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Unequal taxation in a digital world – a challenge for the Nordic media industry

May 2017

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Foreword by the Nordic media organisations

The Nordic countries have a proud tradition of a free and independent media sector. This is a prerequisite for a healthy democracy. Without media to report, scrutinize and debate important issues our democracies cannot continue to flourish.

The world is increasingly interconnected. Digital technology knows very few borders. This poses tremendous opportunities. People around the world now have access to services and information that used to be available only to a small minority, and in many cases not at all. In many ways this benefits us all.

The flip side is that global players to a large extent can pick and choose the jurisdiction most beneficial to their business for regulatory and financial purposes. When your product is a digital service, and your assets are mostly intellectual property, data code and algorithms, national borders become just lines on a map.

Players such as Google and Facebook can move profits between jurisdictions and in practice avoid taxation of their digital advertising revenue in many countries, including the Nordics.

All perfectly legal, but deeply troubling in three ways: from a democratic standpoint where national platforms for journalism are taxed but international platforms for advertising are not, from a competition standpoint and from the standpoint where money from taxation is used to finance a welfare state.

Media are among the businesses most affected by this unfair competition. Consequently there is an urgent need to describe and analyze the legal situation in order to see what can be done to make the playing field level. This report is a step in that direction.

May 2017

TU Medier i Sverige

DANSKE MEDIER

finnmedia

MEDIEBEDRIFTENES LANDSFORENING

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Important message

This report ("the Report") has been prepared by Advokatfirmaet PricewaterhouseCoopers AS and PwC AS (jointly referred to as ("PwC")) for the Mediebedriftenes Landsforening (Norway), Danske Medier (Denmark), Finnmedia (Finland) and TU-Medier (Sweden) in accordance with the contract dated 7 April 2017, Supplementary Agreement dated 9 May 2017 (together "the Contract") and on the basis of the terms, scope and limitations set out in the Contract.

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This final Report was issued on 23. May 2017

Best wishes,

Eivind Nilsen
Partner
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Executive summary

Considerable differences with regard to direct taxation of Nordic media players' and global players' digital advertising revenue from Nordic customers.

The main output from our work included in this report is that there are considerable differences with regards to direct taxation of Nordic media players' and global players' net digital advertising revenue from Nordic customers.

The Nordic media players' net digital advertising revenues, are subject to corporate income tax in the Nordic countries in a range between 20-24 pct. when the income stems from the Nordic customers. The global players' digital advertising revenues from Nordic customers are on the other hand as the main rule not subject to corporate income tax in the Nordic countries. According to the Organisation for Economic Co-operation and Development's (OECD) they are often neither subject to a running similar corporate tax rate elsewhere.

Global players often subject to no or low corporate income tax in the Nordic countries

The main reason for the lack of Nordic taxation of the global players' digital advertising revenue is the lack of physical presence in the Nordic region. This as a Nordic country's right to tax the global player depends on the global player having a taxable presence, normally in form of a "permanent establishment" ("PE") in the Nordic country or in form of a local company. If they have a local company, the digital advertising revenues will typically not be taxed in this company and the taxable profits will normally be low.

The current PE concept was implemented with more traditional business models in mind. As such models are based on the need for a business to establish local physical presence in order to derive significant local revenues, taxation based on the current PE concept depends on some kind of local physical presence. Due to the development of the digital economy, the global players' business models imply no or little need for establishing a physical presence in order to retrieve substantial local revenues from customers in the Nordic region. Thus, the current legislation makes it possible for the global players to legally avoid PE-status and local taxation of digital advertising revenue.

Global players often not subject to a running similar corporate tax rate elsewhere

Even if the global players should be deemed to have taxable presence through PEs, or local companies, they will typically arrange their operations in a way that minimizes the profits that is attributable to these PEs or local companies, and thus taxable in the Nordic region. This can for instance be done by allocating assets, functions and risk in the group in a way that minimizes profits attributable to the PE, or the local company. Therefore, only a minor part of their Nordic digital advertising revenues will be taxable in the Nordic region.

According to OECD, the global players often use legal business structures that imply that profits are shifted from where the profits are created (high tax countries) to group companies based in low tax jurisdictions in a way that ensures that the total tax burden of the group is low. Even if some of the companies in such structures could be tax resident in high tax countries, for instance

By the term "Nordic media players" we refer to companies in the media industry tax resident in a Nordic country (Iceland not included) deriving digital advertising revenues from business conducted within its Nordic country of tax residency. By "global players" we refer to multinational groups with significant digital advertising revenues from Nordic customers, tax resident outside the Nordic region, supplying digital advertising services from business wholly or mainly physically present outside the Nordic region.

According to the Norwegian Media Diversity Report it is likely that Google and Facebook yearly sell digital advertising towards the Norwegian media consumers for more than four billion Norwegian kroner. The amount in Denmark is DKK 3,7 billion according to Danske Medier Research: Online Markedsstatistik 2016. IAB Finland estimates that the amount in Finland is around 150 million euros accordingly.

the US, taxation of significant income streams are often first carried out when and if income is repatriated to such country. The global players will thus typically postpone repatriation of income, and will by that achieve a considerable deferred taxation which in turn will imply a reduction of the effective taxes. Therefore, global players are generally not subject to similar corporate taxation as the Nordic Media players, elsewhere. The OECD's final report on Addressing the Tax Challenges of the Digital Economy (Action 1 in OECD's Action plan on Base Erosion and Profit Shifting ("BEPS")) includes an example of a typical tax planning structure for internet advertising, that illustrates this.
The example is mentioned under chapter 3 below, and in Attachment A to the report.

The deviation in taxation implies a competitive advantage for the global players. The Nordic players will generally have limited possibilities to use the same tax planning techniques as the global players and will thus generally face higher effective taxation.

According to the Norwegian Media Diversity Committee[1], the situation regarding global competition is one of the key factors, which implies that the current business models in the Norwegian Media industry are not viable to finance considerable parts of the Nordic media journalism, which is essential to the Nordic societies.[2] Further the committee specifically point out as a challenge that the fact that the global players to a small degree are subject to tax in Norway, and thus operates under different competition conditions than Norwegian media businesses.[3] The Media Diversity Committee also points out that many of the global players do not produce content themselves, but benefits from media content created by media businesses, and at the same time they reduce the foundation of income from the players which produces journalistic content.

VAT does not represent any competitive advantage for the global players, as VAT will apply on digital advertising revenues irrespective of whether the supplier is a Nordic media player (resident) or global player (non-resident).

[1] NOU 2017:7 Det norske mediemangfoldet – en styrket mediepolitikk for borgerne
[2] https://www.regjeringen.no/contentassets/1e0e03eacdad4c2f865b3bc208e6c006/no/pdfs/nou201720170007000dddpdfs.pdf
[3] https://www.regjeringen.no/contentassets/1e0e03eacdad4c2f865b3bc208e6c006/no/pdfs/nou201720170007000dddpdfs.pdf

No satisfying international or regional solution with regard to levelling the corporate income taxation - despite substantial work efforts

The challenges mentioned above have for several years been, and still are, high up on the international agenda. G20 and OECD have lead the way internationally with its BEPS project where considerable amount of work has been put into addressing different types of challenges related to the current tax and VAT environment. The purpose of the BEPS project is to find solutions, which prevent companies/groups from using artificial structures in order to shift profits from where the values are created to typically low tax jurisdictions. These challenges have also been subject to substantial work by the EU.

In relation to the BEPS project, OECD has analysed different measures to mitigate the different types of challenges and has in its final reports presented in October 2015, made several recommendations with regard to such measures. Among other things, OECD has recommended several changes to the definition of a "permanent establishment" in the OECD Model Tax Convention ("MTC"), with the purpose of making it easier to tax business income from the new business models locally.

It is a common view that the recommended changes could have a levelling effect in cases where the global player has some sort of physical presence in the local country in question.

The question is however, to what degree the global players need a physical presence in the Nordic countries in order to derive digital advertising revenues from Nordic customers. Due to the digital development, we assume that the global player can carry out core business activities related to the sale of digital advertising services via websites, smart phone applications and from servers located outside the Nordic region. Thus, in our view the global players will most likely still be able to legally avoid a taxable presence in the Nordic region. This is supported by the fact that also OECD has stated that it will be important to review and analyse data that will be available over time, for instance with regard to the ability of businesses in the digital economy to be able to participate in the economic life of a country without a taxable presence there. [4] In addition, the fact that OECD opens up for countries to implement local tax rules, could also be seen to indicate that the recommended measures in the BEPS project will not be sufficient with regard to tackling the tax challenges in the digital economy.

