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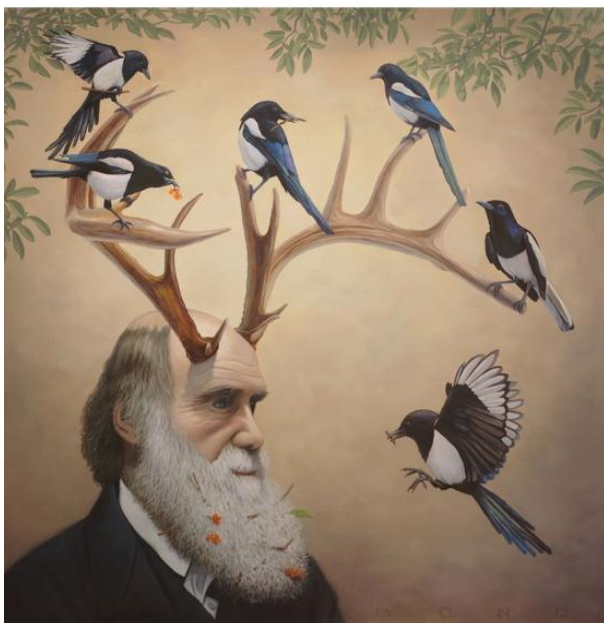
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Legal problems of e-commerce taxation regulation

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Abstract

This article discusses the legal problems of taxation regulation e-Commerce via collection and study of individual facts; generalization; methods of scientific abstraction; methods of regularity cognition. As a result of the analysis, it is proved that a computer server owned by a foreign enterprise and located in another state can be recognized as a permanent establishment for the purposes of taxation of income of a foreign enterprise from activities in that state. The article concluded that it is necessary to form a special definition of e-Commerce, which will be used exclusively for tax purposes.

Keywords: Electronic, Commerce, Legally, Significant, Messages.

Problemas legales de la regulación fiscal de comercio electrónico

Resumen

Este artículo analiza los problemas legales de la regulación fiscal del comercio electrónico a través de la recopilación y el estudio de hechos individuales; generalización; métodos de abstracción científica; métodos de cognición de regularidad. Como resultado del análisis, se demuestra que un servidor informático propiedad de una empresa extranjera y ubicado en otro estado puede ser reconocido como un establecimiento permanente a efectos de imposición de los ingresos de una empresa extranjera de las actividades en ese estado. El artículo concluyó que es necesario formar una definición especial de comercio electrónico, que se utilizará exclusivamente para fines fiscales.

Palabras clave: Electrónica, Comercio, Legalmente, Significativo, Mensajes.

1. INTRODUCTION

Global e-Commerce leads to blurring of borders between countries and significantly complicates the delimitation of national tax jurisdictions, creating new opportunities for tax planning, as well as tax avoidance. The governments of economically developed countries are concerned about the real possibility of losing in the future a significant part of tax revenues to the budgets due to the lack of sufficient legislative regulation of taxation of e-Commerce. Internet and e-Commerce make the problem of not only modernization of existing tax systems, but also their harmonization urgent. An active work is conducted in this direction today. Most of the authors' studies

are fragmentary or narrowly focused. They are extent of the analysis of the norms of current legislation and international agreements, or devoted to the study of the practice of an individual state without taking into account the accumulated international experience in the field of international taxation in General and taxation of e-Commerce in particular (OKRIASHVILI & YAKUPOV, 2012: BABAEIPOUR, SAHEBOZAMANI, MOHAMMADIPOUR & VAKILIAN, 2018).

2. METHOD

Every year the volume of trade turnover on the Internet increases with incredible speed. According to the U.S. Department of Commerce, total online retail sales in the United States in 2018 amounted to \$ 175 billion, and in the first quarter of 2018 - \$ 32.4 billion, representing 5.4% of total retail sales in the United States. At the same time, the growth of retail sales on the Internet in the first quarter of 2018 compared to the same period of 2017 amounted to 13.4%. According to forecasts of Forrester Research, by 2020 the volume of retail sales on the Internet in the USA will reach 435 billion dollars. According to the forecasts of e-Marketer analysts, online sales in the Asia-Pacific region for three years will grow by almost a quarter (23.3%) and by 2021 will reach 268.7 billion dollars. By the end of 2019, this figure is projected to be 101.7 billion us dollars. At the same time, the current leaders of the list - Japan and South Korea will give up their positions to the fast-growing markets of China and India.

The object of the study is taxation in the online sale of goods and services. The following methods are used in this article: collection and study of individual facts; generalization; methods of scientific abstraction; methods of regularity cognition. The method of objectivity allowed to reflect the role and importance of taxation in e-Commerce. With the help of the principle of objectivity, the essence of such a concept as electronic Commerce was determined (OKRIASHVILI, GURINOVICH, PAVLYUK & YAKUPOV, 2018: OLIVEIRA, OLIVEIRA, GOMES & QUEIROS, 2018: SAZESH & SIADAT, 2018: TOPRAK & KARAKUS, 2018).

