



VIRTUAL PERMANENT ESTABLISHMENT

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UNISA/FIRS

INTRODUCTION

**Bloomberg
Technology**



Google Faces \$1.3 Billion French Ruling Amid 'Tax Populism'

By **Gaspard Sebag**

Updated on

- Court to rule on operations of Google's Irish arm in France
- Decision could have impact throughout French economy

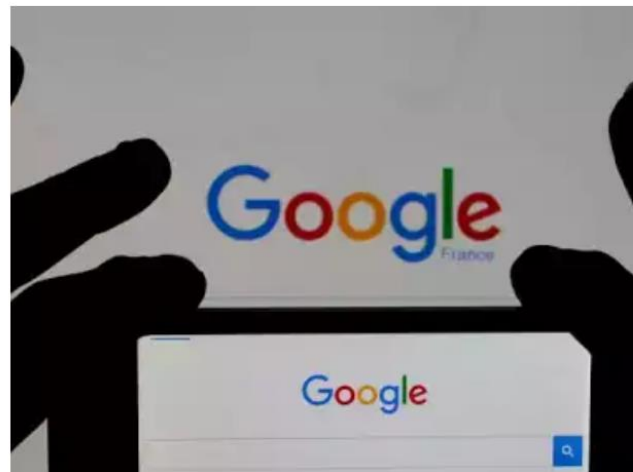


Google wins challenge against 1.1 billion-euro French tax bill



Laurence Frost and Emmanuel Jarry, Reuters

Jul. 12, 2017, 4:19 PM **1,291**



The Paris administrative court ruled that Google Ireland Limited was not subject to corporate and value-added taxes for the period 2005-2010, striking down the tax administration's demands for back payments.

The ruling in favor of Google, now part of Alphabet, followed a court adviser's recommendation that Google did not have a "permanent establishment" or sufficient taxable presence to justify the bill.

PERMANENT ESTABLISHMENT

The profits of an enterprise of a Contracting State shall be taxable only in that state unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.

The term `permanent establishment` means a fixed place of business through which the business of the enterprise is wholly or partly carried on

The term “permanent establishment” includes especially: (a) a place of management, (b) a branch, (c) an office, (d) a factory, (e) a workshop, (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.”

WHY IS IT AN ISSUE FOR AFRICA?

- E-commerce is growing in Africa: By 2018, the African e-commerce market will grow to US\$ 50 billion, from just US\$ 8 billion in 2013. (International Trade Centre 2015)
- Corporate Income Taxes are the most significant taxes for developing countries as a share of all tax revenue in comparison to higher income countries. (Crivelli, et al 2015).
- Development financing is critical – the opportunity cost of not taxing e-commerce means lesser funds available for financing development



Jumia Group, formerly known as African Internet Group was founded in Nigeria in 2012.

It has Germany's Rocket Internet as its parent company situated in Germany, and also has Goldman Sachs, Orange and South African telecoms group MTN among its shareholders.

The Group owns a number of technology-based firms across 22 African Countries, and in 2016, it was valued at 1 billion US dollars.

The most notable of the group's companies is the Jumia.com, which is often referred to as the Amazon.com of Africa. According to Rocket Internet annual report (2017), Jumia.com is yet to make any profits yet

WEBSITE/SERVER AS PE



ARGUMENTS AGAINST VIRTUAL PE

Compliance cost would be high because e-commerce companies may not have a physical presence and will be operating in a different jurisdiction without offices and personnel.

In respect of digitized products, where shipping documents are absent, there may not be an existing and reliable means of establishing the jurisdiction of the e-commerce transaction.

Certainty and Simplicity: if source country taxation is conditional on a threshold, e-commerce companies may be unaware if their economic presence in a certain jurisdiction will exceed the threshold, thereby qualifying for a PE in the jurisdiction.

E-commerce companies may spread their activities to other jurisdictions to avoid threshold

EMERGING ISSUES

- France and others: Impose an “equalisation tax” on the turnover generated by the digital companies in Europe
- India: equalisation levy of 6% to 8% is imposed on the gross payment on services such as online advertising, cloud computing, software downloads and web hosting received by foreign companies without a permanent establishment in India.
- In a case between Dell and Spain: even though Dell Ireland did not have a physical presence in Spain the court ruled against Dell because it sold goods to Spain through a website dedicated to the market in Spain. The server that hosted the website was also not in Spain in this case, and no employees of the company were resident in Spain. The court ruled that all revenue derived from the sales through the website to the Spanish market should constitute a PE. (Sengupta 2013)

Issues



- There is strong evidence that e-commerce is growing in Africa, however efforts to tax the digital economy remain subtle
- New approaches suggest that there is a shift from taxing profits to taxing transactions – (Double incidence on indigenous taxpayers)
- Unilateral approaches (Mostly ‘quick wins’) are being explored by countries due to the lack of consensus and perceived difficulty of addressing the issues
- The negative externalities birthed by e-commerce technology with regards to tax policy may require more investment in technological based solutions, however the discussions are reluctant

The way forward



A multi-jurisdictional approach that involves the use of software to determine PE by an economic presence threshold through the sales of goods and services. (may involve third parties)

The use of real-time exchange of relevant information on transactions conducted via e-commerce

Agreed standards for software solutions

The use of Software to identify location of parties to transaction

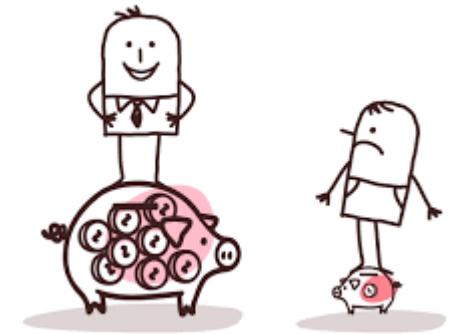
FURTHER RESEARCH

Allocation of profits

Valuing Intangibles for tax purposes

Formulary apportionment?

Valuing and Taxing Data?



CONCLUSION

The Virtual Permanent Establishment is currently the best option for broadening the definition of PE. The use of technology to ascertain the level of economic activities in a jurisdictions to determine nexus will go a long way in achieving this.

To achieve the aforementioned, it is necessary to engage in further international collaboration and a consensus on how to use technology to address the impasse caused by e-commerce.



THANK YOU

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