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Digital Taxation on Over-The-Top Services: A Comparative Study of Regulations in Indonesia and the ASEAN Region

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Abstract
Digital transformation has driven the rapid growth of Over-the-Top (OTT) services in the ASEAN region, including Indonesia, presenting new challenges for national tax systems. The digital and cross-border nature of the OTT business model, operating without the need for a physical presence (permanent establishment), has led to regulatory gaps in taxation, particularly in the collection of Value Added Tax (VAT) and Corporate Income Tax (CIT) for foreign OTT companies. This study aims to analyze digital tax policies for OTT services in Indonesia and compare them with those of ASEAN countries, including Singapore, Malaysia, Thailand, and Vietnam. The research uses a normative juridical method, employing both a statutory approach and a comparative approach. The data are sourced from national and international regulations related to digital taxation, academic journals, and policy studies from global organizations such as the Organisation for Economic Co-operation and Development (OECD) and G-20. The analysis compares OTT tax regulations across Indonesia and selected ASEAN countries to identify similarities, differences, and implementation challenges in digital tax policy. The findings indicate that The Association of Southeast Asian Nations (ASEAN) countries adopt diverse approaches to taxing OTT services, such as the Goods and Services Tax (GST) in Singapore, the Digital Servicce Tax (DST) in Malaysia, and Digital Income Tax Regimes (DITR) in Vietnam and Thailand. These measures reflect concerted efforts to enhance fiscal fairness, increase state revenue, and foster the sustainable growth of the digital economy. For Indonesia, it is recommended to strengthen its DST framework, implement technology-driven monitoring systems utilizing big data and Artificial Intelligence (AI), and align its digital taxation policies with international standards.

Introduction

The development of digital technology has brought about significant changes in the way people access and consume entertainment content. One of the most prominent phenomena in this digital era is the rapid growth of Over-the-Top (OTT) services, such as *Netflix, YouTube, Disney+*, and *Spotify.* These platforms have become dominant in media consumption across Indonesia and *The Association of Southeast Asian Nations* (ASEAN) countries, gradually replacing traditional broadcasting models like cable television and conventional radio.[1] OTT services offer a number of advantages that have made them increasingly popular among the public. One of the key features is accessibility and flexibility, allowing users to enjoy content anytime and anywhere, without being bound to scheduled programming as in conventional television. Moreover, the widespread and affordable internet connectivity, especially through the expansion of mobile internet and the availability of 4G/5G networks, has significantly boosted access to OTT services.[2]

In Indonesia, *Netflix* has become a highly popular platform for streaming movies and series, offering a wide range of content from both domestic and international sources. *YouTube*, as the world's largest video-sharing platform, has transformed video content consumption patterns by providing space for local creators to grow and compete with the traditional entertainment industry. Meanwhile, *Disney+,* with the strength of franchises such as *Marvel, Star Wars,* and *Pixar*, has also successfully attracted the interest of the Indonesian market as well as other ASEAN countries.[3] In the digital music industry, Spotify has emerged as the leading streaming service, replacing traditional formats such as radio and physical album sales. This trend is also evident in other ASEAN countries such as Malaysia, Thailand, Singapore, and Vietnam, where the adoption of OTT services is rapidly increasing.

Innovation in digital business models has enabled these services to grow rapidly. Therefore, appropriate policy strategies are needed to accommodate this innovation while protecting local industries and broader public interests.[4] Such strategies should support digital innovation, ensure fair taxation, safeguard local industries, and uphold consumer rights and security. With a balanced approach between innovation and regulation, Indonesia and other ASEAN countries can fully harness the potential of OTT

[1] Volker Stocker, William Lehr and Georgius Smaragdakis, 'COVID-19 and the Internet: Lessons Learned' (2023) 2 Emerald Insight 17. https://doi.org/10.1108/978-1-80262-049-820231002.

[2] Mario Pons, Estuardo Valenzuela, Brandon Rodríguez, Juan Arturo Nolazco-Flores, and Carolina Del-Valle-Soto, 'Utilization of 5G Technologies in IoT Applications: Current Limitations by Interference and Network Optimization Difficulties—A Review' (2023) 23 (8) Sensor 3876. https://doi.org/10.3390/s23083876.

[3] Lady Aileen Ambion Orsal, 'Netflix as A Transverse Transnational Media In Southeast Asia: Exploring the Philippine Context' (2024) Graduate Research Theses & Dissertations. https://huskiecommons.lib.niu.edu/allgraduate-thesesdissertations/7916.

[4] Dmitry Plekhanov, Henrik Franke and Torbjørn H. Netland, 'Digital transformation: A review and research agenda' (2023) 41 (6) European Management Journal 821-844. https://doi.org/10.1016/j.emj.2022.09.007.

services to support inclusive and sustainable digital economic growth. Behind this rapid growth lies a regulatory challenge in taxation that creates a gap between foreign OTT companies and domestic digital service providers. One of the main causes of this gap is the difference in tax obligations between foreign OTT companies operating in Indonesia without a physical presence and local digital companies that are legally incorporated within the country.[5]

Without a physical presence in a country, OTT companies often have no administrative obligation to register as taxpayers in the countries where they generate revenue. One of the main challenges in collecting digital taxes from OTT services is the lack of transparency in reporting the number of subscribers and the revenue earned from each country. Due to their digital-based business models, which allow them to operate across multiple countries without a permanent establishment, these companies are often not required to provide detailed reports on revenue and user numbers in each country they operate in. In Indonesia, for instance, platforms such as *Netflix, YouTube, Disney+,* and *Spotify* generate substantial income from local subscribers through paid subscriptions or advertising revenue.[6]

One of the main issues in digital taxation is the lack of transparency in reporting the number of subscribers and revenue generated by foreign OTT companies in a given country.[7] Without clear reporting obligations, foreign OTT companies often do not disclose in detail how many users they have in Indonesia, the total revenue generated, or how tax allocations are made based on their areas of operation. This situation opens the door to tax avoidance, where profits generated from the Indonesian market are instead taxed in jurisdictions with lower tax rates (tax havens), rather than in the country where the revenue is actually earned. As a result, there is a loss of state revenue and an

[5] Martínez-Peláez, Rafael, Alberto Ochoa-Brust, Solange Rivera, Vanessa G. Félix, Rodolfo Ostos, Héctor Brito, Ramón A. Félix and Luis J. Mena, 'Role of Digital Transformation for Achieving Sustainability: Mediated Role of Stakeholders, Key Capabilities, and Technology' (2023) 15 (14) Sustainability 11221. https://doi.org/10.3390/su151411221.

[6] Cahyadini, Amelia, Sherly Ayuna Putri, Tasya Safiranita and Muhammad Jaka Hidayat, 'Technology Architecture as an Instrument for Digital Taxation' (2024) 13 (1) Laws 7. https://doi.org/10.3390/laws13010007.

[7] Aulia, Sandra and Ahmad Hambali, 'Digital Service Tax: Lessons Learned' (2022) 83 (1) Proceedings 7. https://doi.org/10.3390/proceedings2022083007.

imbalance in competition between foreign OTT companies and domestic digital service providers, who are fully subject to national tax regulations.

In the ASEAN context, digital tax regulations remain fragmented, with each country having different rules on taxing foreign digital services. Singapore, for example, applies a 7% Goods and Services Tax (GST) on digital services, Malaysia has introduced a 6% Digital Service Tax (DST), while Thailand and Vietnam have adopted stricter tax schemes by imposing VAT and direct income tax on foreign OTT service providers. On the other hand, Indonesia has implemented an 11% VAT on foreign digital companies through Minister of Finance Regulation No. 48/PMK.03/2020 but has yet to establish an effective mechanism for imposing income tax on OTT companies without a physical presence in the country.[8]

Several studies have provided in-depth insights into the regulatory disparities between telecommunications operators and OTT service providers in various countries, as well as their implications for the telecommunications industry and consumers. *First,* "Analysis of OTT Service Business Models from the Perspective of Mobile Telecommunications Operators in Indonesia as a Consideration for Regulatory Formulation (A Study on PT. XL Axiata Tbk)".[9] This study aims to provide a clear overview of the key aspects shaping the OTT business model, serving as a consideration for the government in formulating regulations that govern the relationship between operators and OTT providers. The findings indicate that OTT services offer free-value services with various utilities that successfully attract the daily internet user market segment.

Second, "Policy Development Towards Application and Content Service Providers on the Digital Ecosystem Through Over-The-Top".[10] This study examines policy development for application and content service providers within the digital ecosystem through OTT platforms in Singapore. The study highlights that foreign OTT service

[8] Alhussain, M. 'The impact of value-added tax (VAT) Implementation on Saudi Banks' (2020) 12 (1) Journal of Accounting and Taxation 12-27. DOI:10.5897/JAT2019.0378.

[9] Shandy Heryana Nugraha and Helni Mutiarsih Jumhur, 'Over-The-Top (OTT) Services Business Model Analysis Based on Mobile Cellular Telecommunication Operator's Perspective in Indonesia as Regulation Consideration (Study at Pt. Xl Axiata)' (2016) 3 (1) E-Proceeding of Management 47. DOI:10.1007/s40171-019-00209-6.

