

International

An Analysis of Diverse Unilateral Digital Tax Measures in Asian Countries

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The article aims to discuss the digital tax landscape in Asian countries, including briefly summarizing the unilateral measures implemented by the Asian countries. After a critical analysis of these unilateral measures and their impact on multinationals and the Asian economy, it concludes with the need for effective regional organizations in Asia to enhance cooperation in tax matters and to have a unanimous say on the global platform.

1. Digital Landscape in Asian Countries

1.1. The rise in digitalization and technological advancements

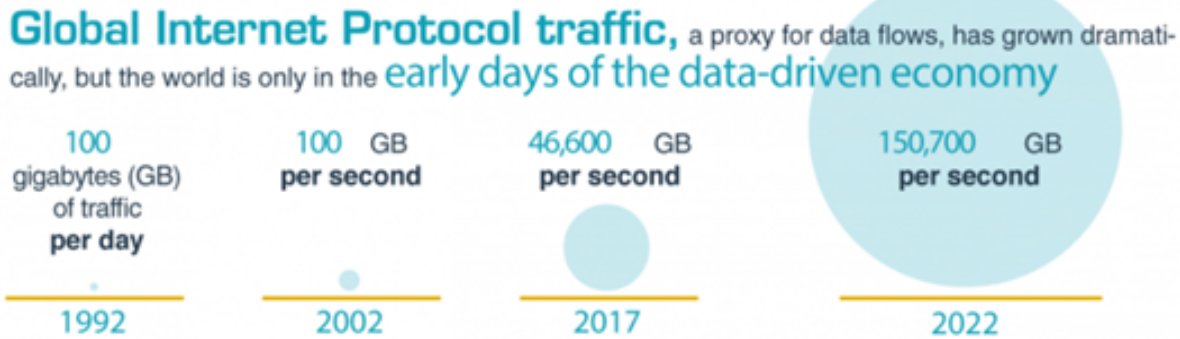
In the current era of globalization and technological advancement, the digital economy plays a fundamental role in the conclusion of international trade in goods and services, thereby affecting the allocation of cross-border investments, the flow of capital, mobilization of resources and creation of employment opportunities. This has resulted in the expansion of businesses across the globe and has also enhanced/integrated the global supply chain/value chain.^[1] The digital economy is characterized by intense innovation efforts, systematic pursuit of rapid and robust growth and is mainly dominated by large ecosystems (salient features of digital business models include scale without mass, reliance on intangible assets and the innate role of user data, user participation and network effects).

On the other hand, with the growth of the digital economy and widespread use of digital technologies (like big data, machine learning, Artificial Intelligence, cloud computing, the Internet of things, etc.), the use and importance of data has risen considerably. Digitalization has enabled businesses to collect and use data across borders to an unprecedented degree (platform businesses mainly capitalize on data as a value driver). With data and digital technologies, some of the big tech giants can control the actors of the ecosystems to obtain a competitive advantage. Various companies are implementing data-driven business models and strategies to attain competitive “data advantage”^[2] in the market as new technologies are aiding the potential to unlock the benefits of data assets.^[3] Figure 1 shows the trends in Global Internet Protocol traffic, which can aid to estimate the rise in data flows.

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1. K. Schwab, *The Fourth Industrial Revolution: what it means, how to respond*, World Economic Forum, available at (<https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/>) (accessed 30 Sept. 2021).
2. Data can help MNEs in attaining competitive advantage and can act as a source of growth. For example, MNEs can run data analytics to understand the customer behaviour patterns and modify services/goods offerings accordingly.
3. Conflux Data (2020), Series 1 – Part 1: *Data economy – Giving rise to new economy*, available at <https://confluxdata.net/f/part-1-data-economy%E2%80%933deluge-to-data-is-giving-rise-to-new-economy> (accessed 30 Sept. 2021).

Figure 1 – Trend in Global Internet Protocol Traffic



Source: I. Joshi, *Challenges loom for Asia's digital landscape*, The Daily Star news (23 Sept. 2019), available at <https://www.thedailystar.net/online/news/challenges-loom-asias-digital-landscape-1804096> (accessed 30 Sept. 2021).

Further, because of the impact of the COVID-19 (COVID) crisis on the global economy, many business models have changed/restructured the means of doing businesses. Digital approaches have proven to be more robust than anticipated, and technological solutions are being used to overcome COVID challenges in almost all industries.^[4]

1.2. Digital landscape in Asia

The size of Asia's digital economy has spanned tremendously, thereby increasing its share in the continent's Gross Domestic Product (GDP).^[5] Asian countries account for nearly seven out of the top ten economies with the highest Internet and Communication Technology (ICT) to GDP ratio, including Thailand, Malaysia and Singapore.^[6] Further, Asia reports roughly around 34% of the entire unicorn companies across the globe.^[7] Also, Asia-Pacific based companies reported 42% of the world's Fortune 500 (the world's 500 biggest companies by revenue) in 2018, as per the McKinsey Global Institute's report, "Asia's future is now, July 2019".^[8] The level of economic growth in the Asia Pacific region for the year 2020 was forecasted to be around 2.2%, which is expected to increase to 6.2% in 2021. Southeast Asia's digital economy is expected to hit USD 200 billion by 2025, while the e-commerce sector alone is forecast to reach USD 88 billion.

Another way to comprehend the pace of digitalization is to analyse the growth of data centres and servers in the Asian markets. The growth of data centres across south-east Asia has been on the rise and is expected to increase at a 6% Compound Annual Growth Rate (CAGR) from 2019-2025.^[9] The growth of digitalization is rapid since Asia houses almost 40% of the world's data centres.^[10] Singapore is one of the leading countries in the continent for building data centres, followed closely by Malaysia, Indonesia and Thailand.

Also, some countries in Asia Pacific has the extensive Internet user base globally.^[11] "A report released by Facebook and Bain & Company, *Riding the Digital Wave*, estimated that the number of digital consumers in Southeast Asia would increase to 310 million by 2025".^[12] Southeast Asia is becoming the world's fastest-growing Internet region with a user base of 260 million in 2016 and is expected to expand to 500 million by 2020, growing at around 4 million per month. The value is likely

4. I. Joshi, *Challenges loom for Asia's digital landscape*, The Daily Star news (23 Sept. 2019), available at <https://www.thedailystar.net/online/news/challenges-loom-asias-digital-landscape-1804096> (accessed 30 Sept. 2021).
5. In May 2016 research work by Google and Temasek estimated that the digital market in Asia would be USD 200 billion by 2025. A 2019 report states that the Internet economy had crossed USD 100 billion for the first time and thus requiring revision of the original estimates. See Google, Temasek and Bain & Company, *e-economy SEA 2019* (2019), https://www.blog.google/documents/47/SEA_Internet_Economy_Report_2019.pdf (accessed 30 Sept. 2019).
6. T.S. Sedik, *Asia's Digital Revolution*, 55 IMF Finance & Development 3 (2018); available at <https://www.imf.org/external/pubs/ft/fandd/2018/09/asia-digital-revolution-sedik.htm> (accessed 30 Sept. 2021).
7. CBINSIGHTS, *The Complete List Of Unicorn Companies*, available at <https://www.cbinsights.com/research-unicorn-companies> (accessed 30 Sept. 2021).
8. D. Watkins & D. Kaur, *Asia-Pacific's response to the proposed OECD reforms*, International Tax Review (23 Apr. 2020), available at <https://www.internationaltaxreview.com/article/b119lmjgt33bpf/asia-pacifics-response-to-the-proposed-oecd-reforms> (accessed 30 Sept. 2021).
9. *Data Center Market in Southeast Asia - Industry Outlook and Forecast 2021-2026* (Apr. 2021), available at https://www.reportlinker.com/p05758036/?utm_source=PRN (accessed 30 Sept. 2021).
10. S. Aurora, *Capital One Data Breach and Why Asia Pacific Must Rethink Cloud Security* (28 Oct. 2019), available at <https://www.cdotrends.com/story/14493/capital-one-data-breach-and-why-asia-pacific-must-rethink-cloud-security?refresh=auto> (accessed 30 Sept. 2021).
11. *List of countries by number of Internet users*, available at https://en.wikipedia.org/wiki/List_of_countries_by_number_of_Internet_users (accessed 30 Sept. 2021).
12. R. Mehta, *The case for digital business models in a new world*, The Business Times (30 Sept. 2020), available at <https://www.businesstimes.com.sg/asean-business/the-case-for-digital-business-models-in-a-new-world-0> (accessed 30 Sept. 2021).

to reach USD 200 billion by 2025, mainly driven by e-commerce, digital media, and travel-related digital solutions. Further, e-commerce is expected to exceed 16 times growth from USD 5.5 billion in 2016 to USD 88.0 billion by 2025. There are more mobile subscriptions in ASEAN than people with over 700 million subscriptions versus its 630 million population (Google & Temasek Holdings, 2016, 2017; World Bank, 2016).^[13] While some countries have already started commercial 5G services, 4G is still prevalent in other countries. A 6G national project is also in talks and expected to start soon.^[14] Separately, trials are ongoing for various other innovative services like autonomous driving, smart factories, smart cities, etc.

