 70% use the internet to stream or download digital video and 49% use the internet for online shopping. Any increase in prices for these goods and services would therefore be felt by a large number of consumers. Firms could also respond to increased costs by reducing investment in goods and services tailored to the Malaysian market, lowering the overall quality of the products available to Malaysian consumers.



### **The costs of using digital platforms will increase for Malaysian businesses – impacting productivity and trade.**

As with consumers, the costs for Malaysian businesses accessing digital platforms could increase. This is important, as access to digital platforms has been shown to increase the productivity of firms. A study by the World Bank found that the more intensively a company uses the Internet, the greater the productivity gains. Increased internet usage is also associated with increased value and diversity of products being sold (The World Bank, 2016). A report by the US Congressional Research Service noted that “the Internet, and cloud services specifically, has been called the great equalizer, since it allows small companies access to the same information and the same computing power as large firms using a flexible, scalable, and on-demand model” (Digital Trade and U.S. Trade Policy, Congressional Research Service, 2018). Access to these services can help Malaysian companies to grow and compete in the global marketplace.

Social media platforms have been found to be beneficial in this respect too. In their paper on the factors influencing the use of social media by SMEs and its performance outcomes, Ainin, Parveen, Moghavvemi, Jaafar and Shuib find that: “Facebook usage has a strong positive impact on financial performance of SMEs; similarly it was also found that Facebook usage positively impacts the nonfinancial performance of SMEs in terms of cost reduction on marketing and customer service, improved customer relations and improved information accessibility (Ainin et al, 2015).”



Access to digital platforms is also important to Malaysian businesses – and particularly SMEs – looking to export their goods and services. For many of these companies, access to international e-commerce platforms is essential. A study of U.S. SMEs on the e-commerce platform eBay found that 97% export (Manyika et al, December 2015). Facebook’s Future of Business Survey Report found that online tools play a role in SMEs’ ability to trade internationally and grow. “SMEs attribute growth — in revenue, resources, and employees — to their use of online tools to trade internationally. More than half of exporting SMEs (54%) report that more than 75% of their international sales depend on online tools. 65% of exporters agree that using online tools for selling internationally has increased their revenue” (The Edge, 2017).

The Digital Free Trade Zone was specifically set up to improve Malaysian SME exports by onboarding SMEs to global e-commerce marketplaces and it is working: Malaysia was among the fastest-growing exporters to China on the cross-border platform of Alibaba, Tmall Global, in 2017 (NST, 2018).

A unilateral tax measure risks increasing the costs for Malaysian business accessing these digital platforms, and therefore the potential to increase productivity and trade.

This has fiscal implications too given the productivity benefits of digital technology, a reduction in investment will likely have a negative impact on the growth of the overall economy - meaning the tax base would be reduced from where it would otherwise have grown to. It is therefore possible that a digital tax would have a net negative impact on the overall tax take.

## Indirect impact

If Malaysia adopts a unilateral digital tax, that is likely to encourage others to do the same. This could have the following consequences:

### The costs for Malaysian businesses exporting overseas will increase.

If other countries adopt unilateral tax measures, then the costs for Malaysian businesses exporting digital goods and services to those markets will increase. As we noted above, these additional costs will likely result in higher prices, making those Malaysian businesses less competitive in overseas markets.

Malaysia is an open, trading nation which stands to benefit from unrestricted access to overseas markets. Malaysia runs a surplus in overall trade and its trade in services has been steadily growing, reaching a record RM341.1 billion in 2017. In the same year exports of services increased to RM159.2 billion, an increase of 7.9% compared to the preceding year and up 42.8% since 2010.

The digital economy is making a growing contribution: numbers from the Department of Statistics Malaysia indicate that the digital economy accounted for 18.2% of the country's GDP in 2016. In light of this, a proliferation of measures which increase the costs for Malaysian digital exporters would be harmful, in particular when many of those exporting are SMEs: nine out of 10 business establishments in Malaysia are SMEs. Of these, 28% have an online presence and 15% already use that presence for export purposes (Digital News Asia).



**This will be particularly harmful in the case of taxes based on revenue.** As noted above, some of the unilateral measures being considered by some countries include taxes on gross revenue rather than profit.