[10] Hein, A., Schreieck, M., Riasanow, T. *et al*, 'Digital Platform Ecosystems' (2020) 30 Electron Markets 87-98. . https://doi.org/10.1007/s12525-019-00377-4.

providers operating in Singapore are required to establish a Permanent Establishment (PE) and register their services before commencing operations. Additionally, they must conduct business activities in accordance with applicable regulations, provide an OTT service information contact center, and fulfill data storage obligations.

Third, research on the OTT service market in the European Union (EU) indicates that this region represents a significant market with unique characteristics, including linguistic, cultural, and regulatory diversity. This diversity presents both challenges and opportunities for OTT service providers seeking to operate across various EU member states.[11] Although efforts have been made to harmonize regulations at the EU level, individual member states retain autonomy in implementing and interpreting rules related to OTT services. This includes aspects such as taxation, data protection, and content licensing. For example, the implementation of the General Data Protection Regulation (GDPR) varies between countries, and some nations may impose additional requirements regarding broadcasting or digital content distribution.[12]

Over-the-Top tax regulations in Indonesia are still in the early stages of implementation and face various complex challenges. One of the main issues is tax avoidance by foreign OTT service providers operating in Indonesia without establishing a Permanent Establishment (PE). Without a physical presence in the country, many global digital platforms can evade income tax (PPh) obligations that should apply to them.[13] This creates a regulatory imbalance between foreign OTT providers and telecommunications companies, as well as local digital service providers, who are required to pay full taxes in Indonesia. The imposition of a 10% Value-Added Tax (VAT) on digital services, as stipulated in Minister of Finance Regulation (PMK) No. 48/PMK.03/2020, represents a positive initial step.

[11] Maíse Soares de Moura, Victor Cordeiro da Silva, Alexandre Ferreira Menezes, Fernando Antonio Leal Pacheco, Luís Filipe Sanches Fernandes, Teresa Cristina Tarlé Pissarra and Adriana Monteiro da Costa, 'Integrating policy, data and technology in pursuing effective management of ecosystem services' (2024) 368 Journal of Environmental Management 122157. https://doi.org/10.1016/j.jenvman.2024.122157.

[12] Hoofnagle, Chris Jay, Bart van der Sloot, and Frederik Zuiderveen Borgesius, 'The European Union General Data Protection Regulation: What It Is and What It Means' (2019) 28 (1) Information & Communications Technology Law 65–98. doi:10.1080/13600834.2019.1573501.

[13] Edwin Jurriëns and Ross Tapsell, Challenges and Opportunities of the Digital 'Revolution' in Indonesia (ISEAS Publishing 2017) 1–18, https://doi.org/10.1355/9789814786003-007.

The discourse on digital taxation, particularly in relation to OTT services, has gained increasing scholarly attention in recent years, both in Indonesia and across the ASEAN region. Several studies have explored the legal and policy implications of taxing digital services, highlighting the challenges of applying conventional tax frameworks to borderless, platform-based business models. Wibisana provides a critical examination of Indonesia's reliance on formalistic interpretations of tax law when dealing with digital businesses. In response, he advocates for a shift toward a more substantive approach, particularly through the adoption of the SEP doctrine as a legitimate basis for cross-border taxation.[14]

Expanding on this domestic critique, Gazali, Susanto, and Rachmawati (2022) focus on the application of both income tax (PPh) and value-added tax (PPN) to foreign OTT services. Their study evaluates the effectiveness of Government Regulation No. 80 of 2019 and Ministry of Finance Regulation No. 48 of 2020, identifying persistent ambiguities in the definitions of digital permanent establishment (PE), as well as practical shortcomings in enforcement and refund mechanisms.[15] These findings underline the limitations of Indonesia's current regulatory framework in ensuring compliance from major global platforms.

In a more policy-oriented study, Mahpudin assesses the impact of Indonesia's most recent tax reform, codified in Law No. 7 of 2021 on the Harmonization of Tax Regulations (UU HPP). While acknowledging its ambition to modernize tax administration in the digital era, the study notes that the reform stops short of fully integrating international tax principles, such as SEP or the OECD's two-pillar solution, thereby leaving gaps in legal certainty and enforceability.[16] At the international level, the OECD's seminal report on Tax Challenges Arising from Digitalisation (2021) serves as a critical benchmark for understanding global tax policy developments. The report elaborates on the two-pillar

[14] Andri Wibisana, 'Taxing the Digital Economy in Indonesia: Between Formalism and Effectiveness' (2020) Working Paper Universitas Katolik Parahyangan 1-20.

[15] Achmad Gazali, Taufik Susanto and Fadhilah Rachmawati, 'Penerapan Pajak Penghasilan dan Pajak Pertambahan Nilai terhadap Layanan Over-The-Top Asing di Indonesia' (2022) 9 (2) Jurnal Ilmu Sosial Ilmu Politik 123-140.

[16] Agus Mahpudin, 'Reformasi Perpajakan Digital dalam Perspektif Kebijakan Hukum Nasional' (2024) 7 (1) Jurnal Ilmu Pemerintahan dan Demokrasi 51-68.

approach, Pillar One, focusing on the allocation of taxing rights for highly digitalized businesses, and Pillar Two, on the global minimum tax.[17]

Finally, comparative insights can be drawn from European scholarship, such as the work of Becker and Englisch (2020), which analyzes the unilateral adoption of Digital Services Taxes (DST) by EU member states and its implications for trade relations and legal harmonization. Their study highlights the regulatory fragmentation that arises when nations pursue independent digital tax policies without regional alignment, an issue equally relevant to ASEAN, where coordination remains limited.[18]

This article offers a novel contribution to the discourse on digital taxation, particularly concerning OTT services, by presenting a comparative legal analysis between Indonesia and selected ASEAN countries. While prior studies have largely focused on the domestic challenges of taxing foreign OTT providers in Indonesia, primarily through the lens of income tax and VAT regulations, this study advances the discussion by situating Indonesia's digital tax regime within a broader regional context. It systematically compares regulatory models implemented in Singapore, Malaysia, Vietnam, and Thailand, thereby constructing a more comprehensive understanding of the legal landscape across Southeast Asia.

The novelty of this research lies not only in its comparative scope, which remains underexplored in existing literature, but also in its critical evaluation of regulatory fragmentation in the region. It highlights the lack of coordination among ASEAN member states regarding digital tax policies, which poses risks of tax base erosion, regulatory arbitrage, and administrative inefficiencies. Furthermore, this study introduces an evaluative dimension by analyzing not just the formal regulatory texts, but also the practical effectiveness of implementation mechanisms, compliance levels among foreign OTT players, and the use of digital infrastructure in enforcement. Importantly, this article also contributes to the reform discourse in Indonesia by offering a set of policy recommendations grounded in regional best practices.

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[17] Organisation for Economic Co-operation and Development (OECD), *Tax Challenges Arising from Digitalisation-Report on Pillar One and Pillar Two* (OECD Publishing 2021). https://www.oecd.org/tax/beps/.

[18] Johannes Becker and Joachim Englisch, 'A European Perspective on the U.S. Digital Services Tax Controversy' (2020) 48 (2) Intertax 152–160.

In addition to impacting regulations and state tax revenues, digital tax policies also influence the local digital ecosystem. If tax regulations are too strict or not accompanied by incentive policies, local OTT services will find it increasingly difficult to compete with global digital giants that have significant capital and more flexible business models.[19] Conversely, if taxes are only imposed on domestic companies without a fair mechanism for foreign OTT providers, the competitive gap will widen further, potentially hindering innovation in the national digital industry. Studies on evaluating the effectiveness of digital tax policies in Indonesia, comparing regulations with other countries, and analyzing their impact on the digital industry and national economy are still highly relevant. To address these issues, this article proposes two main research questions: 1. How do digital tax regulations for OTT services differ among ASEAN countries, and what are the implications of these differences for potential tax avoidance by foreign companies?, 2. How effective are Indonesia's digital tax regulations in taxing foreign OTT services, and what challenges are faced in implementing digital taxation to ensure fairness for domestic businesses?.

Research Method

This study employs a normative juridical method, focusing on the analysis of written laws and existing regulations related to digital taxation for OTT services in Indonesia and ASEAN. This approach is used to understand how digital tax regulations are designed, implemented, and the challenges encountered in their enforcement. The research method includes several approaches: a) Statute Approach; b) Comparative Approach; and c) Conceptual Approach. These approaches are used to analyze the concept of tax fairness in the digital economy, including the Tax Fairness Theory, Fiscal Sovereignty Theory, and Significant Economic Presence (SEP) Theory. This study aims to provide an in-depth analysis of digital tax regulations in Indonesia and ASEAN, as well as optimal strategies to address the challenges in implementing digital taxes for foreign OTT services.