Of late, there were several national-level strategic initiatives, like the “Made in China 2025 Campaign” (Institute for Security and Development Policy, 2018) and the “Make in India Campaign”, which also began in 2014 (MakeInIndia.com, 2020). Some others include the “New Robot Strategy” in Japan (Headquarters for Japan’s Revitalization, 2015; Japan Robot Association, 2015); the “Thailand 4.0/Digital Thailand” national business and government transformation initiative (Digital Government Development Agency, 2017; Bukht and Heeks, 2018); and the “AI Information Industry Development Strategy” in South Korea (Shin, 2019; Paypay.me, 2019). Thus, embedding aspects of digital economy functionality into traditional manufacturing has been acknowledged as essential for the manufacturing sectors of the Asian nations.^[15]

Additionally, the number of digital transactions and other digitization measures considerably increased during the COVID crises. The business-to-business (B2B) transactions were transacted with the best possible use of digital technology, and business-to-consumer (B2C) online transactions increased substantially due to the effects of lockdowns.^[16] Despite all the economic downturns, the rise in digital transactions continues to dominate the Asian market and thus could be an essential tool for raising the government’s tax revenues. Some Asian countries (like the People’s Republic of China (PRC), Australia, Japan, New Zealand, Singapore, and the Republic of Korea) are host to advanced e-commerce markets and platform/digital companies. For example, companies like WeChat allow messages, photo sharing, news consumption from a wide range of sources, including social media, purchasing, gaming, health management and payments. In addition, Alibaba, Grab and the Google-Jio platforms provide an ecosystem for other product offerings.^[17] This in turn has increased the usage of e-payments and reliance on various wallets while decreasing the use of cash for making the payments. See [Figure 2](#).

13. P.J. Pena, *An ASEAN Digital Single Market: Boosting the Aspiration for a Single Market in the Digital Era* (13 Aug. 2019), available at https://mpr.aub.uni-muenchen.de/95948/1/MPRA_paper_95948.pdf (accessed 30 Sept. 2021).

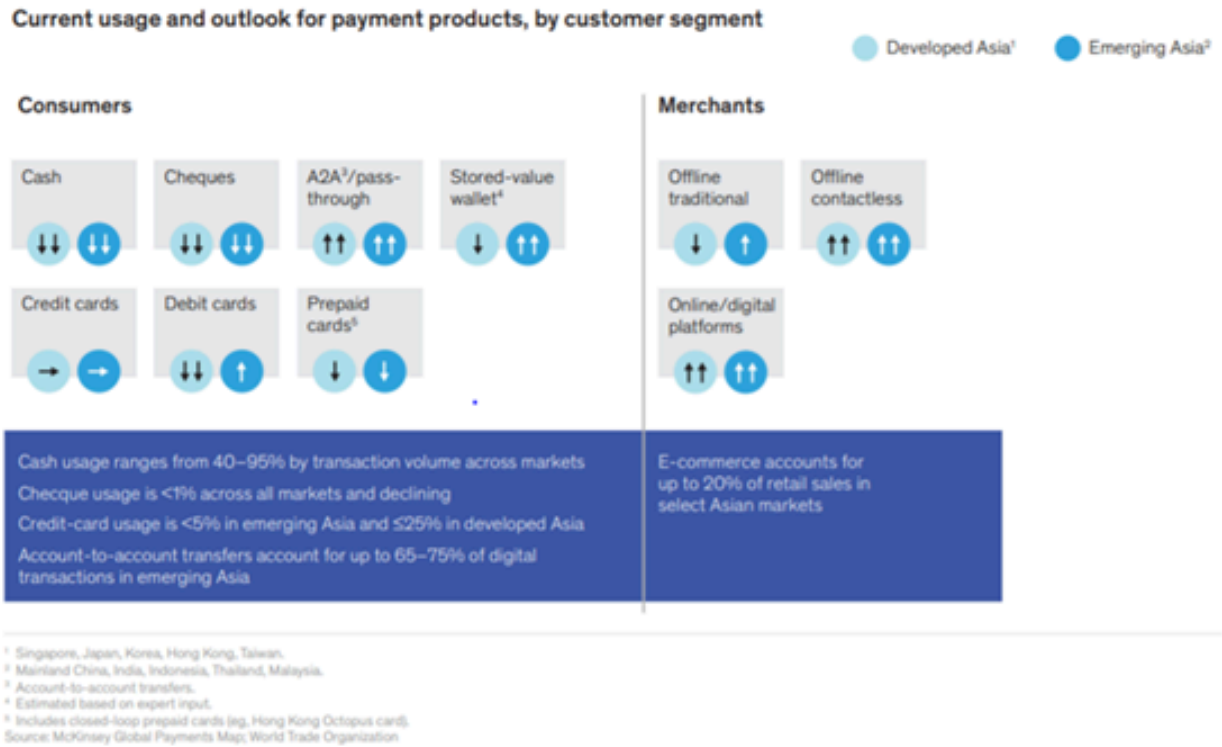
14. J.H. Kim, *6G and Internet of Things: a survey*, 8 *Journal of Management Analytics* 2, 316-332 (2021), available at DOI: [10.1080/23270012.2021.1882350](https://doi.org/10.1080/23270012.2021.1882350) (accessed 30 Sept. 2021).

15. K. Li et al., *How should we understand the digital economy in Asia? Critical assessment and research agenda* (9 Sept. 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7480531/pdf/main.pdf> (accessed 30 Sept. 2021).

16. *Online Platforms to Catalyze Inclusive Growth by ADB Economists’ Forum* (13 Jan. 2021), available at <https://www.adb.org/news/events/online-platforms-catalyze-inclusive-growth-live-webinar> (accessed 30 Sept. 2021).

17. *Supra* n. 9.

Figure 2 – Payments in Asia are likely to go through a paradigm shift in the medium to long term



Source: *The future of payments in Asia*, McKinsey & Company (2020).

Figure 3 represents the acceleration of the e-commerce sector during the COVID times.

Figure 3 – E-commerce accelerated during COVID-19

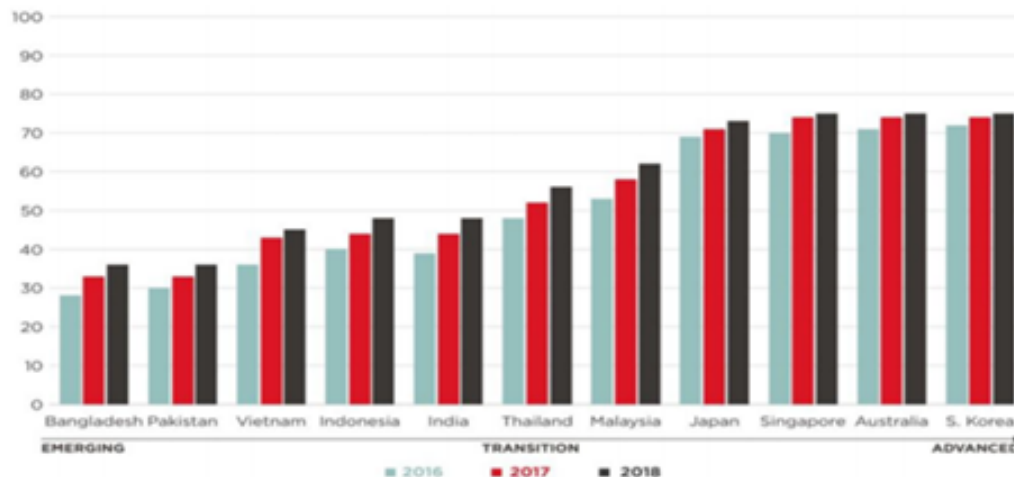


Source: Y. Sawada, Online Platforms to Catalyze Inclusive Growth presentation (13 Jan. 2021), available at <https://www.adb.org/sites/default/files/event/668976/files/online-platforms-catalyze-inclusive-growth-sawada.pdf> (accessed 30 Sept. 2021).

