

Electronic Commerce and Taxation

- 電子商去來 租稅政策 -

開院 5周年 紀念

發表論文集

1997. 12

韓國租稅研究院

序 言

21 世紀 世界經濟 世界化 情報化
無限競爭 時代 . WTO 世界經濟秩序
情報通信技術 地球村 市場經濟體制
到來 .
假想市場(cyber market) 電子商去來 가 .
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財政經濟院 關係公務員, 學界 言論界
筆者 討論者 , OECD J. Owens I. Hut chi son
鄭映憲 博士,
沈在珍 主任研究員, 吳美順 研究助員 出版課 職員 勞苦 謝意
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公式的 見解가 .

1997年 12月

韓國租稅研究院

院長 金 仲 秀

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■ : **Electronic Commerce and Taxation**()

■ : 1997 8 22 () 14:00~18:00

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: 姜萬洗

Jeffrey Owens, Head, Fiscal Affairs, OECD

14:30 ~ 14:00

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: 金完淳

1 : **Jeffrey Owens**, Head, Fiscal Affairs, OECD

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: 金東建

: **Ian Hutchison** Principal Administrator, OECD

: 金裕燦

18:00 ~ 19:30

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韓國租稅研究院 開院 5周年

姜萬洗

, OECD

韓國租稅研究院

5

5

韓國租稅研究院

가 21

世界化(globalization)

自由化(liberalization)

가

가 가

가

世界化·自由化·情報化가

假想

市場(cybermarket)

電子商去來(electronic commerce)

(global marketing)

가

領土 概念

가

가 가

가

가 國際規範

議題

電子商去來

電子商去來

가

가

30

民間消費支出

30%

Forest Research가

1997

1,138

2000

6,579

가

OECD

1980 暗號化(cryptography)
가 『 』
UN 國際通貨去來法委員會(UNCTRAL) 1996 5
『 』
政策 方向 가 電子商去來 租稅
『 』
綜合的 政策 對應方案
租稅管理 能力
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韓國租稅研究院 院長 金 仲 秀

祝辭

韓國租稅研究院 5 .

政府 租稅 財政, 金融政策 樹立
가
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가

21 WTO
術 電子商去來 政府 情報·通信技 租稅管理 能力
가

1990 假想
空間(cyber space) 假想市場(cyber market)
가
租稅制度 가

1997 7 1 「
無限稅地帶 가
(EU) 1997 7 8 『
가
가가
內容物 關聯 規制 , 無關稅化, 內國稅問題, 知的財產權 保護,
가

電子商去來 擴大
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 가 金仲秀 院長

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 가

1997年 8月

財政經濟院 次官 姜 萬 洸

COMMEMORATIVE ADDRESS

Good afternoon, ladies and gentlemen.

It's a pleasure to be back in Korea, it's my fifth visit here, although I feel like it's more like my fiftieth visit - I'm getting to know Korea so well. It's also a pleasure to be at this seminar, organised by the Korea Institute of Public Finance. Today, we will be looking at the challenges posed by Electronic Commerce and Taxation, looking specifically to features of the Korea VAT, and we'll see during the course of the afternoon that the Internet is certainly going to pose major challenges to the Korean VAT system over the next 20 years, so let's celebrate the VAT now, while we still have it, and we'll see what happens over the next 20 years.

Perhaps just to say a few words about the OECD. Many of you know that this year, we celebrated our 50th anniversary, it's a long time for any organisation to survive 50 years. I wasn't there at the beginning, but I have been there for the last 20 years and today, we cover 29 member countries: 22 European countries; the 3 NAFTA countries; and then Japan, Australia, New Zealand, and since last December, Korea. It's interesting that over a 20 year period, right up from 1974 to 1994, the organisation did not expand at all, and then during the last three years, we suddenly found that we are beginning to take on new members, countries like Mexico, the Czech Republic, Poland, Hungary and Korea. I think that that's been a very positive development for the organisation. It's given us a new growth, it's given us a new dynamism and having Korea in, I think, has tended to help us have a new perspective on our work, to give a perspective that is more Asian and less, perhaps, European. I know that I am speaking on behalf of our secretary-general when I say that, we are particularly pleased with the active role that Korea is now playing in the organisation.

Perhaps just a word on how the OECD differs from other international organisations. I think there are three main characteristics that distinguish us from the IMF or the World Bank. The first is the fact of the restricted membership, we are only 29 countries. If you look at the World Bank, IMF, we're talking about 120, 140 countries. So, that's the first distinctive feature - a small group of countries that have many things in common. The second distinctive feature is the wide range of activities that we cover. Clearly, today we'll be talking a lot about taxation, but taxation is only one, in fact,

of many activities we look at. Almost any activity that the Korean government is concerned with has, in fact, a relevant committee or body at the OECD that is discussing it. The third distinctive feature of the OECD is that there's very close relationship officials that actually come to Paris to the committees that we have. So, those are the three distinctive features of the organisation.

I'd just like to conclude by making two general points which are very re-lated, I think, to the topic that we are going to be discussing today - the Internet. The first one is that, even though we have this restricted membership, we recognise that when we must be developing our contacts with non-member countries, with countries that are outside of the OECD area, particularly countries here, in Asia. And why do we feel that's important? Mainly because almost any of the issues that we are looking at, are global in nature. Multinational Enterprises don't make any distinction between countries that are in the OECD and countries that are outside of the OECD. So we feel that it's particularly important at the present time that we make an effort, in fact, to develop our dialogue with the non-member countries and, as I said, particularly the non-member countries here in the Asian region. I think, in fact, that we've been quite successful in doing that over the last five years. Today, we have regular contact with more than 50 non-member countries. And I also feel quite strongly that those contacts are very much in the interests of the Korean government and of its business sector. When Korean multinationals, when they move into China, and I could have a long list here, because one of the things that strikes me as I travel around the world is that there seems to be more and more Korean multinationals wherever I go. And clearly, where your multinationals go, they expect to have an internationally accepted treatment, whether it's in terms of investment or whether it's in terms of taxation. A lot of the outreach programs that we have at the OECD is intended to ensure that your multinationals get that treatment. That is a way, I think, of avoiding conflict in a global economy.

The other point I would make is that if we want these non-member countries to follow the rules of the game that have been developed by the OECD, particularly in the tax area, then we have to recognise that they need assistance. If you're talking about complex transfer pricing regulations, it is not enough just to tell these countries that they have to follow the "arms length" principle. You have to not only explain to them what the "arms length" principle is, but you have to help them build up the administrative capacity to apply it. And, in fact, a lot of our work at the moment is directed at that particular issue. And we are particularly pleased that in September, there will be a major initiative, a joint OECD - Korean initiative, to establish here, in

Korea, a Multilateral Tax Center, which would provide assistance to the Asian economies in transition. And I'm sure, that very quickly, we will find that many of the issues that we will discuss today on the VAT side, on the questions of the Internet, will be issues that will be discussed in the context of that Multilateral Tax Center.

Let me conclude, just by outlining some of the issues that the Committee on Fiscal Affairs, which is the main tax policy body of the organisation, is currently discussing, because I think you'll see that as we go through the afternoon's discussion, the Internet seems to pull in a lot of what may appear to be separate issues, but in fact, what are issues which are quite closely related. So I'll conclude by just giving you a very quick list some of the issues that we're looking at.

The first, and perhaps the most important, is the question of tax competition. Can we find ways of saying what acceptable forms of tax competition are and what unacceptable forms of tax competition are? Particularly, competition for financial and services, and there again, you see the link with the Internet, because the Internet, in fact, will intensify the way that countries use their tax systems to attract financial and service activities. Well, that's an issue that we are looking at quite carefully, and we hope that we will come up with some recommendations for next April. Second issue, and this is one that I know I've talked about previously when I've been here, is the need to globalise the OECD Model Tax Convention. We are now making a major effort to try to associate non-member countries with the OECD Model, and we hope that by November of this year, we will have a new publication coming out that will set out the position of 16 non-member countries on the Model. That, I think, is a major development. The third topic is this whole question of the Internet, but in fact, (as the President said earlier,) the Internet is only part of a much broader range of issues that come under the heading of the communication revolution. I think the communication revolution has not only changed in the ways in which business carries out its activities, but it's going to have dramatic changes on the ways in which tax authorities carry out their activities as well. Unless tax authorities are successful in adapting to this new global environment, to this new technological environment, then they're going to have difficulties in protecting their tax price and in collecting their revenues. A fourth area that we're looking at, which I think is particularly relevant for Korea, are the whole questions of how to go about taxing financial services. Under the VAT, under the income tax, how do you apply withholding taxes? There's a whole set of issues there, which I think we will be spending a lot of time on, and again, which we'll see this

afternoon, are closely linked to the development of electronic commerce and the Internet. We're also putting a major effort into a new project which is being developed on strategic management. In other words, asking ourselves whether, in this new environment, tax administrations can continue to carry out their business in the way that they have for the last 20 years, or whether in fact, we need a new approach towards tax administration.

Well, there are many other topics that I could talk about, but I think I will conclude by saying that we, at the OECD, are very pleased to be associated with this initiative. I think it's particularly appropriate that the initiative should've been taken by the Institute. I'm sure that the discussions this afternoon, in fact, are going to help both the business community and the Korean government, to decide on what type of policies it should adopt towards taxing income and the transactions that are undertaken by means of the Internet. Thank you very much.

August, 22, 1997

Jeffrey Owens
Head, Fiscal Affairs, OECD

Tax and the WEB - An Overview

- - 1 : Jeffrey Owens(OECD)
"Taxation in Cyberspace"
 - 2 : 鄭映憲 ()
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- - 柳一鍋 ()

TAXATION IN CYBERSPACE

Jeffrey Owens
(Head, Fiscal Affairs, OECD)

Contents

- I. The growth of the Internet
 - II. What are the characteristics of the internet most relevant for tax policy makers?
 - III. What are the implications for tax policy and tax administration?
 - IV. The response of governments
- ANNEX**

Taxation in Cyberspace

[On the First Day, The Computer Gods Created Information Services. On The Second Day, The Tax Collector Subscribed]

Tax Authorities are optimistic about the possibilities but pessimistic about the probabilities offered by the internet. The communication revolution has opened up new possibilities for tax administrations to improve the efficiency of their operations. But these new technologies also open-up new "probabilities" for tax evasion and avoidance. The challenge for tax administrations is how to maximise the potential efficiency gains of the internet and at the same time protect their revenue base without hindering the development of these new technologies.