[19] Nagy K. Hanna, 'Assessing the Digital Economy: Aims, Frameworks, Pilots, Results, and Lessons' (2020) 9 (1) Journal of Innovation and Entrepreneurship 16. https://doi.org/10.1186/s13731-020-00129-1.

Concept of Digital Tax in the Digital Economy

The rapid advancement of technology has driven digitalization across various aspects of life, including the business and economic sectors. Digital-based companies are now able to generate revenue from a country without having to establish a physical office or presence (permanent establishment) in that country.[20] This phenomenon poses a significant challenge to conventional taxation systems, which have traditionally relied on physical presence as the basis for taxation. In this context, digital tax emerges as a policy instrument aimed at ensuring that digital companies still pay taxes in the countries where they generate profits, thereby promoting fiscal fairness for all business actors.

In its development, digital tax has been implemented in various forms, such as VAT on digital services, PPh for foreign digital companies, and the DST, which is imposed on revenue from specific digital transactions. Indonesia has implemented an 11% VAT on foreign digital services through Minister of Finance Regulation (PMK) No. 48/PMK.03/2020 as an initial step toward aligning tax regulations with the digital economy era.[21] However, the main challenge remains in the enforcement of PPh on foreign digital companies that do not have a physical presence in Indonesia. This calls for a more comprehensive policy strategy to ensure the effectiveness of digital taxation. In addition to its broad definition, digital tax also has several distinctive characteristics that differentiate it from conventional tax systems.

First, digital tax is imposed on digital economic activities that do not rely on physical presence. In conventional tax systems, companies must have an office or physical operations in a country to be subject to taxation. In contrast, under digital taxation, the basis for taxation is the location of users and the source of revenue generated from digital transactions. For example, even though *Netflix* does not have an office in Indonesia, it is still subject to VAT for streaming services enjoyed by Indonesian users.

[20] Aqib Aslam and Alpa Shah, *Chapter 10 Taxing the Digital* Economy in *Corporate Income Taxes under Pressure* (International Monetary Fund (2021) https://doi.org/10.5089/9781513511771.071.ch010.

[21] Hanappi, T. and A. González Cabral, 'The impact of the pillar one and pillar two proposals on MNE's investment costs: An analysis using forward-looking effective tax rates' (2025) 50 OECD Taxation Working Papers-OECD Publishing. https://dx.doi.org/10.1787/b0876dcf-en.

Second, digital tax is adapted to the cross-border nature of digital business models. Unlike traditional businesses that are limited by geography, digital companies can operate globally without being bound by tax regulations in every country where they generate revenue.[22]

Third, digital taxation comprises a range of tax instruments specifically designed to align with the unique characteristics of the digital economy. Among the most commonly implemented models across various jurisdictions are: Value Added Tax on digital services, PPh imposed on foreign digital companies, and the DST. These models reflect the evolving fiscal strategies aimed at ensuring that digital business activities contribute fairly to national tax bases. *Fourth,* digital tax aims to prevent tax avoidance in the digital economy. Digital business models allow companies to shift profits to low-tax jurisdictions (profit shifting), causing countries where the users are located to often lose their taxing rights.[23]

Fifth, digital tax often adopts a global tax approach to create a fairer system. International organizations such as the OECD and the G-20 have developed a Global Tax Framework that regulates how digital companies should pay taxes in the countries where they have users. One of the approaches used is the Base Erosion and Profit Shifting (BEPS) Action Plan 1, which aims to ensure that digital companies pay taxes fairly in every country where they generate revenue.[24] However, the implementation of digital tax also faces its own set of challenges, particularly in harmonizing policies across countries. For example, within ASEAN, each country has adopted a different approach to digital taxation. Singapore applies a 7% GST, Malaysia has a 6% Digital Service Tax (DST), while Thailand and Vietnam have adopted broader tax schemes by imposing VAT and direct income taxes on foreign OTT service providers.[25]

Digital transformation has brought significant changes to the global economic system, including in taxation practices. With the growing dominance of OTT companies,

[22] Sari Ramadhanti, Tjip Ismail, 'The Imposition of Digital Taxes in E-commerce' (2023) 6 (1) Sociological Jurisprudence Journal 50-55. https://doi.org//10.22225/scj.6.1.2023.50-55.

[23] Mumtaz Ali Bohio, 'Taxation of Digital Economy-a Cross-Country Comparison' (2024) Social Science Research Network 1-37.

[24] Meita Puspitasari and Danny Septriadi, 'Analysis of The Implementation of Base Erosion and Profit Shifting (BEPS) Inclusive Framework on Indonesian Tax Regulation' (2022) Tesis Universitas Indonesia.

[25] Ayman Falak Medina, https://www.aseanbriefing.com/news/malaysias-new-digital-service-tax-impacting-foreign-providers/.

new challenges have emerged for countries in imposing fair and efficient taxation. Foreign OTT companies can generate substantial revenue from a country without having a physical presence (permanent establishment), leading to fiscal imbalances between global OTT companies and domestic digital industry players. In designing an optimal digital tax policy, there are three key theories that must be considered: The Tax Fairness Theory, the Fiscal Sovereignty Theory, and the Tax Efficiency Theory.[26]

The Tax Fairness Theory emphasizes that a taxation system should be designed to ensure an equitable distribution of the tax burden among all economic actors, including global OTT companies and domestic digital industries. In the context of the digital economy, this theory becomes increasingly relevant as many foreign digital companies enjoy substantial profits from domestic markets without paying taxes that reflect their economic contribution. To achieve fiscal fairness, digital tax policies must ensure that foreign OTT companies and domestic digital industry players are taxed equally, in accordance with their economic contributions within a country.[27] One potential solution is the adoption of the Significant Economic Presence (SEP) concept, which requires foreign digital companies to pay taxes based on the number of users or the revenue generated from a particular country, without the need for a physical presence.

From the perspective of the Fiscal Sovereignty Theory, it is asserted that each country has the full right to regulate its own taxation system, including imposing taxes on foreign companies that earn income from its residents.[28] In the context of digital taxation, this theory serves as the foundation for countries to establish tax policies that align with their national interests and domestic economies. One of the main challenges in implementing digital taxation is tax avoidance by global OTT companies, where profits are shifted to low-tax jurisdictions (tax havens), such as Ireland, Singapore, or the Cayman Islands. As a result, countries where users are located are unable to collect

[26] Oluwafunmilola Adebosola Dasaolu, 'Literature Review of Three Applicable Theories to Taxation: the Ability to Pay Approach, the Benefit Principle, the Neutrality Approach' (2025) Social Science Research Network (SSRN) 1-10. http://dx.doi.org/10.2139/ssrn.4800892.

[27] Regi Rivaldi, 'Global Digital Taxes in International Trade And Its Urgency for Indonesia' (2021) 2 (1) Transnational Business Law Journal 35-49. https://doi.org/10.23920/transbuslj.v2i1.684.

[28] Godfrin, Thaïs, 'From the OECD's Pillar Two to the Global Minimum Tax Directive: Origins, Ambitions and Shortcomings' (2024) http://hdl.handle.net/2078.1/thesis:47224.

income tax from foreign digital companies, even though those companies earn significant revenue from those markets.

The Tax Efficiency Theory emphasizes that tax policies should be designed in a way that does not create barriers to economic growth and innovation. In the context of the digital economy, this theory becomes particularly crucial, as overly strict tax regulations can deter investment in the technology sector, while overly lenient policies may result in significant losses in state revenue.[29] In practice, digital taxation must strike a balance between optimizing government revenue and supporting the digital economic ecosystem. Therefore, digital tax policies should be designed to be effective in tax collection without hindering the growth of the technology industry. By integrating these three theories, Tax Fairness, Fiscal Sovereignty, and Tax Efficiency, into digital tax policy, countries can develop a tax system that is fair, effective, and sustainable to be tax principles practically.

Digital Tax Regulations in the Global and ASEAN Context

The development of the digital economy has transformed the way businesses operate around the world. Global technology companies, especially those based on OTT platforms, are able to generate substantial revenue from users in various countries without having a physical presence (permanent establishment) in the countries where they profit.[30] This situation presents a challenge to conventional taxation systems, where the country in which the transactions occur often lacks tax jurisdiction over the income earned by foreign digital companies. As a result, many global digital companies shift their profits to low-tax jurisdictions (tax havens), leading to tax avoidance that harms the countries where the revenue is actually generated. Organizations such as the OECD, the European Union, and India are among those that have taken concrete steps to reform the global digital tax system.

[29] Naufal Rizqiyanto, M. Rizqi, Fahmil Alfian Rizkia Afsa, Badreddine Berrahlia, 'Tax Regulation Challenges In The Digital Economy Era: Legal Analysis And Implications In Indonesia' (2025) 7 (1) *Trunojoyo Law Review (TLR)* 1-22.

[30] Mahpudin E, 'Digital tax reform in Indonesia: Perspective on tax policy development' (2025) 8 (8) Journal of Infrastructure, Policy and Development 7032. https://doi.org/10.24294/jipd.v8i8.7032.

