Taxation Aspect of Digital Economy

AN OPPORTUNITY AND CHALLENGES

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Outline

1. DIGITAL ECONOMY
2. INDONESIA'S DIGITAL ECONOMY POTENTIAL
3. CHALLENGES
4. TAXATION ASPECT OF DIGITAL ECONOMY
5. PROPOSED SOLUTION

Hipothetichal status:

- Globalisation paradox ➔ space-time compression/distantiation (Giddens:1984), globalisation of nothing (Ritzer:2006), flow of information (Castells:2007), fluid society (Bauman:2000), risk society (Beck:1992), accumulation by dispossesion (Harvey:2008)
- Globalisation and its tax discontent (Cockfield:2011) ➔ mobility of capital vs immobility of labour
- The borderless economy vs the soverign of nation-state / MNEs vs Government
- Is there "an international tax governance"? (Rixen:2008)
- International tax challenge ➔ multilateral, unilateral, bilateral?
- Digital economy ➔ the phenomenon of elusive object?
- Base erosion and base cyberization (Jinyan Li:2014)
- Ontological question ➔ is there tax subject in digitalized world?

Digital Economy

Definition & Types

The Digital Economy :
the widespread adoption of ICT that has contributed to the development of new activities in both the private and public sector.

The digital economy has given rise to a number of new business models.

Modern advances in ICT have made it possible to conduct many types of business at substantially greater scale and over longer distances than was previously considered impossible.

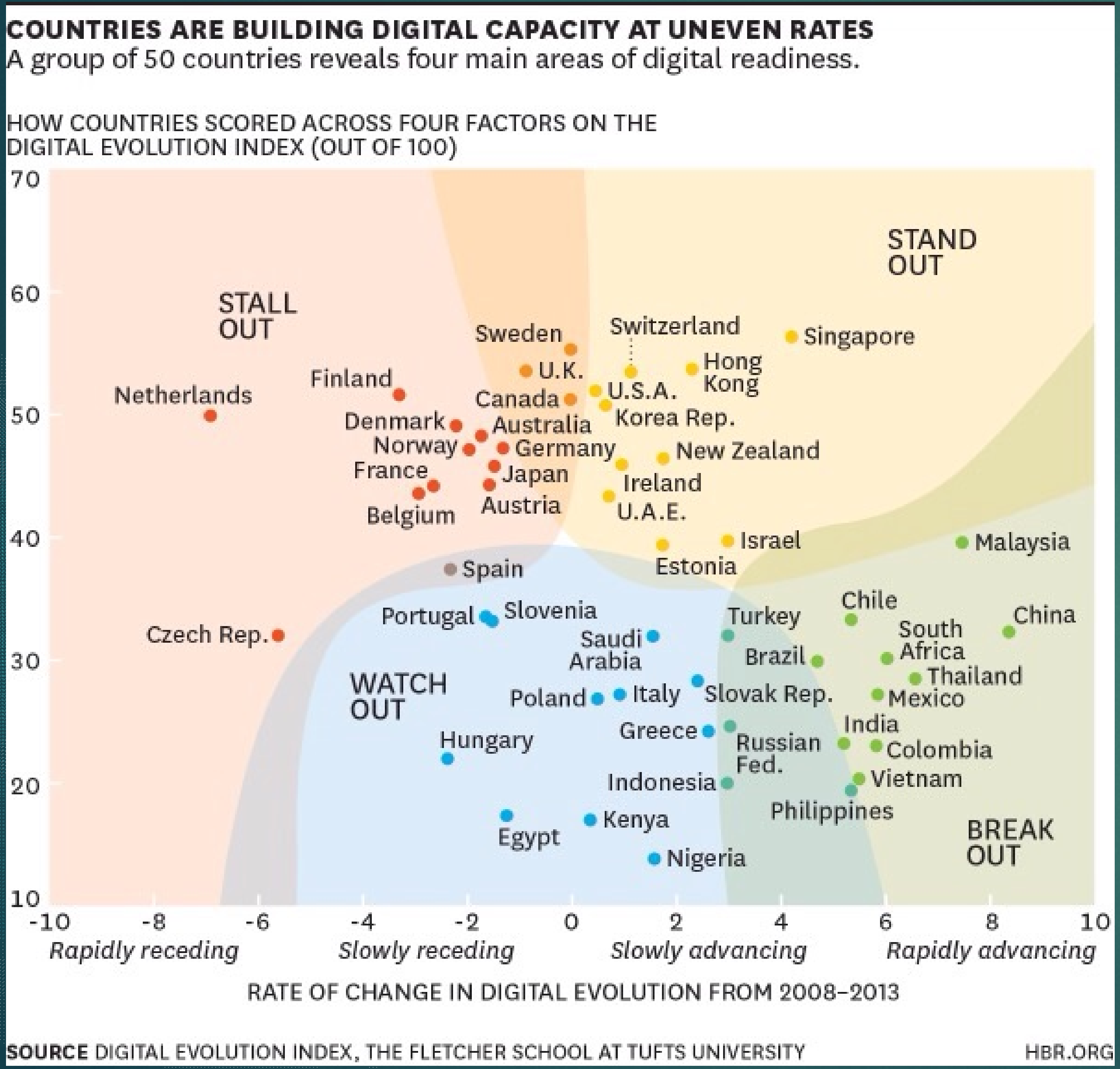
Digital Economy

E-Commerce	App Store	Online Advertising
Electronic commerce (e-commerce), has been defined broadly by the as "the **sale or purchase of goods or services, conducted over computer networks** by methods specifically designed for the purpose of receiving or placing of orders". E-commerce can be used either to facilitate the ordering of goods or services that are then delivered through conventional channels (indirect or offline e-commerce) or to order and deliver goods or services completely electronically (direct or on-line e-commerce).	Application stores typically take the form of central retail platforms, accessible through the consumer's device, through which the consumer can browse, view information and reviews, purchase and automatically download and install the application on his/her device. Gartner, Inc., an information technology research and advisory company, estimated that **downloads from app stores would reach 102 billion in 2013, up from 64 billion in 2012. Total revenue from app store purchases was expected to exceed $26 billion in 2013**, an increase of 31% over the total in 2012.	Internet advertising is rapidly growing, both in terms of total revenues and in terms of share of the total advertising market. PwC estimates that **Internet advertising reached USD $100.2 billion in 2012**, which represented 17 percent growth from the previous year, and a **20 percent share of the total global advertising market**. The market for internet advertising is projected to grow at a rate of 13 percent per year during the period from 2012 to 2017, reaching USD 185.4 billion in 2017. Internet advertising would by that point become the **second-largest advertising medium behind television advertising**, with a 29 percent share of the overall global market.

Digital Economy

Cloud Computing	High Frequency Trading	Participative Networked Platform	Online Payment Service
Provision of standardised, configurable, on-demand, online computer services, which can include computing, storage, software, and data management, using shared physical and virtual resources. Many cloud services have been provided free of charge, with **revenue generated through advertising or the sale of data on user behaviour, or on a "freemium" basis**. Other consumer cloud services are sold on a monthly subscription basis. In B2B markets, cloud services are most typically sold by subscription.	High frequency trading uses sophisticated technology, to trade securities at high speed. Large numbers of orders which are typically fairly small in size are sent into the markets at high speed, with round-trip execution times measured in microseconds. High frequency trading firms **profit mostly from small price changes exploited through small, but frequently executed trades**.	An intermediary that enables users to collaborate and contribute to developing, extending, rating, commenting on and distributing user-created content. User created content (UCC) comprises various forms of media and creative works (written, audio, visual, and combined) created by users in general, **user-created content is created without the expectation of profit.**	Online payment service providers providing a secure way to enable payments online without requiring the parties to the transaction to share financial information with each other.

Digital Economy



The Digital Evolution Index Data showed that various digital capacity occurred between 2008-2013. Many West Europe countries experienced a slowly receding digital capacity and categorized in "Stall Out" Countries. That condition happened most likely due to European financial crisis.

Asian countries experienced an "advancing" digital capacity with the most rapidly advancing countries is Malaysia, Singapore, and China. Indonesia is considered as "slowly advancing" country in term of digital capacity.