The risks for revenue authorities are real and governments will need to address these risks in a spirit of collective co-operation rather than in a spirit of competition. The allocation of taxing rights must be based upon mutually agreed principles and a common understanding of how these principles should be applied.

This common understanding must extend to the business community and must cover all the major sources of revenue. This is the approach taken in the work being undertaken by the Committee on Fiscal Affairs, the main tax policy body of the Organisation of Economic Cooperation and Development (OECD).

Is their tax after Cyberspace?

What the Press Say:

“Internet users face digital tax bills”

“Brussels set to impose VAT on non-EU telecom service”

“The tax man cometh to cyberspace“

"A plan to tax cyberspace, bit by bit"

What some politicians say:

"No new taxes on the net"

"Senator wants tax-free net"

"US proposes a duty-free cyberspace zone"

“Clamour for tax relief on the net”

What the tax authorities say:

“Commissioner fears that 30% of tax base will disappear into cyberspace”

“Cyberspace: the ultimate tax haven”

This article focuses on the international issues raised by the internet since it is important for all countries to see their own domestic debate in this wider context.

I . The Growth of the Internet¹⁾

The Internet has been described as “a world-side network of networks with gateways linking organisations in North and South America, Europe, the Pacific basin and other countries[...]”. The organisations are administratively independent from one another. There is no central, world-wide technical control point. Yet, working together, these organisations have created what to a user seems to be a virtual network that spans the globe²⁾

From 1988 to 1994, the number of Internet hosts grew from zero to 3 million. In 1995 this figure doubled. By January 1997, there were 16 million Internet hosts(see Figure 1). This growth has been uneven throughout the OECD area, with the Southern European countries generally having less than 5 Internet hosts per 1,000 inhabitants and North America, Nordic and Pacific countries more than 20 hosts per 1,000 inhabitants(see Figure 2). Users have grown from a limited number of military personnel and academics in the 1980's to 30~60 million users today. This rapid growth has been promoted by:

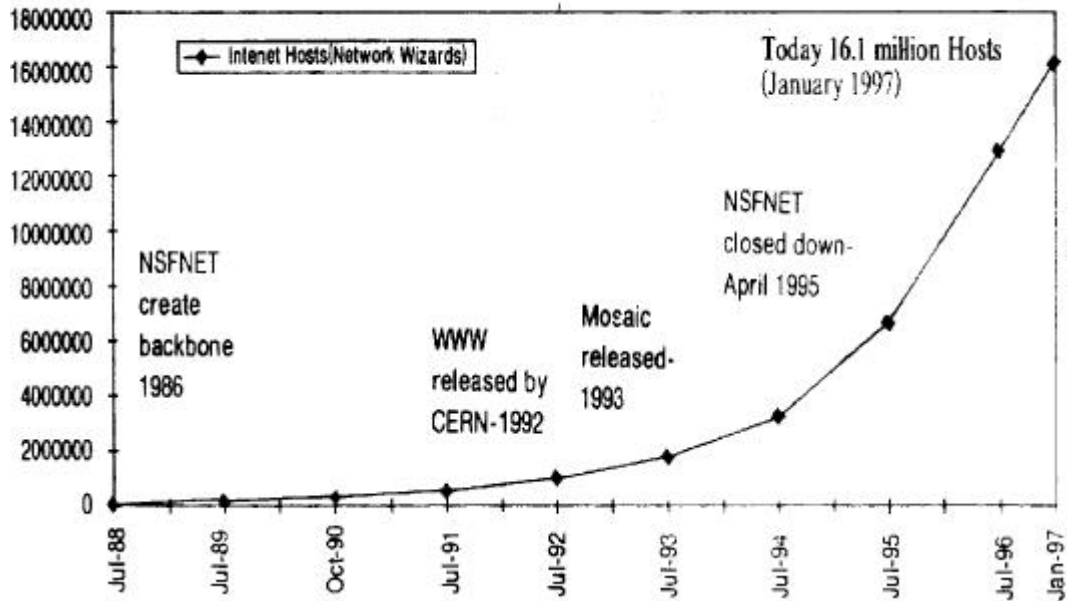
- Liberalisation and deregulation of the telecommunications sector. In the 1980's telecommunication was a virtual monopoly in almost all OECD countries. Today about one-third of OECD countries have opened up their telecommunications market. By the year 2000 the WTO expects that more than 90 countries will have de-monopolised their telecommunication markets.
- Improved communication infrastructure: Technical advances(high speed modems, cablemodems, satellite and terrestrial broadcast, multi-media products) have increased the speed of transmission and increased the potential of the Internet to deliver goods and services on-line.
- New means of “devering” the Internet: (Top boxes, Internet ready TV) has and is continuing to ease the access of households to the Internet.
- Consumer access pricing is rapidly falling, in part because of the technical developments referred to above and in part because of the growth of the market. In 1995 the average costfor 20 hours access was \$60; today it is less than \$20.

1) “1997 Communications Outlook”, ICCP, OECD, April 1997. Other OECD Work on Internet and communication policy can be found at:

http://www.decd.org/dsti/sti_ict.html.

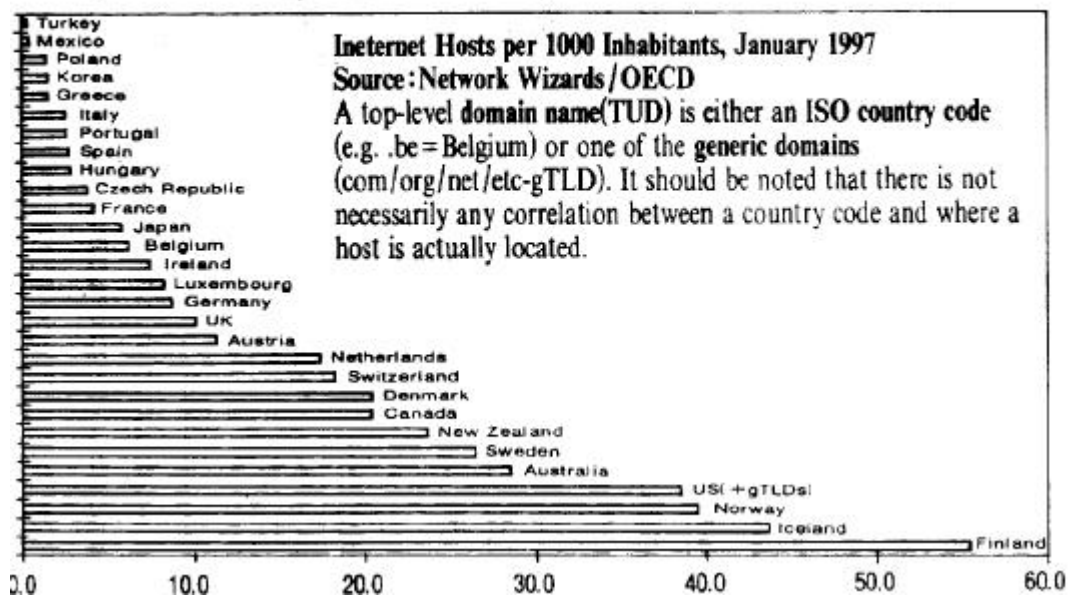
2) M. Mecker & C. Depay, The Internet Report 1-9(1996).

[FIGURE 1] Internet Growth Time Line



A host is a domain name that has an Internet Protocol address (A) record associated with it. This would be any computer system connected to the Internet (via full or part-time, direct or dialup connections). ie. oecd.org or www.nw.com

[FIGURE 2] Internet Access varies greatly throughout the OECD Area



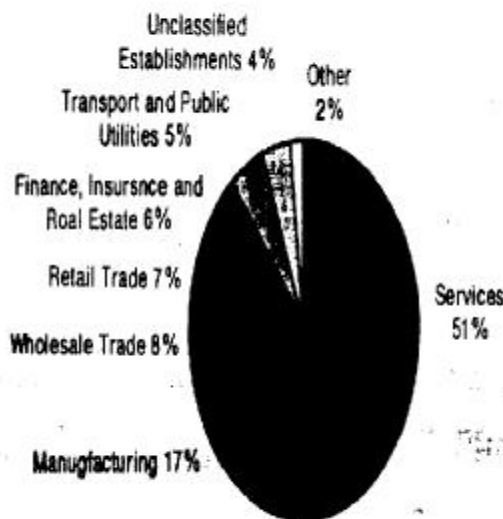
Commercial applications have to date experienced the fastest growth. Within this sector, services account for more than half of the activities (see Figure 3). It is estimated that two-thirds of the growth takes the form of intra-firm traffic (commonly referred to as private intranet activities).

Three factors will be critical to the future growth of the Internet and electronic commerce. The first is, developments in the bandwidth, since this determines the speed at which data can be transferred over the system (currently, it takes two days to transfer the entire contents of a music CD across the Internet. Higher speed connections are likely to reduce this time to 10~15 minutes). The second factor is improved and secure payment mechanisms. The development of electronic cash ("cyber cash" or "E-Money") will promote a rapid expansion of electronic commerce by reducing reliance on credit cards. The third is willingness of governments to reach agreement on measures to protect the security and confidentiality of information transmitted on the Internet, particularly encryption standards.

[FIGURE 3] Major Commercial Users

US SIC Classifications for Commercial Internet Users

(Top Level)



*Other: Construction(1.14%); Agriculture, Forestry and Fishing(0.26%); Mining(0.20%).