Based on the above we find it not likely that the recommended BEPS measures which aim to ensure local taxation (PE threshold) will have sufficient effect due to the lack of need for physical presence in the digital advertising business.

Equal taxation can also be achieved by ensuring that the overall taxation of the global players is more in line with the Nordic media players. With regard to the recommended measures that aims to ensure increased taxation on a global level (group level), for instance Controlled Foreign Company –regulations (CFC) and Transfer Pricing regulations, we find that such measures could have an effect with regard to ensuring that the overall taxation level for the global players increases. However, at this stage it is difficult to say anything concrete about the anticipated effects of these measures.

Evaluation of need for imposing domestic/regional tax measures

The most likely insufficient and unsure BEPS measures, and the seriousness of today's situation for the Nordic media industry, implies **a need for the Nordic Governments to conduct an assessment of the competitive situation between Nordic media and global players with regard to taxation of digital advertising revenues. In particular, our analysis indicates that it should be considered whether there is a need for imposing domestic measures in order to ensure competition on more equal terms between the global and the Nordic media players.**

The situation for the Nordic media industry is severe. In large advertising markets like the US and UK, Facebook and Google dominate the digital advertising market. According to a report from OC&C Strategy Consultants, Google and Facebook will take

[4] http://www.oecdilibrary.org/docserver/download/2315281e.pdf?expires=1493230696&id=id&accname=guest&checksum=8E7A22AABBB994EEB4E92787101119E0 p 138

more than 70 pct. spent on digital advertising in 2020. Their share of the US digital advertising market is already at greater level. In the Swedish report Medieekonomi 2016 it is explicitly stated that the daily newspapers is the part of the media industry which has been hit the hardest by the new competitive situation in the media industry. [5]We note that several countries outside the Nordics are already imposing additional domestic measures in order to ensure that global players pay local taxes in countries where significant economic activity takes place.

UK[6] and Australia[7] have for instance imposed a ”diverted profits tax”, which is intended to tax profits diverted untaxed or low taxed from the markets where it was earned. The aim is to encourage businesses to restructure relevant arrangements such that profits are not diverted untaxed or low taxed from the market state.

India[8] has imposed an equalization levy that implies that if an Indian company buys digital advertisement services from a global player, the Indian customer has to withhold and pay 6 pct. of the payment to Indian tax authorities.

There are signs that indicate that such local measures have an effect on how the global players choose to structure their business. An example of this is the announcement made by Facebook in March 2016 that it would change its policy so that revenues generated from its largest advertisers displaying content on Facebook will be routed through the UK rather than Ireland. The change is expected to generate higher taxable profits in UK and forms part of the US company’s plan to mitigate criticism of tax avoidance.While Facebook will still not record all of its UK ad revenue in the UK, the latest move will ensure that more tax will be paid. This announcement was made only months after the UK diverted profits tax was introduced. [9]

According to news articles, Facebook has also made similar changes in Australia, which implies that they have started booking Australian advertising revenues in Australia. [10]

Snapchat has also announced that it will pay taxes in the countries where they sell digital advertising services. [11]

In section 2.3 we have projected that the total digital advertising revenues for the Nordics will amount to € 5 227 millions in 2021 based on the assumption that the total advertising market is stable in all Nordic countries and that 60 pct. of the total market represents digital advertising revenues. The trend is that the global players part of this revenues increases every year. Due to the huge numbers, an increased taxation revenues would have an effect on the Nordic countries tax revenues.

[5] http://www.radioochtv.se/sv/nyhetsrum/pressmeddelanden/2016/det-finns-fortfarande-manga-lonsamma-medieforetag-i-sverige-/
[6] http://www.pwc.com/jg/en/media-article/the-uks-new-diverted-profits-tax-article.html
[7] http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2016/Diverted-profits-tax
[8] http://economictimes.indiatimes.com/news/economy/policy/apple-netflix-microsoft-amazon-and-ibm-may-have-to-play-google-tax-in-india/articleshow/56027728.cms
[9] http://www.independent.ie/business/technology/facebook-to-stop-routing-big-uk-sales-through-ireland-pay-more-tax-in-britain-34511096.html
[10] http://macaudailytimes.com.mo/australia-facebook-google-paying-local-tax.html
[11] http://www.dn.no/etterBors/2017/03/19/2037/Reklame/lover-a-betale-snap-skatt

1.

Introduction

1.1 Background, purpose and scope of the report

We have been engaged by Mediebedriftenes Landsforening and its Nordic sister organizations: "Danske Medier" in Denmark, " Finnmedia" in Finland, and "TU – Medier " in Sweden to prepare a report on potential competitive differences between the Nordic media businesses and global players competitors on digital advertising services due to the current tax and VAT environment.

The report is limited to taxation of digital advertising revenue, as defined in item 1.2 below.

For this purpose the report describes the current tax situation in each Nordic country for digital advertising revenues from Nordic customers, for the Nordic media players and the global players, respectively. Based on the OECD's BEPS reports, we have also commented on the taxation of the global players digital advertising revenue outside of the Nordic countries. Based on these descriptions we have compared the taxation and highlighted potential differences in taxation between global players and Nordic media players.

The potential challenges arising due to differences in taxation of digital advertising revenue earned by global players and Nordic media players will be similar to tax challenges raised by the digital economy in general and by the substantial increase in integration of national economies and markets recent years. These challenges have put a strain on the international tax rules, which were designed more than a century ago, and have been subject to massive assessments in recent years. Measures to mitigate such tax challenges have been presented internationally by the OECD through the BEPS reports[12], regionally by the EU through for instance the Anti-Tax-Avoidance Package and locally in some countries through diverted profits tax, equalization levies etc.

The report will describe some of the measures presented through the above mentioned work, which we deem could be most relevant to mitigate the potential challenges arising due to differences in taxation of digital advertising revenue. This to give the reader an overview of potential tools to assist in restoring a more levelled taxation.

1.2 Online/Digital advertising revenues

The scope of this report is the tax and VAT environment with regard to "online/digital advertising revenues". The report will apply the same definition of digital advertising as in the OECD's final report on Action 1 Addressing the Tax Challenges of the Digital Economy:

Digital advertising uses the Internet as a medium to target and deliver marketing messages to customers and offers a number of advantages over traditional advertising. For example the industry has developed sophisticated methods for segmenting consumers in order to allow more precise targeting of ads and more precise measurements of return on investments.

Digital advertising takes a number of forms, the most prominent of which are display ads (banners), in which an advertiser pays to display ads linked to particular content or user behaviour, and search engine ads, in which an advertiser pays to appear among Internet search results.

Digital advertising involves a number of players, including web publishers, who agree to integrate advertisements into their online content in exchange for compensation, advertisers, who produce advertisements to be displayed in the web publisher's content and advertising intermediaries, who connect web publishers with advertisers seeking to reach an online audience.

In advertising-based business models, publishers of content are frequently willing to offer free or subsidised access to content and services to consumers in order to ensure a large enough audience to attract advertisers. [13]

The report will mainly focus on the news media industry and less on the part of the media industry which comprises TV broadcasting and streaming services.

[12] http://www.oecd.org/ctp/beps/
[13] OECD BEPS Action 1 – item 4.2.4

1.3 Limitations of scope

1.3.1 State Aid

State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. A company which receives government support, gains an advantage over its competitors. Therefore, the EU treaty generally prohibits State aid unless it is justified by reasons of general economic development.

Due to the subsidies granted to the press from the Nordic governments and the acceptance from the EU to such subsidies, state aid should be a familiar subject for the media industry. Even if issues related to state aid are not part of the scope of this report, we find it suitable to mention that issues related to potential state aid due to tax benefits granted multinationals have been an area of focus internationally the last years.

Since the European Commission in the beginning of 2014 announced a new focus on aggressive tax planning, tax avoidance and tax evasion by multinational companies we have seen the European Commission open State aid investigations into specific tax rulings and tax regimes.

We are however, not aware of any State Aid investigations being raised against any of the global players earning digital advertising revenues in the Nordic Market.

1.3.2 Grants

All the four Nordic countries have, in different ways, significant media subsidies and grants in order to promote innovation and the opportunities for diversity within the media industry. The purpose is to contribute towards multifaceted news distribution and the creation of public opinion and the widespread distribution of media throughout the counties.

In the report "Det norske mediemangfoldet"[14] it was for instance suggested different grants to the media industry in order to stimulate continued diversity in the media industry[15]. Grants are however not part of the measures discussed in this report.

1.3.3 Taxes covered by scope

We have in the report focused on corporate income tax, VAT and withholding tax. Other direct and indirect taxes, such as social security contributions, employment taxes, real estate taxes, environmental taxes, stamp duties etc. are not covered by this report.