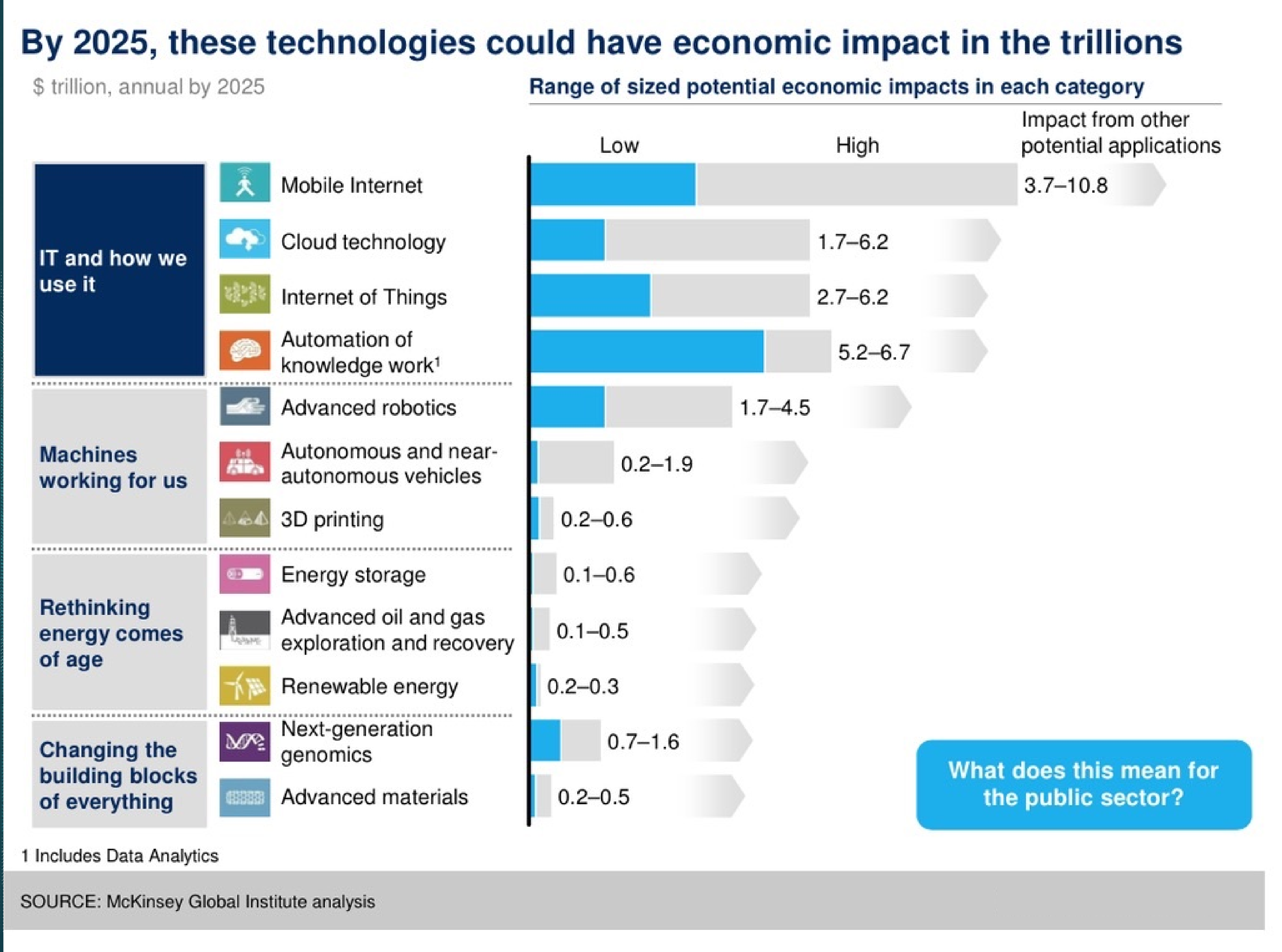
This uneven rates of digital capacity is an indication that the digital economy will face some challenges in the future due to "not standardized" digital readiness among different countries.

Digital Economy

Mobile game is a "compulsory" application that installed in every gadget or computer, whether it is serious game or casual game that usually appear on social media.

Mobile game usually offers in-app purchase that generates revenue for the developers. The revenue generated from game will be expected reached $30.3 billion worldwide http://fortune.com/2015/01/15/mobile-console-game-revenues-2015/

Digital Economy



ICT have the biggest potential economic impacts compared with other sectors in technology industry.

That condition make utilization of digital economy through internet and cloud technology will become more robust.

Indonesia's Digital Economy Potential

Key Features of the Digital Economy

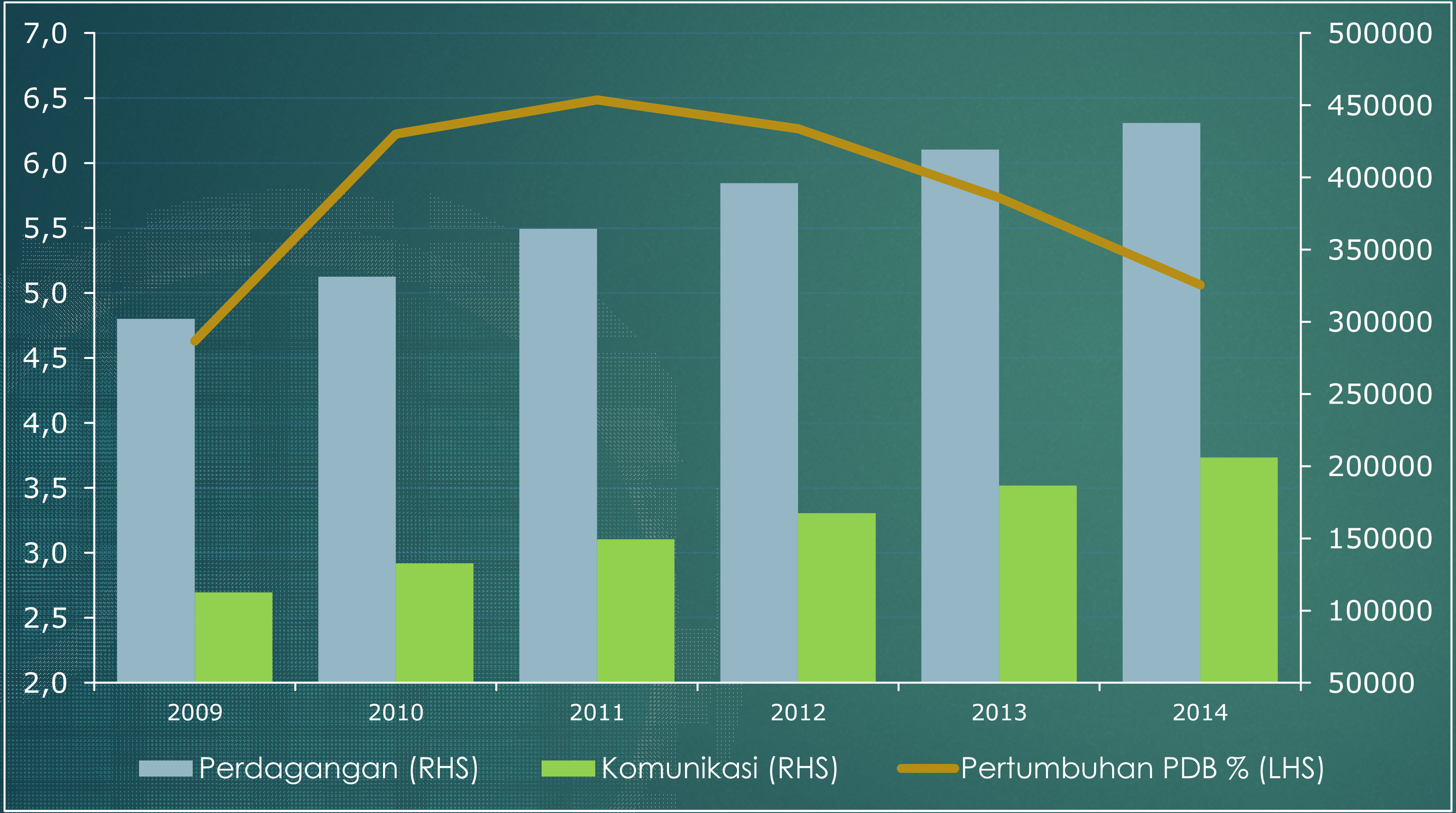
There are a number of features that are increasingly prominent in the digital economy and which are potentially relevant from a tax perspective.

Key Features

- **Mobility**
  - *with respect to (i)the intangibles on which the digital economy relies heavily, (ii) users, and (iii) business functions*
- **Reliance on Data**
  - *including in particular the use of so-called "big data"*
- **Network Effects**
  - *understood with reference to user participation, integration and synergies,*
- **Multi Sided Business Model**
  - ***Tendency toward monopoly or oligopoly***
    - *relying heavily on network effects*
  - ***Volatility***
    - *due to low barriers to entry and rapidly evolving technology.*