Top 10 Second Level SIC Classifications

1. Business Service (26.20%)
2. Engineering, accounting, research, management, and related service(10.86%)
3. Wholesale trade: durable goods(6.17%)
4. Printing, Publishing, and allied industries(5.40%)
5. Non classified establishments(3.86%)
6. Educational services(3.41%)
7. Membership organisations(3.12%)

8. Communications(2.88%)
 9. Electronic & electrical machinery equipment except computer(2.72%)
 10. Industrial & commercial machinery, and computing equipment(2.45%)
- Source : TIG Survey

II. What are the characteristics of the Internet most relevant for tax policy markers?

Relevant characteristics of the Internet.

The ability to establish public and private global communication systems which are secure and inexpensive to operate.

This will enable small and medium size enterprises to engage in international commerce. Tax authorities will see a rapid expansion in cross-border activities.

The process of “disintermediation“

Where by the internet will substantially reduce the need for intermediaries, for example, financial and other information may become available without the intermediation of banks and other financial institutions.

The development of encrypted information.

Encryption may preclude governments from accessing the content of messages sent on the net.

An increased scope for the “integration of business function“.

Private internet networks are now widespread in multinational corporations and today are more important than public networks. This development will produce a closer integration of transactions within an MNE and makes it increasingly difficult to separate out the functions carried out by related enterprises.

The greater flexibility in the choice of the organisation form.

We may see MNEs coming to prefer branches to subsidiaries.

The fragmentation of economic activity.

The physical location of an activity becomes less important and it becomes more difficult to determine where an activity is carried out.

Other characteristics that will have significant implications for the operation of tax systems are:

Lack of any central control.

Users of the internet have to control and in general no idea of the path travelled by the information they seek or publish.

No central registration.

Registration requirements are minimum, as are proof of identity requirements.

Weak traceability.

Untraceable use of an internet site is ease to arrange.

Weak correspondence between computer domain name and reality.

Although the internet address(or “domain-name”) will tell you who is responsible for maintaining that site, it may not tell you anything about the computer corresponding to the actual internet address, or even where that machine is located.

III. What are the implications for tax policy and tax administration?

Tax authorities will face at least four interrelated challenges by the internet.

1. The challenge to tax administrations

Tax enforcements in cyberspace

The internet will change the environment within which tax administrations operate.

1. Traditional audit trails may disappear.

Tax administrations may encounter greater difficulties tracing transactions because of the lack of links between electronic entities and their physical counterparts.

2. Verification of identity of taxpayers will become more difficult.

Individuals and entities engaging in electronic commerce will be able to establish an internet address in almost any taxing jurisdiction irrespective of the location of his residence or the source of his activities.

3. obtaining acceptable documentation of proof will become more difficult.

Where books and records are maintained in a tax haven, for example, it is unlikely that the tax authorities will be able to obtain access to them since few countries have treaties with tax havens. It is also unclear whether the evidence that tax administration would be able to produce on transactions in cyberspace would meet the documentation and evidence standards set by tax courts.

4. Disintermediation will remove convenient “taxing points”.

The elimination of “middle-men” could force tax administrations to collect smaller amounts of revenue from a larger number of tax payers. Withholding taxes, particularly on financial transactions, and certain consumption taxes (transaction taxes) may become less viable sources of revenue.

5. tax haven and off-shore banking facilities will become more accessible.

It will be increasingly easy for the “average” tax payer to use off shore financial centres. Internet banking will offer an ease of access, low transaction costs, a degree of anonymity and an immediacy of transferability of funds which is not available today. If these attributes can be combined with well run off-shore institutions in an environment which provides security, we can expect that a much wider clientele will be attracted to this medium. We can also expect that

governments will not stand back in the face of this development.

The opportunities of new communication technologies to tax administrations

Whilst the challenges are here today, the opportunities offered by these new technologies are only just emerging. Tax administrations will be able to improve their operations by using new communication facilities. Already a number of tax authorities have electronic data interchange(EDI) programs that are making their operations more efficient, improving the quality and timeliness of service to taxpayers. Electronic data interchange means that businesses need less time to comply with tax regulations and both the tax administration and its client use less paper. Other benefits include timely updating of clients accounts, faster processing, and improved productivity. In the area of income taxes, a number of countries(eg Australia, Canada, Denmark, The Netherlands and the US) have implemented.

Direct deposit Program.

Direct deposit can replace cheques as standard method of issuing payments. Direct deposit has a number of advantages over the traditional method of payment. It offers clients a safe, convenient, dependable, and time-saving way of receiving payments, and saves the government money through reduced fees and postage. Business clients can also have their income tax refund and VAT refunds and rebates deposited directly.

Electronic filing.

Tax returns can be filed by using electronic media. The advantages of using electronic filing include accuracy of tax data, reduced cost to the public and to the tax authorities, reduced paper use and fast processing of returns. Electronic filing can be used by individuals who complete their own returns, or by individuals who use the services of a tax professional. An encryption device can be used to ensure that tax information remains confidential.

Automated deductions of social security and other payroll taxes.

The authorities can accept payroll deductions electronically from any employer who wants to send them that way. This process eliminates the need for employers to file tapes or paper.

Customs Process.

EDI systems may be used to streamline the customs commercial process(e.g. the recent Canada-United States Accord on the shared border arrangements).

Improved exchange of information.

Intranet type networks may open up new possibilities for tax authorities to exchange information in a more timely and secure way. Already the OECD has developed an OECD Standard Management Format for automatic exchange of

information (OECD Council Resolution of 1992) and work is advancing on developing an EDIFACT Standard for Electronic Exchange of Tax Information. In the field of Consumption Taxes work is in hand to develop international co-operation and to introduce the means for exchanges of information.

The members of the CFA are committed to exploiting these new opportunities to improve the service available to taxpayers and to explore ways in which administrative and compliance costs can be reduced by using these new technologies.

2. The challenge to Consumption Taxes

Taxes on consumption now account on average for 30 per cent of the tax revenues in the OECD area and 27 of the 29 member countries use a value added taxes(VAT)(the two exceptions are Australia and US) which is why I will focus primarily on VAT, although many of the issues raised would apply also to other forms of sales taxes.

(i) The concept of “place of supply” under VAT

In broad terms, the place of supply rules fall into two categories: those which depend upon the identification of a relevant establishment(belonging to the supplier in some cases, and to the customer in others), those which are based on the place of performance or enjoyment Electronic Commerce offers business consumers new opportunities to evade or avoid VAT by turning to suppliers who are not registered for VAT. The links between the place of supply, the place where the enterprise is located and the place where the service is used or consumed become much more opaque.

How to respond? One option we are examining is to maintain the current "place of supply" rule but to broaden the definition of fixed(or permanent) establishment to cover cabling, switching and other technical resources required to deliver such services.

Another option would be to change the basic “place of supply” rule to where the service is consumed. This could be quite attractive. However, it raises the fundamental question of how tax would be levied on non-business consumption. It could also still be susceptible to avoidance of tax by the financial institutions, who could arrange their affairs so that the “customer” is an associate who is not established in the taxing jurisdiction. Another idea is to require non-resident service suppliers to register or have a fiscal agent.

Mr Ian Hutchison will expand on these issues in his presentation.

3. The challenges to Tax Treaties

Typically tax treaties are bilateral and cover income and capital taxes, though there are some examples of multilateral tax treaties and treaties concerning other taxes such as estate and gift taxes. There are well in excess of 1,500 tax treaties and the number is growing rapidly. The discussion here is confined to bilateral tax treaties in relation to taxes on income and capital which are largely based on the OECD Model Tax Convention on Income and Capital, with a number of countries following variants found in the UN Model Double Taxation Convention between Developed and Developing Countries.

The purpose of bilateral tax treaties is typically expressed in their preamble to be “the avoidance of double taxation and the prevention of fiscal evasion”. As most countries nowadays contain within their domestic law provisions to prevent double taxation of their residents in the most common cases (where another country taxes the same income on a source basis), the main operation of tax treaties in this respect is for other types of double taxation. The prevention of tax evasion primarily refers to cases where taxpayers fraudulently conceal income in an international setting and rely on the inability of tax administrations to obtain information about income from foreign sources. The exchange of information article in tax treaties is the major provision dealing with this problem. In a general sense these two purposes summarise the domain of international taxation: substantive rules designed to allocate taxing rights and administrative rules designed to give effect to the single taxation objective, the two objectives which are closely linked.

There are a number of other purposes of tax treaties that are usually unstated, but in many cases are equally important. First, there is the division of tax revenues to be derived from income involving the two countries which are parties to the treaty. Where flows of income from business, investment etc. are balanced between two countries, it often does not make a large difference to the direction of revenue collections if each country agrees to significantly curtail its source jurisdiction to tax on a reciprocal basis as its residence taxation of income sourced in the other country is correspondingly increased. Curtailing of source jurisdiction rather than residence jurisdiction in this context makes sense because of the distorting effects of gross basis taxes at source (e.g. withholding taxes) and the greater ease of enforcing net taxation by assessment in residence countries. Typically larger developed countries will be in this position as a group even if there are some disparities in flows as regards specific countries in the group. Second, there is an agreed basis for determining whether the income returned or expenses claimed on related party dealings by taxpayers forming part of a multinational group operating in the two countries which are parties to the treaty can be regarded as acceptable.

Electronic commerce and the permanent establishment concept

In assigning taxing rights over business operations, the OECD Model Tax convention's concept of permanent establishment is used to determine whether the enterprise has brought itself within any particular taxing jurisdiction. Under article 7 of the OECD Model Treaty, a country may tax an enterprise's business profits attributable to a permanent establishment located in that country, regardless of the enterprise's country of residence for tax purposes.

Article 5 of the OECD Model Tax Convention gives a definition of the concept of a permanent establishment. Paragraph 1 of that article states that a permanent establishment is a "fixed place of business through which the business of an enterprise is wholly or partly carried on" examples of what constitutes a permanent establishment are provided in paragraph 2. Paragraph 4 indicates that where a place of business is used exclusively for the performance of certain types of activities, which are generally of a preparatory or auxiliary nature, that place will not constitute a permanent establishment. For instance, a permanent establishment does not include "the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise"(sub-paragraph 4a). Paragraphs 5 and 6 provide rules according to which an agent may constitute a permanent establishment of the enterprise for which he is acting.

