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TAX CHALLENGES OF THE DIGITAL ECONOMY IN BRAZIL

OS DESAFIOS TRIBUTÁRIOS DA ECONOMIA DIGITAL NO BRASIL

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Abstract: The taxation of the digital economy is proving to be one of the greatest international challenges of our time. While the OECD is trying some consensus to establish benchmarks that guide its members to uniform taxation, and the US has been looking at public hearings and bills for more than a decade, such as the Fairness Marketplace Act, developing countries are immersed in the same discussions, but with additional challenges of the great number of internal challenges, as intense as the external ones. In order to analyze the Brazilian system, we will necessarily navigate through the fiscal war between states and municipalities to understand the barriers that exist between an effective system and the existing one. And Brazilian legislation has taken important steps recently, by choosing to change from the technique historically used in Brazil that is to tax sale at the State of origin, to a method of taxation in the destination, as a way to decentralize tax collection markedly concentrated in the states of the southeast, such as São Paulo and Rio de Janeiro. The Brazilian example is quite peculiar, but also reflects the tax challenges raised by the digital economy worldwide.
Keywords: Digital economy; taxation at origin; tax war.

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Resumo: A taxação da economia digital está provando ser um dos maiores desafios internacionais do nosso tempo. Enquanto a OCDE tenta chegar a um consenso para estabelecer padrões de referência que orientem seus membros para uma tributação uniforme, e os EUA estão analisando as audiências públicas e projetos de lei por mais de uma década, como o *Fairness Marketplace Act*, os países em desenvolvimento estão imersos nas mesmas discussões. , mas com desafios adicionais do grande número de desafios internos, tão intensos quanto os externos. Para analisar o sistema brasileiro, nós necessariamente passaremos pela guerra fiscal entre estados e municípios para entender as barreiras que existem entre um sistema efetivo e o existente. E a legislação brasileira deu passos importantes recentemente, ao optar pela mudança da técnica historicamente usada no Brasil, que é a venda de impostos no Estado de origem, para um método de taxação no destino, como forma de descentralizar a arrecadação de impostos marcadamente concentrada em os estados do sudeste, como São Paulo e Rio de Janeiro. O exemplo brasileiro é bastante peculiar, mas também reflete os desafios fiscais levantados pela economia digital em todo o mundo.
Palavras-chave: Economia digital; tributação na origem; guerra fiscal.

1. INTRODUCTION

There are several tax challenges for the digital economy in Brazil. Although the taxation of the digital economy in Brazil poses challenges that are very specific due to the particular features of Brazil's tax system, it somewhat reflects the tax challenges raised by the digital economy worldwide.

Taxing the digital economy in Brazil raises three main questions. The first is whether digital goods can be taxed and, if so, who is entitled to charge the taxes on digital transactions – Federal or State Local level. Another question

concerns the criterion to be used in defining whether the tax will be paid in the seller's jurisdiction (origin) or the consumer's jurisdiction (destination).

The first question as to whether digital goods should be taxed is a relevant one because the Brazilian Constitution assigns governments at federal, state and municipal levels the authority to tax based on concepts of the industrial society that take into account tangible assets.

The Brazilian Constitution has adopted an inflexible system of distribution of taxing power. The Federal government charges taxes on industrialized products (IPI), whereas the State governments charge taxes on the circulation of goods, provision of interstate and inter-municipal transportation and communications services (ICMS). City governments charge taxes on the provision of services (ISS). The municipal tax is generally charged by the city in which the taxpayer provides the service. However, in exceptional cases, ISS must be charged by the city where the service is performed.

The criterion adopted in Brazil is not the same as the one used in most countries, where consumption tax is based on the notion of value added tax, regardless of how such value is created: whether through the sale of goods or the provision of services.

The fine line between what is sale of goods and what is provision of service has already been at the center of the debate between City and State governments,[1] even prior to the spread of the digital economy. In today's scenario, with the raise of the digital economy worldwide, this debate is bound to be fiercer.

[1] FEITOSA, Maurine Morgan Pimentel. O conflito de competência entre o ISS e o ICMS-Comunicação no rastreamento de veículos. In: CAMPOS, Carlos Alexandre de Azevedo; IBRAHIM, Fábio Zambitte; OLIVEIRA, Gustavo da Gama Vital. (Orgs.). **Estudos de federalismo e guerra fiscal**. Rio de Janeiro: Gramma, 2017, v. 1, p. 175-216.