Opportunity

Continuous Economic Growth



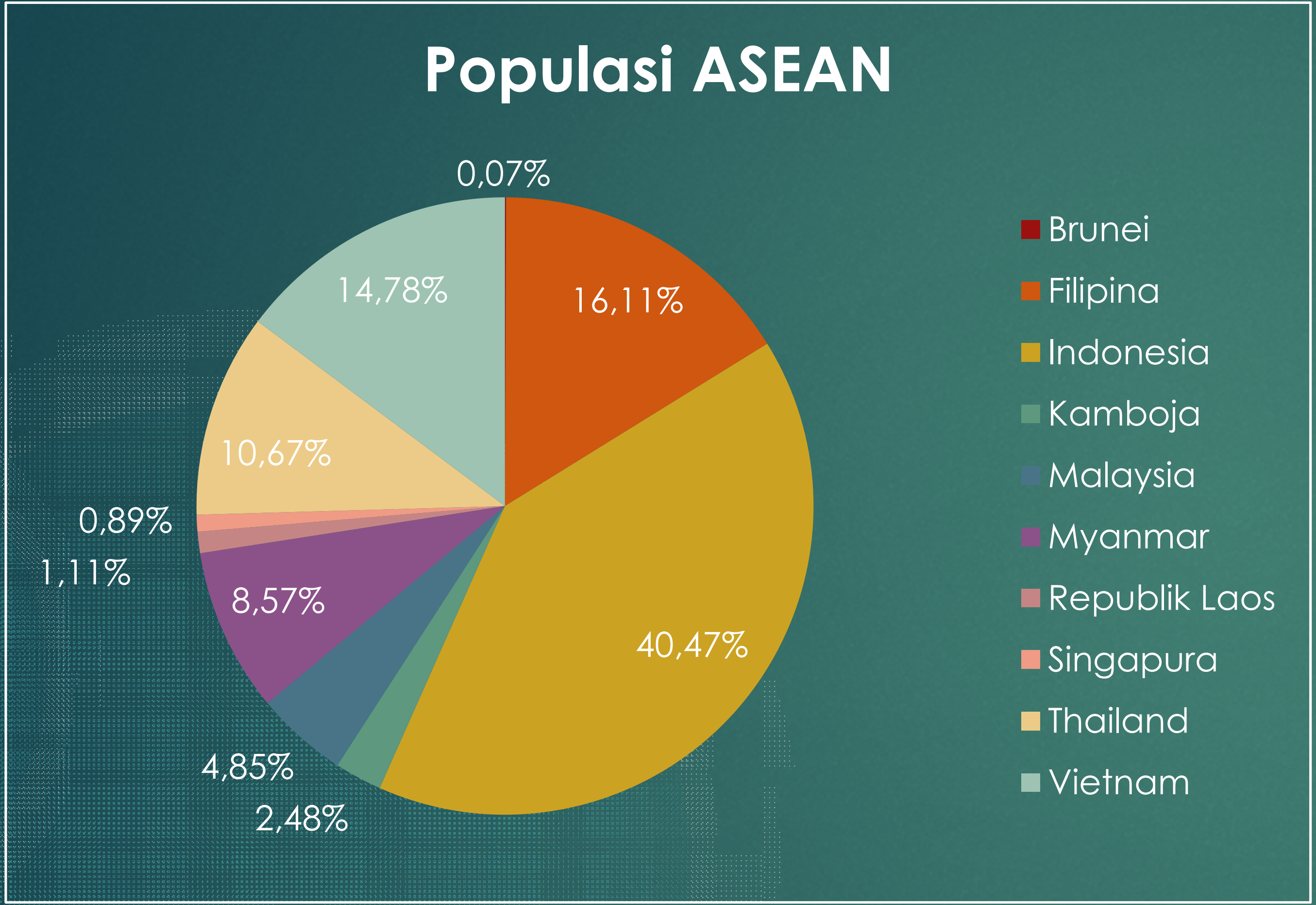
Source : Badan Pusat Statistik

Indonesia is still showing a **good GDP growth.**

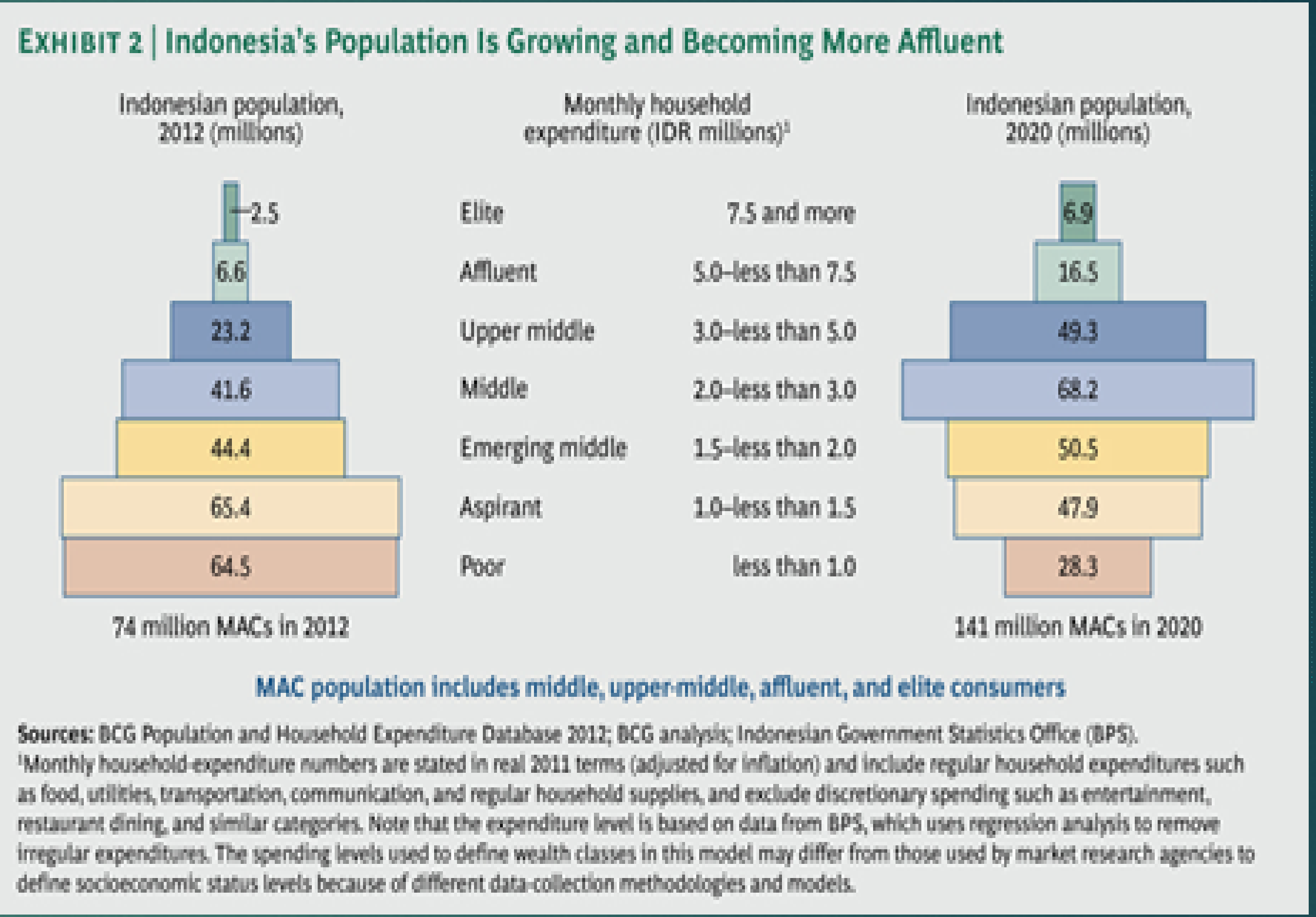
Growth in trade and communications sector is an indication that the infrastructure that will be useful to support the digital economy will become better. Those economic support can **increase the potential of the digital economy** in Indonesia.