In the rapidly growing era of the digital economy, digital tax regulation has become a vital instrument to ensure fiscal fairness and prevent tax avoidance practices by global digital companies. With the increasing number of OTT companies generating revenue from users across multiple countries without having offices or a physical presence (permanent establishment), traditional taxation systems have become less effective in taxing the income earned by these companies.[31] This phenomenon has prompted various international organizations and countries to design more equitable and adaptive digital taxation mechanisms. The OECD has taken a leading role in reforming the global digital taxation system through its BEPS Action Plan 1.

As one of the regions with the largest number of digital users in the world, the European Union (EU) faces major challenges in taxing foreign technology companies that generate revenue from their citizens. To address this imbalance, the EU introduced the Digital Service Act (DST) as a solution to tax certain digital transactions that were previously beyond the reach of traditional tax regulations. The aim of this tax is to reduce tax arbitrage practices, where global digital companies could previously avoid taxation by shifting profits to low-tax jurisdictions. With the implementation of the DST, companies such as Google and Facebook are required to pay taxes directly in the countries where they earn revenue, not just in the countries where they are legally registered.[32]

Singapore is one of the countries with a structured and adaptive digital tax regulation, particularly in responding to the rapid growth of the digital economy and cross-border transactions. As a business and technology hub in Southeast Asia, Singapore maintains a competitive tax policy while striving to ensure that foreign digital companies generating revenue from its domestic market also contribute to its tax system. To tax digital services provided by foreign companies, Singapore implemented a GST on foreign digital services starting 1 January, 2020.[33] This regulation aims to ensure that

[31] Cahyadini, Amelia, Sherly Ayuna Putri, Tasya Safiranita and Muhammad Jaka Hidayat, 'Technology Architecture as an Instrument for Digital Taxation' (2024) 13 Laws 7. https://doi.org/10.3390/laws13010007.

[32] Jane Kelsey, 'Reconciling Tax and Trade Rules in the Digitalised Economy: Challenges for ASEAN and East Asia' (2021) 395 *ERIA Discussion Paper Series* 1-50.

[33] Evgeny Guglyuvatyy and Nikolai Milogolov, 'GST Treatment of Electronic Commerce: Comparing The Singaporean and Australian Approaches' (2021) 19 (1) E-Journal of Tax Research 17-47.

foreign digital companies pay taxes equivalent to those paid by local businesses offering similar services in Singapore.

Goods and Services Tax in Singapore is a consumption tax imposed on goods and services consumed domestically, including digital services purchased by customers in Singapore. This regulation came into effect after the government introduced the Overseas Vendor Registration (OVR) Regime under the GST (Amendment) Act 2018, which requires foreign digital companies to register as GST collectors if they meet certain criteria. Singapore has implemented GST on foreign digital services as a primary mechanism for taxing global digital companies that generate revenue from consumers in the country. With a GST rate of 8% (increased to 9% in 2024).[34]

Meanwhile, Malaysia has implemented digital taxation to ensure that foreign companies generating revenue from its domestic market contribute to the national tax system. Alongside the rapid growth of the digital economy, the Malaysian government adopted the DST as the main mechanism to tax global OTT companies, which were previously untaxed in Malaysia. This tax was introduced to promote fiscal fairness between foreign and domestic digital companies and to increase state revenue from the rapidly growing digital sector. When compared to other ASEAN countries and global counterparts, Malaysia's digital tax policy shares similarities with the DST implemented in the European Union and India.[35] Although Malaysia's DST rate is lower than Indonesia's VAT and Singapore's GST, it remains effective in ensuring that foreign digital companies contribute to the country's tax revenue.

Although the DST has successfully increased tax revenue from the digital sector, Malaysia still faces challenges in imposing income tax on foreign digital companies. So far, existing regulations only cover consumption tax and do not yet regulate income tax collection from global OTT companies.[36] Given the rapid development of the digital

[34] Hendy Ramadhan, 'Pajak Penghasilan Terhadap Tenaga Kerja Asing Sebagai Subyek Hukum Pajak' (2018) 1 (2) Media Iuris. DOI: https://doi.org/10.20473/mi.v1i2.8830.

[35] Yasmin Ismail, *The Global Debate on Taxation in Digital Economy: State Of Play and Implications for Developing Countries* (CUTS International 2020) 1-37.

[36] Sarah Munirah Abdullah, *et al,* 'Digital Services Tax Laws in Malaysia: A Changing Landscape' (2022) 7 (11) Malaysian Journal of Social Sciences and Humanities (MJSSH) https://doi.org/10.47405/mjssh.v7i11.1925.

economy and the dominance of global tech companies in the Malaysian market, the government needs to take further steps to enhance its digital tax framework. Currently, Malaysia imposes a 6% DST on digital services provided by foreign companies. However, this policy only covers consumption tax (similar to VAT) and does not address income taxation for foreign digital companies. As a next step, Malaysia could consider several strategies to ensure that foreign digital companies pay fair taxes based on their economic contribution to the country.

With the rising use of digital services and the dominance of global technology companies, Thailand has successfully implemented digital tax regulations to ensure that foreign companies generating revenue from its domestic market contribute to the national tax system. This policy is designed to promote fiscal fairness between foreign digital companies and domestic digital industry players, while also increasing state revenue from the rapidly growing digital economy sector. Thailand's digital tax regulation was formally enacted through a revised VAT Law in 2021, which mandates the collection of VAT on digital services provided by foreign companies to customers in Thailand. As of September 1, 2021, Thailand applies a 7% VAT on digital services offered by foreign providers.[37]

Compared to other countries in ASEAN and globally, Thailand's digital tax policy is similar to the VAT systems implemented in Indonesia and Singapore, but with some differences in areas such as registration requirements and input tax deductions. Although Thailand's VAT rate is lower than that of Indonesia and Singapore, the regulation remains effective in ensuring that foreign digital companies contribute to Thailand's tax system. Since successfully implementing a 7% VAT on foreign digital services in 2021, Thailand has demonstrated its commitment to creating a fairer tax system for both global digital companies and domestic digital industries.[38]

However, VAT only covers consumption tax and does not regulate Personal Income Tax (PIT) for foreign digital companies that generate substantial profits from users in

[37] Ehtisham Ahmad and Aekapol Chongvilaivan, *Digital Transformation of Multilevel Tax Policies and Administration for Resilience and Sustainable Growth* (Asian Development Bank 2024) 9.

[38] Aekapol Chongvilaivan and Annette Chooi, *A Comprehensive Assessment of Tax Capacity in Southeast Asia* (Manila: Asian Development Bank 2021) 15.

Thailand.[39] Therefore, Thailand may consider taking further steps to optimize its digital taxation system. Key strategies that could be implemented include the adoption of a SEP policy, collaboration with the OECD-G-20 in implementing the global digital tax framework, and enhancing the harmonization of digital tax policies at the ASEAN level. One of the main challenges in digital taxation systems is the reliance on the concept of physical presence (permanent establishment) as the basis for taxation.[40] Foreign digital companies can earn significant revenue from users in Thailand without having an office or legal entity in the country, and as a result, they are not subject to PIT in proportion to the profits they earn.

To achieve this goal, Vietnam has implemented two main types of taxes for foreign digital service providers: a 10% VAT and a 10% Corporate Income Tax (CIT), imposed on companies earning revenue from customers in Vietnam.[41] In addition, the government requires foreign OTT companies to register in Vietnam to ensure compliance with applicable tax regulations. As part of its efforts to enhance transparency and tax compliance, Vietnam requires foreign digital companies that earn revenue from Vietnamese customers to register in Vietnam.[42] By mandating such registration, Vietnam is able to monitor digital transactions more effectively and ensure that foreign OTT companies cannot avoid tax obligations by shifting their profits to low-tax jurisdictions. Therefore, Vietnam's digital tax regulation is considered more progressive than the digital tax frameworks in Indonesia, Thailand, and Malaysia, which generally impose only consumption taxes (VAT/PPN/DST) without applying CIT on foreign digital companies.

By implementing a mandatory registration requirement for foreign digital companies, Vietnam can more effectively monitor digital transactions, particularly in identifying and measuring the revenue earned by digital companies from Vietnamese

[39] Organisation for Economic Co-operation and Development (OECD), *Tax Challenges Arising from Digitalisation-Report on Pillar One and Pillar Two* (OECD Publishing 2021), https://www.oecd.org/tax/beps/.

[40] Johannes Becker and Joachim Englisch, 'A European Perspective on the U.S. Digital Services Tax Controversy' (2020) 48 (2) 152–160.

[41] Anh Pham, 'Effects of temporary corporate income tax cuts: Evidence from Vietnam' (2020) 146 *Journal of Development Economics* 102476, https://doi.org/10.1016/j.jdeveco.2020.102476.

[42] Quoc Dung NGO, https://jfsdigital.org/articles-and-essays/2024-2/vol-29-no-2-december-2024/the-future-of-e-commerce-taxation-in-vietnam-a-causal-layered-analysis-approach/.

customers.[43] This step allows Vietnam's tax authorities to ensure that every digital transaction occurring within its jurisdiction is properly taxed, and helps to prevent tax avoidance practices commonly employed by multinational companies.[44] One of the main challenges in digital taxation is tax avoidance through profit shifting to low-tax jurisdictions. Foreign digital companies often register in countries with more lenient tax rates or use complex business structures to avoid taxation in the countries where they actually generate income.