Figure 2 clearly indicates how the Asian economy is trending towards a cashless economy. Similarly Figure 3 demonstrates the growth in the online e-commerce markets over years. The reason for this can be attributed to a large youth population who is already digitally savvy. Also, access to world-class knowledge and strategic geographical locations allow for a cutting-edge digital future.^[18]

Needless to say, not all Asian countries are at same level of development and the growth varies based on various factors some being demographics, stage of economic development, etc. This is even reflected by the Digital Economy and Society Index (DESI) which is emerging as a specific indicator of the spread of the digital economy (and a proxy for its economic performance). Figure 4 represents the DESI and Platform Readiness of the Asian countries.

Figure 4 – DESI and Platform Readiness of the Asian countries (2016-2018)



18. A. Sheng, *The ASEAN Digital Tomorrow*, The International Affairs (16 Sept. 2019), available at <https://en.interaffairs.ru/article/the-asean-digital-tomorrow/> (accessed 30 Sept. 2021).

Similarly, the World Economic Forum's Networked Readiness Index (NRI) measures whether countries are geared up to take advantage of the growing digital economy and benefit from it. The past data of the NRI shows that the leader in technology "readiness" and "usage" is Singapore.^[19]

Even though all countries may not be advancing at the same pace to cope with digitalization, the discussion in this section reflects that Asian countries are taking significant steps towards a heavily digital economy.

2. Digital Tax Landscape in Asia

2.1. Background and a glimpse of digital tax landscape in Asian countries

The current taxation rules are woefully inadequate to tax income that could derive from an entity without a taxable presence in a jurisdiction (as the current rules are mainly based on a source and residence concept). The issue is further accentuated by the fact that the discussions and negotiations on arriving at agreed parameters for taxing the digital economy have moved at a sluggish pace compared to the pace at which technology has grown in the past.

The rapid growth of digital and technology use in Asia has accelerated the question of the government's role in addressing the digitalization of the economy and the potential for achieving international consensus on new rules for taxation of the digital economy.^[20] Asia is not oblivious to the issue as, for many companies, the greatest share of the user base is located in Asian countries. Governments are becoming more stringent regarding the growth of digital companies, causing unease among multinational Internet businesses that have thrived amidst the COVID-19 pandemic. Also, there is this belief that potential tax revenue sourced from technological and digital businesses could, to a larger extent, narrow down the government's fiscal deficit caused by the COVID-19 pandemic.

Several Asian countries have been participating in the global discussions and are part of the inclusive framework (IF). Pertinent to mention that 15% of the countries represented in the OECD/G20 IF comprise countries in Asia-Pacific (OECD/G20 Inclusive Framework on BEPS, June 2019). However, due to the lack of an existing global consensus model and potential delays in taxing digital transactions, several countries have enacted unilateral methods of taxing digital transactions to protect their tax base.^[21]

Though the taxing model or the way in which these unilateral measures are drafted may vary across regions (i.e. in terms of nature of levy, threshold, in-scope activities, de minimis exemption, etc.), all of them, directly or indirectly, seek to achieve a common purpose in a significantly broader sense, i.e. taxation of digital transactions in the user/market jurisdiction, thereby preventing a significant erosion to their national tax base.

Below, the unilateral measures enacted by the countries in the Asian continent are discussed.^[22]

Direct tax measures

Country	Measure	Description
Hong Kong	General income tax	Departmental Interpretation and Practice Notes No. 39, issued on 27 March 2020, addresses the various key issues and concerns taxation of e-commerce transactions and digital assets. It was stated that tax consequences of e-commerce transactions would be determined in accordance with section 14 of the Inland Revenue Ordinance. It provided some practical guidance on how to determine the locality of profits in the context of e-commerce transactions; taken the view that in the context of e-commerce, the decisive criterion to determine PE existence shall be based on the nature of the activities (i.e. whether the activities on the whole form an essential and significant part of the e-commerce business or whether those go beyond preparatory or auxiliary activities). ^[1]

19. *Supra* n. 9.

20. *Strategic workshop on Tax and Digitalisation in Asia*, ADB (2-4 July 2019), available at <https://www.adb.org/news/events/strategic-workshop-tax-and-digitalization-asia> (accessed 30 Sept. 2021).

21. The Straits Times, *The Asian Voice, Asia's digital economy needs a clear global tax framework: Jakarta Post columnist* (30 Sept. 2020), available at <https://www.straitstimes.com/asia/asias-digital-economy-needs-a-clear-global-tax-framework-jakarta-post-columnist> (accessed 30 Sept. 2021).

22. KPMG, *Taxation of the digitalized economy* (Developments Summary, 26 Apr. 2021), available at <https://tax.kpmg.us/content/dam/tax/en/pdfs/2021/digitalized-economy-taxation-developments-summary.pdf>; Global VAT Compliance, available at <https://www.globalvatcompliance.com/global-vat-rates-table-digital-services-thresholds/>; Avalara, available at <https://www.avalara.com/vatlive/en/global-vat-gst-on-e-services.html>; Taxamo, <https://blog.taxamo.com/insights/digital-tax-rules-in-operation> (all accessed 30 Sept. 2021).

Country	Measure	Description
India	Equalization levy/ Significant economic presence	<p><i>Equalization levy:</i> It was enacted from 1 June 2016 and was levied at 6% on the gross amount of online advertising payments made to non-residents initially. However, the scope of the levy was broadened with effect from 1 April 2020 to levy 2% on the provision of the following additional services:</p> <p>(1) Online sale of goods owned by the e-commerce operator.</p> <p>(2) Online provision of services provided by the e-commerce operator.</p> <p>(3) Online sale of goods or provision of services facilitated by the e-commerce operator (i.e. when the operator provides a platform for others to supply goods or provide services).</p> <p>(4) Any combination of the above.</p> <p><i>Significant economic presence (SEP):</i> It was introduced in 2018 in the Income-tax Act to establish a business connection of non-residents in India, subject to prescribed thresholds. However, the Finance Act has deferred its applicability to Assessment Year 1 April 2022, and expanded the source rules to include income from advertisements that target Indian customers, income from the sale of data collected from India, and income from the sale of goods and services using such data collected from India.</p>
Indonesia	Digital permanent establishment/Electronic transaction tax	<p><i>Digital permanent establishment:</i> It was enacted from 31 March 2020 and is levied on revenue related to the digital permanent establishment, also known as SEP. Under this rule, permanent establishment (PE) is deemed to have been established under SEP in Indonesia based on the consolidated gross revenue, sales amounts in Indonesia, and/or the size of active members in Indonesia.</p> <p><i>Electronic transaction tax:</i> It was enacted from 31 March 2020 on e-commerce sales, when the digital PE cannot be applied due to the beneficial treatment accorded per tax treaty provision. However, the rates at which this levy will be leviable are yet to be finalized.</p>
Malaysia	Withholding tax	It was enacted from 13 May 2019. Under this, income from e-commerce transactions is deemed to be derived from Malaysia if it is associated with any activities in Malaysia irrespective of whether income is received in Malaysia or otherwise.
Pakistan	Withholding tax	It was enacted from 1 July 2018 and is levied at 5% on payments made for offshore digital services (such as online advertising, designing, creating, hosting or maintenance of websites, providing any facility or service for uploading, storing or distribution of digital content, online collection or processing of data related to users in Pakistan, any facility for online sale of goods or services, or any other online facility) performed by non-resident persons.
Taiwan	Withholding tax	It was enacted from 1 January 2017 and aims to cover payments made to foreign providers for online advertisement and remunerations for e-services (such as online games, videos, audio broadcast, movie, TV series, music and online platform services). As we understand it, the rates generally vary at either 3% or 6%.
Thailand	Withholding tax	Withholding tax rate is applicable at 15% on gross payments to non-resident companies providing digital services provided through any digital platform. This withholding tax on income from digital services applies under general corporate income tax rules. ^[2]
Vietnam	Withholding tax	It was enacted from 1 January 2021 and is applicable on income derived by non-residents from digital and e-commerce operations in Vietnam.