Indonesia's Digital Economy Potential

Large Market



Source : World Population Prospect, United Nations

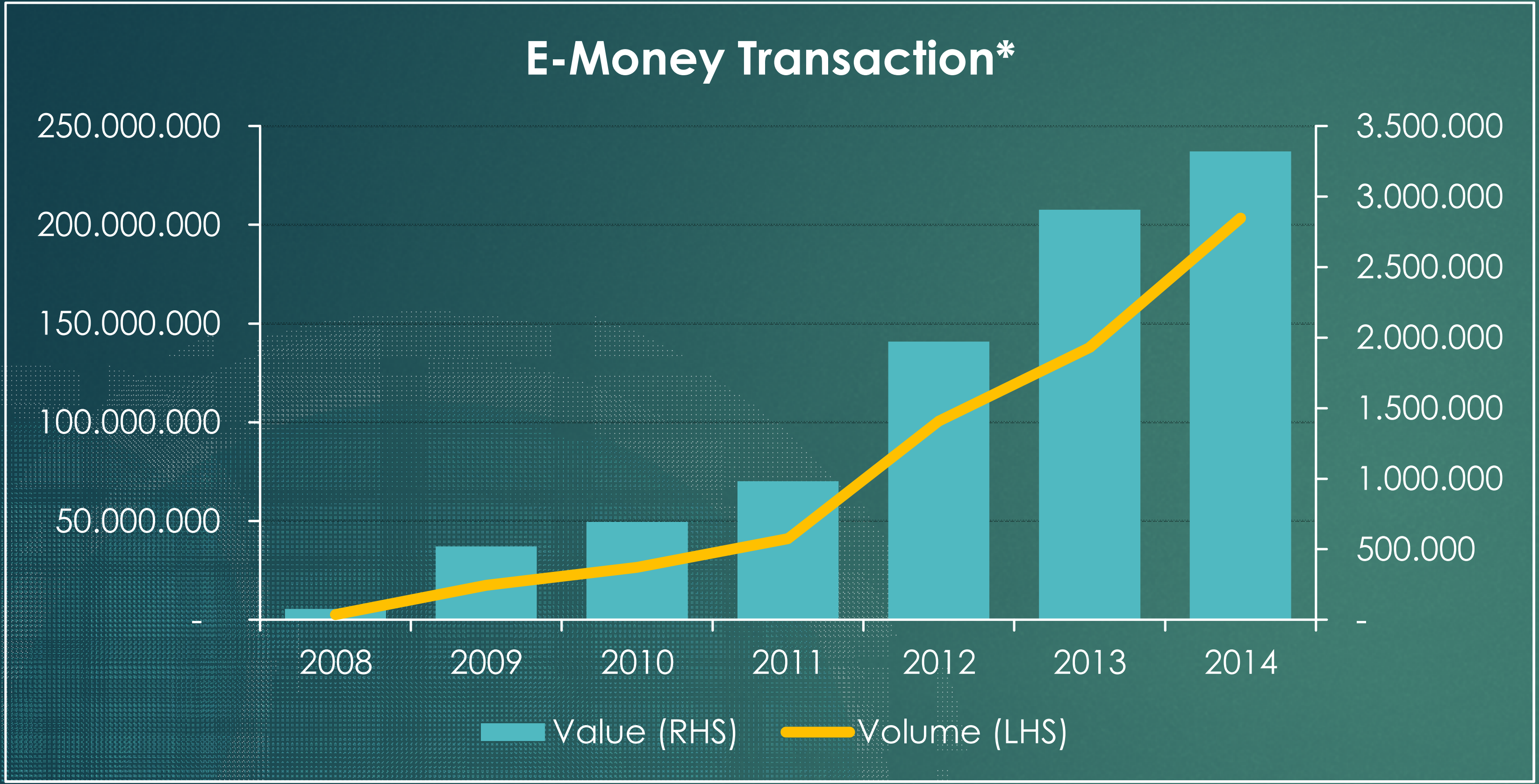


Source : The Boston Consulting Group

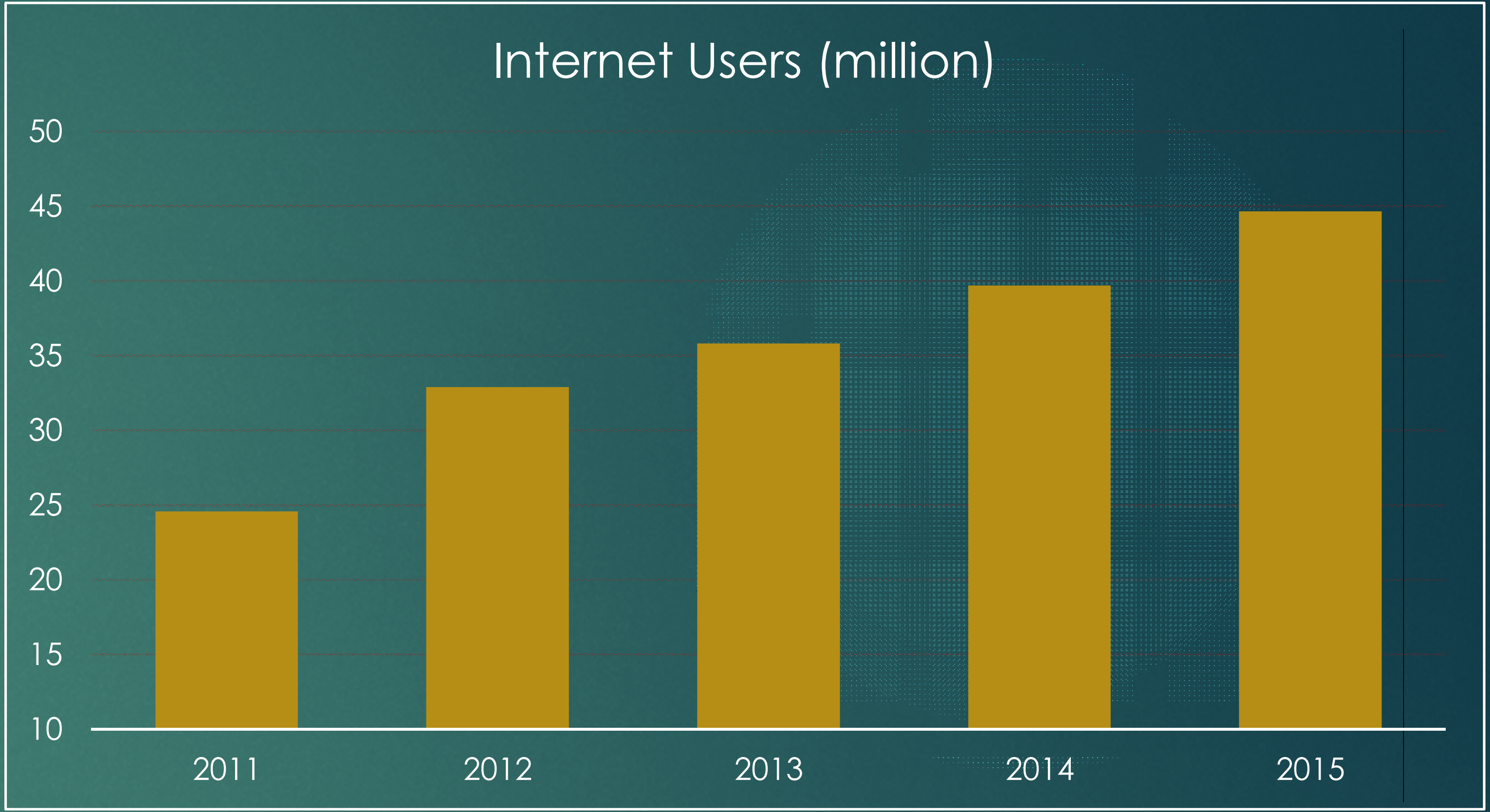
Indonesia's demographics are attractive and it is **the largest market share in ASEAN**. More than 60 percent of its residents are currently aged 20 to 65 (the principal working years) and the middle income class is growing and becoming more affluent. Country's rising proportion of Middle Income Class will likely bring a wave of consumer spending. Thus it will benefit the E-commerce from this borderless transaction era.

Indonesia's Digital Economy Potential

Supportive Condition



Source : Bank Indonesia



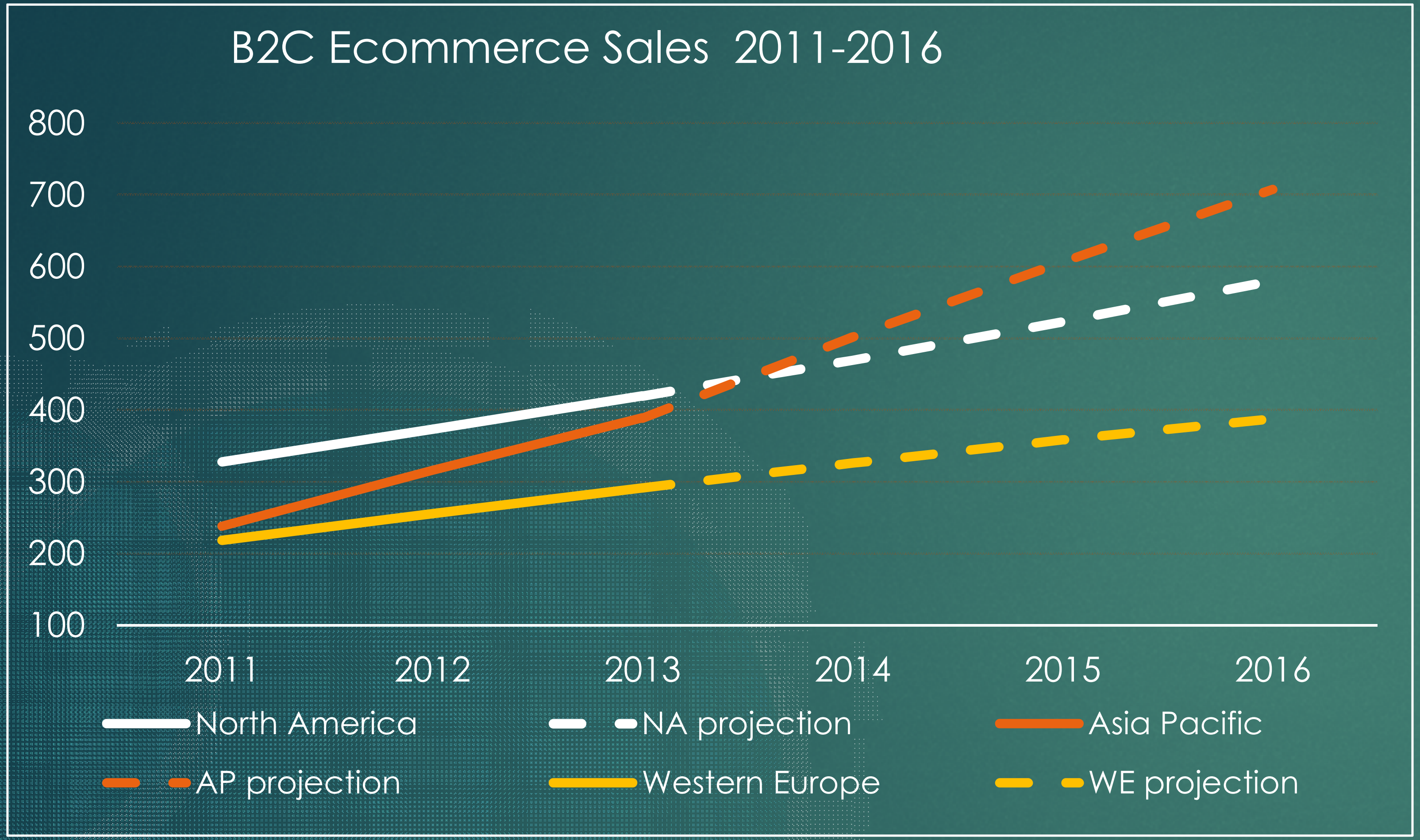
Source : Euromonitor Lifestyle Indicator