Brazilian fiscal federalism also has not been enough to guarantee states and cities their own necessary resources for the functions and responsibilities that have been assigned to them. The federal government concentrates the substantial amount of tax resources and has concentrated its tax collection on contributions whose revenues are not shared with states and cities.[2] States and municipalities become financially dependent on transfers from the central government.[3]

This scenario poses a real imbalance between tax revenues and responsibilities assigned by the Constitution and generates many conflicts between subnational entities. This results in harmful tax competition, also known as "tax war" in Brazil.[4] The taxation of the digital economy in Brazil must be understood with respect to this reality.

2. "FISCAL WAR" BETWEEN CITY AND STATE GOVERNMENTS – TAXATION OF SOFTWARE

Brazil is now facing a true "fiscal war" between City and State governments when it comes to taxing the use of software.

In 1998, Brazilian Supreme Court ruled that standard software (off-the shelf) is subject to the states sales tax (ICMS) because it is truly a good. At that time, software was often distributed as physical media (CD-ROM). [5]

[2] ALVES, Raquel de Andrade Vieira. **Federalismo fiscal brasileiro e as contribuições**. Rio de Janeiro: Lumen Juris, 2017.
[3] OLIVEIRA, Gustavo da Gama Vital. Reforma tributária e federalismo fiscal. In: PAULA, Daniel Giotti; RIBEIRO, Ricardo Lodi (org.). (Org.). **Direito tributário inclusivo**. 1ed. Rio de Janeiro: Multifoco, 2016, p. 123-139.
[4] PENCAK, Nina. Sobre a (in)constitucionalidade dos benefícios fiscais de ICMS concedidos sem convênio. In: CAMPOS, Carlos Alexandre de Azevedo; IBRAHIM, Fábio Zambitte; OLIVEIRA, Gustavo da Gama Vital. (Orgs.) **Estudos de federalismo e guerra fiscal**, v. 1, Rio de Janeiro: Gramma, 2017.
[5] RE 176626.

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In 2011, the court also ruled, in a preliminary decision, that is was possible to consider the ICMS to be collected even when the consumer purchased the software through electronic transfer of data. [6] In other words, the decision stressed that software via electronic transfer (download) should receive the same tax treatment of software applied to physical media. The court denied an injunction to suspend the effects of state law 7.098/1998, enacted by the state of Mato Grosso, which established the levy of ICMS on any sale of a software, including those via download.

However, Supplementary Law 116/13, which provides for service tax to be charged by city governments, lists the assignment of the right to use software as one of the events subject to service tax (ISS).[7] According to the Brazilian Constitution[8], the supplementary law is the path to the settlement of tax conflicts between governments, and also establishes the taxable event and the taxpayers responsible for collecting the taxes. [9] Moreover, operations involving software cannot be consider similar to an operation of sale of goods, because there is no ownership transfer.[10]

In turn, State governments, who are in charge of taxing the sale of goods, according to Supplementary Law 87/96, argue that the sale of standardized software is subject to sales tax (ICMS). For them, ICMS must be paid even when

[6] MC ADI 1945.
[7] Supplementary Law 116/03, item 1.05 – "software licensing or assignment of use rights"
[8] Article 146, III.
[9] For more information about the issue, OLIVEIRA, Gustavo da Gama Vital de. Federalismo fiscal, jurisdição constitucional e conflitos de competência em matéria tributária: o papel da lei complementar. In: **Temas de federalismo fiscal brasileiro**. Rio de Janeiro: Gramma, 2016, p. 95-119.
[10] MACEDO, Alberto. ISS versus ICMS-Mercadoria: Licenciamento de Software e a Impossibilidade do Avanço do Conceito Constitucional de Mercadoria Como Bem Imaterial. In: MACEDO, Alberto; AGUIRREZÁBAL, Rafael; PINTO, Sérgio Luiz de Moraes; ARAÚJO, Wilson José de (Coord.). **Gestão Tributária Municipal e Tributos Municipais**. Vol.6. São Paulo: Ed. Quartier Latin, 2017, p.57-99.

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such a sale is made through the electronic transfer of data. The argument here is that the ICMS does not only levy on the sale of tangible assets. The ICMS is the most important tax for States in Brazil.