1 News Flash, Hong Kong Tax (2 Apr. 2020), available at <https://www.pwchk.com/en/hk-tax-news/2020q2/hongkongtax-news-apr2020-5.pdf> (accessed 30 Sept. 2021).

2 Thailand – Digital Taxation Monitor, Tables IBFD.

Indirect tax measures

Country	Measure	Description
Australia	Goods and services tax	<p>— Effective 1 July 2017, non-resident vendors of digital services to consumers in Australia are required to register for and collect goods and services tax (GST).</p> <p>— Effective 1 July 2018, the scope broadened, and non-resident vendors (including online platforms) are required to charge GST in the same way as a local seller.</p>
Bhutan	Value added tax	From 1 July 2021, non-resident vendors providing digital services to consumers in Bhutan are required to register for and collect value added tax (VAT) at 7%. The threshold specified for its applicability is BTN 5 million.
India	Goods and services tax	Non-resident digital services providers must collect GST on Online Information Database Access and Retrieval (OIDAR) services. These taxes on OIDAR services were levied under the Service Tax Regime w.e.f. 1 December 2016 and have now also been levied under the GST Regime w.e.f. 1 July 2017.

Country	Measure	Description
Indonesia	Value added tax	Effective 1 July 2020, further regulation for the taxation of electronic transactions became applicable. The regulation provided the following thresholds to be appointed as a VAT collector: (1) the amount of PMSE transactions with Indonesian consumers exceeds IDR 600 million in one year or IDR 50 million in one month, and/or (2) the amount of traffic or access in Indonesia exceeds 12,000 in one year or 1,000 in one month. Thus, sales of digital goods and services from abroad to domestic consumers will be subject to VAT at the rate of 10%. With these provisions, digital products such as streaming music subscriptions, streaming films, digital applications, games, and online services from abroad will be treated the same as domestic products, including similar digital products produced by domestic businesses. Through the Directorate General of Taxation, the Minister of Finance will designate businesses that meet specific transaction value criteria or the amount of traffic within 12 months as a VAT collector. However, where a business has met the criteria and has not been designated as VAT, collectors should submit notifications online to the Directorate General of Taxation.
Japan	Consumption tax	Effective 1 October 2015, consumption tax on the provision of cross-border digital services requiring non-resident vendors to register for and collect Japanese consumption tax (JCT) on B2C sales of digital services was introduced and reverse charge applies for B2B sales. However, Japan distinguishes B2B and B2C based not on the customer type but on the type of digital service.
Malaysia	Service tax/ Tourism tax	Effective 1 January 2020, foreign service providers are required to register for service tax where the total annual sales of digital services to Malaysian customers exceeds MYR 500,000. Digital services are defined to include software, music video, and digital advertising. Also, the provision applies to both B2B and B2C transactions. Also, effective 1 July 2021, the scope of tourism tax was expanded and digital platform service providers would need to modify their system to identify the citizenship status of each tourist (through an identity card number or passport number).
Pakistan	Sales tax	Effective from 1 September 2021, withholding of 2% sales tax by online marketplaces on the gross value of the supply from persons other than active taxpayers.[1] Sales tax was also imposed by provinces on supply of various digital services prior to new withholding requirement above.[1]
Singapore	Goods and services tax	A statutory regime to tax the digital services for GST, i.e. Overseas Vendor Registration Regime (OVRR), was introduced. The OVRR works in addition to the reverse charge mechanism, which covers digital/non-digital transactions. Under OVRR, overseas businesses supplying digital services in Singapore are required to register themselves if the actual or expected global turnover is exceeding SGD 1 million in the calendar year and they supply or expect to supply digital services exceeding SGD 100,000 annually to non-registered customers in Singapore.[2] for GST registered customers reverse charges apply.
South Korea	Value added tax	Effective 1 July 2015, non-resident vendors of certain digital services to consumers (i.e. in B2C supply situations) in South Korea are required to register for and collect VAT. Further, effective 1 July 2019, the scope of digital services was expanded to include advertising services, cloud computing services, and intermediary online-to-offline services.
Taiwan	Value added tax	Effective 1 May 2017, non-resident vendors providing digital services to consumers in Taiwan are required to register and collect VAT.
Thailand	Value added tax	Effective 1 September 2021, non-resident vendors are required to register for and collect VAT on digital services provided to consumers in dealings with VAT unregistered consumers in Thailand; where taxable sales exceed THB 1.8 million. However, in dealings with VAT registered consumers (i.e. mainly in B2B situations reverse charge applies).[3]

1 Pakistan – Digital Taxation Monitor, Tables IBFD.

2 IRAS, *IRAS e-tax Guide: Taxing imported services by way of an overseas vendor registration regime*, 2nd ed., para. 3.3 (26 Aug. 2019).

3 Thailand – Digital Taxation Monitor, Tables IBFD.

Direct and indirect taxes

Country	Measure	Description
Vietnam	Withholding tax/Value added tax	Effective 1 July 2020, a new e-commerce withholding tax regime was introduced. This withholding tax (WHT) will apply to all designated B2C and B2B transactions. However, the actual implementation was postponed for six months and will be effective 1 January 2021 (even though the mandated effective date in the law is 1 July 2020). Under this, financial institutions will collect the WHT on the subject transactions (how they are to do this remains unclear). The rate needs to be determined on a case-by-case basis by referencing the foreign contractor tax (FCT) rates by treating each transaction separately. Also, the WHT collected is variable and consists of a VAT component, at rates of 2%-5% and a corporate income tax component, at rates of 1%-10%.

2.2. Critical analysis of the above diverse unilateral measures

The design of these levies in Asia varies substantially (some of which are uncoordinated and overlapping), but they can be broadly classified into VAT, GST, consumption tax, WHT, digital permanent establishment/SEP, equalization levy and electronic transaction tax. Even though the ultimate purpose of these levies, as mentioned earlier, generally remains the same (i.e. to make up for the revenue forgone or not captured via the traditional income tax system in the market jurisdiction), the effect of them (like impact on global and regional competition and competitiveness; impact on FDI, contribution to tax revenues, etc.) varies, as we will see below.

The distinction in these levies can also be made based on nature, scope, calculation modes, threshold, de minimis threshold, for example VAT, GST or consumption tax are a form of indirect tax which aims to cover situations where the billing address or payment country are usually used in deciding whether to levy VAT/GST, i.e. it aims to cover the situation in which consumption is done in a particular country. WHT, SEP/digital permanent establishment on the other hand are provisions that are found in direct tax laws and are codified in the direct tax laws (like Income-tax Act) of the country. For example, SEP represents a taxable presence of a non-resident based on revenue, digital and/or user-based factors (like local user interaction, number of active users consuming the digital services, etc.) that evidence sustained interaction with a jurisdiction. An appropriate definition of SEP would combine revenue factors with digital or user-based factors to establish a meaningful and sustained connection that triggers taxation. Once the nexus based on SEP occurs, profit attribution rules that will enable the computation of taxable profits need to be determined.

Implementation

With respect to WHT, the scope of transactions covered by the withholding tax should be clearly defined to ensure clarity for taxpayers to discharge their obligations. For instance, in B2C transactions, it may not be ideal for making individuals/private consumers responsible for withholding taxes since they have limited experience in such matters, and it would be difficult to enforce compliance from many private consumers. Many countries are using financial intermediaries to ensure compliance with WHT. Also, WHT would not be able to align entirely with the value creation principle.

Equalization levy though works like WHT (i.e. some portion is deducted from the payments made to non-residents), it mainly aims to cover remote sales transactions in the market jurisdictions. However, these levies usually are not part of the countries' income tax act and are treated as a separate levy.

However, there arise a lot of practical challenges while applying these measures (e.g. what exchange rates to use if a credit note is issued against the invoice, or how to keep track of these forex differences).

Double taxation without relief

Further, the way in which the levy is structured will determine whether credit for the levy is available against tax paid in the country of residence of the enterprise, thereby raising double taxation issues. In many cases like equalization levy and electronic transaction tax, likely, tax treaty benefit may be availed, leading to double taxation. Also, the claim of treaty benefit in WHT/SEP depends on the availability of a tax treaty between the countries in question. Additionally, where the same transaction may fall under different levies of a country (e.g. equalization levy and SEP both in the case of India); it should be clarified that both cannot be applied at the same time (like where say the SEP rule is applicable, EL should not be applied).