[14] NOU 2017:7
[15] https://www.regjeringen.no/contentassets/1e0e03eacdad4c2f865b3bc208e6c006/no/pdfs/nou201720170007000dddpdfs.pdf

2.

Development in digital technology and its impact on the economy

2.1 The development in digital technology and its impact on the economy in general

The digital economy is the result of a transformative process brought by information and communication technology (ICT), which has made technologies cheaper, more powerful, and widely standardized, improving business processes and bolstering innovation across all sectors of the economy. [16] Personal computing devices like smart phones and tablets are now available to "everyone" at a low cost. Internet is accessible from almost everywhere.

The digital economy and its new business models present some key features which are potentially relevant from a tax perspective. These features include mobility, reliance on data, network effects, the spread of multisided business models, a tendency toward monopoly or oligopoly and volatility. The types of business models include several varieties of e-commerce, app stores, online advertising, cloud computing, participative networked platforms, high speed trading, and online payment services. The digital economy has also accelerated and changed the spread of global value chains in which global players integrate their worldwide operations.[17]

The development of the digital technology has contributed to lowered costs, expanded market reach and development of new activities and products. The technologies have also changed the ways in which such products and services are produced and delivered, as well as the business models.

Online retailers initially adapted the business model of brick-and mortar stores by selling traditional physical goods (for example, books) digitally. The logistics sector has been transformed by the ability to track vehicles and cargo across continents, and financial services providers has increasingly enabled customers to manage their finances, conduct transactions and access new products on line. The digital development has enhanced the ability to remotely monitor production processes and to control and use robots. In the education sector, universities, tutoring services and other education service providers are able to provide courses remotely, which enables them to tap into global demand. In the healthcare sector, the digital economy is enabling remote diagnosis and the use of health records to enhance system efficiencies and patient experience. [18]

Companies may now, due to the digitalization of the economy, easily provide their services globally with no or little physical presence in the market countries.

Business activities that traditionally have been considered as preparatory and auxiliary, are now in many cases core business activities, for example a local warehouse of a global digital sales company.

[16] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493204369&id=id&accname=guest&checksum=1C5CEB627EDDDD5A55F7B4452D7D1832p. 11
[17] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493204369&id=id&accname=guest&checksum=1C5CEB627EDDDD5A55F7B4452D7D1832 p. 11
[18] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493204369&id=id&accname=guest&checksum=1C5CEB627EDDDD5A55F7B4452D7D1832 p 142

2.2 The development in digital technology and its impact on the media business in particular

The digitalization of the economy effects all industries, including the media industry. The digital development has opened up for new possibilities when it comes to production and distribution of content and has at the same time made it possible for large (new) multinational groups to enter the market.

From production, distribution and consumption of physical copies of newspapers, magazines etc., an increasing part of media content is now produced, distributed and consumed digitally. A consequence of this digitalization is that advertising revenues has declined for print media and shifted to other digital marketing channels. The development has also opened up for global players, which not themselves produces news contents, but who benefit from news produced by the Nordic media industry. These global players compete with the local Nordic media businesses with regard to digital advertising revenues. More and more journalistic content is published on digital platforms operated by global tech players, as opposed to media businesses. In a report by the Tow Center for Digital Journalism at Columbia Journalism School, it is stated that the competition among platforms to release products for publishers is helping newsrooms reach larger audiences than ever before. It is however, difficult to assess whether the media businesses' return on such investment is adequate. In Norway for instance, we note that media businesses has left Facebook's solution "Instant Articles". [19]The loss of branding, the lack of audience data, and the migration of advertising revenue remain key concerns for publishers. Further the report states that if the speed of convergence continues, more news organizations are likely to cease publishing–distributing, hosting, and monetizing–as a core activity. According to the report, the structure and the economics of social platforms incentivize the spread of low-quality content over high-quality material. Journalism with high civic value –journalism that investigates power, or reaches underserved and local communities–is discriminated against by a system that favors scale and shareability.[20]

Social media and search engines have compared to traditional media gained a greater share of the total advertising spend. The market research company eMarketers predicts that Google and Facebook will have a market share of 46.4 pct. of the global digital advertising spend in 2017. The Chinese tech companies Alibaba, Baidu and Tencent are also experiencing great growth in advertising revenue as the digital consume increase in China as well.

2.3 Overview of the Nordic media industry

The Nordic media industry plays an important role in society for both economic, social and cultural reasons. Economically the media industry contributes to the wider Nordic economy in several areas. The tax paid in the different countries is a direct effect to the economy. The industry has also significant expenditures to supplier and employees in the Nordics. The sector also plays a key role in informing the public about issues of interest as well as holding governments, businesses and other powerful interests accountable through investigation journalism and content creation.

As an industry, the digital shift in business models has generated challenges and opportunities for the main players in the Nordics.

[19] http://journalisten.no/2017/04/facebook-instant-articles-er-gatt-fra-must-have-til-nice-too-have
[20] http://towcenter.org/research/the-platform-press-how-silicon-valley-reengineered-journalism/

The current advertising market in the Nordics

The development in Denmark, Finland, Norway and Sweden follows a similar pattern as described above.

In Denmark, internet advertising's share of the total advertising revenue was 50 pct. in 2016 according to Dansk Reklameforbrugsundersøkelse. In 2008, internet advertising had a market share of 21 pct. This illustrates the rapid shift in the market. Total advertising revenues were estimated to DKK 13.383 billions in 2016, up 1.6 pct. from 2015. Internet advertising experienced a growth of 9.4 pct. in the same period.

In Sweden, the total advertising spend for 2016 was estimated to SEK 34.9 billons according to Institutet för Reklam och Mediestatistik (IRM). Digital advertising's share of the revenue was SEK 15.7 billions, up 21pct. from 2015. According to the same report, this is the greatest annual growth registered for internet advertising. The advertising revenue for newspapers experienced a reduction of 10 pct. from 2015 to 2016, and from 2011 to 2016 the total revenue reduction has been more than 40 pct. Both the Nordic media industry and global players have market shares. IRM estimates that ads were bought for 1.4 billion SEK in social networks in 2016, up from 900 million SEK in 2015. It is further estimated that investments in search ads in 2016 amounts to 6 billion SEK (up from 5 billion SEK in 2015).

The Norwegian advertising market follows similar patterns. Of a total advertising market of NOK 19.2 billions in 2016, digital advertising's market share was 41 pct. according to IRM. This is a market share that has increased from 26 pct. in 2012. According to the Norwegian Media Diversity Report it is likely

that Google and Facebook yearly sells digital advertising towards the Norwegian media consumer for more than four billion Norwegian kroner. [21]

According to IAB Finland the Finnish media market experience similar changes, but print media is still in 2016 the dominant advertising channel. In 2016 internet advertising had a market share of the advertising market of 28 pct., and experienced an annual growth of 13 pct. from 2015.

The table below summarizes the advertising market in the Nordics.

	Total advertising market (2016) revenues	Total market in € (millions)*	Internet advertisings share of the market	Source
Denmark	13,4 (mrd DKK)	1 798	50 pct	Dansk Reklameforbrugsundersøkelse 2016 * Average 2016 currency Danmarks Nationalbank
Sweden	34,9 (mrd SEK)	3 681	45 pct	IRM * Average 2016 currency Sveriges Riksbank
Norway	19,2 (mrd NOK)	2 065	41 pct	IRM * Average 2016 currency Norges Bank
Finland	1 168 (million €)	1 168	28 pct	IAB Finland

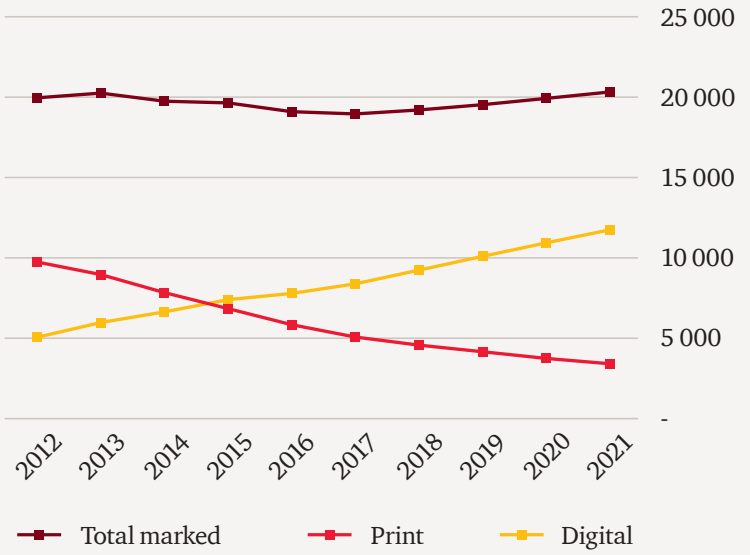
[21] https://www.regjeringen.no/contentassets/1e0e03eacdad4c2f865b3bc208e6c006/no/pdfs/nou201720170007000dddpdfs.pdf p. 74

2.3.1 Outlook for the Nordic advertising market

The media outlook for the Nordics going forward with the structural change from print to digital is expected to continue in line with recent development. Increased growth in internet advertising with mobile and search accelerating the development is the expected outlook. IRM predicts that the digital share of the advertising market in Norway in 2021 will be 58 pct., with the implication that the digital advertising revenues are almost 3,5 times larger than print advertising. Based on the historic development in the Nordics and the similarities in the market these are expectations that are aligned with general outlook for the Nordic advertising market.