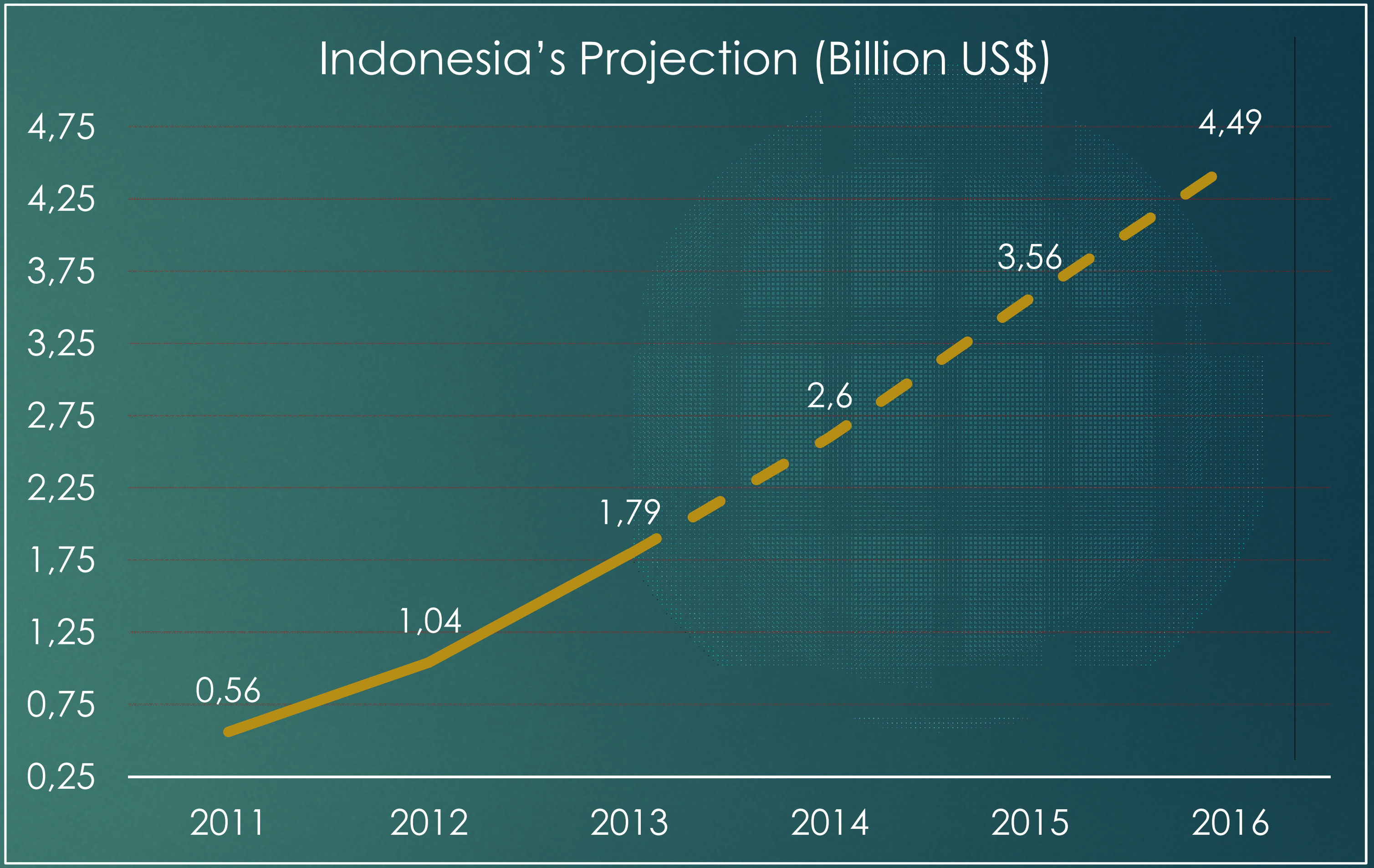
Digital economy existence requires full support of infrastructure related to the provision of Internet services and electronic money transactions. **Internet users in Indonesia in 2015 amounted to 44.6 million people**. In addition, the value of **electronic money transactions Indonesia increased from Rp 76.6 billion in 2008 to Rp 3,3 trillion in 2014**. Those conditions is very supportive for the digital economy growth.

*value in million

Indonesia's Digital Economy Potential

Promising E-commerce Performance





Source : eMarketer

Indonesia E-commerce condition showed progressive growth and it is projected to continue to rise. E-Commerce Market in Asia Pacific is growing significantly among other areas, that condition can be utilized by Indonesia to develop the E-Commerce further.

Challenges

The evolution of business models and the growth of the digital economy, have resulted in non-resident companies operating in a market jurisdiction in a fundamentally different manner today than at the time international tax rules were designed. For example, while a non-resident company has always been able to sell into a jurisdiction without a physical presence there, advances in ICT have dramatically expanded the scale at which such activity is possible. The main policy challenges raised by the digital economy fall into four broad categories:

Nexus	**Data**	**Characterisation**	**VAT Collection**
The continual increase in the potential of digital technologies and the reduced need in many cases for extensive physical presence in order to carry on business raises questions as to whether the current rules are appropriate.	issues of how to attribute value created from the generation of data through digital products and services, and of how to characterise for tax purposes a person or entity's supply of data in a transaction, for example, as a free supply of a good, as a barter transaction, or some other way.	The development of new digital products or means of delivering services creates uncertainties in relation to the proper characterisation of payments made in the context of new business models, particularly in relation to cloud computing.	Cross-border trade in both goods and services creates challenges for VAT systems, particularly where such goods and services are acquired by private consumers from suppliers abroad.

Current Taxation Regulation for *E-commerce*

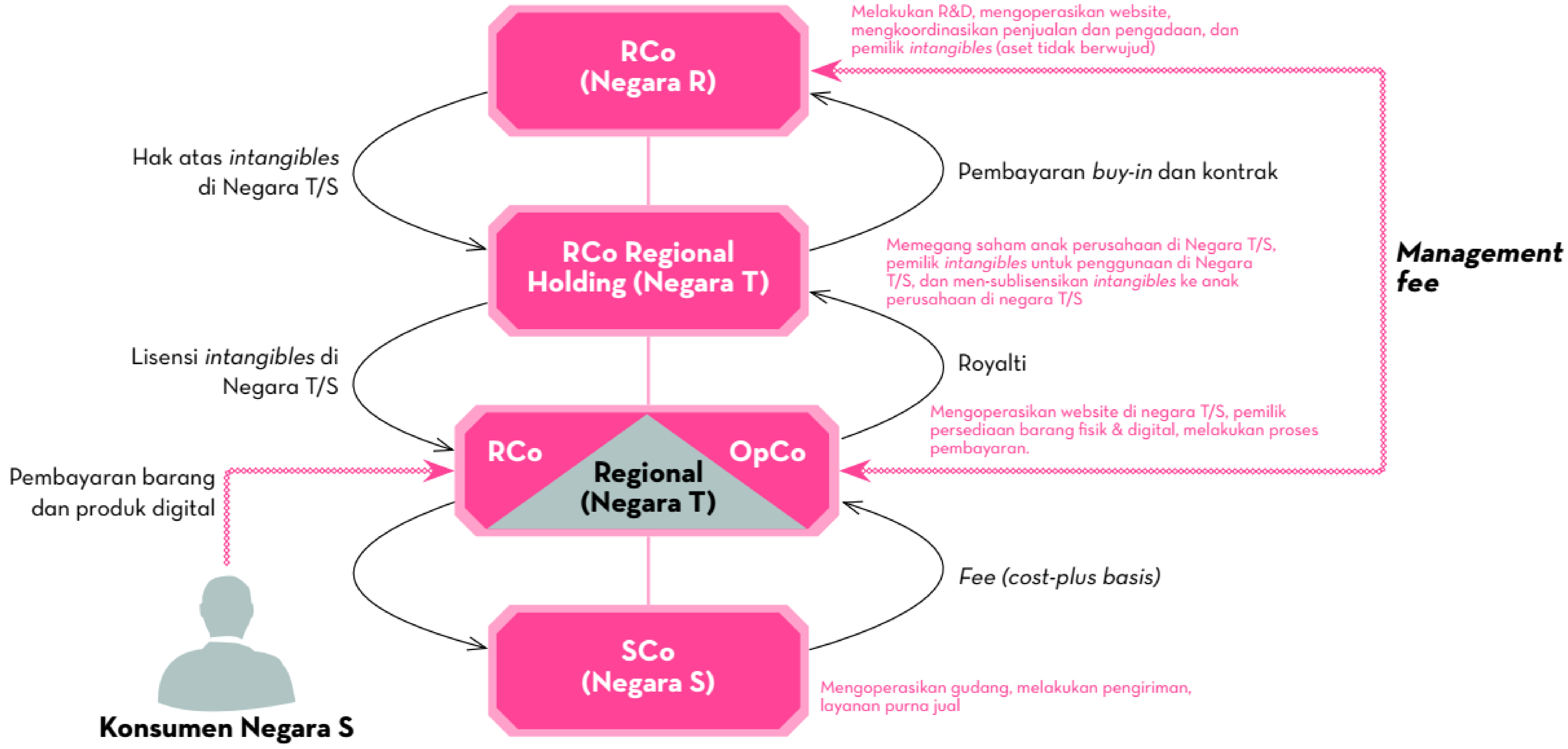
There are **no specific rules** regulating taxation of e-commerce in Indonesia