Increased costs

Pertinent to mention that unlike VAT/GST or other indirect taxes, where the burden of the levies is passed on to the ultimate customers, other taxes may impact the company's working capital as the levies would increase the cost of the company operation of the multinationals (MNEs) in a jurisdiction. Though entities can claim a deduction of these taxes in the profit and loss account, tax arbitrage and double taxation may persist. These would indirectly increase the price of the digital services, thereby affecting the consumer demand patterns and impacting the flow of cross-border capital and investments.

Administrative burden

Also, with VAT/GST challenges arise in terms of registration procedures as every jurisdiction might have its own rules and procedures for registration; this will create differences in filling, deadlines, tax rates, invoicing requirements and even languages.^[23] The modalities of these rules may vary (e.g. in the context of digital transactions, VAT rules are usually legislated specifically for B2B and B2C transactions, since nature, volume, characteristics and degree of enforcement of both the transactions completely differ – when VAT is imposed for consumption of digital services in a B2B sphere, the tax liability in

23. OECD, Centre for Tax Policy and Administration, *Transfer Pricing Aspects of Business Restructurings: Discussion Draft for Public Comment* (OECD, 19 Sept. 2008-19 Feb. 2009), available at <https://www.oecd.org/ctp/transfer-pricing/41346644.pdf> (accessed 30 Sept. 2021).

most cases would be discharged through reverse charge mechanism by the service recipient (i.e. where the business/service recipient is registered under VAT) and the business entity which receives the digital service shall take credit for the concerned tax payment). Further, the B2C business model poses more incredible difficulty in today's Internet era since the customers are scattered across the jurisdiction with low per capita consumption/expense. Further, in situations where non-residents deal with unregistered businesses or with B2C companies (where the law specifically covers B2C transactions), non-residents may have to register for disposing of the VAT liability in the jurisdiction.

Balanced approach

Needless to say, all these levies increase the cost of tax compliance and entail a lot of administrative procedures (though the effort and cost of compliance may vary depending upon the simplicity with which the law is drafted) and entail computational challenges. Also, the threshold, when set too low, may impose a significant compliance burden on smaller-scale operators. Further, the scope of the levy should be fixed based on the objective sought to be achieved. For example, if the priority is to tax the value created by users, the levy could be on the data and other contributions gathered from users in the market jurisdiction. However, the valuation of data would be challenging since its value may vary depending on its content and the purpose for which it was collected.

In all, these unilateral measures add another layer of unequal treatment to the existing inconsistencies. As reflected in [Figure 2](#) and [Figure 3](#), various countries in the continent are trending towards the era of increased digitalization be it in terms of moving to cashless economy or increase in online/e-commerce transaction. Increasingly MNCs are exploring ways to establish presence in Asia because of large user base or for availability of workforce/infrastructure at comparatively lesser cost. In such situations, these unilateral digital tax measures may serve as a deterrent against the digital transformation of traditional businesses and weaken a country's attractiveness as a business place.

3. How the Above Measure Would Interact with a Representative Platform Business Model

As highlighted in earlier sections, the continent is embracing the digital revolution on its own terms/pace, the digital data ecosystem business models are growing, and many of the world's largest tech companies based in the region – such as China's Alibaba, Tencent and Baidu, Go-Jek in Indonesia – are providing services ranging from e-commerce to fintech and cloud computing. The unilateral digital tax measures discussed in section 2. will impact each of these digital business models differently as a lot varies in terms of in-scope activities, thresholds, marketplace, etc. As such, the author has taken one example from the hospitality segment to discuss below the impact of various unilateral digital taxes and show the challenges that such business may face in complying with such unilateral digital taxes because of diverse laws and lack of appropriate guidance.

3.1. Case of Airbnb is taken to discuss the implications of these levies on such business model

3.1.1. Business and revenue model

AirbedandBreakfast.com went live in 2008 and was subsequently renamed as Airbnb. Over time, the number of hosts and guests on Airbnb have climbed, and the company has invested in building a more robust platform for its rentals.

Under its primary business model, hosts who own houses and apartments are connected with guests who want to rent them for short-term stays while providing a secure and easy-to-use platform for search, reservations, communications and payments.^[24]

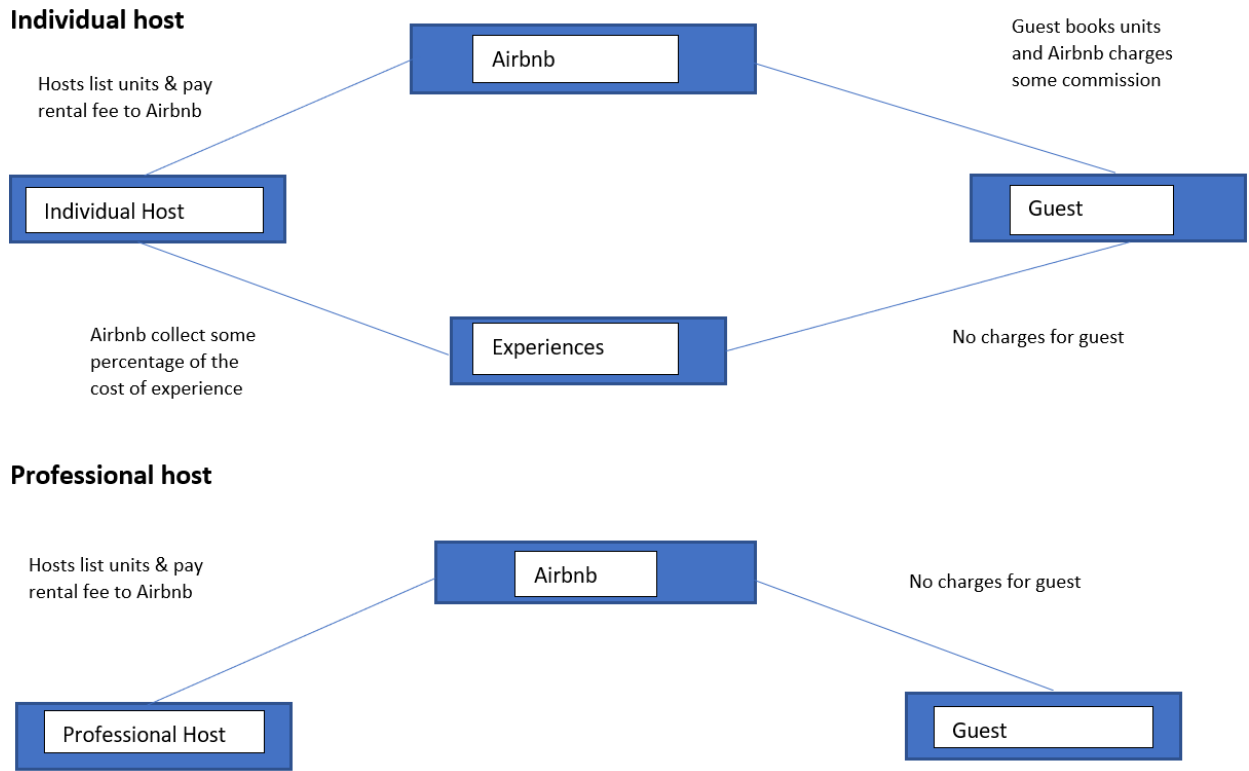
The following alternatives are possible (see also [Figure 5](#)):^[25]

- original form (hosts renting their own houses or apartments); and
- professional hosts (hosts owning multiple units or even operating small hotels, renting the accommodation).

24. A. Damodaran, *The Sharing Economy come home: The IPO of Airbnb!* (2 Dec. 2020), available at <http://aswathdamodaran.blogspot.com/2020/12/the-sharing-economy-come-home-ipo-of.html> (accessed 30 Sept. 2021).

