

Is the OECD about to cave in to Google and Amazon?

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[According to the FT](#) the OED has concluded that there is no tax solution that is specifically applicable to the digital economy. Happy days for Google, Amazon, Apple, et al then.

And according to the same report:

The UK Treasury has voiced support for this stance, calling for “common principles” to apply whether companies operate online or from physical premises.

Now if this conclusion is because, [as the BEPS Monitoring Group \(of which I am a member\) said in its submission to the OECD](#), the digital economy is now so pervasive that to see it as distinct is simply not tenable then I have some sympathy with the conclusion. But as the FT notes of that submission:

Tax campaigners including Tax Justice Network have agreed that rule changes could not be focused on the digital economy, which was “a feature that has permeated all business sectors” but called for a rethink of the rules whereby a multinational’s subsidiaries would no longer be treated as independent entities.

Some observers of the OECD talks reckon that the difficulty of reaching agreement on any tax changes will result in less radical measures.

So might the consequence be that the groundwork is being laid for no change at all, with the OECD believing the frantically untenable claims of the leading digital companies that they have taken no action to avoid tax, [to which I referred yesterday](#)? I regret that seems to be possible, and if it is the FT is helping pave the way, as usual.

The clue is in the style of the argument presented. The tax campaigners view is dismissed as untenable. The idea that the UK would lose from reform is presented as evidence based, with the source of that evidence being the ever-reliable KPMG, who have done a survey that suggests less tax would be paid in the UK if reform to the tax system took place than if the status quo were maintained.

That does, however, presume that the right question was asked by KPMG. I am quite sure it was not. The Ft does not tease that issue out.

So, what is needed? In essence the required change is obvious. Companies like Amazon and Google do not pay tax on most of their UK earned profits because they claim not to have a taxable permanent establishment for those sales in this country, the billing instead taking place from Ireland and Luxembourg. So [the answer as the BEPS Monitoring Group says is:](#)

In our view, however, a more comprehensive approach is needed than the various points put forward in the BEPS Action Plan. It should by now be plainly evident that transnational corporations operate as integrated firms under central direction. They must therefore be treated as unitary firms for tax purposes. This entails reconsideration of the independent entity principle in tax treaties.

The concept of a permanent establishment, based on physical presence, also clearly needs revision. In our view, this should go further than seems to be suggested in the BEPS Action Plan. The problem is not simply one of 'abuse' of the concept: it needs to be rethought to meet the needs of the 21st century.

We have made this point time and again. But in its [BEPS Action Plan the OECD says:](#)

In the area of transfer pricing, the rules should be improved in order to put more emphasis on value creation in highly integrated groups, tackling the use of intangibles, risks, capital and other high-risk transactions to shift profits. At the same time, there is consensus among governments that moving to a system of formulary apportionment of profits is not a viable way forward; it is also unclear that the behavioural changes companies might adopt in response to the use of a formula would lead to investment decisions that are more efficient and tax-neutral than under a separate entity approach.

The OECD has already conceded this issue as a result.

In 2009 the OECD was asked to tackle tax haven abuse. Its response was to produce a 'black list' of tax havens and a demand that tax havens sign at least twelve tax information exchange agreements to get off it. Within a week the black list was empty. Because the target of 12 tax information exchange agreements was so ludicrously low reaching an acceptable number of agreements was almost like falling off a log - especially when agreements with Greenland counted (it has signed 34; Nigeria has none). [In 2012 just seven TIEAs were signed](#) - all by Guatemala with the Nordic states. The OECD initiative had failed, completely.

I sincerely hope we're not heading the same way now. But it feels like it.