While there are many cases in which the application of these rules is difficult and contentious, the application of the concept of permanent establishment in the context of electronic commerce raises a number of new and difficult questions.

The first question is whether the general conditions for the existence of a permanent establishment found in paragraph 1 of Article 5 may be satisfied by a web site on a server. This requires a determination of whether such a site constitute a "place of business", whether the server can then be said to be "fixed" and whether the undertaking of periodical automated business functions (such as advertising, ordering, or payment) may be said to constitute the carrying on of a business through such a fixed place of business.

The determination of whether the site constitute a "fixed place of business" must take account of various possible scenarios. For instance, a server may be located in a building situated in a country where the enterprise has no other presence. Alternatively, it could be located on a portable computer used in different places within that building or moved from city to city by an itinerant employee. Further difficulties would arise where a number of mirror web sites on different servers located in different countries would be used so that a customer could be directed to any site for any function depending on electronic traffic. Another possibility would be to have only one web site which is electronically transferred

in total every three months to a new server in a different building, city or country. The ownership of the web contents and of the server would also be relevant: for instance, the enterprise could own the web site but lease the server from a service provider, lease both the web site and server from the service provider or lease the web site and server and share various functions with the service provider.

Another question is whether the activities carried on through a web site go beyond the types of preparatory and auxiliary activities which, under paragraph 4 of article 5, would not result in a permanent establishment. This question has to be addressed with respect to the various functions that can be automated, such as advertising, ordering, payment, storage and digital delivery as well as which respect to various combinations of these functions. It also requires a determination of the extent to which a data base of digital contents may be said to constitute a stock of goods and, if that is the case, whether the database may be said to be maintained solely for the purposes of storage, display or delivery if it also has a search and reporting facility (e.g., if a customer can select the contents of the database merely for viewing). Particular problems arise in respect of the exception, included in sub-paragraph 4(d), concerning the collection of information as it is not clear to what extent processing of the raw information that is collected may render the exception inapplicable.

If the functions performed through a given web site and server were such that it did not constitute a permanent establishment, there would also be a need to examine whether other activities were carried on through that server, i.e. where the enterprise would lease excess capacity in its server to allow another business to operate a web site.

Other questions arise with respect to the relationship between an enterprise that owns a web site and a service provider, the question being whether and to what extent the latter may be considered to be an agent of the former for purposes of paragraph 5 of Article 5. Also questions arise with respect to the relationship between an enterprise that owns a web site and a service provider, the question being whether and to what extent the latter may be considered to be an agent of the former for purposes of paragraph 5 of Article 5.

Any problems related to the application and interpretation of the permanent establishment concept in tax treaties will probably only exist as a short term consequence of band with limitations given the expected progress of cable and satellite technology.

Any problems related to the application and interpretation of the permanent establishment concept in tax treaties will probably only exist as a short term consequence of band with limitations given the expected progress of cable and

satellite technology. Once these limitations are overcome, it will be possible to locate most, if not all, of the functions of an Internet business in any country, either the country of residence or a low tax jurisdiction. This will shift the problem to domestic tax laws which often rely on concepts similar to that of the permanent establishment in order to determine whether business profits of non-residents are taxable. In that case, the use of tax havens as locations for web sites and servers would create particular difficulties, which could lead to a reconsideration of domestic rules for the determination of residence and of the source of income as well as of the scope of controlled foreign corporation legislation.

These are questions that the Working Group on Permanent Establishment are exploring. In the context of its work, the Working Group intends to examine:

- whether there is a need for substantial changes to the tax treaty rules for the taxation of business profits;
- what are the various alternatives to these existing rules and what are the pros and cons of such alternatives, particularly in relation to compliance issues;
- whether approaches used for other taxes, such as VAT, could be used for purposes of addressing the problems that electronic commerce create for direct tax rules for the taxation of business profits;
- to what extent expected developments related to electronic commerce should lead to a consideration of domestic rules for the determination of residence and of the source of income as well as of the scope of controlled foreign corporation legislation.

Digitised Information. Characterisation of Income

Any type of information that can be digitised, such as computer programs, books, music, or images, can be transferred electronically. For example, a person in State B could connect with a computer in State A and download a computer program or digitised image in exchange for a fee. The purchaser's rights in the information transferred could vary depending on the contract between the parties. For example, the purchaser of a digitised image could obtain the right to use a single copy of the image, the right to reproduce ten copies of the image for use in a corporate report, the right to reproduce the image for use in an academic work that is expected to have a limited press run, or the right to reproduce the image in a mass-circulation magazine. It may be argued, some of these transactions are equivalent to the purchase of a physical copy of the photograph, which would result in business profits, while other of these transactions would result in royalty income, which would be taxable in the source country. Consequently, existing income characterisation principles may require modification in light of the ease of perfectly reproducing and disseminating digitised information.

Digitised information also poses problems for the definition of services income, as distinguished from sales of goods income or royalties: problems similar to those described above under the section on VAT. Previously a reference work, such as an encyclopedia, would have been sold as a set of bound volumes and the sale of the bound volumes would have resulted in sale of goods income, notwithstanding the fact that the cost of printing and binding represented only a small fraction of the encyclopedia's value. Now, instead of purchasing a bound volume, a potential purchaser might be able to choose between a set of CD-ROMs and a computer on-line service through which the encyclopedia's content can be accessed. If the customer has a sufficiently fast modem connection, there may be little practical difference between accessing the on-line service and the CD-ROMs on the customer's personal computer. Yet the sale of the CD-ROMs still results in sale of goods income while the character of the income arising from the on-line service is not clear. It may be necessary to reconsider existing principles in this area in relation to income, and sales and consumption taxes.

The ability of taxpayers to electronically sell digitised information and services may have an effect on existing regimes that seek to limit the use of tax referral through foreign corporations. Many countries have regimes whereby income earned by controlled foreign corporations may be currently taxed to the corporation's shareholders³⁾. If controlled foreign corporations can engage in extensive commerce in information and services through web sites or computer network located in a tax-haven, it may become increasingly difficult for tax administrators to enforce these anti-deferral regimes. It may also be necessary to broaden the scope of the income subject to these regimes.

Given the unique characteristics of digitised information and the difficulties of characterisation that could arise in this context, the OECD is examining how to further clarify the definition of royalties in the Model Convention.

4. The challenge to Transfer Pricing

In principle, the communications revolution presents no new problems, no fundamentally or categorically different dimensions, for transfer pricing but the development of internal private networks within multinationals may pressurise the traditional approach. Private intranets will lead to a greater integration of the operations of MNEs, particularly in the way MNEs organise and provide services. This will make new challenges for tax administration. The main challenges relate to comparability. It will become even more difficult to determine what the transaction actually is, and find a third party transaction about which enough is known to conclude that it is comparable. The OECD Guidelines direct a functional analysis to assess comparability, but with electronic commerce and private

3) See Controlled Foreign Company Legislation OECD 1996.

networks it may be difficult to know who is doing what. Transfer pricing will increase in complexity, particularly if the MNE is purposefully attempting to shift income among related parties. The greater degrees of integration may often also bring synergistic benefits over and above the directly measured contribution of the participants. This raises the difficult question of how such benefits should be divided up between the related enterprises.

The second challenge relates to whether the standard of comparability can be met. The standard likely would not permit application of a traditional method to determine the computer server revenues, based upon profit margins or prices from third party information providers, unless those third parties, like the MNE, also had developed the information database and equally reliable software.

IV. The response of governments

The response of governments to these developments has been one of caution. No National Government to-date has issued new laws or regulations on how to apply existing concepts to activities carried out on the Internet.

This cautious approach may dismay the private sector which is looking for greater certainty in this area, but it is the right approach at the moment. Because of the global nature of the internet and rapid change, it is essential that globally accepted principles of taxation are agreed upon on how to tax activities carried out over the internet. Such an agreement will only be reached once tax policy makers have: (1) come to a common understanding of how the net functions; (2) agreed upon which existing tax arrangements need to be reviewed; (3) agreed upon the process by which any of existing arrangements will be changed and (4) agreed upon the nature of these changes. Throughout this process the dialogue must include all parts of the government and the private sector. A dialogue must also be established between those responsible for income taxes and consumption, otherwise businesses will be caught between conflicting rules. Only if all of these conditions are met will we achieve a stable tax environment which will enable the internet to develop its full potential but at the same time protect the revenue base.

It is too early to anticipate the outcome of our work but Box I sets out the criteria that should apply to determining the way in which the internet should be taxed:

BOX I

SEVEN CRITERIA TO JUDGE PROPOSALS
TO TAX THE INTERNET

1. **The system should be equitable.** Taxpayers in similar situations which carry out similar transactions should be taxed in the same way.
2. **The system should be simple.** Administrative costs for the tax authorities and compliance costs for taxpayers should be minimised as far as possible.
3. **The rules should provide certainty for the taxpayer** so that a taxpayer knows in advance of a transaction what will be the tax consequence. Taxpayers should know what is to be taxed and when and where the tax is to be accounted for.
4. **Any system adopted should be effective.** It should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimised.
5. **Economic distortions should be avoided.** Corporate decision-makers should be motivated by commercial rather than tax considerations.
6. **The systems need to be sufficiently flexible and dynamic** to ensure that the tax rules keep pace with technological and commercial developments.
7. **Any tax arrangements adopted domestically and any changes to existing international taxation principles should be structured to ensure a fair sharing of the internet tax base between countries,** particularly important as regards division of the tax base between developed and developing countries.

These criteria will conflict. A simple system may not be equitable and may not be sufficiently robust to be effective in protecting the revenue base. All involve an element of judgement. Views on what is a fair distribution of the revenue base, for example. Governments and businesses are likely to take different views on what the tradeoffs should be where conflicts do arise. But most would agree on the criteria listed above. And I hope that all would agree on the need for an international consensus: Maintaining an international consensus is the key to enable the internet to develop to its full capacity and at the same time enabling tax authorities to protect their revenue base.