Compared to other ASEAN countries, Vietnam's digital tax regulation can be considered more progressive and comprehensive. Several countries, such as Indonesia, Thailand, and Malaysia, only impose consumption taxes (VAT/PPN/DST) on foreign digital services, without applying corporate income tax to foreign digital companies. In contrast, Vietnam imposes not only a 10% VAT but also a 10% CIT on foreign digital companies operating in its market.[45] This approach creates a fairer taxation system for the digital industry in Vietnam, as both local and foreign companies are now subject to equivalent tax obligations. Furthermore, the policy helps prevent tax arbitrage practices, where foreign digital companies previously avoided taxation by establishing entities in countries with more lenient tax policies.

Digital Tax Regulation in Indonesia

The development of information technology has driven a major transformation in global business models, including in Indonesia. OTT digital services and application providers have become an integral part of the country's economic and social life. However, the surge in digital economic activity also presents serious challenges for the national taxation system, particularly in taxing cross-border transactions conducted by foreign digital companies without a physical presence in Indonesia. In response to

[43] Phan Thi Hang, Nga, 'Policy Recommendations for Digital Banking Development Contributing to Sustainable Development in Vietnam' (2024) 11 (1) Cogent Business & Management. doi:10.1080/23311975.2024.2389459.

[44] Diwa Guinigundo, Masahiro Kawai, Cyn-Young Park and Ramkishen S. Rajan, *Redefining Strategic Routes to Financial Resilience in Asean+3* (Asian Development Bank 2021) 49.

[45] Sisca Premida Wardani and Gilang Maulana Majid, 'Digital Taxes in Southeast Asia: A Review' (2020) The 1st International Congress on Regional Economic Development 1-10.

these challenges, the Indonesian government has implemented a number of policies to regulate digital taxation, aiming to ensure that foreign companies generating revenue from the domestic market also contribute to state revenue.

The first step taken by the government was the issuance of Minister of Finance Regulation (PMK) No. 48/PMK.03/2020 and PMK No. 60/PMK.03/2022, which require foreign digital companies to collect and remit VAT at 11% on the sale of digital products and services to consumers in Indonesia.[46] This policy applies to digital companies that meet specific criteria: annual transaction value exceeding IDR 600 million or more than 12,000 user traffic per year from Indonesia. Companies that meet the threshold are required to register as VAT collectors and remit VAT for the transactions conducted. To date, dozens of foreign OTT companies have registered, including *Netflix, Spotify, Google Asia Pacific*, and *Facebook Ireland*.

This concept is included in Law No. 2 of 2020 concerning COVID-19 Response and Financial System Stability, which states that foreign digital companies that have substantial economic interactions with Indonesian consumers can be considered to have a permanent establishment (PE) and be subject to income tax. However, the implementation of SEP-based income tax is still pending international consensus through the OECD-G-20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), particularly Pillar 1 and Pillar 2, which address the redistribution of taxing rights and a global minimum tax rate.[47] Although Indonesia's digital tax regulations demonstrate significant progress in responding to the dynamics of the global digital economy, their implementation still faces a number of structural and technical challenges that require serious attention.[48]

First, the most fundamental challenge is the lack of data transparency from foreign OTT companies, particularly regarding the number of active users, transaction values,

[46] Sri Mulyani, Suparno Suparn, Retno Mawarini Sukmariningsih, 'Regulations and Compliance in Electronic Commerce Taxation Policies: Addressing Cybersecurity Challenges in the Digital Economy' (2023) 17 (2) International Journal of Cyber Criminology 133-146.

[47] Agrawal, D. R. and Wildasin, D. E, 'Technology and tax systems' (2020) 185 Journal of Public Economics 185 104082. https://doi.org/10.1016/j.jpubeco.2019.104082.

[48] Cockfield, A. J, 'Transforming the Internet into a taxable forum: a case study in e-commerce taxation' (2000) 85 (5) Minnesota Law Review 1171-1266. https://www.researchgate.net/publication/228132491..

and total revenue generated from the Indonesian market. Global digital companies such as *Netflix, Google, Facebook*, and others often do not openly disclose the exact amount of income earned from Indonesian users.[49] This lack of disclosure makes it difficult for tax authorities to conduct accurate and fair tax assessments. Without strict reporting requirements, companies can unilaterally determine the figures they report, which can potentially reduce their tax contributions to the state. *Second,* Indonesia faces difficulties in cross-jurisdictional law enforcement, especially concerning foreign OTT companies that do not have a PE or legal affiliation in Indonesia.[50]

Third, there is a risk of double taxation if no bilateral or multilateral tax avoidance mechanisms are in place. In the context of the digital economy, a single transaction may involve entities in multiple countries, increasing the risk of the same income being taxed in more than one jurisdiction. Without a mutually agreed-upon international framework, such as through the OECD-G20 Inclusive Framework, companies may be taxed on the same income in multiple countries, ultimately creating a disincentive for compliance and even encouraging more complex tax avoidance strategies. *Fourth,* the success of digital tax collection heavily relies on inter-agency synergy, particularly between the Directorate General of Taxes (DJP), the Ministry of Communication and Digital (Kemenkomdigi), and Bank Indonesia (BI).[51]

These four challenges highlight that digital tax regulation cannot function effectively in isolation. An integrated policy framework is needed, one that combines tax regulation, digital data governance, and cross-sectoral oversight, to ensure that the digital tax collection system can effectively address the complexities of modern economic transactions. Moreover, international cooperation is essential to overcome the limitations of national jurisdiction. Through global forums such as the OECD-G20 Inclusive Framework, Indonesia can advocate for a global consensus on taxing rights and minimum digital tax rates, which would strengthen the country's position in tackling

[49] Hendriyetty, Nella, Evans, Chris, Kim, Chul Ju and Taghizadeh-Hesary, Farhad (*Eds.*), *Taxation in the Digital Economy: New Models in Asia and the Pacific* (Routledge 2023) https://doi.org/10.4324/9781003196020.

[50] Chan, K. H. and P. L. Lan Mo, 'Tax Holidays and Tax Noncompliance: An Empirical Study of Corporate Tax Audits in China's Developing Economy' (2000) 74 (4) The Accounting Review 469–484.

[51] Azam, R, 'Global Taxation of Cross-Border E-commerce Income (2011) 31 Virginia Tax Review 639–693.

tax avoidance by multinational companies.[52]

Facing the rapid growth of the digital economy and the increasing use of cross-border digital services by Indonesian consumers, the government, through the Directorate General of Taxes (DJP), has taken strategic steps to ensure fiscal fairness and optimize state revenue. One such step is the regulation of VAT collection on the utilization of intangible taxable goods and/or taxable services from abroad that are consumed domestically.[53] This policy arose from the need to align the national tax system with the evolution of global digital business models, in which many foreign digital service providers generate significant revenue from the Indonesian market without any physical presence in the jurisdiction.

Through VAT regulation on foreign digital services, DJP appoints foreign companies as VAT collectors if they meet certain thresholds related to transaction volume or traffic from Indonesia. Companies meeting the criteria must collect 11% VAT on the transaction value from Indonesian consumers and remit and report the tax to the state. This scheme is known as the Electronic-Based Trading (PMSE) mechanism.[54] This step is not only crucial to plug potential tax leakages from cross-border digital transactions but also to create equal tax treatment between local and foreign businesses. In the long term, this policy is expected to help build a fair, adaptive, and inclusive tax system, supporting sustainable national digital economic transformation.

Although Indonesia has successfully implemented regulations on VAT collection for foreign digital services through the PMSE scheme, a fundamental weakness remains in the national digital tax system, particularly in the PPh on foreign OTT companies that lack physical presence in Indonesia. Under the current legal framework, the imposition of PPh on foreign entities is generally based on the principle of PE, where a company is liable for income tax in Indonesia only if it has an office, agent, warehouse, or other form

[52] Cockfeld, A. J, 'The Rise of the OECD as an Informal World Tax Organization through National Responses to E-commerce Tax Challenges' (2019) 136 (8) Yale Journal of Law and Technology 1-25.

[53] Jone, M, 'A Preliminary Evaluation of Australia's Tax Dispute Resolution System in the Context of the ATO's Reinvention Program' (2019) 34 (3) Australian Tax Forum 513–550.

[54] Cherly Elisabeth, 'Analysis of VAT Policy Toward Overseas Digital Service Providers Through Consumer Regulatory Impact Assessment in Indonesia' (2023) 3 (1) Golden Ratio of Taxation Studies 1-14. https://doi.org/10.52970/10.52970/grts.v3i1.296.

of physical presence within the country.[55] However, in today's digital economy, many global OTT companies earn substantial profits from Indonesian consumers without any legal entity or physical infrastructure in the country.