Based on this expected development the future implications for the industry are relevant.

Norwegian advertising market
(in NOK millions)



2.3.2 Implications of expected outlook for the media industry

The most dominant media companies in the Nordics are few companies that operate somewhat across borders both in the Nordics, but also at a global level. Bonnier is the largest media company in Sweden with revenues of SEK 27 billions in 2015. The total advertising market in the Nordics is expected to be relative stable, therefore the importance of gaining market shares from the growth in digital advertising is crucial for the traditional media industry. The actual development indicates that Bonnier, Schibsted and other Nordic companies are not able to hold their market share of the total advertising market as other global players gain a greater share of the digital growth and are preferred in greater extent as an advertising channel.

This is not only a Nordic phenomenon, but a change most local media industries have experienced internationally.

In large advertising markets like the US and UK, Facebook and Google are expected to dominate the digital advertising market going forward. According to a report from OC&C Strategy Consultants, Google and Facebook will take more than 70 pct. spent of digital advertising in the UK in 2020. Their share of the US digital advertising market is already at 60 pct.

The market shares of these global players in the Nordics are not possible to quantify precisely as companies like Google and Facebook do not report revenues at a country by country level. It is however likely that companies with an attractive set up for digital advertising in general, and mobile advertising especially, will increase their market positions.

Based on the outlook presented above we have projected the total digital advertising revenues in the Nordics in 2021 based on the assumptions that the total advertising market is stable in all countries and that 60pct. of the total market represents digital advertising revenues. With this simplified analysis the total digital advertising revenues for the Nordics will amount to € 5 227 millions in 2021. Estimating the profit margin is based on judgement as traditional media companies in the Nordics have reported profit margins around 10 pct. whereas the digital segments such as among other Schibsted's Finn has reported margins between 40 and 50 pct. yearly. The trend is that the global player's part of the digital advertising revenues increases every year. Due to the huge numbers, an increased taxation of the global player's part of this revenues would have an effect on the Nordic countries tax revenues. The table below shows a conservative estimate of potential tax revenue.

	Total advertising market revenues in 2016 (€ millions)*	Digital advertisings share of the market 2016	Revenues based on a 60 pct digital advertising share in 2021*	Tax of 22 pct based on a 20 pct profit margin (€ millions)**
Denmark	1 798	50 pct	1 079	47
Sweden	3 681	45 pct	2 209	97
Norway	2 065	41 pct	1 239	55
Finland	1 168	28 pct	701	31

3.

Current tax challenges in the digital economy

3.1 Introduction

In this chapter we on a general basis address the direct and indirect taxation of a Nordic media players' and a global players' digital advertising revenue from Nordic customers in order to identify potential differences in the taxation. We do not have concrete nor detailed information about the different players business or structures to do a concrete assessment. Therefore, our assessment is based on certain assumptions appearing below.

3.2 Description of the current corporate tax and VAT environment – Nordic media players

3.2.1 Taxes on income vs consumption – corporate income tax vs VAT

Most countries imposes taxes on both income and consumption and so do the Nordics. While income taxes are levied on net income (i.e. from labour, business activity and capital) over an annual tax period, consumption taxes operate as a levy on expenditure relating to the consumption of goods and services, imposed at the time of the transaction.

3.2.2 Corporate income tax

Nordic media players, tax resident in Norway, Finland and Sweden are, as a starting point, subject to corporate income tax on its worldwide income, in its respective Nordic state of tax residency.

The respective corporate income tax rate is 20 pct. in Finland, 24 pct. in Norway (expected to be reduced to 23 pct. from 1.1.2018) and 22 pct. in Sweden and Denmark.

Thus, a Nordic media player, tax resident in Finland, Norway or Sweden, will as a staring point be liable to corporate income tax of 20 pct., 24 pct., or 22 pct. respectively, on its **digital advertising revenue, irrespective of whether the digital advertising contracts are entered into locally** or abroad and irrespective of whether the advertising revenues are derived from sale to local or foreign customers. As corporate income tax is a tax on net income, it is only the net digital revenue that will be taxed in the Nordics. Therefore, arm's length consideration for functions risks and assets possessed by Non Nordic group companies contribution to the digital advertising revenue, will reduce the Nordic tax basis and thus, Nordic taxation. If the effective taxation of the arm's length consideration is lower in the state where the providing company is taxable, this will reduce the effective taxation of the digital advertising revenue. As we have not done any concrete assessment of concrete structures, we are not able to quantify the effect of this.

In case local taxable presence is created for the Nordic media player outside its country of tax residency, a situation of double taxation could arise. If so, the local country of tax residency, i.e. one of the Nordic countries, is obliged – on certain conditions and within certain limits – to allow the Nordic media player to reduce its local tax payable, with the tax paid in the state were taxable presence were created. As the digital advertising revenue would still be taxable in the Nordic state of tax residency, this will not reduce the effective taxation.

A Danish tax resident company is not taxed on its worldwide income, only its Danish income. Therefore, if the Danish tax resident derives digital advertising revenues from a permanent establishment outside of Denmark, such income is excluded from taxable income in Denmark. In case of a permanent establishment being created in a country with a corporate tax rate below the Danish, the effect could be reduced effective taxation of part of the digital advertising revenue. As we have not done any concrete assessment of concrete structures, we are not able to quantify the effect of this.

To sum up Nordic media players net digital advertising revenue from Nordic customers will generally be subject to Nordic taxation at a rate between 20-24 pct.

3.2.3 VAT

Local supply of digital advertising is subject to VAT at the standard VAT rate in all the Nordic countries irrespective of status of customer. The standard VAT rate is 25 pct. in Norway, Sweden and Denmark and 24 pct. in Finland.

3.3 Description of the current tax and VAT environment – Global players

3.3.1 Corporate income tax – Introduction

Companies being tax resident in states outside of the Nordic region will as a starting point not be subject to corporate income tax in the Nordic countries. Instead, their digital advertising revenue will be taxable in the global player's state of tax residency, even if being earned from Nordic customers, on advertising towards the Nordic market and based on Nordic infrastructure.

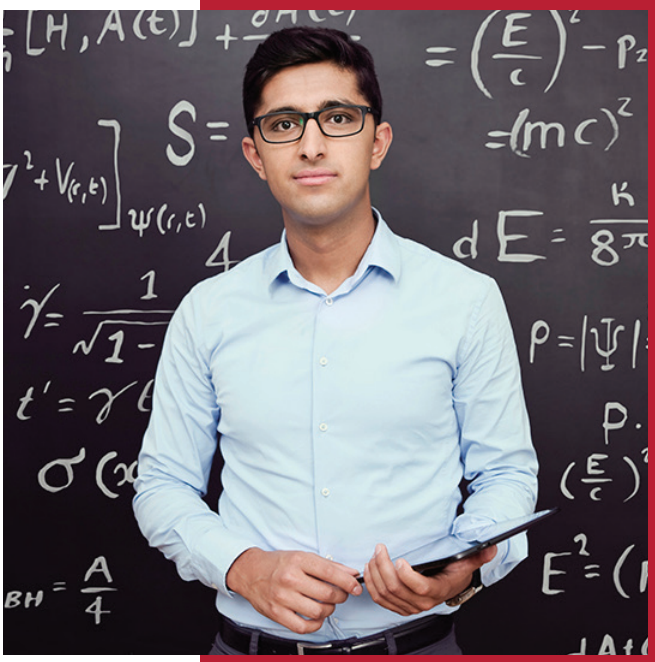
Thus, the determination of where a company is tax resident becomes important. Normally, this is not difficult to determine, as a company's tax residency normally will be in the country where the company is established, registered and/or are also being managed - which normally is the same place. In some cases this could however be more complex and could result in both double residency and non-residency again resulting in double or non-taxation of profit.