3. DISCUSSION

The modern tax system has been functioning for almost a hundred years, ensuring the distribution of tax revenues between countries. The basic principles of the consensus reached to date on international taxation are enshrined in more than a thousand substantially similar bilateral agreements, treaties and conventions, as well as in several internationally recognized model conventions for the avoidance of double taxation. It should be emphasized that the issue of international distribution of tax revenues has always been a problem.

So, it is a very difficult task to establish new principles of equitable distribution of the tax revenue that would be acceptable to countries all over the world. In particular, it is extremely difficult to

revise the principle that the preferential right of taxation of profits from entrepreneurial activity belongs to the state in the territory of which the source of income is located, and not to the state in which the enterprise is established (or in which the place of its management or control is located), or the natural person - the recipient of income (BURCU, SEDA & MUSTAFA, 2015).

One of the fundamental principles of international tax law is the principle of territoriality. In accordance with this principle, the state has the right to levy a tax on a non-resident only if he has an object of taxation in the territory of the state or abroad, but in connection with activities in the territory of the country. The principle of territoriality is determined by the international legal principle of territorial supremacy of a country over its territory.

Territorial supremacy is an integral part of state sovereignty, its material embodiment, which means, first, that the power of the state, including in the field of taxation, is the Supreme power in relation to all persons in its territory, and, secondly, that the public authority of a foreign state is excluded in the territory of that state. Exceptions to the principle of territorial supremacy can take place only with the consent of the state, which can be expressed in international agreements concluded by the state and in other ways. Traditionally, the tax jurisdiction of the state, that is, the ability to establish rights and obligations for persons associated with economic interaction with the

state, applies only to its own territory (AKHMETSHIN, PAVLYUK, HASANOV, SVERDLIKOVA & KADYROV, 2018).

E-Commerce is trans-border and is not tied to a particular geographical area and therefore to the territory of a state. As a result, the link between income-generating activities and territory becomes non-obvious. In this regard, traditional taxation mechanisms and instruments may lose their effectiveness in relation to e-Commerce. Applying traditional space-time categories to e-Commerce is difficult, but e-Commerce has some spatial references. Thus, persons involved in e-Commerce are always in the territory of a certain country, as well as the execution of most transactions and the receipt of income from them takes place in the territory of any state. E-Commerce can be carried out on the territory of one or several countries, including tax-free (offshore) jurisdictions (ANUBHAV & BRIG, 2014).

Currently, almost all over the world recognized the idea that it is not required to establish any new taxes specifically for e-Commerce as the fundamental one. Most countries have concluded that existing taxes apply to Internet transactions as well. Much of the credit for this belongs to the activities of international intergovernmental organizations (primarily OECD), as well as non-governmental organizations (in particular, the Transatlantic business dialogue, the world business dialogue on e-Commerce, contact groups of representatives of the Commission of the European Communities and entrepreneurs). This principle means the maximum possible

minimization of administration costs in the tax system. The rules for levying a tax should be created in such a way as to let the tax extracts from the taxpayer's pocket as little as possible, in excess of what goes to the Treasury (BHARAT, ASHRAF & SARAH, 2013).

The tax legislation should be clear and easy to understand so that the taxpayer in each case clearly knows the date of payment of the tax, the method and amount of payment and could foresee the tax consequences of the transactions concluded by him. Opportunities for tax evasion (tax evasion) and tax avoidance (tax avoidance) should be minimized by taking proportionate countermeasures. Tax systems should be flexible and dynamic, allowing them to match the level of technology and trade at the present stage. Adequate taxation of income from e-Commerce should be ensured not by establishing fundamentally new rules specifically for e-Commerce, but by improving and adapting to the realities of the new economy of existing institutions, concepts and concepts of tax law. Taxation of e-Commerce is possible due to the presence of certain spatial references, since the persons involved in e-Commerce are always in the territory of a certain country, as well as the execution of most transactions and the receipt of income from them takes place in the territory of a state.

Modern technologies and e-Commerce challenge existing principles of income classification for tax purposes and necessitate their revision, but the proposal to qualify income from e-Commerce as income from the sale of individual digital products, or as royalties,

depending on the amount of rights transferred under the transaction is not acceptable. The application of this approach in practice leads to irreparable contradictions in the classification of income from e-Commerce. Comparing transactions with digital products with transactions of purchase and sale of individual physical objects, it can be concluded that in some cases, the recognition of income from the sale of digital products as royalties can lead to different taxation, i.e. tax discrimination, the same transactions depending on the method of their conclusion. The following differences between e-Commerce and traditional business activities can be distinguished in Table 1:




	no geographical boundaries on the Internet
	the anonymity of the participants
	absence of intermediaries between suppliers and services

Table 1: Differences between e-Commerce and offline trade

These features of e-Commerce not only make it difficult to determine the tax liabilities of its participants, but also create significant obstacles to tax control, and in some cases, they lead to the actual loss of income from taxation. However, due to the presence of certain spatial references, there is a fundamental possibility of taxation of e-Commerce, since the persons participating in it are always in the

territory of a certain country, as well as the execution of most transactions and the receipt of income from them takes place in the territory of some state.