According to the SEP concept, a foreign company could be deemed to have a taxable presence if it meets certain criteria, such as user base, transaction volume, or revenue generated from Indonesia, even without a physical presence. However, the implementation of SEP has been hindered by the lack of a multilateral agreement and the potential for conflicts with existing double taxation avoidance agreements (tax treaties) with other countries. The core weakness in Indonesia's digital tax regulation lies in the mismatch between the conventional taxation system and the characteristics of modern digital business models, which are borderless, intangible, and platform-dependent.[56]

However, in today's digital economy, foreign OTT companies can operate and profit from the Indonesian market without any physical presence. They conduct economic activities virtually, offering digital services such as streaming, online advertising, cloud storage, and other apps directly to Indonesian consumers.[57] As a result, these companies fall outside the scope of existing income tax rules, despite having a significant economic footprint. The reliance on physical presence becomes increasingly problematic amid the ongoing global digital transformation, where economic value is no longer derived solely from physical assets, but from user data, platform interaction, and digital networks.

To address these challenges, a more progressive and adaptive reform of digital tax regulation is urgently needed. Indonesia must strengthen its legal framework by adopting the SEP concept, which would allow the state to tax companies based on substantial economic engagement, even without a physical presence. Furthermore, Indonesia must actively participate in shaping a global consensus, especially through the OECD/G20 Inclusive Framework on BEPS, which is currently developing a global

[55] Kurniawan, Maman Sudirman, Benny Djaja, 'The Regulation of Personal Income Tax and Its Enforcement For Foreign Workers' (2023) 5 (2) Jurnal Ilmiah Mahasiswa, Studi Syariah, Hukum and Filantropi 252-265. 10.22515/jurnalalhakim.v5i2.7658.

[56] Hendy Ramadhan, 'Pajak Penghasilan Terhadap Tenaga Kerja Asing Sebagai Subyek Hukum Pajak' (2019) 1 (2) Media Iuris 266-280. 10.20473/mi.v1i2.8830.

[57] Mohd Javaid, Abid Haleem, Ravi Pratap Singh and Anil Kumar Sinha, 'Digital economy to improve the culture of industry 4.0: A study on features, implementation and challenges' (2024) 2 (2) Green Technologies and Sustainability. https://doi.org/10.1016/j.grets.2024.100083.

digital tax system under Pillar 1 and Pillar 2.[58] Through active involvement in these global forums, Indonesia can contribute to establishing a more fair, transparent, and proportionate international tax system, and help prevent tax avoidance by multinational digital companies.

Comparative Models of Digital Tax Regulation in ASEAN

In the context of digital tax regulation, Singapore and Indonesia have taken different approaches in managing the taxation of foreign digital services. Singapore prioritizes efficiency and simplicity, implementing a self-assessment and voluntary registration system through the Overseas Vendor Registration (OVR) scheme. Under this mechanism, foreign companies providing digital services to Singaporean consumers are given the flexibility to register voluntarily if they meet a certain threshold, namely annual revenue exceeding SGD 100,000.[59] The Inland Revenue Authority of Singapore (IRAS) oversees this administratively, offering a streamlined and integrated reporting system. This approach aims to minimize compliance burdens and encourage voluntary participation by foreign firms, without reducing the effectiveness of Goods and Services Tax (GST) collection at a rate of 8% (increasing to 9%).[60]

In contrast, Indonesia adopts a more active and centralized approach through its Electronic-Based Trading (PMSE) mechanism. Under this system, the Directorate General of Taxes (DJP) has full authority to appoint foreign digital companies as VAT collectors if they meet certain criteria, such as annual transaction value above IDR 600 million or over 12,000 users annually from Indonesia.[61] This approach gives tax authorities greater control, as appointments are formal, and designated companies are required to remit and report 11% VAT on transaction value. While DJP's designation system allows for

[58] Elisabet, Mutiara and Dewi, Yetty Komalasari, 'Digital Services Tax Regulation and WTO Non-Discrimination Principle: Is The Deck Stacked?' (2022) 19 (1) Indonesian Journal of International Law 39-57. DOI: 10.17304/ijil.Vol. 19.1.2. Accessed on 16 June 2025.

[59] Vikram Chand (Editor). https://kluwertaxblog.com/2021/03/05/the-un-proposal-on-automated-digital-services-is-it-in-the-interest-of-developing-countries/,

[60] Jeremy Gross and Ponciano S. Intal, Jr, *Reducing Unnecessary Regulatory Burdens in ASEAN Country Studies* (Economic Research Institute for ASEAN and East Asia 2018) 25.

[61] Felix Pratama Tjipto, 'Comparative Law Analysis of Consumer Protection Law in Commerce Transaction Between Indonesia and United States' (2021) 5 (2) UIR Law Review 11-25. https://doi.org/10.25299/uirlrev.2021.vol5(2).7456.

tighter compliance monitoring, it also involves more complex administrative challenges, particularly with verification, cross-border coordination, and the large number of OTT companies without physical presence in Indonesia.[62] As of January 2025, Indonesia has officially increased its VAT rate from 11% to 12%, as mandated by Law No. 7 of 2021 on the Harmonization of Tax Regulations (UU HPP).[63]

Tax rate differences are also significant: Indonesia imposes 11% VAT, higher than Singapore's 8% GST. While higher rates can increase potential revenue, they may also lead to resistance from foreign companies if not paired with efficient and transparent systems.[64] Conversely, Singapore maintains its appeal as a digital hub with a moderate tax structure and business-friendly administration. Indonesia's interventionist, authority-based model offers stronger oversight but requires greater administrative capacity and support infrastructure, while Singapore's model favors simplicity and voluntary compliance, which may be less effective in capturing the full scope of foreign digital taxpayers.

Meanwhile, Malaysia and Thailand both rely on consumption-based taxation to secure fiscal contributions from foreign digital service providers, though they differ in structure, regulatory approach, and institutional design. Malaysia introduced a standalone DST effective January 1, 2020, at a rate of 6%, targeting foreign digital services such as streaming, software subscriptions, digital advertising, and cross-border e-commerce. DST is separate from Malaysia's domestic Service Tax, creating a distinct legal framework aimed specifically at digital cross-border activities.[65] Thailand, on the other hand, took a more integrated route by expanding the scope of its existing VAT system, in place for many years. As of September 1, 2021, Thailand requires foreign digital companies to collect and remit 7% VAT on transactions with Thai consumers.

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[62] Nella Hendriyetty, Chris Evans, Chul Ju Kim, and Farhad Taghizadeh-Hesary, *Taxation in The Digital Economy New Models in Asia and The Pacific* (Routledge 2023) 21.

[63] Republic of Indonesia, *Law No. 7 of 2021 on the Harmonization of Tax Regulations* (State Gazette of the Republic of Indonesia 2021).

[64] Elisabeth Struckell, Divesh Ojha, Pankaj C. Patel andAmandeep Dhir, 'Strategic choice in times of stagnant growth and uncertainty: An institutional theory and organizational change perspective' (2022) 182 Technological Forecasting and Social Change 121839. https://doi.org/10.1016/j.techfore.2022.12183.

[65] Susanna Hartanto, 'Tax Challenges of Digital Economy in Indonesia' (2021) 16 (2) Jipak:Jurnal Informasi, Perpajakan, Akuntansi, dan Keuangan Publik 163. https://doi.org/10.25105/jipak.v16i2.6181.

While Malaysia's DST (6%) is lower than Thailand's VAT (7%), the difference in policy structure reflects divergent philosophies: Malaysia focuses on foreign digital entities, while Thailand emphasizes integration and consistency with its existing tax system.[66] Nevertheless, both countries share a key limitation: they have not yet extended their digital tax policies to CIT for foreign OTT companies without permanent establishments (PE). To address this, both countries should consider adopting SEP or actively participating in the OECD/G-20 global digital tax framework to ensure that foreign firms benefiting from domestic markets also share a proportional fiscal responsibility.

In the ASEAN digital tax landscape, Vietnam stands out as more progressive than Indonesia, particularly regarding income tax on foreign OTT companies. Vietnam imposes a 10% Corporate Income Tax (CIT) on income earned by foreign digital companies, even without a PE or physical presence. This reflects Vietnam's recognition of economic presence as a legitimate basis for taxation in the borderless digital economy.[67] In contrast, Indonesia remains at the conceptual stage, having introduced the SEP concept in Law No. 2/2020, which aims to impose income tax based on user base, transaction value, or digital interaction levels. However, the implementation of SEP is still pending, mainly due to concerns over international agreements, existing tax treaties, and reliance on a global consensus through the OECD/G-20 Inclusive Framework.

Meanwhile, VAT plays a more immediate and operational role in Indonesia's digital tax regime**.** As of January 2025, the VAT rate has officially increased to 12% pursuant to Law No. 7 of 2021 on the Harmonization of Tax Regulations (UU HPP).[68] Unlike income tax, VAT is levied on the consumption of digital services, including those provided by foreign OTT platforms, regardless of the provider's physical presence. This makes VAT a more effective and enforceable tool in capturing tax revenue from the

[66] Wutthiya Aekthanate Srisathan, Chavis Ketkaew, Chanchai Phonthanukitithaworn, Phaninee Naruetharadhol, 'Driving policy support for open eco-innovation enterprises in Thailand: A probit regression model' (2023) 9 (3) Journal of Open Innovation: Technology, Market, and Complexity 100084. https://doi.org/10.1016/j.joitmc.2023.100084.