An exemption applies if a global player advertising revenue is considered attributable to a permanent establishment ("PE") in the relevant Nordic state, cf. "MTC" Article 7, cf. Article 5. Income will be considered attributed to a PE if sufficient connection to the assets, functions and risk assumed by the PE. In such case digital advertising revenues derived by global players from Nordic customers will be taxable in the respective Nordic region based on the respective corporate income tax rate.

Whether the above implies a difference in effective taxation on digital advertising revenue from Nordic customers earned by local Nordic media players and global players will in practise depend on whether the global player has a taxable presence in a Nordic country either

1. **through a PE in case a double tax treaty exist or**
2. **based on domestic rules in case a double tax treaty does not exist or**
3. **if no taxable presence exist whether the global player is subject to similar taxation in its country of residency / elsewhere.**

Item 1 is discussed in section 3.3.2 below, item 2 in section 3.3.3 below and item 3 in section 3.3.5 below.



3.3.2 Corporate income tax – in case a tax treaty exists

Local taxation in case a tax treaty exist requires both that there are internal basis for taxation and that the tax treaty does not deny such taxation. As the tax treaty normally requires more extensive physical presence than the local rules, we will in this item, focus on the tax treaty only.

In tax treaties that are based on the MTC, the term "permanent establishment" is defined as "a fixed place of business through which the business of an enterprise is wholly or partly carried on."

This implies that the global player must conduct core business activities through a physical place of business in the Nordic region.

The scope of the term "place of business" is wide. It normally will encompass all premises, facilities and installations used for business purposes, including data equipment like for instance a server.[22] In order to be "fixed", the place of business has to be located at a distinct place with a certain degree of permanence (normally approximately 6 months).[22]

If for instance the global player owns or rents an office space in one of the Nordic countries, and uses the office for selling advertising services over a period of 6 months a PE would be deemed to exist.

However, the place of business must be used to carry out core business activities. If the global player only carries out activities that are considered as preparatory or auxiliary to the company's core business, the connection to the source state is considered too weak to create a PE. If the global player only carries out marketing activities in the Nordic region, and the actual sales are made from outside of the Nordic region, for instance through a website operated on a server located outside of the Nordic region, such activities will be viewed as supporting activities as opposed to core business, and will thus not create a PE.

In addition, there are certain types of activities that are explicitly exempt and which per definition do not create a permanent establishment. [23]For instance, the global player may maintain an office for the collection of information, or maintain a warehouse for the purpose of storage and delivery of goods in the Nordic region without creating a PE. Even though such activities may imply a considerable physical presence in forms of office space and personnel, a PE will not be established through the activities mentioned in the MTC Article 5 (4).

The activities mentioned in the specific exemption rules has traditionally been viewed as preparatory/auxiliary activities as opposed to activities vital for the core business. The specific exemptions were designed to prevent a company from being taxed in a source country if its activities in the source country was of a preparatory/auxiliary character. [24]

A PE may also be deemed to exist even without such fixed place of business as described above, through the presence of personnel (dependent agent-PE). [25] If e.g. the global player has a local representative in the Nordic region which habitually exercises an authority to conclude contracts in the name of the global player regarding sales of advertising services to Nordic customers, the global player could be deemed to have a PE through the activities of the representative. This is provided that the representative is considered a dependent agent (legally and economically), and not an agent of an independent status like a broker, general commission agent or similar. If the agent is subject to instruction and control by the principal, and the agent represents a low number of principals, this could indicate that the agent is a dependent agent. [26]

In Denmark, it was recently established that even situations where multinational corporations like Apple and Facebook place servers for the storage of their data centres on Danish territory, these servers will not result in a permanent establishment, provided that certain conditions are met, cf. SKM2016.188.SR[27].

3.3.3 Corporate income tax – if no applicable tax treaty exists

If there is no applicable tax treaty, then the question of tax liabilities will depend on the domestic taxation rules in the respective Nordic countries.

In Norway, a global player's profits derived from sale of digital advertising services will be taxable in Norway if the global player is considered to conduct or manage such advertising business from Norway.[28] Even if the threshold under the domestic rule is considered lower than the PE-threshold in the double tax treaties, typical structures of selling digital advertising will normally not be caught under the rules. This is due to the fact that such business will normally not be managed from Norway, and due to lack of physical presence, ref. discussion above.

The same principles apply in Denmark; cf. the Danish Corporate Tax Act, Section 2(1)(a) and Finland, cf. Finnish Income Tax Act Section 10.

The Swedish PE-regulation/definition is based on Article 5 in the OECD MTC. Hence the Swedish Tax Authority tends to use the comments to Article 5 in the OECD MTC to interpret the domestic legislation.

[22] OECD Commentaries on Article 5 – paragraph 6
[23] The socalled "negative list" included in the MTC Article 5 (4).
[24] OECD Commentary on Article 5 – paragraph 21 et seq.
[25] MTC Article 5 (5).
[26] OECD Commentaries to the MTC Article 5 – paragraph 38 et seq
[27] http://www.skat.dk/SKAT.aspx?oId=2228690
[28] Norwegian Tax Act Section 2-3 (1) b

3.3.4 VAT

In case of cross border B2B supplies of digital advertising services, the customer will as a main rule be responsible for calculating and reporting VAT reverse charge. VAT calculated reverse charge will be deductible for the customer suppose the customer conducts VAT liable business activities. Alternatively, the supplier will be required to register for VAT and apply local VAT on the services supplied.

If digital advertisement is supplied B2C, the VAT reporting obligation and VAT treatment will as a main rule be the same, irrespective of whether the supplier is a Nordic media player or Global player. The supplier will in both scenarios normally be obliged to apply and report local VAT on the supply.

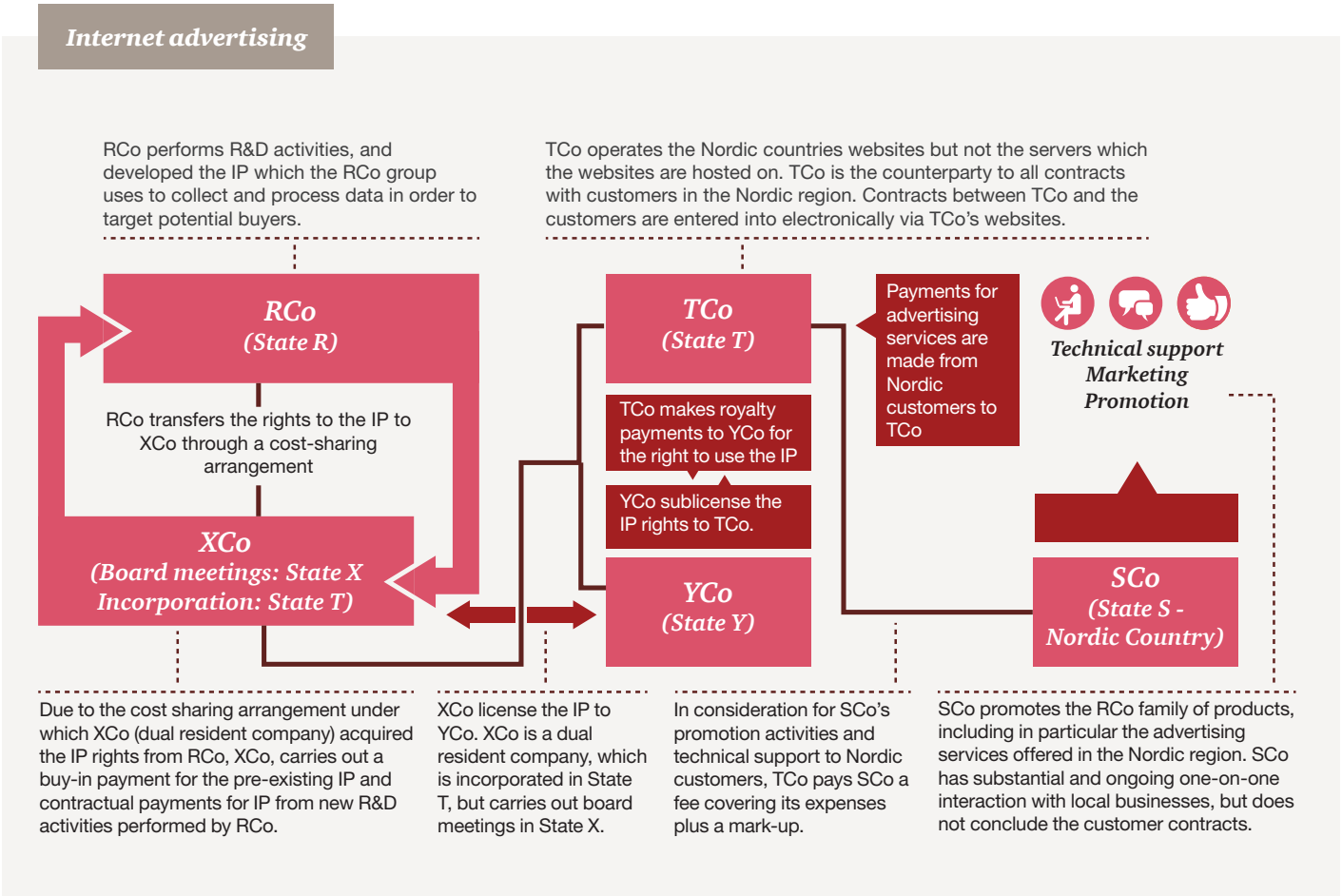
3.3.5 Taxation of global players digital advertising revenues outside the Nordic countries

As mentioned in item 3.3.1 the taxation of the global players' and the Nordic players' digital advertising revenue from Nordic customers can be levelled, even if the global players are not subject to local Nordic taxation, if the global players are subject to similar taxation in its country of residency / elsewhere.