ANNEX

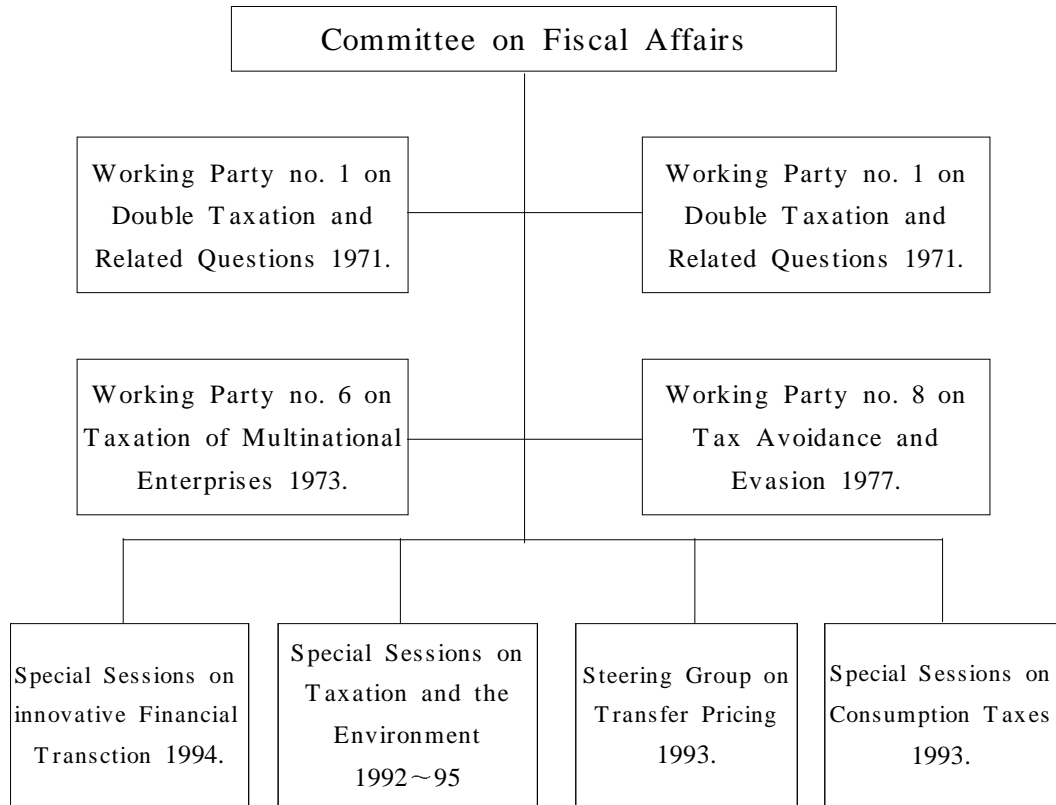
I. Work of the Committee on Fiscal Affairs on the Tax Policy and Administrative Implications of the Communication Revolution.

In June 1996, the Committee on Fiscal Affairs(CFA) considered a note on the implications of the Communications Revolution for tax policy and tax administration and decided to intensify its work in this area by inviting its subsidiary bodies to examine the impact of the communications revolution in their respective areas of competence.

Four separate sub groups have been formed respectively by Working party N° 1 on Double Taxation, Working party N° 6 on Taxation of MNEs, Working Party N° 8 on Tax Avoidance and Evasion and the Special Session on Consumption Taxes which are working closely together and benefiting from other work carried out in other parts of the OECD on the Communications Revolution(see Figure IV). This work in the tax area is carried out in a co-ordinated manner in close contact with the business and tax community. At the January 1997 meeting of the CFA these groups reported on the status of their work and made proposals for future action in this area.

[FIGURE IV]

The Committee on Fiscal Affairs and its Working Parties



Issues relating to the OECD Model Tax Treaty on Income and Capital

The subgroup of Working Party N is studying whether the traditional international tax concepts which were developed in an era where the conduct of significant business could be carried out only through physical presence are well adapted to the new environment, and in particular:

What is the interaction of the internet and the permanent establishment? Can a server or server space constitute a permanent establishment for tax purposes? Are there alternatives to the permanent establishment concept? Even if a permanent establishment is established, what income should be attributed to the PE. How to characterise income from transfers of technology over the Internet? Does it constitute business profits or royalties? Is there a need to amend the definition of royalties in the Model? Is there an erosion of source taxation?

Issues relating to transfer pricing

Computer networks allow for increased speed and integration of transactions, thereby making it difficult to apply the transactional analysis prescribed in the OECD Transfer Pricing Guidelines. The sub group of Working Party N is focusing on these potential transfer pricing issues. Electronic commerce may raise due to the pressure on the transactional and comparability principles are now interpreted by the OECD. The Working Party is examining the difficulties in applying the traditional rules for the allocation of profits to transactions carried out over private networks within MNEs and whether there is a need for an innovative approach. One example is global trading carried out electronically.

Issues relating to Tax Avoidance and Evasion

The sub group of Working party N is examining tax administration issues involving the internet such as the proof of identity requirements for taxpayers operating on the internet, the lack of audit trails, the compliance difficulties created by disintermediation, the problems raised by electronic cash (lack of traceability, easier access to tax havens, access to business records due to encryption). It is also discussing the opportunities presented by new technologies to improve services to taxpayers and administrative practice.

Issues relating to VAT and GST

The sub-group of the Special Session of Consumption taxes is examining

whether as in the case of the Model Convention for the definition of "permanent establishment", the concept of "fixed establishment" for VAT or GST purposes is or not sufficiently comprehensive to deal with electronic commerce since services can be supplied without the service provider setting up traditional "establishment" and customers may receive the services. The sub-group is focusing on the following main issues: the distinction between goods and services provided over the internet since goods are losing their physical identity, the distinction between different types of services, the changes to the place of supply and place of establishment rules for telecommunications services; more uniformity and updating of technical terminology in the definition of telecommunications services; extension of reverse charge/self assessment mechanisms when appropriate; audit trail difficulties and other control issues (in close contact with the sub-group of Working Party N° 8 and developing increased mutual international mutual assistance.

< >

Taxation in Cyberspace

電子商去來 稅制 稅政

世務調查 , 證憑書類 가 , 仲

介機關 課稅捕捉地點(taxing points) 가

(direct deposit)

, 社會保障稅(social security tax) (payroll tax)

(automated deductions)

供給場所(place of supply)

固定事業場(permanent establishment)

移動價格(transfer pricing) 가

가 7가

가

, 衡平性 : 가

, 簡便性 : 가

, 明確性 :

, 效率性 : 가

, 經濟的 歪曲 回避 : 가

, 柔軟性 動態性 : 가

, 配分 公正性 :

(Electronic Commerce and Taxation : An Overview)

()

目 次

- I.
- II.
- III. 가
- IV.
- V.
- VI.

*

I.

1990 空間(Cyberspace) 通信手段 (internet) , , , , 仔詳 國際的

가 가 가 가

1997 125

1996 6 200% 가 28 3,076

가 가 , PC 가

(KREN), (KREO Net), (KOSnet) 非常用

34 , 6 9,221

1996 , , PC

가

美國 財務省 國際租稅室長 Joseph H. Guttentag 가

租稅回避 二重過歲

美國 財務省 「tax toll booth

所得源泉 가, 世法 s」 가

假想市長(cybermarket)

電子商去來(electronic commerce) 政府 租稅管理 能力

가

1997 7 1 「 」 無關稅

地帶 가

(EU) 1997 7 8 「

政府規制 租稅 關稅

(Bonn) 」

電子商去來 發展 市場 規模 가

租稅政策 方向 國

際的 動向 가 情報化時代

租稅定策 基本方向

II.

1.

‘電子商去來’

概念

EDI(Electronic Data Interchange), PC

HTML 4)

(WWW : World

Wide Wed) 5)

가

國家 排他的 領域 國境

가

3

가

1970 ARP ANET

가 1980 NSFNET

1990

6).

政府

商業的 用途

7)

經營目的

電子商去來가

國際貿易

國際貿易體系

가

가

貿易代金 決濟

貿易自動化가

貿易自動化

E (Electronic Data

Interchange)

1960

1087

EDI

UN/EDIFACT(Electronic Data Interchange for Administration, Commerce,

4) HTML (Hyper Text Marked Language)

(Protocol)

5) (Web) 가

가

(text)

6) , 「 , 『 , 1997. 4, P. 103

7) C. Cockburn and T. D. Wilson, “Business Use o the World Wide Web, ”

International Journal of Information Management, Vol. 16, NO. 2, pp. 84~85.

Transport)가 (ISO) EDI

1990 國際商工會議所(ICC : International Chamber of Commerce)가 가 EDI

가 , 가 SWIFT(Society of World Wide Interbank Financial Telecommunication) 1993 EDI

1992 7 貿易自動化 特別法 電子文書가

가 VAN(가 : Value Added Network) VAN

가 . EDI VAN EDI가

假想空間 가 情報傳達 媒體

가 業務再設計(BPR : Business Process Reengineering)가

VAN EDI

業務 再設計

가가 (VAN : Value Added Network) EDI

EDI , 가

. VAN EDI 貿易書類 電子文書 가가

(CD,)

EDI

國際貿易 方式 革新 가

가 가

規制 效率

가가

2.

가.

< 1> 1997 125
2000 가 400

< 1> (:)

	1996	1997	1998	1999	2000
	700	1,257	2,012	2,869	4,091
	94,720	128,810	-	-	200,000

: &

Network Wizards 가 "Internet Domain Survey" 1997
1 < 2> 1,615

(domain) 83

< 3> kr 4 8

25 가 19

< 2>

(:)

1994. 1	2,217,000	30,000
1994. 7	3,212,000	46,000
1995. 1	4,852,000	71,000
1995. 7	6,642,000	120,000
1996. 1	9,472,000	240,000
1996. 7	12,881,000	488,000
1997. 1	16,146,000	828,000

: Network Wizards.