25. A. Damodaran, *supra* n. 24.

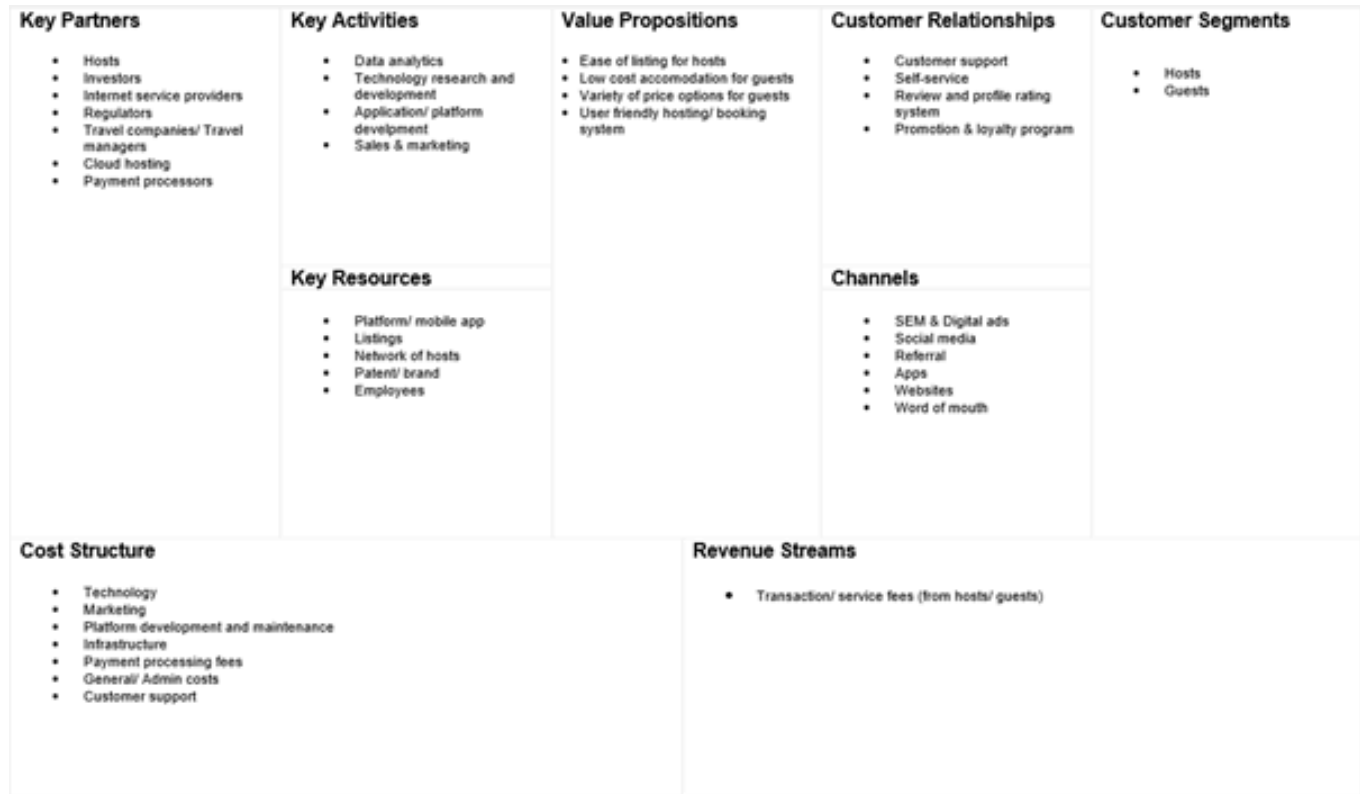
Figure 5 – Airbnb business model



Modified diagram, *primary source*: A. Damodaran, *The Sharing Economy come home: The IPO of Airbnb!* (2 Dec. 2020), available at <http://aswathdamodaran.blogspot.com/2020/12/the-sharing-economy-come-home-ipo-of.html> (accessed 30 Sept. 2021).

The business model canvas of AirBnb is presented in [Figure 6](#).

Figure 6 – Airbnb business model canvas



Some of the value creators in such cases are:

- *Platform interface*: the Airbnb platform that enables users to book accommodation online.
- *Technology*: the technology used by the company to manage the uninterrupted provision of services.
- *Data*: User data plays an essential role for such businesses. For example, the data generated and analysed from end-user booking patterns assist the services provider in identifying end-user preferences by the use of algorithms, technologies, analytic capabilities and more.
- *Direct/Indirect network effects*: As more hosts join, the more inventory and choice there is for guests to choose from. This is also the case for stays and experiences. Destination-based experiences form a valuable complementary offering. However, to enhance and embrace network effects, both sides need to be grown commensurately.

Airbnb’s revenues come from fees collected on rentals in both versions of the model, where the host and the guest pay fees in the individual host version but only the host pays in the professional host version. However, listings offered to the property owners are free of charge; but, all booking and monetary transactions are routed on Airbnb’s platform.

In 2016, the company also started allowing hosts to offer experiences to their guests where Airbnb charges a certain percentage as service fees.

Over time, AirBnb has increased its footprints in the Asian continent. As per an article of May 2019, “Airbnb has crossed one million listings across Asia-Pacific, and more than 100 million guests have checked into an Airbnb homeshare in the region, providing hosts with earnings of around \$10 billion”.^[26]

26. R. Hamdi, *Airbnb crosses 1 million listings in Asia-Pacific Despite Hurdles* (27 May 2019), available at <https://skift.com/2019/05/27/airbnb-crosses-a-million-listings-in-asia-pacific-despite-hurdles/> (accessed 30 Sept. 2021).

3.1.2. Impact of these unilateral taxes on such business models

Under SEP; the company's assets would be the user data, accommodation listing, and the part of the software/hardware tool (i.e. the website) enabling the MNE to provide more listing, gather user data, analyse user booking data to understand the preferences and demand in a particular region. In such situations, it will become too difficult to determine the nexus for SEP and the amount allocated to the revenue and cost when preparing the profit and loss account of this digital PE (problems may arise when a company has to prepare a provisional profit and loss account in determination of cost allocation). The other challenge is what factors should be used to determine the revenue allocated as the criteria specified in the definition for SEP are usually comprehensive, and the law is not that clear. Since many individuals lists their accommodation on such a platform, it is questionable how the equalization levy and WHT will work in such a situation as it would be difficult to administer such taxes while dealing with individuals.

Similarly, there may be multiple issues when it comes to the application of VAT. Such service providers will be required to comply with multiple registrations in each of these countries to deal with B2B and B2C segments. Even in cases where VAT is applicable on the B2B basis under reverse charge, these companies would still have to register when engaging with individual customers. Furthermore, VAT is usually determined by the address of the service receiver (i.e. based on place of supply rule) i.e. the billing address or the country from where payment is made and these companies have to rely on the address provided to them and it may not be possible to check the validity of the address.

Also, in some jurisdictions the same revenue may fall under purview of different levies, hence it needs to be clarified, in such situation, which will supersede the other.

4. Overall Impact of These Unilateral Measures

4.1. On multinationals

Many businesses are willing to comply with all the law, but it is for the government to reduce the complexities of these laws. For example Lazada, an e-commerce platform owned by Alibaba, mentioned that it complies with local tax regulations: "We will continue collaborating with legislators and other government agencies on digital tax initiatives that equitably benefit all relevant stakeholders."^[27]

The business community wants more certainty, which an agreed global framework may bring in the near future. Fiscal certainty enables long-term planning for businesses and a level playing field for firms operating across multiple markets. Asia Internet Coalition, or AIC, which has tech giants like Facebook, Google, Amazon and Singapore super-app provider Grab under its umbrella, has critiqued governments' go-it-alone efforts and said that "a lack of consensus on a global tax framework could widen the digital gap even further by dampening investments, cross-border trade and access to innovations for many communities".^[28]

Coming to the effects of these unilateral levies, though investment decisions are based on various tax and non-tax factors, MNEs would like to establish their footprints in the country where the laws are transparent, simple, reliable, stable vis-à-vis a situation where there is economic and political instability. In contrast, complex and diverse procedures, i.e. differences in instructions, opinions and procedures of tax administration, and non-transparent and inequitable tax case-law, etc. become hurdles in the choice of country for doing business.^[29]

Also, these costs and complexity of laws ultimately hit the pockets of the consumer and could potentially diminish the spirits of companies to invest in future growth.^[30] For example a growing start-up operating across Asia, in this case, at high cost and having to comply with multiple, inconsistent and overlapping rules, might have to think on the operating expenses (OPEX) hit of these levies when offering services to overseas customers.

Further, these companies might be required to incur additional out-of-pocket tax cost under a few unilateral tax regimes. Thus it might impact their routine working capital and fund flow, affecting the transaction prices eventually (for example: in initial phases, an MNE may have to incur huge OPEX to set up its footprints in a jurisdiction; hence these additional taxes would add to that burden and the MNE may decide to quit from the market). There might also be a substantial risk of double taxation with these unilateral tax measures unless the MNE's home country provides for unilateral tax relief through its domestic tax law

27. D. Loh, *From Thailand to Indonesia, taxes tighten for digital businesses*, Nikkei Asia (27 Nov. 2020), available at <https://asia.nikkei.com/Economy/From-Thailand-to-Indonesia-taxes-tighten-for-digital-businesses> (accessed 30 Sept. 2021).

