

Taxation of the digital economy: Evaluations on the amendments on permanent establishment notion

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When we look at the economic developments from past to present, it is obvious that the greatest changes have been technology based experiences and this is also reflected in the economy/commerce axis, which has gained a significant dimension with digitalization. Especially since the first product from amazon.com was sold by a stockbroker, it could be said that commercial activities have changed its basis and even though we have not been well aware of electronic commerce, it has been at the center of our daily lives with our purchases we made through our smartphones or tablets whenever and wherever we want. It should be noted that digitalization has flourished the economic life and expanded the commercial volume in the world from day to day. However, along with the development of the economy and commerce, the domestic policies of the countries should have been developed on the same level. In this respect, the tax legislation should be given of high importance as a significant part of the domestic policies. Nevertheless, global developments within digital companies are a very controversial issue, as it arises curiosity on which level the countries' legislations may follow these developments. As a matter of the fact, new practices which have changed the traditional commerce methods have made it impossible for existing legislations to be sufficient on the taxation of commercial transactions.

That is the reason why the methods and practices used for the taxation of electronic commerce have become an important issue that needs to be addressed globally. In this light, we will focus on the taxation of electronic commerce in this article and we will include international regulations of the Organization for Economic Development and Cooperation ("OECD") together with the evaluations of Turkish tax legislation on this issue.

In the taxation of the digital economy, it can be observed that the search for solutions on the international platform is accelerated. This has been done in parallel with the increase in the risk of abusing the existing Double Tax Treaties ("DTTs") by means of tax planning and tax evasion since the DTTs are based on the traditional permanent establishment notion. In this context, a "Task Force on Digital Economy" was set up to address the issues arising from the digital economy in the OECD and this resulted in the establishment of Base Erosion and Profit Shifting ("BEPS") Action Plan 1.

The BEPS Action Plan 1 includes an illustration of ways in which the implementation of business models through legal and tax structures may place pressure on the existing international tax framework. The examples include online retailer, internet advertising, cloud computing and internet app store and we will provide you the detailed analysis of the implementation of internet advertising model in this article. In this respect, the alternative measures mentioned in the BEPS Action Plan 1 are explained under three propositions; namely, i) updating the definition of permanent establishment to meet the existing needs; ii) taxation through withholding on digital transactions and electronic commerce and iii) indirect tax (VAT) application. In this article, the draft Turkish Tax Procedural Law will also be emphasized since it is considered to be amending the permanent establishment notion in order to enclose the digital economy activities.

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