< 3>

(:)

1	com	/	3,323,647
2	e	/	2,114,851
3	net	/	1,232,902,
4	uk		579,492,
5	de		548,168
6	jp		469,427
7	us		432,727
8	mil	/	431,939
9	ca		424,356
10	au		397,460
11	gov	/	362,065

(:)

12	org	/	327,148
13	fi		277,207
14	nl		214,704
15	fr		189,786
16	se		186,312
17	no		120,780
18	it		113,776
19	ch		102,691
20	za		83,349
21	nz		77,886
22	dk		76,955
23	at		71,090
24	es		62,447
25	kr		47,973
26	br		46,854
27	be		43,311
28	il		39,611
29	pl		38,432
30	sg	가	38,376

: Network Wizards.

電子商去來 規模 가 30 民間消
 費支出 30% Forest Research 가
 1997 < 4>
 1,138 2000 6,759
 < 4>

(:)

	1996	1997	1998	1999	2000
	140	323	701	1,228	2,105
	126	276	572	961	1,579
	85	194	420	733	1,250
	46	89	163	234	322
	45	103	222	386	658
	39	78	149	227	336
	37	75	144	221	329
	518	1,138	2,371	3,990	6,579

: Forest Research

電子商去來 市長 規模 1997 63
 2000 613

< 5>

(:)

	1996	1997	1998	1999	2000
	1,400	6,258	15,094	34,434	61,396

:

Ⅲ. 가

PC

技術的 解決 方

案

2.

假想空間 ‘ ’
地域的(領土的) 範圍

‘商品’

가 商品(products) ,
使用 許可(the use of intangibles) (service)

가 가 電子

商品’
稅制

가

- (Developing and distributing software)
- (Developing and distributing shareware)
- (Providing online information service)
- (Allowing electronic access to proprietary databases)
- (Publishing electronic versions access of newspapers and magazines)

物

品, , 特許權() 定義(definition of goods vs. services vs. intangible),
販賣 源泉(sourcing of sales) 固定事業場(permanent establishment issue)

가. , ()

租稅協約 稅法 가 , ()
 , 稅制 適用 .
 所得類型 決定, 關稅 適用 與否 가 稅制上 解釋
 .
 () 가가
 , 가 源泉稅 所得稅
 .
 가가
 가 가 가

1) (Software)

HM Customs and Excise

附加價值稅 , OECD 1992

9).

商法 稅法

1996 8 1 國際租稅 法人稅法 基本通則

特許權

使用料

2) (Shareware)

가

9) HM Customs and Excise, "Importing computer software," 1994.:OECD, "The Tax Treatment of Software" 1992.

가 (test drive) 가 , , , .
 , , .
 , () 가 , () 가 , + +
 , (bug fixed)) 가 가 .
 概念 定立

3) (Online Information Service)

가
 10) 가 . , 가 ()가 , , .

 知的財産權 情報(copy-
 righted material) 가 가
 , 가 가
 가 가 使用料 가 財
 産 讓渡 가 가 .

4)

(: TRW, Lexis/Nexis)
 가 가 가 가
 . 가 DB

10) America Online, CompuServe, , BBS .

新聞 雜誌

電子傳送

去來類型

規定

가

(, ,)

所得 源泉

가

課稅權 行使 與否, 外國納付稅額 控除

가 가

1992 OECD (OECD Model Income Tax Treaty) Article 5

固定事業場(permanent establishment)

“…… a fixed place of business through which the business of an enterprise is wholly or partly carried on.”

固定事業場

가 X 가 甲會社가 Y 가 乙會社

甲會社

乙會社 가

甲會社 Y

가 固定事業場 가

가? OECD

固定事業場

“a fixed place of business”

課稅當局 法院

租稅紛爭

가

가

3.

電子商去來

課稅原則

政策

租稅政策

租稅行政

政策的 含意가

가.

가

가 . 행정官僚 仲介人
가 .
情報 電子
貨幣 .
移轉

가 .
課稅捕捉地點(taxing points) 納稅順應
仲介機關 金融機關
가 仲介機
關 .

(domain name)
가 . 電子郵
便 가 가
가 가 . 課稅 納稅
資料 納稅者 居住地 身分確認 .

가

統制者가

遠隔調整

電子通信 2 (binary digits)

가

가

電子貨幣

IV.

1.

가.

「 (A framework global electronic commerce)」 超高速情報網

가

電子商去來

가

가

가

「 民間部門 電子商去來 基本原則 政府 가」

가

制度的 商去來環境 豫測性, 一貫性 單純性 가
法律 規制 가

非規制的 媒體

가

財政的 · 制度的 · 市場接近

9가

來 無關稅環境 地球村 電子商去
性 가 租稅制度 非差別的 單純性 透明

國際租稅協力
局 가
가

財務省 OECD
州政府 地方稅政 當

地方稅制度 가
가

2. (EU) (Bonn)

가.

1997 7 6~8 (Bonn) 가

EU

電子商去來가

(Bonn Declaration)

雇用

創出

가

市場主導的 接近

契約法 改正

가

電子書名, 電子書類

가

非差別的 租稅原則
 國際協力

가

附加價值稅 間接稅,

, Web 無課稅地域 課稅

緩和地域 가 가가

가 (bit tax)

가

, 租稅回避 脫稅

가 租稅收入

市場歪曲

가

OECD 가

, 所得 - '居住' 源泉-

가

가 OECD

消費稅 直接稅

3.



V.

1.

情報化時代

租稅政策

< 6 >

< 6 >

	-	-
		가가
	- IC	- ,
	- SET	-
	-	- UNCITRAL
	-	1998
	-	-
	-	- , ,

< 6 >

		- OECD
		- OECD
	- 1997.3 ●2000	(IT A- 11), (MRA)
(Content)		
	ETRI, TTA , , ICEC,	가 ISO, ITU-T

2.

「 」 EU 「 」

- ① 中立的
 - ② ‘ ’
 - ③ 關稅
- Owens(1997) 가 7가

- ① 刑鞭性 : 가
- ② 簡便性 : 가
- ③ 明確性 :
- ④ 效率性 : 가

- ⑤ 經濟的 歪曲 回避 : 가
- ⑥ 柔軟性 動態性 : 가
- ⑦ 配分 公正性 :

中立國 稅源 所
 得 中立性

3.

租稅摩擦 가
 가
 가
 가 二重課稅 가 가 國際規制
 租稅回避 國際協約

4.

(customs clearance)

關稅法 輸出通
 關 收入通關 揚陸

11),

가 , , 12),

CD

가

< 7 >

(: %)

	0
	: 2,040 /m()
	0
(, CD) ·	8

가

가

가

無關稅地帶

WTO

無關稅化

WTO

(Internet Round)

費用便益分析

3 5,000 1995 2,100
 競爭力指數¹³⁾가 - 0.89 國際競爭力

11) , 『 』, 1996, p. 360.

12) S/W 가

13) = (-) / (+)
 가 - 1 가

+1 가

가

< 8>

(:)

	1991	1992	1993	1994	1995
	14	16	12	16	21
	144	154	206	293	350

: 『 , 1996.』

5. 가가

가 輸入品 附加價值稅 課稅 가가 < 9>

1995 總市場規模 2 6

2,600 附加價值稅 稅收漏出

< 9> 가가

	가가
	가
	(1997 1)
	가가

가가 가

稅務當局

國際間 電子商去來 國內

電子商去來 制度的·技術的 裝置

(homepage)

假想課稅官廳(Cyber- Tax- Admi

- nistration)

國稅廳 가, 가
'電子商去來 對策班'

6.

假想課稅官廳 基礎構造(architecture)
人工知能(artificial intelligence)
關稅 內國稅 가
가 가 가

現金 電子貨幣
資金洗濯

『New Yorker』 “ (on the
Internet, nobody knows you're a dog)”

가 가 納稅者 身元 가 租稅規定
身分確認

證明書(digital certificates) 身分證(digital IDs)

納稅者 租稅管理者가

順應

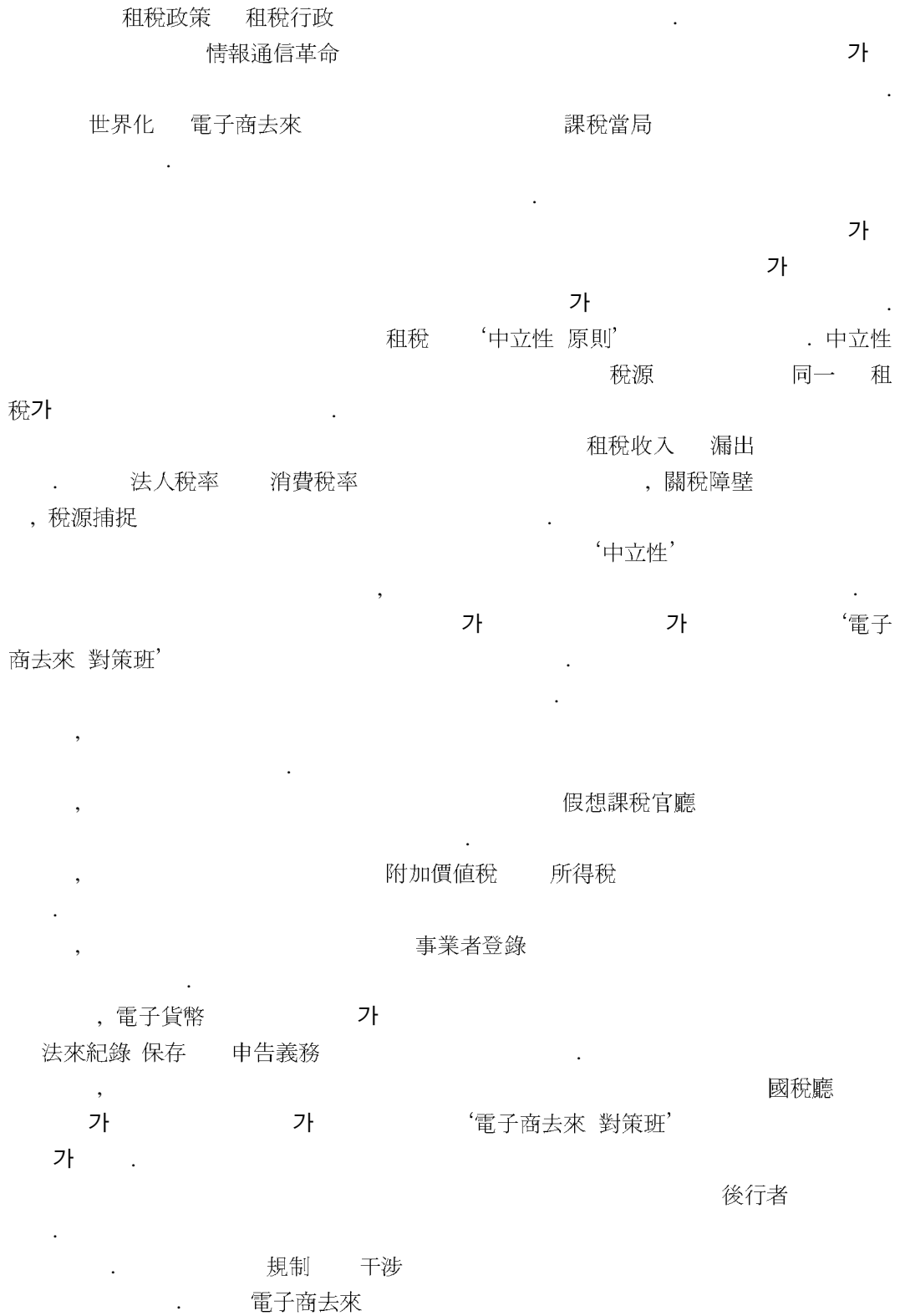
國稅廳

租稅專門家

情報通信專門家

‘電子商去來 對策班’

VI.