28. J. Paine, *Asia's digital economy needs consensus on tax*, Bangkok Post (25 Sept. 2020), available at <https://www.bangkokpost.com/opinion/opinion/1991207/asias-digital-economy-needs-consensus-on-tax> (accessed 30 Sept. 2021).

29. N. Jalan et al., *The Impact of Unilateral Digital Taxes in Africa*, Tax Notes International, Vol. 103 (16 Aug. 2021).

30. J. Paine, *Asia's digital economy needs a clear global tax framework*, Nikkei Asia (12 Oct. 2020), available at <https://asia.nikkei.com/Opinion/Asia-s-digital-economy-needs-a-clear-global-tax-framework> (accessed 30 Sept. 2021).

(which is not the case in most countries).^[31] This will increase the cost of digital service and might have a negative effect on the MNE's global market, business and consumers.

MNEs must also be cautious of the possible interplay between direct and indirect tax legislations when the MNE sells goods via online mode since such interplay might pose challenges in areas such as the event triggering taxation, object and purpose of the legislation, valuation of goods, the possibility of double taxation, etc. Failure to pay attention to these interplays might lead to possible tax disputes. Complex tax rules such as SEP regulations might force MNEs to invest a substantial portion of funds towards information technology infrastructure and human resources to monitor their legal obligation and compliance. Further, low thresholds for this review would accentuate these difficulties.

4.2. On the Asian continent as a whole

Due to the ongoing digital transformation in various industries in the continent, the requirement for advanced technologies is increasing in this region. These trends are expected to lead to the increased adoption of digital transformation solutions, thus increasing the growth of the APAC digital transformation market.^[32] Further, "Asia's sustained growth and importance as a hub of economic, social and political activity have attracted significant foreign direct investment and opportunities for economies from the West and other parts of the world to invest in this fast-growing region. Regional headquarters and global innovation hubs of large multinational corporations (MNCs) are evidence of an Asian century phenomenon".^[33]

For example, some Asian countries (like the People's Republic of China (PRC), Australia, Japan, New Zealand, Singapore and the Republic of Korea) are hosts to advanced e-commerce markets. However, not all regions of Asia are at the same level of development.^[34] Accordingly, the continent needs to provide a more favourable investment atmosphere (e.g. in terms of good infrastructure, good governance, etc.) to investors, businesses for global expansion.

Therefore, these diverse sets of unilateral policies will negatively influence the FDI, i.e. if there is double taxation, MNEs will have to meet higher performance thresholds to ensure sufficient net returns. Hence, the government needs to maintain a balance in the imposition of tax between a collection of revenue, on the one hand, and a business-friendly approach, on the other hand. It is essential that the tax system is updated more often and achieves the right balance in tax compliance efficiency and effectiveness.

Further, Asia and the Pacific region needs to pull together and push forward the necessary reforms, innovate tax structures and administration, and continue to learn from each other's experiences.^[35] By simplifying compliance, policymakers can at least ensure the big players that dominate the digital economy will be in a position to comply. Each country must take the initiative to engage with the business sector and promote compliance of the big players operating in their jurisdiction. As rightly said by Wawan Juswanto and Rebecca Simms: "It is about raising awareness while also understanding that when you are trying to change the pillars of a tax system that has existed and evolved over centuries, any changes will take considerable time".^[36]

The taxation measures should enhance the availability of technological innovation to power the transformation, build government policies that support new models of social interaction to enhance domestic economic growth and continue to encourage the high capacity for digital entrepreneurship and successful start-ups. Thus, "maintaining a balance between an investment-friendly digital sphere while at the same time leveraging maximum revenue for financing its sustainable development goals is essential and a crucial tax policy challenge".

Separately, the focus should be placed on providing tax technology solutions, reducing tax uncertainty (easy to administer, clearly defined policy objectives, simplified compliance procedures), ensuring fairness, active participation, and the need for a regional organization.

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31. P.T.F. Schrievers, *Digital Services Tax Emerging in Africa*, *NovioTax* (17 Dec. 2020), available at <https://novio.tax/en/news-221/article/digital-services-tax-emerging-in-africa> (accessed 30 Sept. 2021).
 32. *The World's Digital Transformation Industry 2020-2025: Trends, Opportunities and Competitive Landscape*, *Globe Newswire* (14 Aug. 2020), available at <https://www.globenewswire.com/news-release/2020/08/14/2078517/0/en/The-World-s-Digital-Transformation-Industry-2020-2025-Trends-Opportunities-and-Competitive-Landscape.html> (accessed 30 Sept. 2021).
 33. V. Pereira et al., *Identity of Asian Multinational Corporations: influence of tax havens*, *Asian Business & Management* (23 Oct. 2019), available at <https://link.springer.com/article/10.1057/s41291-019-00090-2> (accessed 30 Sept. 2021).
 34. See also the Networked Readiness Index prepared by the World Economic Forum.
 35. W. Juswanto & R. Simms, *Fair Taxation in the Digital Economy*, *ADBInstitute* No. 2017-5, available at <https://www.adb.org/sites/default/files/publication/390261/adbi-pb2017-5.pdf> (accessed 30 Sept. 2021).
 36. W. Juswanto & R. Simms, *supra* n. 35.

5. Need for Regional Cooperation in Tax Matters

5.1. Background on the existing regional organization^[37]

Usually, diverse regional cooperation structures are seen in the region. Some of the regional cooperation structures seen in the region are shown in the [Table](#).

Regional cooperation structures

Organization	Description
Association of South-East Asian Nations (ASEAN)	It was formed in 1967 and now has ten member states. ^[1] Cooperation in ASEAN mainly focused on economic integration. It also records the ASEAN states' commitment to the rule of law, democracy and good governance and envisages the formation of a human rights body.
ASEAN + 3	Formed in the late 1990s (in response to the Asian financial crisis), a regional framework for discourse between the ten ASEAN member states and the three East Asian powers China, Japan and South Korea. It works mainly on economic, trade and financial policy, but also environmental and health issues. This multilateral cooperation has given rise to several agreements, like ASEAN has free trade agreements with China, Japan, South Korea, etc.
East Asia Summit (EAS)	In 2005, the 16 heads of state and government of the ten ASEAN states and Australia, China, India, Japan, New Zealand and South Korea, formed the EAS. Later, the United States and Russia have been full members of the EAS since the EAS Summit in 2011, mainly discussing security policy issues and soft issues. It complements the Asia-Pacific Economic Cooperation, which primarily focuses on economic and financial policy issues.
Asia-Europe Meeting (ASEM)	Founded in 1996 at the initiative of Singapore and France and having expanded from its original membership of 26 to include 53 members, this is an interregional dialogue forum for multilateral exchange between Asia and Europe in politics, business and culture.
ASEAN Regional Forum (ARF)	Founded in 1994, following a decision by the ASEAN ^[2] Foreign Ministers, it mainly deals with security issues and is the only institutionalized security-policy discussion forum in the Asia-Pacific region.
South Asian Association for Regional Cooperation (SAARC)	Founded in 1985 by Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. Afghanistan has been the eighth member since 2007. Together with China, Japan, South Korea and the United States, the European Union attended the SAARC Summit as an observer for the first time in New Delhi in 2007. SAARC itself has had observer status at the United Nations since December 2004. SAARC concentrates on economic and trade issues. SAARC's remit extends to cooperation in seven key areas, including agriculture and rural development, environment and forestry, human resources development and transport.
Pacific Islands Forum (PIF)	Founded in Wellington in 1971, currently having 16 members, ^[3] it provides a forum for dialogue and cooperation on politics, economics, environment, culture, education, and social affairs.
Pacific Islands Tax Administrations Association (PITAA)	Formed in May 2003, currently comprises of 16 Pacific Islands tax administrations. ^[4] ^[5] Under this forum Pacific Island Countries (PIC's) tax administration meet annually to share the views and desires for individual tax administration. ^[6]
Shanghai Cooperation Organisation (SCO)	Formed in 2001 from the "Shanghai 5" set up in 1996. ^[7] Furthermore, it maintains cooperation agreements with the Commonwealth of Independent States (CIS) and the ASEAN. The SCO's original focus was security cooperation in the member states' border regions, however, now it covers other areas such as economic and trade issues also.
Asia-Pacific Economic Cooperation (APEC)	Formed in 1989 on the initiative of Japan and Australia (currently having 21 members); ^[8] it aims to strengthen economic growth in the Asia-Pacific region, not least by dismantling tariffs and other trade barriers.
Study Group on Asian Tax Administration and Research (SGATAR)	Established in 1970, it comprises of 17 members. It is established as an annual forum for tax administrators to enhance cooperation, improve administration and discuss issues related to tax administration. ^[9]