In 2015, the CONFAZ[11] – National Council of Fiscal Policy – which represents all 27 states of Brazil, ruled[12] that States may continue to charge ICMS in all operations involving software, such as data storage, games, applications, and including software that is available by electronic data transfer.

In 2017, the Agreement 106/2017 also ruled for the imposition of ICMS regarding transactions with software and digital goods. According to the agreement, the ICMS must be paid to the state where the consumer resides, and the States also can transfer the collection obligation to many persons, such as the one who performs the merchandise offer or the financial intermediary, for example the credit card administrator.

A fiscal war between State and City governments concerning the taxation of software has been recently declared in the major Brazilian state, São Paulo. Both the São Paulo State government and the São Paulo City government have already voiced their intention to tax software transactions. The state of São Paulo enacted Decree no. 63099/2017 and the Normative Decision CAT 04/2017 expressing that ICMS can be levied in transactions involving any type of software, including software that is not distributed on a physical store.

Almost at the same time, the Municipality of São Paulo published Normative Opinion SF 01/2017, which established that under Supplementary Law 116/13, transactions involving software are subject to the municipal tax on the provision of services (ISS). The decision also explains that the ISS must be

[11] CONFAZ is a committee which coordinates tax regulation regarding state tax ICMS.
[12] Agreement n. 181/2015.

collected if the software is standardized ("off the shelf") or the software was adapted to the specific needs of the consumer. It also ruled that the ISS must be charged even when the software is installed from an external server ("Software as a Service – SaaS").

The scenario became even more complex in 2016, after Supplementary Law 157/16, which added several technological services to the list that allowed the Municipality to charge municipal tax. These new services includes storage of data, texts, images, videos, applications, websites, apps (including cloud services) and the provision of video, audio, text content and image via internet through streaming.[13]

This would make software companies subject to double taxation, which is banned by the Brazilian Constitution. Under Brazil's tax system, the same taxable event cannot be subject to both the municipal service tax and the state sales tax.

This scenario presents two important problems. On the one hand, companies engaged in the software market have the fiscal costs of their products increased and this represents unnecessary expense that could be avoided should there be clarity on the subject. On the other hand, the final price of software is pushed up by taxes, and this can harm thousands of consumers throughout the country.

To give an idea of the impact of software sales in Brazil, the "2017 Brazilian Software and Service Market" study carried out by the Brazilian Association of Software Companies in partnership with International Data Corporation shows that the Brazilian IT market which includes software, hardware, services and

[13] For more details, PISCITELLI, T..; CANEN, D. . Taxation of Cloud Computing in Brazil: Legal and Judicial Uncertainties. **Bulletin for International Taxation**, v. 72, p. 72-79, 2018.

exports – reached 39.6 billion dollars in 2016, accounting for 2.1% of Brazil's GDP and 1.9% of the world's IT investment.

The controversy over which tax is to be levied – state or municipal tax – on transactions involving software is only expected to be solved after the Brazilian Supreme Court (STF) issues a ruling on the subject. This may take a while, which will add to the already existing legal uncertainty.

3. CONTROVERSIES ALSO CONCERNING FEDERAL TAXES

As shown, specifically regarding Brazil, the so-called "fiscal war" – the dispute over allocation of tax jurisdiction between states and municipalities – triggers a full of questions.

If conflicts of competence allocation between States and Municipalities in Brazil were not enough, federal taxation also contributes to an uncertain and insecure environment. As an example, there are some federal taxes in Brazil that affect the importation of goods and services, such as the Withholding Income Tax, the so-called CIDE-Remittance and the PIS and COFINS Imports Contributions.

At the same time, the uncertainties regarding the taxation of the digital economy brings insecurity until the dispute is resolved, except the existing one between Tax and taxpayers. We refer to the interpretive attempt that the Federal Revenue Service of Brazil has been making to try to frame federal taxes that, in theory, would not affect some operations, such as payment for the use of supplier software based in another country, like software as a service. Therefore, there is also uncertainty about the federal taxes themselves, in an environment without competition. Therefore, in the acquisition of license to use certain software,

without technology transfer, that is, without acquiring the source code, it would not be necessary to talk about the incidence of the federal taxes.

However, in recent manifestations, the Federal Revenue Service of Brazil came to understand that any software hosted in the cloud, without it being downloaded by the user, would be interpreted as a Software as a Service and, therefore, subject to all taxes.[14]

This is an example of insecurity in Brazil without there being a dispute between different federative entities. Of course, it is not the place of hosting the software that will indicate whether it is service, merchandise or mere use of license, without transfer of technology for tax purposes.