As there is not one way a global player can choose to organise its business we have based the description of the global player's effective taxation on its digital advertising revenue on an example included in the OECD final report on Action 1 Addressing the tax challenges in the digital economy (BEPS project).

According to the OECD report, this example is simplified and is based on what a number of tax administrations have observed. It is intended to provide an illustration on ways in which the implementation of business models through legal and tax structures may place pressure on the existing international tax framework.

The example illustrates a typical business structure within internet advertising, and the tax issues related to such structures. In the figure below, we have included the whole structure from top parent to local subsidiaries in the market region (State S, which for our purpose will be a Nordic state) and highlighted the main activities and tax issues/effects in each country. A full description of relevant facts/circumstances and tax consequences in all mentioned states is included in an attachment to this report, see Attachment A.



High level description of relevant facts and circumstances with focus on activities in the Nordic region

The RCo Group provides a number of Internet services (e.g. search engines) to customers worldwide. Many of these online services are offered free of charge to consumers, whose use of the online services provides the RCo Group with a substantial amount of data, including location-based data, data based on online behaviour, and data based on personal information provided by users. Over the course of many years of data collection, refinement, processing, and analysis, the RCo Group has developed a sophisticated algorithm that targets advertisements to those users who are most likely to be interested in the products advertised. RCo Group derives substantially all of its revenues from the sale of advertising through its online platform, for a fee that is generally based on the number of users who click on each advertisement. RCo is the top parent and is the company that performs R&D activities and which developed the IP used to collect and process data. The rights to exploit the IP in the Nordic region are owned by XCo, a dual resident company. XCo acquired the IP under a cost-sharing arrangement. XCo licenses all of the IP rights to YCo, a company resident in State Y. YCo then sublicenses the IP rights to TCo.

TCo, a company tax resident in State T, operates the websites offering free online services to consumers in the Nordic region, and serves as the legal counterparty for all sales of advertising in the Nordic region. Advertisement services contracts between TCo and customers in the Nordic region can be concluded electronically through TCo's websites.

The servers that host these websites may be placed throughout the region and/ or located in State R and operated by RCo.

To promote the purchase of such advertising services by businesses active in the Nordic region, TCo has local affiliates, such as SCo, a company resident in State S (one of the Nordic countries), whose purpose is to promote the RCo family of products, including in particular the advertising services offered in the region. Local staff members have substantial and ongoing one-on-one interaction with local businesses, particularly the largest customers in the local market, many of which end up purchasing advertising. In consideration for its promotion activities and technical support, TCo pays SCo a fee covering its expenses plus a mark-up. In general, customers supported by local affiliates such as SCo have no interaction with TCo staff.

Direct tax consequences in State S

SCo is allocated minimal taxable income, based on the position that SCo's functions are limited to those of a service provider.

All revenues from sales of advertising in State S, including advertising purchased by State S' residents and other regional customers, are treated as the revenues of TCo.

TCo does not carry out activities in State S that exceeds the PE-threshold.

The development within digital technology made it possible for TCo to carry out its business with little or no need for establishing a physical presence as a base for conducting business activities. TCo does not have any physical presence in State S. As earlier mentioned, a PE requires some sort of physical presence, either through a physical place of business or personnel (dependent agent). TCo operates the websites offering free online services to consumers in State S. Advertisement services contracts with TCo is concluded electronically through these websites. Thus, the core business activities of TCo is conducted via local websites. A local website consists of software and is not tangible property. According to the OECD Commentaries to the OECD Model Tax Convention, a website will thus not create a PE (a website cannot constitute a place of business). [29]The conclusion will most likely be the same if TCo operates an application for personal computing devices because an application is also software and not tangible property.

The websites are however hosted on servers, which are tangible property. According to the OECD Commentaries to the OECD Model Tax Convention, a server may thus in principle constitute a place of business and may create a PE for the company that operates the servers, if the other PE-conditions are fulfilled. [30]

In order for the server to create a PE, the functions carried out through the server must be core business functions as opposed to preparatory/auxiliary functions.

The function of the servers in this example is to host websites where the advertisement services contracts are concluded. This must be considered as part of core business functions and the server can thus create a PE if the other PE-conditions are fulfilled.

The servers that host these websites will however typically be placed throughout State S and/or located in State R and operated by RCo. In order for the server to create a PE in State S, the server

[29] OECD Commentaries to the MTC Article 5 - paragraph 42.2 et seq.
[30] OECD Commentaries to the MTC Article 5 – paragraph 42 et seq.

must meet the requirement of being "fixed", i.e. the server will need to be located at a certain place for a sufficient period of time. If the server is located in State R, then the server will not create a PE in the Nordic region.

If the servers are placed throughout State S, this will challenge the "fixed" requirement. If one server is located in the south of the country and the other server located in the north, it would be necessary to conduct two separate PE assessment, one for each location. If the servers are being moved, they will not meet the "fixed" requirement unless the area within which they are moved is considered to constitute a coherent whole commercially and geographically with respect to the business. By placing (and moving) the servers throughout the region, TCo will most likely be able to avoid the fulfilment of the "fixed" requirement and thus PE status.

The term "fixed" implies both requirements with regard to time/permanency and place (geographical and commercial coherence).[31] If the actual server is moved around or if the website switches with regard to which server it is hosted on, it will become difficult to conclude that the server is a "fixed" place of business for TCo in the relevant Nordic country.

Further, in order for the servers to be considered as a PE, TCo must be considered to have the servers at its disposal. It is not necessary for TCo to own the servers, however TCo must have some kind of disposal right over the servers. If the servers are not operated by TCo, the servers will as the main rule not create a PE for TCo. The reason is that TCo will normally not have the servers at its disposal if for instance the servers are operated by an internet service provider or other third party. [32]

Thus, TCo does not have a fixed place of business in State S. The next questions is thus whether SCo's activities could cause SCo to be deemed as a dependent agent of TCo and thus create a PE.

SCo's staff conducts marketing and support activities on behalf of TCo. They have substantial and ongoing one-on-one interaction with local businesses, many of which end up purchasing advertising.

The lack of authority for SCo staff to legally conclude contracts, and the use of standardised contracts and online contract acceptance by TCo, will however result in SCo not being considered as an dependent agent for TCo. Thus, TCo will not create a PE in State S through the activities of SCo. [33]

As a result, State S does not tax the profits that TCo derives from the sale of advertising services in State S.

Direct tax consequences in State T

State T imposes corporate tax on the profits earned by TCo from its various activities in the T/S region. TCo's income, however, is almost entirely offset by the royalty the company pays to YCo (another group company) for its sublicense of the technology used by TCo to provide Internet services.

The royalty payment is not subject to withholding tax under the relevant double tax treaty. This way, most of the profits derived by TCo may be streamed upwards in the group structure.

Maximizing deductible payments, for instance royalty payments, from/to group entities is a common strategy used for minimizing taxable income for group entities based in high tax jurisdictions. The local company may thus derive massive income from sale of internet advertising services, but because the company pays large amounts of royalty payments to other group companies for their sublicense to use intangibles (for instance an algorithm), the profit left to taxation is small.

[31] OOECD Commentaries to the MTC Article 5 – paragraph 5.1 et seq.
[32] OECD Commentaries to the MTC Article 5 – paragraph 42 et seq.
[33] OECD MTC article 5 (5)

High level description of the direct tax consequences in State Y, X and R

State Y imposes corporate income tax on the profits of YCo, but those profits are limited to a small spread between the royalties received by YCo and the royalties paid by YCo to XCo.

