“Recent Trends in Law of Taxation”

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ABSTRACT

Governments have to cope with less revenue, increasing expenditures and resulting fiscal constraints, raising revenue remains the most important function of taxes, which serve as the primary means for financing public goods such as maintenance of law and order and public infrastructure. Assuming a certain level of revenue that needs to be raised, which depends on the broader economic and fiscal policies of the country concerned, there are a number of broad tax policy considerations that have traditionally guided the development of taxation systems.

Keywords: Electronic Communication, Electronic Signature, Contracts, Electronic Form

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Introduction

Truly global tax reform movements, with a majority of countries adopting broadly similar policy measures, rarely occur—perhaps with the global spread of the VAT over the last 40 years as the most notable exception, with the fall in statutory corporate tax rates coming in as a close second (both phenomena dealt with in what follows) . However, we frequently observe common patterns, at least on a regional basis, in tax reforms adopted by different countries over a given period. We believe there are, in fact, underlying factors that induce countries to adopt broadly similar approaches to tax reform over given periods of time with the following ones mentioned in no particular order and frequently overlapping.

Neutrality: Taxation should seek to be neutral and equitable between forms of business activities. A neutral tax will contribute to efficiency by ensuring that optimal allocation of the means of production is achieved. A distortion, and the corresponding deadweight loss, will occur when changes in price trigger different changes in supply and demand than would occur in the absence of tax. In this sense, neutrality also entails that the tax system raises revenue while minimising discrimination in favour of, or against, any particular economic choice. This implies that the same principles of taxation should apply to all forms of business, while addressing specific features that may otherwise undermine an equal and neutral application of those principles.

Efficiency: Compliance costs to business and administration costs for governments should be minimised as far as possible. • Certainty and simplicity: Tax rules should be clear and simple to understand, so that taxpayers know where they stand. A simple tax system makes it easier for individuals and businesses to understand their obligations and entitlements. As a result, businesses are more likely to make optimal decisions and respond to intended policy choices. Complexity also favours aggressive tax planning, which may trigger deadweight losses for the economy.

• Effectiveness and fairness: Taxation should produce the right amount of tax at the right time, while avoiding both double taxation and unintentional non-taxation. In addition, the potential for evasion and avoidance should be minimised. Prior discussions in the Technical Advisory Groups (TAGs) considered that if there is a class of taxpayers that are technically subject to a tax, but are never required to pay the tax due to inability to enforce it, then the taxpaying public may view the tax as unfair and ineffective. As a result, the practical enforceability of tax rules

is an important consideration for policy makers. In addition, because it influences the collectability and the administer ability of taxes, enforceability is crucial to ensure efficiency of the tax system.

Flexibility: Taxation systems should be flexible and dynamic enough to ensure they keep pace with technological and commercial developments. It is important that a tax system is dynamic and flexible enough to meet the current revenue needs of governments while adapting to changing needs on an ongoing basis. This means that the structural features of the system should be durable in a changing policy context, yet flexible and dynamic enough to allow governments to respond as required to keep pace with technological and commercial developments, taking into account that future developments will often be difficult to predict. Equity is also an important consideration within a tax policy framework. Equity has two main elements; horizontal equity and vertical equity. Horizontal equity suggests that taxpayers in similar circumstances should bear a similar tax burden. Vertical equity is a normative concept, whose definition can differ from one user to another. According to some, it suggests that taxpayers in better circumstances should bear a larger part of the tax burden as a proportion of their income. In practice, the interpretation of vertical equity depends on the extent to which countries want to diminish income variation and whether it should be applied to income earned in a specific period or to lifetime income. Equity is traditionally delivered through the design of the personal tax and transfer systems. Equity may also refer to inter-nation equity. As a theory, inter-nation equity is concerned with the allocation of national gain and loss in the international context and aims to ensure that each country receives an equitable share of tax revenues from cross-border transactions . The tax policy principle of inter-nation equity has been an important consideration in the debate on the division of taxing rights between source and residence countries. At the time of the Ottawa work on the taxation of electronic commerce, this important concern was recognised by stating that “any adaptation of the existing international taxation principles should be structured to maintain fiscal sovereignty of countries.

Taxes on income and consumption Most countries impose taxes on both income and consumption. While income taxes are levied on net income (i.e. from labour and capital) over an annual tax period, consumption taxes operate as a levy on expenditure relating to the consumption of goods and services, imposed at the time of the transaction. There are a variety of forms of income and consumption taxes. Income tax is generally due on the net income realised by the taxpayer over an income period. In contrast, consumption taxes find their taxable event in a transaction, the exchange of goods and services for consideration either at the last point of sale to the final end user (retail sales tax and VAT), or on intermediate transactions between businesses (VAT) , or through levies on particular goods or services such as excise taxes, customs and import duties. Income taxes are levied at the place of source of income while consumption taxes are levied at the place of destination (i.e. the importing country). It is also worth noting that the tax burden is not always borne by those who are legally required to pay the tax. Depending on the price elasticity of the factors of production (which in turn depends on the preferences of consumers, the mobility of factors of production, the degree of competition etc.), the tax burden may be shifted and thus both income and consumption taxes can have a similar tax incidence. In general, it is said that the tax incidence falls upon capital, labour and/or consumption. For example, if capital were more mobile than labour and the market is a highly competitive and well-functioning one, most of the tax burden would be borne by workers.