Obviously, there are other examples, but the focus of the present study is to demonstrate that in Brazil, as elsewhere, while the Legislature does not reach a legal model guiding taxation on the digital economy, interpretative problems of various natures arise inexorably, since, after all, no government wants to stop taxing wealth that has been generated pending legislative discussions.

4. ORIGIN X DESTINATION

The second problem that taxing the digital economy raises in Brazil concerns the criterion to be used when defining whether the tax will be collected in the jurisdiction of the seller (origin) or in the jurisdiction of the consumer (destination).

An intense debate on this subject has already taken place with respect to the sale of merchandise through the internet. In this case, there was no doubt: the tax levied on the transaction was clearly the state sales tax. But the problem was that the Brazilian Constitution used to provide that the State tax was

[14] SOLUÇÃO DE CONSULTA COSIT Nº 191, DE 23 DE MARÇO DE 2017.

to be collected in the State of origin, regardless of the final destination of the goods.

Because companies that sell online are mostly located in Brazil's major economic centers (especially São Paulo and Rio de Janeiro), the other states started claiming that the rule was unfair because tax revenues were concentrated in the richest states.

In reaction to this scenario, 19 States approved in 2011 the Protocol CONFAZ 21,[15] assuring for the state of destination an ICMS share, resulting in potential double taxation for e-commerce sellers, because the State of origin continued to tax the transaction as the Federal Constitution provides. The Supreme Court held the agreement unconstitutional,[16] because, under Brazilian Constitution, state tax should be collected in the State of origin in an interstate transaction between an ICMS taxpayer and a final consumer.

This movement resulted in the issue in 2015 of the Brazilian Constitutional Amendment No. 87, which drastically changed this criterion by determining that the sales tax was to be collected in the state of destination of the goods, after a short transitional period. However, it did not bring minimal systemic infrastructure for this to occur, in order to generate excessive bureaucracy for Brazilian taxpayers.

It is true that had this rule not been changed, the tax revenue from ICMS would have ended up in the states where Brazil's major retail companies are located, to the detriment of economically weaker states, boosting the so-called "fiscal war".

[15] BARROS, Maurício. O ICMS no comércio eletrônico e a inconstitucionalidade do Protocolo ICMS 21/2011. **Revista Dialética de Direito Tributário** , v. 193, p. 93-111, 2011.
[16] ADI 4628 e 4713.

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Online sales will tend to increase in coming years and, consequently, sales in physical stores are bound to drop. So, States will lose their bargaining power to attract investments as a result of the "fiscal war", which relies on origin-based taxation, as the destination-based principle will apply to most sales, for they will be made through the internet.

Although taxing online sales in the jurisdiction of the destination is clearly a fair rule, it has created some practical difficulties for sellers in Brazil. Prior to the Constitutional Amendment No. 87, the online seller located in São Paulo could sell goods to the twenty-six Brazilian states and then collect the state sales tax in the state of origin, São Paulo. But this was changed by Constitutional Amendment No. 87. Now, the seller located in São Paulo is obliged to collect the ICMS in all states where their goods are purchased; clearly a heavy obligation, especially for small businesses.

This burdensome rule generated discussions on what measures can be taken to help compliance with such obligations. Sensitive to this issue, the Brazilian Supreme Court ruled[17] that Brazilian companies that adopt the simplified tax program (*Simples Nacional*) – a system that includes micro and small companies, whose billing cap is R$ 4,800,000.00 (approximately U$ 1,250,000.00) – are temporarily not obliged to comply with the requirements brought by the new Constitutional Amendment.

The Brazilian experience of online sales taxation brings to mind the 1992 U.S. Supreme Court ruling (504 U.S. 298). In Quill Corporation v. North Dakota, the U.S. Supreme Court ruled constitutional the protection of remote sellers that

[17] ADI 5464.

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did not meet the substantial nexus requirement under the Commerce Clause of the Constitution,[18] i.e., lacked physical presence.[19]

The Supreme Court, however, stressed that the U.S. Congress was free to disagree with its conclusions and change the legal landscape by producing legislation. It is interesting to note that the U.S. Supreme Court considered the fact that many variations in taxation and in administrative and record keeping requirements could make mail order sales much more complex operations. In other words, the Supreme Court considered relevant the fact that changing taxation to the state of destination of the merchandise could not be done if it rendered taxation an overly complex process for taxpayers.