[67] Mpofu, Favourate Y, 'Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries' (2022) 10 (9) Economies 219. https://doi.org/10.3390/economies10090219.

[68] Republic of Indonesia, *Law No. 7 of 2021 on the Harmonization of Tax Regulations* (Jakarta: State Gazette of the Republic of Indonesia, 2021).

digital economy in the short term, even as the broader income tax framework continues to rely on the emergence of global consensus mechanisms.

This comparison highlights a policy gap between Vietnam and Indonesia in addressing the challenges of digital taxation. Vietnam has adopted a bolder and more direct approach, while Indonesia is still waiting for global legitimacy to act, aiming to maintain harmony within the international tax system. Although Vietnam's approach carries certain risks, such as the potential for international tax disputes, it reflects a serious commitment to ensuring that all digital economic activities generating profit from the domestic market are taxed fairly. Looking ahead, Indonesia must reassess its strategic position within the global digital tax framework. If an international consensus is not reached soon, Indonesia should consider implementing unilateral policies that still uphold the principles of fair taxation and proportional contribution, similar to what Vietnam has done.

In response to the evolving digital economy, ASEAN countries have employed a range of strategies in addressing digital taxation challenges, each reflecting the characteristics of their national tax systems and strategic positions within the global digital ecosystem. Among these countries, Singapore and Thailand have adopted evolutionary approaches, expanding their existing consumption tax systems, Goods and Services Tax (GST) in Singapore and VAT in Thailand, to cover foreign digital services. These approaches emphasize simplicity and administrative efficiency, as they require no new tax regime but merely extend the scope of existing laws.[69] Foreign digital companies simply register, collect taxes from local consumers, and remit them to tax authorities.

In contrast, Indonesia and Malaysia have taken a more structural route, creating dedicated mechanisms to handle digital taxation. Indonesia developed the PMSE VAT scheme, whereby the Directorate General of Taxes (DJP) actively appoints foreign companies meeting specific thresholds as VAT collectors at a rate of 11%. Malaysia introduced a 6% Digital Services Tax (DST), applicable to foreign digital service providers

[69] Roel Dom, Anna Custers, Stephen Davenport and Wilson Prichard, *Innovations in Tax Compliance Building Trust, Navigating Politics, and Tailoring Reform* (World Bank 2022) 27.

since 2020.[70] Vietnam stands out as the most progressive country in taxing digital income.[71] Unlike other ASEAN nations that limit taxation to consumption, Vietnam has imposed a 10% Corporate Income Tax (CIT) on the income of foreign OTT companies, even without a Permanent Establishment (PE) in the country.

Meanwhile, Indonesia remains in the policy harmonization phase at the global level, particularly through its participation in the OECD/G20 Inclusive Framework on BEPS. Indonesia has introduced the Significant Economic Presence (SEP) concept in its national regulation, but it has yet to be implemented effectively due to the need for alignment with international tax treaties and the pending global consensus. As a result, Indonesia's digital income taxation remains limited, focusing primarily on VAT through the PMSE mechanism. This comparison shows that there is no one-size-fits-all approach to digital taxation, but some emerging patterns can be observed:[72] a) Singapore and Thailand prioritize simplicity by expanding existing tax systems, b) Indonesia and Malaysia innovate through structured, stand-alone digital tax policies, and c) Vietnam takes a radical step by directly taxing digital income ahead of its regional peers.

Strategy for Optimizing Digital Tax Regulation in ASEAN

In response to the rapid transformation of the digital economy, developed countries have designed and implemented various effective digital tax models that can serve as important references for developing countries, including Indonesia. Among these models, the European Union and India present distinct and relevant approaches to the taxation challenges posed by foreign companies. The European Union, as one of the largest economic regions in the world, has proposed a Digital Services Tax (DST) to address the shortcomings of conventional tax systems.[73] The EU's DST is designed to tax digital revenues generated from user-based economic activities, such as digital

[70] Machfud Sidik, 'Digital Services Tax: Challenge of International Cooperation For Harmonization' (2022) 3 (1) Jurnal Pajak dan Bisnis 56-64. https://doi.org/10.55336/jpb.v3i1.46.

[71] Peter Mullins, *Taxing Developing Asia's Digital Economy, (Background* Paper 2021) 1-44.

[72] Putri Andreana and Inayati, 'Principles of Tax Collection in Value Added Tax (VAT) on Digital Services in Indonesia' (2022) 8 (2) Jurnal Public Policy 1-7.

[73] Aulia, Sandra and Ahmad Hambali, "Digital Service Tax: Lessons Learned" (*Proceedings* 83, (No. 1: 7, 2022). https://doi.org/10.3390/proceedings2022083007.

advertising, the provision of digital marketplaces, and the sale of user data. Although collective implementation of DST across all EU member states faces political obstacles, several countries such as France, Italy, and Spain have adopted national DSTs with an average rate of 3%.[74]

India, on the other hand, has become a pioneer among developing countries in actively implementing the Equalization Levy as a form of digital taxation. Since 2016, India has imposed a 6% tax on digital advertising services provided by foreign companies to Indian entities.[75] In 2020, the scope of the Equalization Levy was expanded to 2% on all cross-border e-commerce transactions, including sales of digital goods and services to Indian consumers by entities with no physical presence.[76] India's approach demonstrates a strong commitment to fiscal sovereignty and addressing loopholes in the international tax system, while still leaving room for global negotiation. Facing cross-jurisdictional challenges in the digital economy, the global community has recognized the need for international cooperation to prevent tax avoidance practices and ensure fair taxation.[77]

To address the increasing globalization and digital transformation, it is crucial for ASEAN countries to begin implementing a standardized digital taxation framework across the region. Currently, differences in national approaches to taxing foreign digital services have created regulatory imbalances, opportunities for tax arbitrage, and unhealthy fiscal competition, where digital companies may choose to operate from jurisdictions with the loosest regulations to minimize their tax burdens. Countries such as Singapore and Thailand have expanded their existing consumption tax systems (GST/VAT) to include digital services, while Malaysia and Indonesia have created new mechanisms such as Digital Services Tax (DST) and VAT through the PMSE scheme.[78]

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[74] Kane Borders, Sofía Balladares, Mona Barake and Enea Baselgia, 'Digital Service Taxes' (2023) 6 Eutax 1-23.

[75] Ashok K. Lahiri Gautam Ray and D. P. Sengupta, 'Equalisation Levy' (2017) 01 Working Paper 6.

[76] Amar Naik and Rushil Shah, 'Digital Economy Taxation - Deconstructing Equalization Levy and GST from an Indian tax standpoint' (2020) 3 Social Science Research Network (SSRN) 1-26. http://dx.doi.org/10.2139/ssrn.3739913.

[77] Aqib Aslam and Alpa Shah, 'Chapter 10 Taxing the Digital Economy". In *Corporate Income Taxes under Pressure*, (International Monetary Fund 2021) https://doi.org/10.5089/9781513511771.071.ch010.

[78] Hendriyetty, Nella (Ed.); Evans, Chris (Ed.); Kim, Chul Ju (Ed.); Taghizadeh-Hesary, Farhad (Ed.), *Taxation in the Digital Economy: New Models in Asia and the Pacific* (Routledge Studies in Development Economics 2023). https://doi.org/10.4324/9781003196020.

Meanwhile, Vietnam has gone further by directly imposing corporate income tax (CIT) on foreign OTT companies, even without physical presence.

Implementing a unified digital taxation standard across ASEAN would offer several strategic benefits. *First,* it would prevent tax avoidance practices by foreign digital companies exploiting regulatory gaps within the region. With an integrated system, companies would not be able to shift operations to countries with the most lenient rules solely to reduce tax obligations. *Second,* standardization would increase legal certainty and administrative efficiency for both global digital businesses and national tax authorities. *Third,* such integration would strengthen ASEAN's bargaining position in global forums such as the OECD/G20, particularly in shaping the international digital tax framework.[79] ASEAN could also establish a coordination platform among member states' tax authorities to develop systems for information exchange, cross-border transaction tracking, and regional digital economy data synchronization.

However, harmonizing digital taxes also requires strong political commitment and a spirit of collaboration among ASEAN members, given their differing fiscal capacities, digital infrastructure, and economic interests. Therefore, a gradual convergence approach that considers national readiness should be prioritized, supported by technical assistance from international institutions such as the OECD, IMF, or World Bank.[80] By implementing uniform digital tax standards, ASEAN can not only protect its tax base from erosion due to cross-border practices but also build a fair and sustainable digital ecosystem where all economic actors, both local and global, contribute equally to public finance.[81]

Big data allow tax authorities to collect, manage, and analyze large volumes of data from various sources, including user traffic, transaction volumes, and consumption patterns. These data can be combined with AI technology to detect anomalies,

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[79] Ikumo Isono and Hilmy Prilliadi, *ASEAN's Digital Integration: Evolution of Framework Documents.* (Economic Research Institute for ASEAN and East Asia (ERIA, 2023) 11.