If these are adopted in Malaysia's export markets, this will be particularly harmful for Malaysian SMEs which are often loss-making in the early years of development. Twitter recorded its first profits for 12 years in February of this year; if it had been subject to additional turnover taxes it might not have survived (www.record.net, 2018). A survey by RAM Holdings Bhd estimated that 28% of Malaysian SMEs are operating in the red, compared to 13% for larger corporates (The Malaysian Reserve, 2018).



In other words, these taxes could act as a significant barrier to entry for new firms, supporting incumbents and reducing competition, with ultimately worse outcomes for consumers.

**In the longer term a proliferation of taxes on digital activity could act as a deterrent to investment, innovation and trade.**

Malaysia has a relatively small domestic market, so future growth will largely depend on growing opportunities for Malaysian companies to export. Malaysia should therefore be cautious of a global consensus emerging on tax that puts more focus on where consumers are based, rather than businesses. In short, countries that run a trade surplus would be net losers from a change in international taxation to reduce the role of the country where value is created. Given Malaysia runs a trade surplus, the Government would likely be a net loser if the arguments being made for digital taxes were more widely applied. Malaysian firms exporting to other markets could end up paying more to foreign governments instead of the Malaysian government.

Instead, Malaysia should advocate for global tax framework that promotes investment, innovation and trade.



## Taxing consumption?

So far, we have focussed on direct taxation – whether to apply additional taxes on the income of digital businesses providing goods and services in Malaysia. The question of indirect tax has also been raised, in particular whether foreign supplied digital goods and services should be subject to consumption taxes. This is a less contentious issue globally: whereas there is disagreement over where the value of digital services is generated, it is clear where the consumption takes place. Introducing indirect taxes on foreign supplied digital goods and services would also level the playing field between foreign firms and domestic firms, who are already subject to consumption taxes. In recognition of that, the OECD has issued guidelines on applying GST/VAT to foreign supplied digital goods and services, which a number of countries are now adopting (OECD, 2017).

In Malaysia, the Customs Department under the previous government announced its intention to amend GST so that it captured digital imports, (The Star, 2017). At the time Deloitte estimated the move would increase GST revenue by 5%-10%.

Following GE14, the new government has abolished GST and is replacing it with the previous Sales and Services Tax (SST). The government could consider amending the scope of the SST to cover foreign supplied digital goods and services. Of course, this would also entail many of the same costs as a direct tax measure – it would increase the cost of the digital goods and services for consumers and businesses, with the knock-on impacts on productivity and trade outlined above. It has been reported that in Australia, where a tax for foreign supplied digital services has been introduced, the cost of home entertainment, apps, video games, e-books, and software is estimated to rise by 150AUD million in its first year (news.com.au, 2017). Furthermore, the rapid implementation of the new SST already involves some risk, so the government should approach any expansion in the scope of SST carefully and in close consultation with industry.

## Conclusions



It is difficult to define “digital businesses” for the purposes of taxation and there is no definitive evidence that more digital companies pay less tax than more traditional companies. There is disagreement over whether digitalisation poses a challenge to the long-standing principles of taxation and value generation, leading some countries to adopt unilateral measures on tax



Although it could increase revenue in the short term, a unilateral direct digital tax in Malaysia would increase the costs of digital goods and services, in turn increasing prices and the cost of trade. Reduced investment in the digital economy would lead to lower productivity growth, which in turn could mean that less is gained from a digital tax than is lost to a reduced tax base from the overall economy.



As an open, trading, and pro-innovation nation, Malaysia would suffer from a proliferation of unilateral taxes on digital trade. If unilateral sector-specific taxes become the norm, countries could target other sectors in which Malaysia runs a trade surplus. Taxes targeted at turnover could be particularly dangerous for new start-ups looking to export. More broadly, Malaysia, with its relatively small domestic market, should be cautious of a global push to rebalance corporate income tax in favour of where consumers – rather than businesses – are based.



The case for consumption taxes covering foreign supplied digital goods and services is less contentious but would still negatively impact prices in Malaysia, and implementation would need to be managed carefully in close consultation with industry.

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