The only regulation is a circular letter from DGT (SE-62/PJ/2013), confirms that the e-commerce follows the existing tax provisions.

Some basic principles of e commerce taxation (OECD:2001)

- **Neutrality –** taxation should seek to be neutral and equitable between forms of e-commerce and between conventional and e-commerce, so avoid- ing double taxation or unintentional non-taxation.
- **Efficiency –** compliance costs to business and administration costs for gov- ernments should be minimised as far as possible.
- **Certainty and simplicity –** tax rules should be clear and simple to under- stand, so that taxpayers know where they stand.
- **Effectiveness and fairness –** taxation should produce the right amount of tax at the right time, and the potential for evasion and avoidance should be minimised.
- **Flexibility –** taxation systems should be flexible and dynamic to ensure they keep pace with technological and commercial developments.

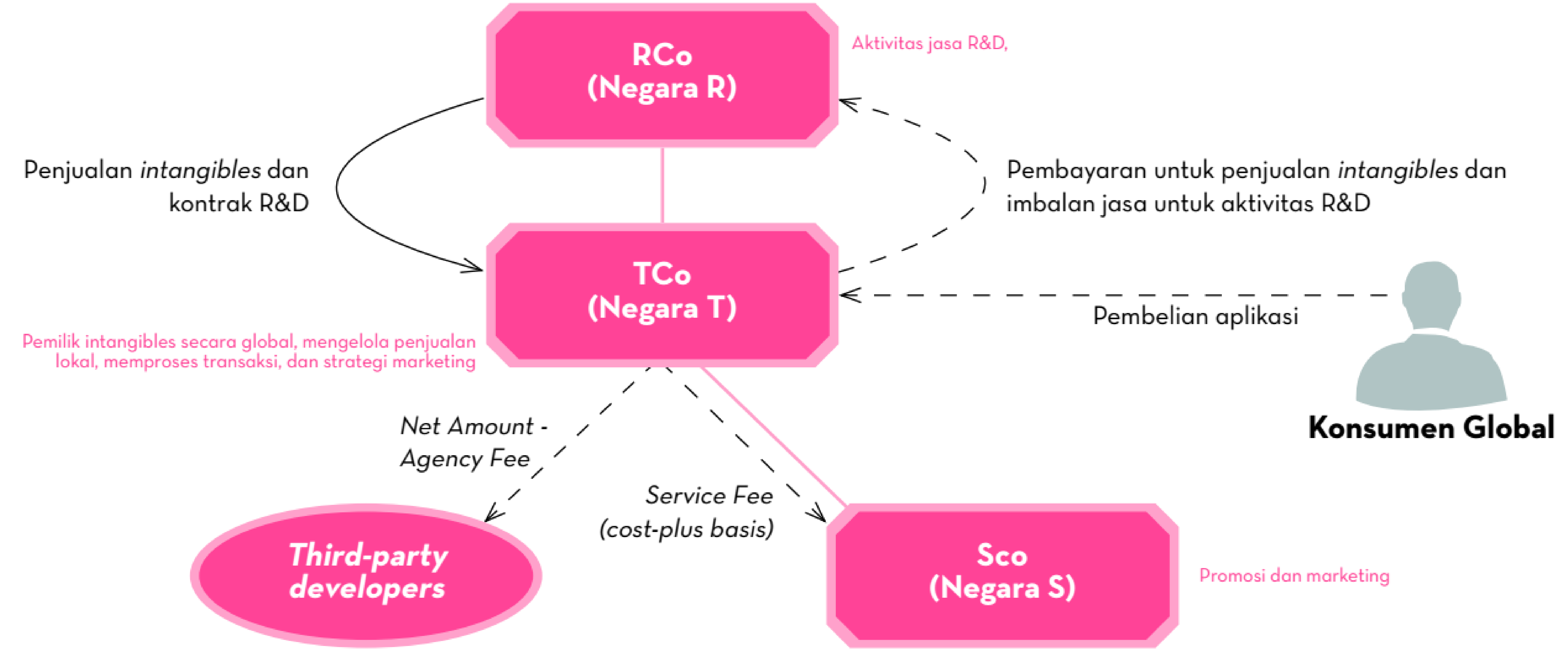
Example of economic activity in digital economy: **Online retailer**



Sumber: OECD (2014), *Addressing the Tax Challenges of the Digital Economy*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing.

Cited from Inside Tax 25th edition, November 2014

Example of economic activity in digital economy: **App Store**



OECD (2014), *Addressing the Tax Challenges of the Digital Economy*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing.

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Taxation Aspect

The digital economy raises issues beyond ordinary business, taxpayer can easily avoid tax by several ways:

- **BEPS in the context of direct taxation**
  - Eliminating or reducing tax in the market country
    - Avoiding a Taxable Presence
    - Minimising Functions, Assets and Risks in Market Jurisdictions
    - Maximising Deductions in Market Jurisdictions
  - Avoiding withholding tax
  - Eliminating or reducing tax in the intermediate country

Taxation Aspect… (contd')

Opportunities for BEPS with respect to VAT

- Remote digital supplies to exempt businesses
- Remote digital supplies to a multi-location enterprise (MLE)

Taxation Aspect

BEPS in the context of direct taxation

Eliminating or reducing tax in the market country		
Avoiding a Taxable Presence	***Minimising Functions, Assets and Risks in Market Jurisdictions***	***Maximising Deductions in Market Jurisdictions***
In many digital economy business models, a non-resident company may interact with customers in a country remotely through a website or other digital means (e.g., an application on a mobile device) without maintaining a physical presence in the country. The domestic laws of most countries require some degree of physical presence before business profits are subject to taxation. In addition, under **Articles 5 and 7 of the OECD Model Tax Convention, a company is subject to tax on its business profits in a country of which it is a non-resident only if it has a permanent establishment (PE) in that country**. Accordingly, such non-resident company may not be subject to tax in the country in which it has customers.	In the context of the digital economy, an enterprise may typically establish a local subsidiary or a PE, with the local activities structured in a way that generates little taxable profit. Typical examples of digital economy structures that **minimise assets and risks in market jurisdictions include using a subsidiary or PE to perform marketing or technical support, or to maintain a mirrored server** to enable faster customer access to the digital products sold by the group, with a principal company contractually bearing the risks and claiming ownership of intangibles generated by these activities.	Once a taxable presence in the market country has been established, another common technique to reduce taxable income is **to maximise the use of deductions for payments made to other group companies in the form of interest, royalties, service fees, etc**. In many cases, MNEs engaging in BEPS practices attempt to reduce taxable income in a source country by artificially inflating the amount of deductible payments made to affiliates in other jurisdictions.

Taxation Aspect

BEPS in the context of direct taxation

Avoiding withholding tax	***Eliminating or reducing tax in the intermediate country***
A company may be subject to withholding tax in a country in which it is not a resident if it receives certain payments, including interest or royalties, from payers in that country. If allowed under a treaty between the jurisdictions of the payer and recipient, however, a company in the digital economy may be entitled to reduced withholding or exemption from withholding on payments of profits to a lower-tax jurisdiction in the form of royalties or interest. Structures that involve treaty shopping by interposing shell companies located in countries with favourable treaty networks that contain insufficient protections against treaty abuse raise BEPS concerns.	Eliminating or reducing tax in an intermediate country can be accomplished through the application of preferential domestic tax regimes, the use of hybrid mismatch arrangements, or through excessive deductible payments made to related entities in low-or no-tax jurisdictions. In the context of the digital economy, for example, **the rights to intangibles and their related returns are often assigned and transferred among associated enterprises, and may be transferred, sometimes for a less-than-arm's length price, to an affiliate in a jurisdiction** where income subsequently earned from those intangibles is subject to unduly low or no tax due to the application of a preferential regime. This creates tax planning opportunities for multinational enterprises and presents substantial risks of base erosion. Heavy reliance in the digital economy on intangibles as a source of value may exacerbate the ability to concentrate value-producing intangibles in this way.

