

DIGITAL TAXATION, THE RETURN LEG

3 solutions that fit together like the three blades of a razor:

- **Virtual Permanent Establishment,**
- **Abuse Tax**
- **Profit Split**

The virtual permanent establishment gives France the possibility to tax, the abuse tax hits artificial arrangements and the profit split values French intangibles like users and their data.

1 VIRTUAL PERMANENT ESTABLISHMENT

Would be recognised on the basis of criteria that remain to be defined and discussed:

- The number of contracts with French residents for the provision of direct or indirect services;
- The number of French customers using free or fee-based services;
- The amount of traffic used by French customers;
- The adaptation of the site for services used in France;
- The correlation that might exist between the amounts paid by the foreign owner or licensee company for the use of the medium to another company and the level of use of the services in France.

Note that creating the obligation to declare a permanent establishment is not a panacea. It will then be necessary to determine its taxable income. This is the purpose of solution 3 below.

2 TAXE ABUSE

This tax would be collected by the procedure of ex officio taxation in order to determine the income and expenses attributable to the French operation. This would reverse the burden of proof on the foreign taxpayer who would then have to prove that the profit determined by the tax authorities is overstated.

Coupled with the provisions on virtual permanent establishments, the aim of this tax is to encourage the declaration of a taxable presence in France.

3 PROFIT SPLIT (DETERMINE THE TAXABLE INCOME OF FOREIGN COMPANIES IN FRANCE USING THE TRANSFER PRICING TECHNIQUE FROM THE OECD COMMENTS)

Once again, this is a classic method used by many international groups, particularly American ones. This method is well known to the control services and in particular to the DVNI. If it is used, it will not create any competitive disadvantage for France. In particular, because many foreign groups already use it on our territory. It is up to our control services to use it in a more systematic way from now on.

The administration could work with specialised valuation firms that know how to use this method and have experience of it, with a dedicated budget. This tax "vade mecum" would thus make it possible to value the digital presence in France, to determine the share of profits attributable to this digital exploitation carried out in France, as a function of the turnover that is achieved on our territory.