State X does not impose a corporate income tax.

State R, where the top parent, RCo, is located, imposes corporate income tax on profits derived by RCo. The profits of RCo will typically be the buy-in payment received in consideration for the transfer of pre-existing technology (algorithm) to XCo and annual payments received under the cost sharing arrangement with XCo. The payments to RCo will typically be structured to be quite low/small. For instance, RCo may take the position that the value of the intagibles was very low, so that the actual amount of gain subject to tax in State R would be very small. RCo may also, depending on the domestic law, be entitled to R&D tax credits for a significant fraction of its expenditures, thereby further reducing its tax liabilities.

Further, the way the business is structured (use of transparent entities) will imply that State R's CFC rules will not be applicable to the royalty payments which XCo receives, and will only be taxable in State R when paid to RCo.

Thus, even if some of the companies in such structures could be tax resident in high tax countries, for instance the US, taxation of significant income streams are often first carried out when and if income is repatriated to such country. The global players will thus typically postpone repatriation of income, and will thus achieve a considerable deferred taxation which in turn will imply a reduction of the effective taxes.

The example illustrates that the global players could be able to structure their operations in a way that not only implies no or low taxation in the market country (Nordic region), but they are also able to achieve low taxation on a global/overall level.

3.4 Summary

3.4.1 Corporate income tax

The current tax legislation implies substantial differences between the Nordic players and the global players with regard to taxation of digital advertising revenues derived from Nordic customers.

The Nordic media players' net digital advertising revenues are as the main rule subject to corporate income tax in the range between 20 and 24 pct. On the other hand, the global players net digital advertising revenue are to a large extent, not subject to Nordic taxation. This as the global players often are able to avoid a taxable presence in the Nordic region, even though they might have physical presence in the region due to personnel involved in marketing and support activities. The same applies if the global player's activity are carried out through related companies which are liable to corporate income tax in the relevant country. In such cases the business is usually structured in a way that implies that taxable income for the local entity is kept at a minimal level in comparison to the total advertising revenues. The activities of the local entity will typically only generate a small service fee covering the entity's expenses plus a mark-up.

According to OECD, the global players often use legal business structures that imply that profits are shifted from where the profits are created (high tax countries) to group companies based in low tax jurisdictions in a way that ensures that the total tax burden of the group is low. Even if the some of the companies in such structures could be tax resident in high tax countries, for instance the US, taxation of significant income streams are often first carried out when and if income is repatriated to such country. The global players will thus typically postpone repatriation of income, and will thus achieve a considerable deferred taxation which in turn will imply a reduction of the effective taxes. Therefore, global players are generally not subject to similar corporate taxation, as the Nordic media players, elsewhere. It should in this regard also be noted that if such legislation implies export subsidies, this could be a challenge in relation to trade obligations. The World Trade Organization (WTO) for instance, prohibits most subsidies directly linked to the volume of exports.

This difference in taxation implies a competitive advantage in favor of the global players.

Nordic media businesses do not have the same possibilities as the large global players with regard to structuring their business in the same tax efficient way.

3.4.2 VAT

The current Nordic VAT regulations should ensure that Nordic media players and global players in effect are treated equally from a VAT perspective when supplying digital advertising to business customers.

4.

Initiatives to mitigate the challenges of the current tax environment

4.1 International - OECD – BEPS

4.1.1. Overview - BEPS Project

Political leaders, media outlets, and civil society around the world have expressed growing concern about tax planning by multinational enterprises (MNEs) that makes use of gaps in the interaction of different tax systems to artificially reduce taxable income or shift profits to low-tax jurisdictions in which little or no economic activity is performed.

In response to this concern, and at the request of the G20, OECD published an Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan, OECD, 2013) in July 2013. The 40 page Action Plan contained 15 separate action points or work streams. [34]

On 5 October 2015, the OECD presented its final package of measures for a comprehensive, coherent, and co-ordinated reform of the international tax rules targeting the possibilities to artificially reduce taxable income or shift profits to low-tax jurisdictions Action 1 of the BEPS Action Plan calls for work to address the tax challenges of the digital economy.[35]

4.1.2 Addressing the tax challenges of the digital economy

In BEPS Action 1 OECD concludes that it is impossible to ring-fence the digital economy from the rest of the economy, as it is increasingly becoming the economy itself. Therefore, OECD seeks to address the relevant BEPS issues in the digital economy by a combination of some of its other actions, namely mainly its actions on Permanent Establishment, Transfer Pricing and CFC (controlled foreign company).

4.1.3 Expanding countries' right to tax foreign companies' activity within its borders by widening the PE-definition

Currently certain common and legal tax avoidance strategies are used to circumvent the existing PE definition. [36]In order to prevent this, OECD has proposed four changes to the definition of "permanent establishment".

Firstly, the changes includes a **widening of the so-called dependent agent rule**. Today local sales force of a global player may play a key role in the process that leads up to the conclusion of contracts with customers without establishing a PE for the entity entering into the digital advertising services agreement, provided that the sales force does not formally conclude the contracts. With the new PE-definition it will no longer be necessary for the local sale force to enter into contracts on behalf of the global player in order to create a PE. If the local sales force of an online provider of advertising services habitually plays the principal role in the conclusion of contracts, and these contracts are routinely concluded without material modification by the global player, this activity will according to the OECD result in a PE for the global player.

Secondly, independent agents of the entity entering into the digital advertising services agreement will currently as the main rule not create a PE. This as they are considered to be carrying out their own activity and not the activity of the foreign company. The new rules will **tighten what is considered an independent agent**. Agents that spend 90 pct. or more of its time acting on behalf of one or several closely related companies, will be considered as a dependent agent and could thus create a PE.

Thirdly, the change will imply that certain activities currently expressly defined as not to creating a PE, i.e. certain **exempt activities, will be tightened**. Currently a PE can be avoided, even if companies carries out activities in the local market that are considered as core business activities. For instance collecting information will today not create a PE, even if this activity for certain global players in the digital services sector, must be considered core activity. The changed will ensure that activities only will be exempt if they are in fact preparatory/auxiliary seen in relation to the relevant company's business.

[34] http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/action-plan-on-base-erosion-and-profit-shifting_9789264202719-en#.WPNIpGmLSM8
[35] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1492339807&id=id&accname=guest&checksum=4953D29FDB4D07287C379C0847F7ADF8
[36] http://www.oecd-ilibrary.org/docserver/download/2315341e.pdf?expires=1492339995&id=id&accname=guest&checksum=F5F04A5213D6FE202F0D9171BCE49AF1

Fourthly, **a new anti-fragmentation rule** will be included to prevent companies from avoiding PE status by fragmenting a cohesive operating business into several small operations in order to argue that each part is merely engaged in preparatory or auxiliary activities that benefit from the exception rules.

According to the new anti-fragmentation rule, the exemption rules will not apply if the company or a closely related company already conducts activities through a PE in the relevant state. This applies irrespective of whether the activity is carried out at the same place or somewhere else in that state. The activity of the company or a closely related company in a state shall be considered as a whole in the assessment of whether the exemption rules applies or not, provided that the activities constitute complementary functions that are part of a cohesive business operation.

It is a common view that the recommended changes could have a levelling effect in cases where the global player has some sort of physical presence in the Nordic countries. In the structure described in item 3.3.5 above, these changes could for instance imply that the staff of SCo which have substantial and ongoing one-on-one interaction with local businesses, could create a taxable PE for TCo in the relevant Nordic country. However, even if SCo staff creates a PE for TCo on the basis of such activities, it is not certain that the PE would be attributed any more profits than the profits taxed in State S today, which is the fee SCo receives from TCo covering expenses plus a mark-up.

The question is however, to what degree the global players need a physical presence in the Nordic countries in order to derive advertising revenues from Nordic customers. Due to digital development, we assume that the global player can carry out core business activities related to the sale of advertising services via websites, smart phone applications and from servers located outside the Nordic region. Thus, in our view the global players will most likely still be able to legally avoid a taxable presence in the Nordic region.
As part of its Anti-Tax Avoidance Package, the EU Commission issued a recommendation which encourages member states to make use of OECD's new PE definition in order to address artificial avoidance of PE status.

4.1.4 Transfer pricing – clarifying arm's length remuneration for intangibles

Companies in the digital economy rely heavily on intangibles in creating value and producing income. A key feature of many BEPS structures adopted by participants in the digital economy involves the transfer of intangibles or rights in intangibles to companies with little or no economic activity in tax-advantaged locations. It is then argued that the legal ownership of the intangibles together with contractual allocations of risk, justify large allocations of income to these entities.