Taxation Aspect

BEPS in the context of direct taxation

Eliminating or reducing tax in the country of residence of the ultimate parent

The same techniques that are used to reduce taxation in the market country are often utilised also to reduce taxation in the country of the ultimate parent company of the group or where the headquarters are located.

This can involve **contractually allocating risk and legal ownership of mobile assets like intangibles to group entities in low tax jurisdictions**, while group members in the jurisdiction of the headquarters are undercompensated for the important functions relating to these risks and intangibles that continue to be performed in the jurisdiction of the headquarters.

In addition, **companies in the digital economy may avoid tax in the residence country of their ultimate parent if that country has an exemption or deferral system for foreign-source income and either does not have a CFC regime** that applies to income earned by controlled foreign corporations of the parent, or has a regime with inadequate coverage of certain categories of passive or highly mobile income, including in particular certain income with respect to intangibles.

Taxation Aspect

Opportunities for BEPS with respect to VAT

Remote digital supplies to exempt businesses

VAT is generally not designed to be a tax on businesses as businesses are generally able to recover any tax they pay on their inputs. **Many VAT jurisdictions using the destination principle for B2B digital supplies will generally require a business customer in their jurisdiction to self-assess VAT on acquisitions of remotely delivered services and then allow the business to claim a credit for this selfassessed VAT**.

BEPS concerns in a VAT context could arise however, with respect to offshore digital supplies made to exempt businesses (e.g. the financial services industry). Where a business is engaged in VAT-exempt activities, no VAT is levied on the exempt supplies made by the business, while VAT incurred by the business on the associated inputs is not deductible.

For example, a business acquiring a data processing service from a non-resident supplier would be required to self-assess VAT according to the rules of the jurisdiction in which it is located and could claim an off-setting credit for this self-assessed VAT (some jurisdictions may not require the business to self-assess tax as it is entitled to an offsetting credit). If the business customer is an exempt business, it is still required to self-assess VAT in these jurisdictions but would not be able to claim a credit for the selfassessed tax.

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Taxation Aspect

Opportunities for BEPS with respect to VAT

Remote digital supplies to a multi-location enterprise (MLE)

BEPS concerns could also arise in cases where a digital supply is acquired by a multinational business that has establishments in different jurisdictions (a "multiple location entity" or MLE). It is common practice for multinational businesses to arrange for a wide scope of services to be acquired centrally to realise economies of scale.

Typically, the cost of acquiring such a service is initially borne by the establishment that has acquired the service and, in line with normal business practice, is subsequently recharged to the establishments using the service. The establishments are charged for their share of the service on the basis of the internal recharge arrangements, in accordance with corporate tax, accounting and other regulatory requirements. However, **many VAT jurisdictions do not currently apply VAT to transactions that occur between establishments of one single legal entity**.

This means that where an establishment of a MLE acquires a service, for instance data processing services, for use by other establishments in other jurisdictions, **no additional VAT would apply on any internal cost allocations or recharges made within the MLE for the use of these services by other establishments**.

Proposed Solutions

Proposed Solution

- Modifications to the Exemptions from **Permanent Establishment** Status
- A New Nexus based on Significant Digital Presence
- Virtual **Permanent Establishment**
  - virtual agency PE
  - virtual fixed place of business PE
  - on-site business presence PE
- Creation of a **Withholding Tax on Digital Transactions**
- Consumption Tax Options
  - Exemptions for Imports of Low Valued Goods
  - Remote digital supplies to consumers

Proposed Solutions

Modifications to the Exemptions from Permanent Establishment Status

One potential option discussed by the Task Force would **modify the exceptions contained in paragraph 4 or Article 5 of the OECD Model Tax Convention**. It is possible in certain businesses that some of the activities described in subparagraphs (a) through (d) of paragraph 4 could constitute core functions of a business. In that case, the proponents of this option consider that the exception contained in paragraph 4, which was primarily intended to exempt preparatory or auxiliary /activities, should not be available.

A New Nexus based on Significant Digital Presence

Another potential option discussed by the Task Force would focus on establishing an alternative nexus to **address situations in which businesses are conducted wholly digitally**. Such a proposal would determine that an **enterprise engaged in certain "fully dematerialised digital activities" would have a permanent establishment if it maintained a "significant digital presence" in the economy of another country.**

Development of such options would require evaluation of the above elements to determine which combination of factors would result in an appropriate nexus to address the tax challenges of the digital economy effectively, while providing enough clarity to minimise potential dispute. It would also require consideration of how profits would appropriately be attributed, and whether doing so would require modification of the current rules for the attribution of profits to PEs. The work would also need to consider whether such a change would require a change in the attribution rules for all enterprises, or whether changes could be limited to fully dematerialised digital businesses.

Proposed Solutions

Virtual Permanent Establishment

Several potential options for alternative PE thresholds have been proposed. Some of these were discussed in the work of the Business Profits TAG, The Business Profits TAG considered three broad alternatives:

"virtual fixed place of business PE"	"virtual agency PE",	"on-site business presence PE"
which would **create a permanent establishment when the enterprise maintains a website on a server of another enterprise located in a jurisdiction** and carries on business through that website	which would seek to **extend the existing dependent agent PE concept** to circumstances in which contracts are habitually concluded on behalf of an enterprise with persons located in the **jurisdiction through technological means, rather than through a person**	which would **look at the economic presence of an enterprise within a jurisdiction** in circumstances in which the foreign enterprise provides on-site services or other business interface at the customer's location.

Creation of a Withholding Tax on Digital Transactions

Another option that has been suggested would be **to impose a final withholding tax on certain payments** made by residents of a country for digital goods or services provided by a foreign e-commerce provider.

This proposal is intended to **address concerns** that it may be possible to maintain substantial economic activity in a market without being taxable in that market under current permanent establishment rules **due to lack of physical presence in that market.**

The Task Force will need to consider consistency with trade obligations. Since international payments for digital economy transactions are generally made using credit cards or electronic payments, **one option to be considered would be to require withholding by the financial institutions involved with those payments**

Proposed Solutions

Consumption Tax Options

The developments of digital economy have resulted in significant growth in cross border B2C (Businee to Client) supplies which present challenges to VAT systems as these supplies often result in no or an inappropriately low amount of VAT collected and create potential competitive pressures on domestic suppliers.

Exemptions for Imports of Low Valued Goods	***Remote digital supplies to consumers***
The thresholds for these exemptions vary widely across jurisdictions. This could notably be achieved by **requiring non-resident vendors of low value parcels to charge, collect and remit the tax on the imports of these goods in the importing jurisdiction**. Compliance by non-resident suppliers with their tax obligations in the country of importation would need to be **facilitated through simplified registration and compliance mechanisms, using the possibilities offered by new technologies** (e.g. on-line registration and filing, electronic payment).	The most effective and efficient approach to ensure an appropriate VAT-collection on such cross-border B2C services is to **require the non-resident supplier to register and account for the VAT on these supplies in the jurisdiction of the consumer**. It is recognised that requiring non-resident suppliers to register and account for VAT in as many foreign jurisdictions as they have consumers of remotely delivered services may impose compliance burdens on these suppliers. **Countries should therefore consider the use of simplified registration regimes and registration thresholds** to minimise the potential compliance burden on businesses. Improved international co-operation between jurisdictions is likely to be required to make this option success. This may include enhanced exchange of information, assistance in recovery and simultaneous audits.

Using Digital Technologies to Enforce Tax Laws

1. Secure Extranet

Tax authorities could set up a secure extranet among themselves far **more comprehensive and efficient exchange of information**.

2. Identifying the Location of Taxpayers

the technologies needed for identifying specific geographic locations of e-commerce participants for tax purp.es. E.g.: **digital certifcates**.

3. International Online Tax Clearinghouse

An international online clearinghouse, could be used to assess and collect taxes on online payments and then remit these taxes to the relevant country.

Regulation in the tax field may help encourage a more efficient and productive forum for the development of e-commerce.

E-Commerce Taxation in Other Countries

China's Challenges

China has special difficulties in handling e-commerce tax issues while this commerce is growing rapidly in the country much faster than the development of the government technology skills and enforcement abilities. Moreover China has unique challenges due to special relation with Hong Kong. There are three common problems that China must address :

E-commerce enterprise could sell intensively in China without any presence in the form of establishment or site. This challenge presents a risk for the Chinese source tax base. This risk is especially important for China as developing country with huge consumer market that imports products from abroad.	The Anti Avoidance Tax rules are difficult for application in China as a huge country with low tax compliance rate and especially in e-commerce context that makes it easier to avoid taxes.	The CFC rule has its own difficulties in the Chinese e-commerce context as a result of the special relations and Geographic proximity between China and Hong Kong which is a low tax jurisdiction.