[80] OECD, *Tax Challenges Arising from Digitalisation – Report on Pillar One and Pillar Two: Inclusive Framework on BEPS* (OECD Publishing 2021). http://dx.doi.org/10.1787/9789264177581-en.

[81] Lee, Brice Tseen Fu, Dinh, Linh Dieu, Sims, Juan Pablo and Bettani, Salman Ali, 'ASEAN Digital Economy Framework Agreement (DEFA): Implications for Digital Trade and Regional Economic Integration' (2025) 8 (1) Journal of Strategic and Global Studies 81-96. 10.7454/jsgs.v8i1.1166.

predict potential tax avoidance, and map the actual economic contribution of foreign digital companies to the national economy. For example, AI algorithms can identify discrepancies between reported transaction values and observed digital consumption behavior recorded in payment systems or communication networks. Moreover, AI can also be used to automate digital audit processes and compliance monitoring, allowing the Directorate General of Taxes (DJP) to efficiently reach foreign entities that previously evaded oversight due to their lack of permanent establishment (PE) in Indonesia.[82]

In addition to data-driven oversight technologies, another important strategy is the collaboration between DJP and digital payment platforms, such as e-wallets, payment gateways, and online transaction infrastructure providers. Through such partnerships, DJP can access actual payment information, including transaction amounts, payment origin and destination, and user identity. This would greatly assist in identifying digital transactions relevant to tax obligations and preventing underreporting by foreign companies. Collaboration between DJP and digital payment platforms can evolve into the integration of tax reporting systems with payment systems, enabling VAT to be withheld automatically at the point of transaction (real-time withholding), without waiting for manual reports from OTT companies.[83]

To establish a fair, efficient, and responsive tax system in line with global dynamics, two strategic steps can be taken: a) Aligning digital tax policies with the DTS model already implemented in regions like the EU and India, and b) Strengthening the mechanism for imposing income tax (CIT) on foreign OTTs that derive significant income from the Indonesian market. The DST model has been adopted in several countries in response to the inadequacies of conventional tax systems in reaching foreign digital companies operating without a physical presence. The EU, for instance, has proposed a 3% DST on revenues from digital advertising, digital platforms (marketplaces), and user-data-based

[82] Wutthiya Aekthanate Srisathan, Chavis Ketkaew, Chanchai Phonthanukitithaworn and Phaninee Naruetharadhol, 'Driving policy support for open eco-innovation enterprises in Thailand: A probit regression model' (2023) 9 (3) Journal of Open Innovation: Technology 100084, https://doi.org/10.1016/j.joitmc.2023.100084.

[83] Elisabet, Mutiara and Dewi, Yetty Komalasari, 'Digital Services Tax Regulation and Wto Non-Discrimination Principle: Is The Deck Stacked? (2021) 19 (1) Indonesian Journal of International Law 39-57. 10.17304/ijil.vol19.1.2.

transactions. Countries like France, Italy, and Spain have adopted this model nationally while awaiting consensus on regional or global digital tax frameworks.

Similarly, India has implemented the Equalization Levy, a form of DST, since 2016 and expanded its scope in 2020. India imposes a 6% tax on digital advertising services and a 2% tax on e-commerce transactions conducted by foreign entities for Indian consumers, without requiring physical presence.[84] This model has effectively increased tax revenue from the digital sector while strengthening the country's fiscal position amid the dominance of global digital platforms. Indonesia can adjust its PMSE VAT policy or develop a standalone digital taxation scheme based on DST principles, i.e., taxing the economic value created by user interaction within the country, regardless of the company's location. This adjustment can serve as an interim measure while waiting for the implementation of OECD/G20 Pillar 1 and Pillar 2 on global digital taxation.[85]

Beyond optimizing digital consumption taxes, Indonesia must also reinforce instruments for taxing income (CIT) from foreign OTTs. Indonesia's tax system still relies on the Permanent Establishment (PE) concept as a prerequisite for imposing income tax on foreign entities. In the context of digital businesses that do not rely on physical presence, this approach is ineffective, as companies can generate billions of rupiah from Indonesian consumers without meeting PE criteria, and thus avoid paying income tax in Indonesia. To address this issue, Indonesia has incorporated the Significant Economic Presence (SEP) concept into Law No. 2 of 2020 as a legal foundation to impose income tax on foreign entities with significant economic contributions, even without physical presence.

The optimization of digital tax regulation in the ASEAN region requires a nuanced theoretical foundation that balances national interests with the transnational nature of the digital economy. Three key theoretical perspectives, Fiscal Sovereignty vs. Digital Globalization, Regulatory Fragmentation in the Digital Economy, and Theories of Tax

[84] Maanya Oberoi and Drishty De, 'Equalisation Levy in India: An Exploratory Study' (2021) 8 (2) IJRAR 1-28.

[85] Fadlol Muhammad Fajar and Ferry Irawan, 'Analysis of The Implementation and Implications of OECD/G20 Pillar One on The Taxation System in Indonesia' (2024) 4 (5) Educoretax 597-619.

Fairness and Equity in Platform-based Economies, can be synergized to provide both normative guidance and policy coherence for ASEAN member states.

First, the Fiscal Sovereignty vs. Digital Globalization debate encapsulates the tension between a state's legitimate right to impose taxes within its jurisdiction and the reality of borderless digital commerce. While fiscal sovereignty enables countries to protect their tax base and assert regulatory control, digital globalization challenges this principle by enabling foreign digital platforms to generate substantial economic value without a physical presence. In the ASEAN context, where digital trade and OTT services often flow across borders, this tension necessitates a collaborative rethinking of sovereignty, shifting from an exclusive national approach to a coordinated regional framework that preserves state autonomy while embracing shared tax governance.

Second, the theory of Regulatory Fragmentation in the Digital Economy highlights the risks of uncoordinated and inconsistent digital tax policies across ASEAN. Fragmented approaches—such as differing definitions of taxable presence, thresholds, or tax instruments (e.g., VAT, DST, SEP), not only create legal uncertainty but also incentivize regulatory arbitrage by multinational digital companies. Harmonizing key regulatory standards across ASEAN can mitigate fragmentation, reduce compliance burdens, and enhance legal clarity, thereby fostering a more stable and predictable digital investment climate.

Third, the Theories of Tax Fairness and Equity in Platform-based Economies offer ethical and distributive principles for designing just digital tax regimes. These theories emphasize that digital companies should contribute to public revenue in proportion to the economic value they derive from user engagement, data monetization, and market access within a country, even in the absence of physical operations. In the ASEAN context, where digital platforms disproportionately benefit from large, youthful, and data-rich populations, ensuring equitable tax contributions is not only a matter of fiscal justice but also a critical component of sustainable digital development.

By synthesizing these three perspectives, ASEAN member states can develop a digital tax framework that is conceptually robust, regionally harmonized, and normatively just. Such a framework would support the adoption of the Significant

Economic Presence (SEP) principle, promote regional alignment with the OECD/G-20 Inclusive Framework, and lay the groundwork for an ASEAN Digital Tax Code, a coordinated policy instrument that respects national sovereignty while addressing the structural asymmetries of the global digital economy.

Conclusion

In the era of rapid digital transformation, OTT services such as *Netflix, Spotify, YouTube, Google, Facebook*, and various other foreign digital platforms have become an integral part of everyday life in Indonesia and the ASEAN region. These platforms enjoy rapid user growth and generate substantial revenue from local consumers, yet they do not always contribute proportionately to the public finances of the countries in which they operate. This creates an imbalance in the tax system, where domestic businesses are subject to full tax obligations, while foreign companies can earn significant profits without physical presence or direct income tax liability. In this context, digital taxation for OTT services has become an urgent necessity, not only as a new source of state revenue, but as a crucial step toward upholding fiscal equity and safeguarding national economic sovereignty.

ASEAN member states currently adopt differing approaches in regulating digital taxation. For example, Indonesia applies the PMSE VAT scheme, Malaysia has implemented the Digital Services Tax (DST), Vietnam directly taxes foreign OTT income through both VAT and Corporate Income Tax, while Singapore and Thailand have opted to expand their existing GST/VAT frameworks to cover foreign digital services. This lack of harmonization results in fiscal disparities across countries, opens the door to tax arbitrage practices, and complicates cross-jurisdictional tax compliance oversight. Through strengthened regional cooperation, alignment of taxation standards, and integration of information systems among tax authorities, ASEAN countries can establish a digital tax framework that is fair, efficient, and competitive. In synthesizing key theoretical perspectives it becomes clear that optimizing digital tax regulation in the region requires a hybrid approach. A harmonized, equity-driven, and multilateral digital tax framework will not only safeguard fiscal interests but also promote sustainable and inclusive digital economic growth across Southeast Asia.

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