The development of e-Commerce casts doubts not only on the traditional notion of withholding taxation, but also on the adequacy of the use of the term residency for tax purposes (CARLOS, 2005). Traditional concepts of residency are mainly based on the criterion of physical presence, which is losing its importance in the world of e-Commerce, where physical presence is very difficult to determine.

The tax jurisdiction of the state extends not only to its tax residents, but also to nonresident foreign persons who conduct activities or derive income in its territory (E-Commerce Law and Practice in Europe). For persons operating in several countries, the problem of avoiding double taxation is relevant. Modern tax law determines the tax status of foreign legal entities and, accordingly, the amount of their tax liabilities depending on the nature, type and duration of their activities in the country. The concept of permanent establishment is used to assess the activities of foreign legal entities. The first international agreement published by the League of Nations to use the concept of permanent establishment is the 1899 Convention between Austria-Hungary and Prussia. Under the Convention, a permanent establishment was defined as: the establishment of branches, factories, ports, offices, places of purchase or sale, and other places of business through which the owner, partner, Manager or other

permanent representative carries out his or her normal business activities.

A permanent establishment is a kind of fiction used in tax law solely for the purpose of determining the degree of the physical presence of a foreign legal entity in the territory of a state and, as a consequence, its tax status. Modern network technologies, such as data transmission within telecommunication networks, make it difficult to apply the concept of a permanent establishment in practice, based primarily on a rigid reference to the terrain. Advanced technologies allow enterprises in a number of industries to provide a significant amount of services for a short period of time and without direct connection with the territory. It is important to note that the fundamental principles of tax law, including the principle of certainty, should be fully applied to the taxation of e-Commerce.

The presence of a permanent establishment allows justifying unlimited tax jurisdiction of the state in respect of income received by a foreign legal entity from the activities of a permanent establishment. In some cases, a computer server owned by a foreign enterprise and located in another state may be recognized as a permanent establishment for the purposes of taxation of the income of a foreign enterprise from activities in that state.

1. It is necessary to create a special definition of e-Commerce, which will be used exclusively for tax purposes. The e-

Commerce should be understood any form of activity legal and physical persons, individual entrepreneurs, associations, States and municipalities, including the sale of goods, performance of works, rendering of services, transfer of property rights using the computer network Internet, the implementation of which leads to the occurrence of the circumstances, having cost, quantitative or physical characteristics and which can be recognized as objects of taxation in accordance with the legislation on taxes and fees;

2. The following General principles of taxation apply to e-Commerce: neutrality; efficiency; certainty and simplicity; efficiency and fairness; flexibility;

3. The issue of classification of income from e-Commerce is subject to resolution at the level of bilateral agreements on avoidance of double taxation. An acceptable option is to classify the income from e-Commerce in the structure of the double tax Treaty as other income subject to taxation, depending on the composition of the parties involved (exporters and (or) importers of digital products), exclusively in the state of residence or in the state of the source of income;

4. A computer server owned by a foreign enterprise and located in another state may be recognized as a permanent

establishment for the purposes of taxation of the income of a foreign enterprise from activities in that state.

4. CONCLUSION

Currently, e-Commerce is one of the fastest-growing economic activities requiring the most detailed legal regulation. The lack of due regard to the issues of international taxation of e-Commerce can lead, on the one hand, to double taxation and violation of the legitimate rights and interests of taxpayers, and on the other hand - to the loss of income from e-Commerce from taxation and the loss in the future of a significant part of tax revenues to the budgets of States. The usage of a new way of information dissemination and data transmission in modern trade can create significant obstacles to taxation in most States whose legislation and law enforcement practices have not yet adapted to the realities of the new economy (AHMED & HEGAZI, 2007).

E-Commerce is characterized by certain features (cross-border nature, the anonymity of participants, lack of intermediaries between suppliers and end users of goods and services), which necessitate a critical rethinking of modern institutions of tax law and improvement of tax legislation. Adequate taxation of income from e-Commerce should be ensured not by establishing fundamentally new rules specifically for e-Commerce, but by improving and adapting to the realities of the new economy of existing institutions, concepts and

concepts of tax law. Further research on the topic should consider applying existing tax rules and existing international tax treaties to e-Commerce.

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