In 2018, in South Dakota v. Wayfair, on a 5-4 vote, the U.S. Supreme Court overruled the decision of Quill Corporation. The court ruled that states are able to tax online sellers even without a physical presence in the state of consumer. The decision mentioned that, when the court decided Quill Corporation in 1992, it was not possible to predict that the most important sellers could be remote sellers.[20]

[18] Art. I, §8.

[19] Many authors have criticised the rule of physicial presence, like ROTHFIELD, Charles. Quill: Confusing the Commerce Clause, 3 ST. **TAX NOTE***S* 111, 115 & n.47 (1992). In the same line, Hellerstein mention that, altought nexus rules are important, the court should "focus on rules that are appropiate to the twenty-first centiry, not the nine-tennth.". HELLERSTEIN, Walter. Deconstructing the Debate Over State Taxation of Electronic Commerce**. Harvard Journal of Law & Technology**, v. 13, n. 3, 2000.

[20] Opinion of the court was delivered by Justice Kennedy: "The Quill Court did not have before it the present realities of the interstate marketplace. In 1992, less than 2 percent of Americans had Internet access. See Brief for Retail Litigation Center, Inc., et al. as Amici Curiae 11, and n. 10. Today that number is about 89 percent. Ibid., and n. 11. When it decided Quill, the Court could not have envisioned a world in which the world's largest retailer would be a remote seller, S. Li, Amazon Overtakes Wal-Mart as Biggest Retailer, L. A. Times, July 24, 2015, http://www. latimes.com/business/la-fi-amazon-walmart-20150724 story.html (all Internet materials as last visited June 18, 2018)."

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South Dakota enacted a law that required all merchants to collect a 4.5 percent sales tax if they had more than $100.000 in annual sales or more than 200 individual transactions for the delivery of goods or services in the state. Especially because South Dakota has no income tax, sales tax is really important to fund essential public services. State officials sued three large online retailers for violating the law. South Dakota argued that the Quill decision did not make sense in the digital era, and the major practical problem it had identified – that it would be burdensome for out-of-state retailers to collect taxes for thousands of local jurisdictions – had been solved by modern software. But the internet merchants argued that a ruling against them would impose burdens on small online merchants.[21] They said that a national solution should come from Congress rather than the Supreme Court.

Four justices dissented from the decision. Justice Roberts mentioned that any alteration of the rules in e-commerce, including the physical-presence rule, should be undertaken by Congress. He also mentioned concerns about the costs that the new decision of the Court will impose on small business.[22]

[21] The Supreme Court, in the opinion wrote by Justice Kennedy, mentioned the issue: "But the administrative costs of compliance, especially in the modern economy with its Internet technology, are largely unrelated to whether a company happens to have a physical presence in a State. For example, a business with one salesperson in each State must collect sales taxes in every jurisdiction in which goods are delivered; but a business with 500 salespersons in one central location and a website accessible in every State need not collect sales taxes on otherwise identical nationwide sales. In other words, under Quill, a small company with diverse physical presence might be equally or more burdened by compliance costs than a large remote seller. The physical presence rule is a poor proxy for the compliance costs faced by companies that do business in multiple States. Other aspects of the Court's doctrine can better and more accurately address any potential burdens on interstate commerce, whether or not Quill's physical presence rule is satisfied."

[22] "The burden will fall disproportionately on small businesses. One vitalizing effect of the Internet has been connecting small, even "micro" businesses to potential buyers across the Nation. People starting a business selling their embroidered pillowcases or carved decoys can offer their wares throughout the country—but probably not if they have to figure out the tax due on every sale."

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5. BRAZILIAN PROBLEMS, UNIVERSAL PROBLEMS

The Brazilian experience of online sales taxation is an interesting taste of the challenges that the entire world has been facing with respect to digital economy taxation.

The long-lasting conflict between origin and destination is gaining momentum in today's reality and not only in Brazil. The European Union is currently proposing a definitive VAT system based on the principle of taxation at destination. The destination-based principle is often raised when the purpose is to ensure tax fairness and avoid the concentration of tax revenue in the seller's country if that jurisdiction is much more advantageous to consumers located in different countries.

