# Give the Digital Services Tax a Chance

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- Wei Cui, *The Digital Services Tax: A Conceptual Defense* (Oct. 26, 2018), available at SSRN.
- Wei Cui & Nigar Hashimzade, *The Digital Services Tax as a Tax on Location-Specific Rent* (Jan. 23, 2019), available at SSRN.

Proposals from the European Council and the UK governments to introduce a digital services tax (DST) took those of us who haven't been watching the field as closely as we should have by surprise. A DST might be levied on a revenue base, such as revenue from selling online advertising, intermediary services or data; at a low rate, perhaps 3%; on companies that exceed a size threshold, such as total revenue of 750 million euros. Coming in the wake of a protracted period in which the Organisation for Economic Co-operation and Development focused on negotiating arguably minor changes to the international tax framework (through the "base erosion and profit split" (BEPS) project), the DST seems to be moving like a high-speed train.

Scholars and policy makers have made efforts to justify (or contest) the normative underpinnings and economic consequences of the DST. In this context, two related papers—one by Wei Cui and Nigar Hashimzade and the second by Wei Cui—offer some helpful and novel analysis.

The major claim of both papers is that the DST can be justified as a means for taxing location-specific rents. The authors accept that other justifications (for example, destination-based apportionment or inter-nation equity concerns about source taxation) may also serve to support the tax; but they suggest that the location-specific rents justification might be more compelling to the DST's critics.

For relative novices in this area of tax policy, Cui's *Conceptual Defense* article offers a welcome entry point. Four aspects of that paper should be highlighted. First, Cui lays out the distinctive economic characteristics of digital platforms that affect their appropriate tax treatment: "(i) network effects that generate market power, (ii) two- or multi-sided business models that involve complex pricing choices in profit maximization, (iii) negligible marginal cost, and (iv) geographic mobility in the location of service delivery and profit recognition" (P. 3.) Cui accepts that these features justify considering new approaches to international taxation. He urges us to think not about whether a DST is appropriate, but instead to turn our attention to its best design.

Second, he calls on us to abandon some of the common tax treaty obsessions. Notably, he argues that expanding the scope for income tax treaties to cover DSTs (in Article 2) and fussing about the definition of permanent establishment (in Article 5) are unimportant diversions. I agree.

Third, he offers compelling rationales for the DST. It is a tax that captures location specific rents (which are created by digital platforms' direct and indirect network effects). The taxation of advertising revenue is a form of designation-based formulary apportionment. And, the collection of data should be sufficient to generate a tax base. Elaboration of these arguments comprises a substantial portion of Cui's *Conceptual Defense* paper.

Fourth, Cui's paper throws into relief the difficulty of prioritizing a corporate profits tax with arm's length allocations over a unilateral turnover tax (the DST) in this context.

Cui's *Conceptual Defense* paper offers a good starting place for readers. It describes the current context and initiatives; for legal readers it highlights a few of the legal debates around the DST; and it opens the door to conversations about appropriate DST design in the light of alternative possible justifications.

The second paper, *The Digital Services Tax as a Tax on Location-Specific Rent*, is for more committed readers. Here, Nigar Hashimzade and Wei Cui turn to an extended rationalization of the DST as a tax on location-specific rent. In this paper, the authors analogize the tax to familiar taxes on natural resources. More boldly, they claim that when some conditions are met, the DST may be a better tax on location-specific rents than resource royalties. The paper offers a considerable economic analysis that may not be helpful for all law readers, but it is nevertheless possible to engage with much of the authors' arguments even if parts of the paper are glossed over. Interestingly, the paper concludes with some nods to the inter-nation equity implications of the DST.

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