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< >

租稅政策 稅務行政

가

電子商去來

가

30

民間消費支出 30%

Forest Research

가

1997

全世界

電子商去來

規制

1,138

2000

6,579

世界化 情報化

租稅政策 稅務

行政體系

가

가

租稅 ‘中

가

立性 原則’

中立性

同一 稅源

同一 租稅가

法人稅率

消費稅率

, 關稅障壁

, 稅源捕捉

가

가

‘電子商

去來 對策班’

費用便益分析

多者間協商

假想課稅官廳

基礎構造

(architecture) 稅法 運用

人工知能(artificial intelligence)

既存

附加價值稅

所得稅

事業者登錄

義務化

가

電子貨幣 發行人

法來記錄 保存

申告義務

租稅廳

가

가

‘電子商去來 對策班’

가

1

()

政策方案

OECD가

가

知識

疑問

가

電子商去來

가

租稅政策 方向

가

論評

가

稅制·租稅行政上 與件

變化

否定的 側面, 肯定的 側面, 國際協約 側面

가

稅收漏出, 租稅

가

國家間 租稅問題

租稅問題

供給場所 概念, 移轉價格 問題, 固定事業場 問題

가

가

가

가 基本的 政策方向 7가

가

電子商去來 無關稅化

「 」

EU 「 」

租稅 衡平性

가

가

, 衡平性

가

가

가가

租稅漏出

가

國家間 租稅問題

가

登錄義務化

ID

租稅漏出 問題

電子 貨幣가

無形財貨

가

移轉

ID

가

租稅

가

가

稅收漏出

(bit tax)

가

가

示唆點

Challenges Posed by the Internet for VAT



: Ian Hutchison(Principal Administrator, OECD)
"Challenges Posed by the Internet for VAT"



金東建()



金裕燦()

Challenges Posed by the Internet for Value Added Tax

Ian Hutchison
(Principle Administrator, OECD)

Contents

- I. Background
- II. VAT : General Principles and Applications
- III. Principal Problems Identified
- IV. Proposals and Options
- V. Conclusions

I . Background

1. The Committee on Fiscal Affairs (CFA) of the OECD invited its subsidiary bodies to report to the January 1997 meeting of the CFA on the impact of the communications revolution on tax policy and tax administration and to identify action which may be required to deal with these effects. To respond to this request the Special Sessions on Consumption Taxes set up an Informal Working Group(IWG) composed of representatives from Canada, Netherlands, Sweden and the United Kingdom with the participation of OECD Secretariat and the European Com-mission (DG XXI)

2. As part of its preliminary findings the IWGproposed that future work in this area should concentrate on the following main issues :
 - changes to the place of supply and place of establishment rules for telecommunications services;
 - more uniformity and updating of technical terminology in the definition of telecommunications services;
 - extension of reverse charge/self assessment mechanisms where appropriate;
 - audit trail difficulties and other control issues; and
 - developing increased mutual assistance arrangements.

3. The presentation specifically focuses on the effects of challenges posed by the Internet in respect of general consumption taxes of the Value Added Tax (VAT) and Goods and Services Tax (GST) types. The main thrust of this note is directed towards the place of supply/fixed establishment rules and most specifically where these rules create possibilities for double taxation or no taxation with the consequent effect on trade and tax competition.

II. VAT : General Principles and Applications

4. **VAT** and similar taxes are taxes on consumer expenditure and in principle charged on the national supply of goods and services. One of the main principles of **VAT** systems is the principle of territoriality, by which the tax should accrue to the authorities of the country in which consumption takes place. **VAT** and similar tax systems have a neutral character which means that these taxes should not interfere with trade in either national or international contexts.

5. As long as providers of goods services had a small radius of activity, turnover taxes could be levied in the homeland of the providers without damaging the main principle: taxation of the national consumption. However, providers are becoming more and more involved in cross border transactions. At present Electronic Commerce is primarily used to arrange for the supply of goods and some services : the selling of digitalized information is expected to grow in volume in the coming years as technology improves. Existing tax-systems were designed to cope with a situation prior to the advent of electronic commerce and these international developments are yet to be incorporated into the operation of consumption taxes.

III. Principal Problems Identified

- Place of Supply Rules

6. As already stated the overall fundamental problem concerns the place of supply/ fixed establishment rules which are designed to avoid either double taxation or no taxation. For certain so-called intellectual services such as consultancy and financial services supplied to business customers, the place of supply is deemed to be where the customer resides, is situated or has a fixed establishment. However, under the provisions of the Sixth VAT Directive of the European Community (AC), when such services are supplied to non-taxable persons, they are deemed to be supplied where the service provider has established his business or has a fixed establishment from where the services are supplied.
7. So in general terms the AC rules- and possibly most other VAT/GST systems - deem the place of supply to be where the supplier is established or has a fixed establishment from where the services are made. But through a combination of technological developments and deregulation, services can be supplied to customers without the supplier having to set up any form of recognizable establishment in the country of consumption of the supplies. A supplier has no need for staff or premises or even his own equipment. Moreover, his maintenance or customer service obligations can be discharged through contracting with a local company.
8. The different categories of activities and related supplies which can be traded via the Internet each present their own specific problems. References are made to Services provided via the Internet. These include off line supplies where goods and services are ordered electronically but delivered by other means (e.g. by post or private carrier); and on-line supplies where “goods” (e.g. digitalized information including text, sound, pictures and software) and services are ordered and delivered electronically.

- Telecoms

Challenges Posed by the Internet for Value Added T

9. There is no doubt that the present rules for dealing with telecommunications and related types of services are already inadequate and create inconsistencies amongst the different tax administrations in determining the correct place of supply for general consumption taxes such as VAT, GST or sales taxes. Future technological developments and increased use of the Internet in making supplies can only compound the problem. The revenue effect due to the current place of supply rules concerning the lack of an establishment or some form of physical presence of the supplier places the liability of the supply outside the country of consumption.

10. In this context the IWG considered the current provisions of the Sixth EC VAT Directive and the Canadian “two out of three rule” in relation to telecommunications services. Recognition was also given to the debate concerning the use of the Internet and inter-state supplies in the USA in relation to State sales taxes. The current EC provision determine that the telecommunication service is supplied where the service provider resides, is situated or has a fixed establishment. The Canadian “two out of three rule” is based on a combination of the origin, destination and billing location of the supply; the billing location for a telecommunications service is considered to be in Canada if the fee for the service relates to a telecommunications facility ordinarily located in Canada (it is not necessarily the place where the invoice is sent). Therefore, if the transmission originates and terminates in Canada OR the transmission either originates or terminates in Canada and the billing location for the services is in Canada, then the supply of the telecommunications services is considered to be in Canada.

- Off-line goods

11. In principle mail order transactions via the Internet pose no real new questions as the delivery of the goods will still entail some form of customs control the biggest problem may simply be the increased resource demands being placed on Customs authorities.

- Off-line services

12. Off-line services including consultancy work, advertising and financial services have hitherto not been traded internationally to any significant degree. However, the Internet provides an opportunity for rapid growth in this area.

- On-line services

13. With respect to supplies (like on-line supply of products) carried on the Internet or some other telecommunications medium there is uncertainty about the current impact. Fiscal effects were largely based on assumptions related more to future anticipation and the consequent impact on the audit trail was as yet unknown. However, the on-line transactions concerning digitalized text, picture, sound and software raise a number of important questions from the revenue point of view. Are such supplies defined as goods or services and are the definitions uniform? Is it possible to find an audit trail? This information has to date mostly been made freely available on the Internet. If this becomes a commercially viable proposition then all these questions will need to be dealt with - and furthermore the volume of transactions will be an important factor.

IV. Proposals and Options

14. To assess the VTA implications, it was first necessary to categorise transactions into on-line and off-line supplies; and next to consider whether transactions are defined as supplies of goods or supplies of services (particularly in respect of products such as CD's, video's and computer software), where previous consignments of goods will in future be able to be transferred in a digitalised form and sent on-line to a customer anywhere in the world.
15. As part of the research of the analysis the place of supply rules in the Sixth EC VAT-directive were compared with the Canadian place of supply rules for GST. A matrix was drawn up showing the differences in the two systems and the resulting effects on VAT liabilities. Taking the basic structure shown in box O, the matrix was used to test the results using examples of the three different categories of supplies (off-line supplies of goods, off-line supplies of services and on-line supplies) made by a taxable supplier to three categories of international customers:
- private persons (the same regime works for non taxable bodies like municipalities),
 - fully taxable bodies and
 - exempt or partly exempt bodies which cannot deduct the VAT or GST or have a limited right of deduction.
16. In the matrix (boxes I , 2 and 3) the delivery of goods (mail-order transactions) concerns the delivery of a CD, a book or spare parts. There is no difference in the tax treatment of these kinds of goods. For services, the difference in the kinds of services is relevant and in several situations can lead to double or non taxation.
17. In box 4 we see an example of a service which a private person could purchase in the form of advice about cosmetics. In the European VAT system these services are taxed at the place of the supplier whereas the Canadian

GST system uses the rule of beneficial enjoyment (this rule is determined by a combination of mechanisms: on the export or relieving side, this includes the place of supply, zero rating, drop-shipment and rebate rules; on the import or taxing side, the combination includes the place of supply rules, including rules for nonresident publishers, imposition of tax at the border of goods and the self assessment rules for imported services and intangibles).