Along those lines is BEPS Action 1,[23] which even refers to destination-based taxation as one of the possible solutions to the tax challenges that the digital economy may bring.[24] The report pointed out several tax challenges of VAT.[25]

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[23] For more details, see BAL, Aleksandra & GUTIÉRREZ, Carlos, "Taxation of the Digital Economy", Madalina Cotrut (ed.), **International Tax Structures in the BEPS Era**: An Analysis of Anti-Abuse Measures (Amsterdam: IBFD, 2015) pp. 249-280.

[24] On this topic, about the relations between Action 1 and Brazil, see Rocha, Sérgio André. **Brazil´s International Tax Policy**. Rio de Janeiro: Lumen Juris, 2017, p. 212 : "This Action is definitely of interest to Brazil. More and more companies of the digital economy are doing business in the country without paying taxes there. This issue is capturing the attention of tax authorities, who have manifested the intention of creating specific rules to deal with this issue in the future."

[25] OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264241046-en: "(i) imports of low value parcels from online sales which are treated as VAT-exempt in many jurisdictions, and (ii) the strong growth in the trade of services and intangibles, particularly sales to private consumers, on which often no or an inappropriately low amount of VAT is levied due to the complexity of enforcing VAT-payment on such supplies".

In order to prevent such destination-based system from imposing excessive tax obligations, certain mechanisms must be adopted. In 2017, The OECD International VAT/GST Guidelines also mention the problems of administrative burden and complexity for non-resident suppliers.[26] The OECD publication of 2018 –Tax challenges arising from digitalization – also mentioned concerns about simplification of tax regimes about VAT.[27]

Destination is also in the spotlight when it comes to corporate income tax. In March 2018 the European Commission proposed new rules to ensure that digital business must be taxed where businesses have significant interaction with users through digital channels, even if a company does not have a physical presence there.[28]

It is also very important, when it comes to evaluating tax challenges of the digital economy, to look for the contribution of constitutional law. In this way, in 2016, The Venice Commission adopted the document "Rule of law checklist" to

[26] OECD (2017), International VAT/GST Guidelines, OECD Publishing, Paris, https://doi.org/10.1787/9789264271401-en. 3.129. "(...) these Guidelines recommend the implementation of a reverse charge mechanism to minimise the administrative burden and complexity for non-resident suppliers, where this is consistent with the overall design of the national VAT system. 3.132. (…)
Where traditional registration and compliance procedures are complex, their application for non-resident suppliers of business-to-consumer services and intangibles would risk creating barriers that may lead to non-compliance or to certain suppliers declining to serve customers in jurisdictions that impose such burdens."

[27] OECD (2018), Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264293083-en. "293. (...)Therefore, the 2015 BEPS Action 1 Report recommends that the foreign supplier be allowed to register for VAT in the market jurisdiction under a simplified registration and compliance regime."

[28] European Commission – 2018 – Council Directive laying down rules relating to the corporate taxation of a significant digital presence. Brussels, 21.3.2018. COM (2018) 147 final. https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-147_en "Article 1 Subject matter - This Directive lays down rules extending the concept of a permanent establishment, as it applies for the purposes of corporate tax in each Member State, so as to include a significant digital presence through which a business is wholly or partly carried on. This Directive also establishes certain principles for attributing profits to or in respect of a significant digital presence for corporate tax purposes."

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identify common features of the rule of law. When it comes to legality, the Venice Commission stressed that is important to consider the difficulty in implementing the law before adopting it.[29]

6. CONCLUSIONS

Although the taxation of the digital economy in Brazil poses challenges that are very specific due to the particular features of Brazil's tax system, it somewhat reflects the tax challenges raised by the digital economy worldwide. After all, origin, destination, fairness, safety, practicability, and simplification of taxation are universal topics that have always affected taxation. The spread of the digital economy only puts the conflicts involving such concepts in the spotlight.

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European Commission – 2018 – Council Directive laying down rules relating to the corporate taxation of a significant digital presence. Brussels, 21.3.2018. COM

[29] European Commission for democracy through law (Venice Commission). Rule of law checklist. March 2016: "54. Obstacles to the effective implementation of the law can occur not only due to the illegal or negligent action of authorities, but also because the quality of legislation makes it difficult to implement. Therefore, assessing whether the law is implementable in practice before adopting it, as well as checking a posteriori whether it may be and is effectively applied is very important. This means that ex ante and ex post legislative evaluation has to be performed when addressing the issue of the Rule of Law."

(2018) 147 final. https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-147_en

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