E-Commerce Taxation in Other Countries

China's Policy Response

In late 2010, the State Administration for Industry & Commerce issued **"interim measures" that require online sellers to provide their real names and identification numbers to the shopping platforms where they open their online stores.** Previously, some sellers registered with any name they wanted, and ID numbers were not required.

Example : Taobao.com handled more than two-thirds of China's online shopping in 2010, with 400 billion Yuan in transactions. Taxing a company within Taobao.com depends on whether it's a registered company, not whether it is an online shop.

In Feb 2012, Eight Chinese government agencies jointly announced guidelines to promote ecommerce and e-invoicing. These guidelines include the setting up of a **trial e-invoice system, online information platforms and online payment standards, as well as the promotion of financial integrated circuit (IC) cards**.

Accordingly, China proposed **to set up an electronic tax system** that includes the establishment of specialized e-business tax registration system; the invention of e-commerce taxation software; the invention of electronic invoicing and clearly its force in law.

E-Commerce Taxation in Other Countries

Australia, Canada, USA Challenges

TAX JURISDICTION

Australia, Canada, the United States and most other countries of the world impose tax on international income on the basis of residence taxation and source taxation. Residence taxation refers to the taxation of non-resident taxpayers based on their residence in a particular jurisdiction. Source taxation refers to the taxation of taxpayers based on the source of income.

CHARACTERISATION OF INCOME

Digital transactions must be classified as a sale of goods, service, licensing of copyright or other intangible property right, or a sale of intangible property.

However, **digital transactions defy the approach of characterisation** because of the hybrid nature of digital products, the modes of delivery, and the fact that digital products may be simply, accurately and cheaply reproduced.

For example, the purchase of multiple copies may give rise to sales profit to the supplier, whereas the acquisition of an electronic version with right of reproduction may give rise to royalty income. The most difficult and common issue at present is the characterisation of software payments.

E-Commerce Taxation in Other Countries

Australia, Canada, USA Challenges

THE SOURCE RULES

Under traditional source rules, the territorial source of income is determined by the place where a taxpayer or his/her agent physically performs a function, or by the physical location of an income-producing asset. These traditional rules were developed for a physical world where it is difficult to do substantial business operations in a country without a fixed place of business in that country.

TRANSFER PRICING

E-commerce will aggravate transfer pricing problems. As a result of the nearly instantaneous transmission of information and the effect of the removal of physical boundaries, it may become significantly more difficult for tax administrations to identify, trace, quantify and verify cross-border transactions. Therefore, e-commerce will increase the number of transactions that need to be valued, and reduce the availability of comparable market prices.

TAX ADMINISTRATION

E-commerce is multi-jurisdictional and can be easily located in tax havens. It poses great challenges to tax authorities. Effective administration relies on the tax authorities' power and means to obtain information in order to assess a taxpayer's tax liability by identifying taxpayers, identifying and verifying transactions, and establishing a link between the taxpayer and the transactions.

E-Commerce Taxation in Other Countries

Australia, Canada, USA Policy Response

Australia, Canada and the United States have reached a consensus that the existing tax principles should apply to e-commerce and that e-commerce should be taxed on the same grounds as traditional commerce. The policy responses by these three countries and the OECD so far have been limited to reinterpreting existing tax principles in the context of e-commerce.

In the long run, such an approach is likely to fail because e-commerce is a brand new medium for international business and will require fundamental changes to the international tax system. The status quo will result in more inequitable allocation of tax revenue between e-commerce exporting countries and importing countries, and increasing deflection of income to tax haven jurisdictions.

E-Commerce Taxation in Other Countries

Australia, Canada, USA Policy Response

Characteristic	*Tax Jurisdiction*
The US software regulations characterise software payments on the basis of the classification of software as copyright, copyrighted article (or copy of program), secret formula or know-how, or services. **The ATO (Australia Tax Offics) views on software payments are not much different from the OECD's revised commentary**. In Taxation Ruling 93/12 the ATO states that payments for the transfer of rights in computer software are royalties. The ruling recognizes that amounts attributable to the right to load a program onto the user's computer would strictly be a royalty, but accepts that the amount, if quantifiable, is likely to be minimal. Revenue Canada's Advisory Committee does not make any specific recommendations on the characterisation of digital transactions. In general, though, the Advisory Committee is sympathetic to the prevailing view that goods that were previously sold in physical form should be treated in the same manner for income tax purposes independent of the form of delivery.	The US Treasury Paper neither addresses the challenges in determining residence in the world of e-commerce nor elaborates on how residence taxation may be more administrable. It is assumed that all taxpayers must be resident somewhere. Even in cyberspace, individuals who run or operate a company generally must reside in a physical location.

E-Commerce Taxation in Other Countries

Australia, Canada, USA Policy Response

The Source Rules

The OECD Article 5 revised draft commentary states that:

1. a web-site does not constitute a permanent establishment;
2. a computer server may constitute a permanent establishment;
3. an enterprise will not be considered to have a permanent establishment by virtue of an arrangement under which its website is hosted by an Internet service provider ("ISP") on the ISP's equipment, even if that equipment is located within the jurisdiction;
4. except in extraordinary circumstances, an ISP cannot create a permanent establishment by agency for the enterprise whose web sites it hosts;
5. a computer server does not constitute a permanent establishment if the e-commerce operations carried on through the server are restricted to the preparatory or auxiliary activities (such as providing a communications link between suppliers and customers, advertising, relaying information through a mirror service for security and efficiency purposes, gathering market data, or supplying information).

E-Commerce Taxation in Other Countries

Australia, Canada, USA Policy Response

Tax Administration

the US Treasury Paper flatly concedes that e-commerce developments will force tax authorities to develop new tax administration techniques.

The ATO Report and the Revenue Canada Advisory Committee Report echo these views and make more specific recommendations. More specifically, the ATO First Report recommends the adaptation of the existing tax compliance requirements to the e-commerce environment, mirroring the migration of some businesses from physical commerce to e-commerce. The main recommendations include:

1. foreign credit card companies should be required to report e-commerce transaction details to the ATO;
2. webshops should be licensed, reflecting their the current standard practice of registration of businesses;
3. middlepersons (such as ISPs) and Online Service Providers may be used as tax reporting and collection agents;
4. it may be feasible to develop a code, embedded in popular web browsers to enable reporting of financial transactions.

The way in which these administrative challenges will be resolved will significantly affect changes to substantive tax law and policy. If new taxes on ecommerce are adopted or existing principles modified, they must be capable of implementation in the digital environment. Solutions to these issues must be tailored to, and take advantage of, the technology supporting electronic commerce.

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Transfer Pricing

The US Treasury Paper notes that the increasing global collaboration facilitated by modem telecommunications may raise issues regarding the allocation of income and expenses from global dealing and other activities, but does not make a specific recommendation. The new global dealing regulations introduced in 1999 move away from the traditional arm's length principle and allow more reliance on the use of profits comparison method and profit split methods.

The ATO First Report also recognizes the difficulties of applying transfer pricing rules to e-commerce transactions, particularly transactions involving digital products or the transfer of information. The ATO acknowledges that ecommerce may alter its approach to transfer pricing issues, and increase the review of know-how transfers and the related transfer prices. Consideration may also be given in the future to the introduction of a safe harbor regime, which could assist in establishing a reasonable basis for transfer prices for e-commerce transactions between related parties.

Revenue Canada's Advisory Committee recognizes that the current transfer pricing rules may not be sufficient, but has clearly rejected the global formula apportionment as an alternative. The committee does not recommend any new substantive changes, and urges the tax administration to pursue stronger exchange of information and audit agreements and mutual collection agreements with Canada's trading partners.

Latest debate on international taxation Wolfgang Schon vs Alan Auerbach

- Wolfgang Schon (Munich, Jerman) vs Alan Aurbach (Berkeley, US).
- Pertanyaan praktis: bagaimana kita memajaki penghasilan tak bertuan (stateless income) yang makin erosif? Apakah distingsi "source" vs "residence" masih relevan?
- Debat ini dipantik oleh "Amazon question", skema tax planning yang memanfaatkan insentif pajak di beberapa negara ("Double Irish", "Dutch Sandwich", 'UK patent box", etc.)
- Auerbach mengusulkan destination-based income tax, semacam CCTB (Common Consilidated Tax Base) Uni Eropa, karena memajaki berbasis sumber semakin sulit.
- Schon mempertahankan pendekatan konvensional dan mewajibkan consolidated tax base di level domestik. Praktik Jerman efektif menangkal tax avoidance.
- Pertanyaan teknis: mengapa Jerman berhasil dan US gagal?
- Tantangan: digital economy akan mengubah lanskap pendekatan dan relasi antarnegara.

New Trend or New Path

- "Bit Tax" → tax on volume of bytes that centrally recorded
- "Clinton e-Tax Plan" → propose an internationally tax administration for digital economy by giving e-card to consumers.
- SSUTA (Streamlined Sales and Use Tax Agreement)
- EU VAT System
- CCTB (Common Consolidated Tax Base) and Unitary Taxation
- The role of international tax agency?

Thank You

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