18. In boxes 5 and 6 advertising is used as example of a service which is taxed at the place of the customer in the European VAT system if the client is an entrepreneur. In the Canadian GST system (box 5) there is no taxation if the purchaser can deduct the tax on imported services; in the export situation (box 6) the Canadian GST system applies a zero rate.

19. To illustrate on-line services, the example of a purchase of translation services is used. This difference in character (on-line instead of off-line) does not always lead to a difference in taxation. Taxation in the European VAT system takes place where the provider is established (which could be construed as the basic rule). The purchase of an on-line advertisement should lead to the outcome which is shown in boxes 5 and 6 - in the European system taxation takes place by means of a reverse charge; there is no difference in treatment under Canadian rules.

20. On-line transactions are shown in the matrix in order to compare the effect of a supply of goods. The working group is also able to demonstrate the differences in taxation which are brought about by the various place of supply rules (advertisement versus translation). With these examples, the IWG has tried to show the effects of as many types of cross-border transactions as possible.

V. Conclusions

21. The annex to this document illustrates that the rules for supplies of goods lead to taxation in the country of consumption (see box 0, first row) and that only goods with a limited value are exempted. The supply of services results in a more complex picture (see box 0, row two and three). Here double or non taxation has been identified in several situations.

0	OFF LINE:		ON LINE:
	GOODS	SERVICES	CONTENT
PRIVATE PERSON*	1 CAN-EU VAT** EU-CAN GST**	4 CAN-EU NO TAX EU-CAN VAT & GST	7 CAN-EU NO TAX EU-CAN VAT & GST
ENTERPRISE	2 CAN-EU VAT** EU-CAN GST**	5 CAN-EU VAT EU-CAN No VAT	8 CAN-EU NO TAX EU-CAN VAT
NO TAX DEDUCTION	3 CAN-EU VAT** EU-CAN GST**	6 CAN-EU VAT EU-CAN GST	9 CAN-EU NO TAX EU-CAN VAT & GST

* Same regime for non taxable bodies

** Goods with limited value exempted

Numbers 4, 7, 8 and 9 show situations where double or non taxation exists. Numbers 4, 7 and 9 are especially important, because in these cases non taxation or double taxation on purchases made by private persons and enterprises or bodies which cannot deduct the tax can lead to distortion.

22. One example of the potential for distortion of the revenue base is the growth of so called "call-back" systems in the telecommunications field. Without needing any fixed place of establishment within the EU it has been possible for non-EU telecommunications providers to supply services to EU customers with no VAT charge under the provisions which were in force.

23. As a result the EU member States have taken measures' to change the place of supply rules effectively to where the customer is established. As a consequence arrangements have to be made to declare tax to the appropriate revenue authority. Methods available include VAT registration by the overseas company which makes the supplies, appointment of a fiscal agent by the company to undertake the necessary obligations or-where the customer is an enterprise-application of a reverse charge/self assessment mechanism.

24. The same kind of solution, combined with uniform definitions, can prevent

double or nontaxation and also prevent distortion between the supply of goods and services and distortion among services in respect of supplies made via the Internet. In accordance with the main principle of VAT systems (taxation of national consumption), the place of supply rules for turnover taxes on goods and services should, where necessary, aim to tax in the country of consumption. A further aim should be to arrive at uniform definitions for goods, services and place of supply rules. National exemptions and the rules for goods with a limited value in that situation will have only national impact.

25. As shown in the matrix, problems with double or non-taxation and distortion play an important role where purchases of goods and services are made by private persons or enterprises and bodies that cannot recover VAT. Differences in the taxation of goods and services (transactions concerning digitalised information) and differences in taxation between different services are clearly illustrated.
26. To prevent these problems, two measures are necessary. Firstly, the rules determining place of supply and fixed establishment (as a part of the mechanism that determines the place of taxation) should aim to tax in the country of consumption. Secondly, uniform definitions are needed for goods and services, the place of supply rules and those for fixed establishment.

Next Steps

27. The Special Sessions on Consumption Taxes is continuing its work and is currently examining these issues in close co-operation with the European Commission and the IWG will, where necessary, submit proposals for changes to the place of supply rules to avoid the possibility of distortion of competition caused by double or non taxation (whilst recognising the relevant legislative situation currently in place throughout the OECD countries). Such proposals must seek consistency and uniformity in the place of supply rules and related definitions of services, consider the use of appropriate tax mechanisms, address the problem of audit trail difficulties and look at ways to develop improved mutual assistance arrangements.

ANNEX

0	OFF LINE:		ON LINE:
	GOODS	SERVICES	CONTENT
PRIVATE PERSON*	1 CAN-EU VAT** EU-CAN GST**	4 CAN-EU NO TAX EU-CAN VAT & GST	7 CAN-EU NO TAX EU-CAN VAT & GST
ENTERPRISE	2 CAN-EU VAT** EU-CAN GST**	5 CAN-EU VAT EU-CAN No VAT	8 CAN-EU NO TAX EU-CAN VAT
NO TAX DEDUCTION	3 CAN-EU VAT** EU-CAN GST**	6 CAN-EU VAT EU-CAN GST	9 CAN-EU NO TAX EU-CAN VAT & GST

* Same regime for non taxable bodies

** Goods with limited value exempted

GOODS:

1	OFF LINE: GOODS CD or book	PRWATE PERSON
CANADLAN GST	Export : zero rate. Import: taxed. Goods with limited value exempted*.	
EU VAT	Export : zero rate. Import: taxed. Goods with limited value exempt.	

* some exceptions on this rule exist

2	OFF LINE: GOODS (sare parts)	ENTERPRISE
CANADIAN GST	Export : zero rate. Import: taxed(tax is deductible)*.	
EU VAT	Export : zero rate. Import: taxed. Goods: taxed(tax is deductible)*.	

* The exemption for goods with a limited value does not have impact in case the tax is deductible

3	OFF LINE: GOODS (sare parts)	NO TAX DEDUCTION
CANADLAN GST	Export : zero rate. Import : taxed(tax is not deductible); Goods with limited value exempted.	
EU VAT	Export : zero rate. Import: taxed(tax is not deductible); Goods with limited value exempted.	

OFF LINE SERVICES:

4	OFF LINE: SERVICE (Make-up advice)	PRWATE PERSON
CANADIAN GST	Provider abroad(Imp.): If beneficially enjoyed in Canada, the service is taxed*. Provider in Canada(Exp.) : Zero rate(not beneficially enjoyed in Canada.)	
EU VAT	Provider abroad(Imp.): No taxation(taxed at the place of the provider)**. Provider in EU(Exp.) : Taxed(place of supply is in EU).	

* If provider does not pay the tax: self assessment.*

** exemptions, mostly in the business sector, are possible(see box 5).

5	OFF LINE: SERVICE (Advertising)	ENTERPRISE
CANADIAN GST	Provider abroad(Imp.) : No tax because purchaser can deduct the tax. Provider in Canada(Exp.) : Zero rate.	
EU VAT	Provider abroad (Imp.) : Taxed, reverse charge Provider in EU (Exp.) : No taxation; (customer outside Europe).	

6	OFF LINE: SERVICE (Advertising)	NO TAX DEDUCTION
CANADIAN GST	Provider abroad (Imp.) : Taxed, reverse charge Provider in EU (Exp.) : Zero rate.	
EU VAT	Provider abroad (Imp.) : Taxed, reverse charge Provider in EU (Exp.) : No taxation; (customer outside Europe).	

ON LINE SERVICES:

7	ON LINE: SERVICE (Translation)	PRIVATE PERSON
CANADIAN GST	Provider abroad(Imp.) : Taxed(service enjoyed in Canada). Provider in Canada(Exp.) : No taxation(service not enjoyed in Canada).	
EU VAT	Provider abroad(Exp.): No taxation(taxed at the place of the provider). Provider in EU(Exp.) : Taxed place of supply is in EU.	
8	ON LINE: SERVICE (Translation)	ENTERPRISE
CANADIAN GST	Provider abroad(Exp.) : No tax because purchaser can deduct the tax. Provider in Canada(Exp.): Zero rate	
EU VAT	Provider abroad(Exp.) : No Taxation(taxed at the place of the provider). Provider in EU(Exp.) : Taxed(place of supply is EU).	
9	ON LINE: SERVICE (Translation)	NO TAX DEDUCTION
CANADIAN GST	Provider abroad(Exp.) : Taxed, reverse charge. Provider in Canada(Exp.) Zero rate.	
EU VAT	Provider abroad(Exp.) No Taxation(taxed at the place of the provider) Provider in EU(Exp.) Taxed(place of supply is EU).	

< >

Challenges Posed by the Internet for VAT

가 가가 가
 가가 供給地主義/固定設備主
 義 原則(the place of supply/palce of fixed establishment princle)
 二重課稅 課稅漏落 , 貿易 租稅競爭

附加價值稅 가 課稅
 當局 課稅權 가 . 가가 가가
 가 가 가 가 가 가가

EU (The 6th VAT Directive of EU) 供給地
 主義/固定設備主義 原則 가

가 가 가 가 가 가

가 가가 가 附加價值稅
 固定設備 EU 가 EU 가
 (GST) 가 가가 가 二重課稅

課稅漏落現狀 .
 供給地主義 原則 固定設備 原則 가가
 가가 消費地國課稅 原則
 가 ,
 가 .

