
Committee ~~004~~ N.0G]TETm

2. The proliferation of technology and commensurate rise of the Digital Economy presents a plethora of administrative concerns, not the least of which are embodied in international taxation. The traditional tools available to tax authorities were developed at a time when physical presence was the norm, and cross-border transactions lacked this type of fluidity. Like the retail stores of the brick and mortar economy, these tools have become outdated, and may soon be rendered obsolete by the Digital Economy. Thus, it is necessary for international organizations and tax authorities to take note of the challenges posed by the Digital Economy, and adapt their approaches accordingly.

I. Tax Challenges in the Digital Economy

i. Nexus

3. Predominantly a state tax concept in the United States, nexus refers to the connection between an out-of-

Traditionally, the existence of a nexus has turned on the physical presence of the taxpayer within a state,

provide goods and services to customers in various states without ever physically setting foot in that

presence test such as the location of the customers for nexus to supplant the physical presence test, which would find a nexus only where the activity meets or exceeds a particular threshold that reflects substantial digital interaction with the economy of the particular state. While it is important not to overstate this concern,²

of business in the Digital

ii. Permanent Establishment

4. For the definition of permanent establish

business

recognized as the key value contributors of digital business models. Accordingly, many insist that transfer pricing in the Digita

transmitting transaction history to a third party. In this space, the security of the technology and the privacy laws related thereto has generally lagged behind the proliferation of e-wallets. E-wallets also pose additional escheat concerns. Consider a company that operates in various countries through independent contractors that it pays via e-wallets issued by third-party service providers. These arrangements, which are increasingly common in the Digital Economy, also present new difficulties, not the least of which is the threshold matter of identifying the person bearing the ultimate escheatment obligations under the applicable law.