- 1 Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.
- 2 Along with the ten ASEAN member states, another 16 countries – Australia, Bangladesh, Canada, China, India, Japan, Mongolia, New Zealand, North Korea, Pakistan, Papua New Guinea, the Russian Federation, South Korea, Sri Lanka, Timor-Leste and the United States – currently participate, as well as the European Union.
- 3 Australia, the Cook Islands, Fiji, Kiribati, the Marshall Islands, Micronesia, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Solomon Islands, Samoa, Tonga, Tuvalu and Vanuatu. The European Union is one of 14 dialogue partners for the PIF (others include China, France, Italy, Japan, the United Kingdom and the United States).
- 4 See <http://www.pitaa.org/about-us/> (accessed 30 Sept. 2021).
- 5 See <http://www.pitaa.org/pitaa-members/> (accessed 30 Sept. 2021).
- 6 Regional organizations in Asia; see https://www.auswaertiges-amt.de/en/aussenpolitik/regionaleschwerpunkte/asien/-/231346#content_1; see also <http://www.pitaa.org/about-us/> (both accessed 30 Sept. 2021).
- 7 The original five members were China, Kazakhstan, Kyrgyzstan, the Russian Federation and Tajikistan; Uzbekistan joined in 2001. Mongolia, India, Iran and Pakistan became "observers" in 2004/05, Belarus and Sri Lanka "dialogue partners" in 2009. At the SCO Summit in Beijing in June 2012, Afghanistan, which had attended SCO Summits as a special guest for several years, was granted observer status, and Turkey obtained dialogue partner status. Turkmenistan is not a member of the SCO on the

³⁷ Regional organizations in Asia; see https://www.auswaertiges-amt.de/en/aussenpolitik/regionaleschwerpunkte/asien/-/231346#content_1 (accessed 30 Sept. 2021).

Organization	Description
	grounds of its "permanent neutrality" but attends Summits as a special guest of honour. The SCO has held observer status at the United Nations since December 2004.
8	Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, the Russian Federation, Singapore, South Korea, Taiwan, Thailand, the United States and Vietnam.
9	See https://sgatar.org/public/about/ (accessed 30 Sept. 2021).

The main agenda of these regional cooperation structures usually aims at strengthening crisis management regimes, developing a regional bond market, and studying regional exchange rate cooperation and monetary integration.^[38] The above regional organization of Asian countries either with other Asian countries or countries from across the globe reflects that Asian countries are trying to cooperate on various fronts. However, these associations are not very active on taxation matters. Also, the regional groups that exist for tax (like PITAA, SGATAR) do not include all countries of the regions. A discussion about taxes should not only be about digital taxes in the region, but it is also prudent to maintain a coherent and relevant basis for other areas of international taxation too, in order to enhance the welfare and economic efficiency. This is possible only by having international/regional collaboration representing common regional interests.

This form of collaboration will foster and facilitate a diversity of knowledge and thoughts. Also, it will increase the say of these companies at the global level. This will help countries to identify global value creation and emerging business models and framing a coherent tax policy is a significant challenge for countries which can better be dealt with by mutual collaboration. However, a proper mechanism also needs to be established to ensure a timely check on the effectiveness of these regional forums.

Even having lobbying bodies like Inter-American Center of Tax Administrations (usually referred to as CIAT) or similar organizations like the African Tax Administration Forum (usually referred as ATAF) that exists for Africa, for promoting the joint interest of Asian countries may help in achieving the regional integration. The Asian Development Bank does play a role in promoting the inclusive interest of Asian countries but it is still not very active in the tax area, and takes into account a much broader economic policy perspective.

Harnessing the potential of the digital economy is fundamental in driving global growth.^[39] However, going alone may not lead to an integrated digital economy for any country. There is a need for countries in the continent to coordinate, develop, implement and monitor policy that meets the demands of and overcomes the challenges digital transformation brings.^[40] Studies have highlighted the need to create a Digital Single Market (DSM) (the digital economic integration (DEI) framework is mainly directed towards creating a DSM within the ASEAN Economic Council (AEC))^[41] in Asian countries and embrace policy solutions for digital transformation. This would also make the continent an appealing location for trade and investment. Also, a centralized VAT and customs system allows the distribution of levied VAT to the participating governments (like the European Union (EU) VAT Mini One Stop Shop (VAT MOSS) system), ensuring avoidance of confusion created by several different and potentially overlapping VAT regimes.^[42]

The experience here can be drawn from EU integration, though in the Asian continent, there is no supranational body like the European Union. Separately, as mentioned earlier, Asia has no effective other institutional organizations like ATAF in Africa (though the Asian Development Bank tries to focus on some policy areas but still it is not that effective to pull all countries of Asia together to have a common say at global forums). The various bodies present in the continent provide more of policy-making mechanisms that encourage the harmonization of laws and initiatives. However, some authors in the past did mention that "ASEAN economic integration was never far-reaching in the first place, given the difference of ASEAN member states (AMS) in terms of economic and governance structure". On the other hand, others noted that the vast differences in digital diffusion across AMS make a DSM challenging to believe. Also, the probability of geopolitical conflict versus economic convergence cannot be ruled out.

However, countries in the Asian continent have to come together to cope with the crises created by COVID and to regain the lost GDP. It may be a good idea to have a common set of minimum standards for any policy discussion at global level amongst the Asian countries; accordingly the regional organization may explore other areas and should not concentrate only on digital economy problems.

38. J-y. Jung, *Regional financial cooperation in Asia: challenges and path to development*, BIS Papers No 42, available at <https://www.bis.org/publ/bppdf/bispap42d.pdf> (accessed 30 Sept. 2021).

39. J. Paine, *supra* n. 30.

40. P.J. Pena, *An ASEAN Digital Single Market: Boosting the Aspiration for a Single Market in the Digital Era* (11 Sept. 2019), available at <https://mpr.ub.uni-muenchen.de/95948/> (accessed 19 June 2021).

41. P.J. Pena, *supra* n. 40.

42. *Id.*

6. Conclusion

It is yet to be seen what will happen with a global consensus, whether regressive unilateral thinking and protestations from countries large and small threaten to undo the OECD's global efforts?

Even in the proposed global pillar solution, there are both winners and losers though the overall revenue impact is to remain modest. Even if we were to think that there are some countries with a high user base in Asian countries which may gain greater allocation of revenue post pillar solution, it is unlikely that revenue gains will be able to meet the revenue derived/to be derived^[43] from the unilateral digital taxes in all cases as the threshold for these unilateral levies are comparatively much lower and in some cases there is no threshold.

In such a situation, a digital tax deadlock will continue to exist and impact economic growth and innovation. The only hope in such a situation will be a regional collaboration with a simple and equitable solution to reduce the challenges faced by MNEs. Further, with much debate in the OECD driven by developed countries based in the European Union and the United States, the voice of Asia-Pacific countries has been less prominent. However, “the Asian Century concept anticipates that economic trends and demographic shifts will increase the importance of Asia-Pacific economies. These emerging multinationals and countries will be operating in an international tax environment shaped by the Global Tax Reset II”.^[44] As mentioned earlier, not all countries in the region have taken advantage of the digital economy, and e-commerce is virtually non-existent in some countries. Hence, it will take time to abolish this digital divide.

Also, it seems that Asian countries have also been able to gain experience from being part of various regional cooperations (covered in section 5.). Hence, countries in the continent can take collective measures to have more say on global platforms in tax matters by capitalizing on experience gained from other regional collaborations to form an effective regional collaboration for handling digital economy matters and for other tax matters.

^{43.} It can be expected the region will see more digitalization in coming times more so with COVID. Accordingly, the collection from unilateral digital taxes should increase.

^{44.} D. Kaur & D. Watkins, *supra* n. 8.