Value added taxes and other indirect consumption taxes Value added taxes (VAT) and other consumption taxes are generally designed to be indirect taxes. While they are generally intended to tax the final consumption of goods and services, they are collected from the suppliers of these goods and services rather than directly from the consumers. The consumers bear the burden of these taxes, in principle, as part of the market price of the goods or services purchased. Two categories of consumption taxes are generally distinguished

General taxes on goods and services, consisting of VAT and its equivalent in several jurisdictions, sales taxes and other general taxes on goods and services. Taxes on specific goods and services, consisting primarily of excise taxes, customs and import duties, and taxes on specific services (e.g. taxes on insurance premiums and financial services). This section focuses mainly on VAT, which is the primary form of consumption tax for countries around the world. The combination of the global spread of VAT and the rapid globalisation of economic activity, which resulted in increased interaction between VAT systems, and increasing VAT rates have raised the profile of VAT as a significant issue in cross-border trade.

Overarching purpose of a VAT – A broad-based tax on final consumption The term VAT is used here to cover all value added taxes, by whatever name, in whatever language, they are known. Note, for instance, that many countries refer to their value added taxes as a “goods and services tax” (GST) (e.g. Australia, Canada, India, New Zealand and

Singapore). While there is considerable diversity in the structure of the VAT systems currently in place, most of these systems are grounded on certain fundamental design principles that are described in this section, at least in theory if not in practice. The overarching purpose of a VAT is to impose a broad-based tax on consumption, which is understood to mean final consumption by households. In principle only private individuals, as distinguished from businesses, engage in the consumption at which a VAT is targeted. In practice, however, many VAT systems impose VAT burden not only on final household consumption, but also on various entities that are involved in non-business activities or in VAT-exempt activities. In such situations, VAT can be viewed alternatively as treating such entities as if they were end consumers, or as "input taxing" the supplies made by such entities on the presumption that the burden of the VAT imposed will be passed on in the prices of the outputs of those non-business activities.

The central design feature of a VAT – Staged collection process The central design feature of a VAT, and the feature from which it derives its name, is that the tax is collected through a staged process. Each business (taxable person) in the supply chain is responsible for collecting the tax on its outputs (supplies) and remitting the proportion of tax corresponding to its margin, i.e. the value added, in a particular tax period. This means that the taxable person remits the difference between the VAT imposed on its taxed outputs (output tax) and the VAT imposed on its taxed inputs (input tax) for this period. Thus, the tax is in principle collected on the "value added" at each stage of production and distribution. In this respect, the VAT differs from a retail sales tax, which taxes consumption through a single-stage levy imposed in theory only at the point of final sale. This central design feature of the VAT, coupled with the fundamental principle that the burden of the tax should not rest on businesses, requires a mechanism for relieving businesses of the burden of the VAT they pay when they acquire goods or services. There are two principal approaches to implementing the staged collection process while relieving businesses of the VAT burden. Under the invoice-credit method, each taxable person charges VAT at the rate specified for each supply and passes to the customer an invoice showing the amount of tax charged. If the customer is also a taxable person, it will be able to credit that input tax against the output tax charged on its sales, each being identified at the transaction level, remitting the balance to the tax authorities or receiving a refund of any excess credits. Under the subtraction method, the tax is levied directly on an accounts-based measure of value added, which is determined for each business by subtracting the taxable person's allowable expenditure on inputs for the tax period from taxable outputs for that period and applying the tax rate to the resulting amount . Almost all jurisdictions that operate a VAT use the invoice-credit method, the Japanese system being the most notable example of a subtraction method consumption tax. VAT exemptions create an important exception to the neutrality of VAT. When a supply is VAT-exempt, this means that no output tax is charged on the supply and that the supplier is not entitled to credit the related input tax. Many VAT systems apply exemptions for activities that are hard to tax (the exemption for financial services being the most notable example) and/ or to pursue distributional objectives (agricultural and fuel exemptions and exemptions for basic health and education are commonly encountered). One adverse consequence of VAT exemptions is that they create "cascading" when applied in a business-to-business (B2B) context. The business making an exempt supply can be expected to pass on the uncreditable input tax in the price of this supply, while this "hidden tax" can subsequently not be credited by the recipient business.

While the destination principle has been widely accepted as the basis for applying VAT to international trade, its implementation is nevertheless diverse across jurisdictions. This can lead to double taxation or unintended non-taxation and to complexity and uncertainty for businesses and tax administrations. In order to apply the destination principle, VAT systems must have a mechanism for identifying the destination of supplies. Because VAT is generally applied on a transaction-by-transaction basis, VAT systems contain "place of taxation" rules that address all transactions, building on "proxies" that indicate where the good or service supplied is expected to be used by a business in the production and distribution process (if the supply is made to a business) or consumed (if the supply is made to a final consumer).

Conclusion and Recommendations

Most VAT systems therefore tax supplies of services to private consumers in the jurisdiction where the supplier is resident (established, located). Many jurisdictions that zero-rate cross-border supplies of services to non-resident customers, limit the application of this regime to B2B supplies, notably by applying it only to services that are typically supplied to businesses (advertising, consultancy, etc.) Supplies to foreign private consumers are then subject to VAT in the supplier's jurisdiction while services acquired from abroad by resident final consumers are not subject to VAT in the consumer's jurisdiction. While this approach, which effectively results in origin taxation, is likely to be less vulnerable to fraud, it may create an incentive for suppliers to divert their activities to jurisdictions

where no or a low VAT is applied and to sell remote services into foreign markets VAT-free or at a low VAT rate. This potential distortion and the associated revenue losses become increasingly significant as volumes of cross-border supplies of services keep growing. process, whether any delivery restrictions apply and which means of payment are accepted.

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