The BEPS work in the area of transfer pricing revised the guidance for intangibles to clarify that legal ownership alone does not necessarily generate a right to all (or indeed any) of the return that is generated by the exploitation of the intangible. Instead, the group companies performing the important functions, contributing important assets and controlling economically significant risks, as determined through the accurate delineation of the actual transaction, will be entitled to an appropriate return. Under this guidance, members of the multinational group are to be compensated based on the value they create through functions performed, assets used and risks assumed in the development, enhancement, maintenance, protection and exploitation of intangibles. Specific guidance shall also ensure that the analysis is not weakened by information asymmetries between the tax administration and the taxpayer in relation to hard-to-value intangibles, or by using special contractual relationships, such as a cost contribution arrangement.

A study paper addressing the tax challenges in the digital economy was prepared by Policy Department A at the request of the TAXE2 Committee in June 2016. The paper analyses direct and indirect tax challenges in the digital economy in light of the conclusions of the OECD's BEPS Project. In the study paper it is indicated that the OECD recommendations do not go far enough to address the challenges at hand. According to the study paper, an overall analysis on BEPS measures shows that some measures fail to address the core of the problem, and that the BEPS measures may have less than the desired outcomes at the end of the day, as it is believed that few businesses change their behaviour as a result of BEPS measures.[37] It is pointed out that this may stem from the OECD being a soft-law organisation and that its efforts to reach a consensus on the basis of minimum standards and multiple options.
It is too early to say anything concrete about the effects of new transfer pricing regulations. The shift from emphasizing legal ownership to increased focus on functions, assets and risk should imply that it will be more difficult to stream profits related to IP to parent companies located in low tax jurisdictions if the parent is an empty shell company which does not have substance.

[37] http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579002/IPOL_STU(2016)579002_EN.pdf p 76

4.1.5 Controlled foreign company (CFC) regulations

CFC taxation implies that the parent company is taxed directly on their allocable part of the profits from a subsidiary's (CFC's) income if the company is resident in a low-tax country, irrespective of whether income is distributed to the parent.

Although controlled foreign company (CFC) rules vary significantly from jurisdiction to jurisdiction, the OECD notes that income from digital goods and services provided remotely is frequently not subject to current taxation under CFC rules. Such income may be particularly mobile due to the importance of intangibles in the provision of such goods and services and the relatively few people required to carry out online sales activities. [38]

OECD recommend changes to the CFC rules with the purpose of a more effective designing of CFC rules.

According to OECD, the changes would subject income that is typically earned in the digital economy, to taxation in the jurisdiction of the ultimate parent company. For instance, countries could define CFC income to include types of revenue typically generated in digital economy transactions such as license fees and certain types of income from sales of digital goods and services. In the structure described in item 3.3.5 this could imply that the income of the company located in the state X could be more easily taxed on a running bases in state R, i.e. taxed even if not distributed. This could in our view have some levelling effect, as it should increase the effective overall tax of the group.

According to an EU study paper from 2016, the BEPS recommendations on CFC rules are criticised for failing to introduce minimum standards. [39]

The EU's Anti-Tax-Avoidance Directive implies all Member States to enact laws that largely implement G20/OECD's BEPS outcomes on CFC's, in addition to the measures on interest limitation rules and hybrid mismatches. The EU implementation of the BEPS actions are based on the need for a coordinated approach to avoid inconsistencies that could create uncertainty and administrative burdens, as well as to prevent divergence generating new mismatches in the single market.

4.1.6 Measures considered, but not recommended by OECD at this stage

In addition to the measures mentioned above the following measures were analysed/discussed by the OECD:

1. a new nexus in the form of a significant economic presence (PE based on economic presence),
2. a withholding tax on certain types of digital transactions, and
3. an equalisation levy

None of these three measures were recommended by the OECD. The main reason for not recommending these measures was that the OECD expects that the other recommended measures will have a substantial impact on the challenges identified. The application of these alternatives would generally allow countries to impose a tax in situations where a global player derives considerable sales income from the country without a physical presence therein, and/or uses the contributions of in-country users in its value chain, including through collection and monitoring of data. [40]

However, the OECD states that such alternative would require substantial changes to key international tax standards and would thus require further work. It has for many years been a common view that merely selling into a market without physical presence or a dependent agent within the market is not sufficient to create a permanent establishment allowing that country to claim a share of the enterprise's profits.

For instance, one of the challenges with the first mentioned option, is that a significant economic presence associated with little or no physical presence in terms of tangible assets and/or personnel in the other country is not likely to involve the carrying on of any functions of the non-resident company in the traditional sense. Thus, it would not be possible to allocate any meaningful income to such PE unless substantial adjustments are made to the existing rules regarding attribution of profits to a PE (transfer pricing). It was thus concluded by OECD that, unless there is a substantial rewrite of the rules for the attribution of profits, alternative methods would need to be considered. [41]

Another concern is that such digital PE-concept implies a risk of double taxation and thus increased controversy.With regard to both options 2 and 3, it was pointed out by the OECD that these options raises challenges related to trade obligations and EU law. For instance, a levy imposed only on global players would according to the OECD be likely to raise substantial questions both with respect to trade agreements and with respect to EU law. In order to address these questions, potential solutions that would ensure equal treatment of domestic and non-resident enterprises would need to be explored. [42]

The broad international consensus for many years has been to try to minimise or eliminate withholding taxes because taxes imposed on gross income, as opposed to net income, do not take into account profitability and can thus act as a deterrent to international commerce by making expansion across borders unprofitable.

The equalization levy could, according to the OECD, be considered as an alternative way to avoid some of the difficulties arising from creating new profit attribution rules for purposes of a new PE-definition based on significant economic presence (option 1). As stated by the OECD, this approach has been used by some countries in order to ensure equal treatment of foreign and domestic suppliers. Such levy could be based on sales transaction,

[38] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493809051&id=id&accname=guest&checksum=AEF0BFF19F8A0D188BA65663B410686F
[39] http://europa.eu/rapid/press-release_IP-17-305_en.htm
[40] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493230696&id=id&accname=guest&checksum=8E7A22AABBB994EEB4E92787101119E0 p. 133
[41] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493204369&id=id&accname=guest&checksum=1C5CEB627EDDDD5A55F7B4452D7D1832 p 111-112
[42] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493230696&id=id&accname=guest&checksum=8E7A22AABBB994EEB4E92787101119E0 p. 115

but could also be based on the volume of data collected from in-country customers and users. While a withholding tax on digital transactions would be connected to/based on payments made from a resident to a non-resident, the equalization levy could have a wider scope and for instance be determined by the economic presence of the non-resident in the relevant country. However, to base the levy on data collected could raise challenges with regard to identifying a reliable direct connection between the in-country revenue and the data collected. [43]

Despite that OECD did not recommend any of the above mentioned measures at this stage, OECD did state that countries could choose to introduce any of these three options in their domestic laws as additional safeguards against BEPS, provided they respect existing treaty obligations. The fact that OECD opens up for countries introducing such additional local measures, indicates that the recommended measures might not be sufficient to prevent BEPS.

In the short term, the EU has expressed that priority should be given to the question of the Permanent Establishment status. It is stated in an EU study paper, that one cannot ignore the fact that the digital economy poses a challenge to the existing PE-test and transfer pricing rules. [44]Within the existing system, it would according to the above mentioned study be feasible to redefine the Permanent Establishment status for the digital sector according to a formula including amount of sales, customers, selling agents etc., which would enable to calculate profit and to allow for tax payments in countries, with significant economic presence, but no or little physical precense where value is created. The study paper refers to the three alternative measures assessed, but not recommended by the OECD, for instance the alternative of a new PE-concept based on significant economic presence, resulting in a greater allocation of taxable base to the country of sales. As stated in the study, these reforms are seen as part of the "Beyond BEPS strategy, which could be realised within five years time or more. In relation to that, it is stated that immediate action is needed to advance this strategy and make it happen sooner than later. It is also explicitly stated that one should ensure that digital companies such as Google and Amazon generating money by sales, content and auxiliary services and having internet presence in one country, constitute a deemed PE.[45]

4.2 Regional - EU

BEPS issues are also high on the EU's agenda and has been subject to considerable amount of work.

In 2o16 the EU for instance presented an Anti-Tax-Avoidance Package, including an Anti-Tax Avoidance Directive. The Directive requires all Member States to enact laws that largely implement G20/OECD's BEPS outcomes on interest limitation rules, hybrid mismatches and controlled foreign companies (CFCs), in addition to set out rules for exit taxation and a general anti-abuse rule (GAAR).

A study paper addressing the tax challenges in the digital economy was prepared by Policy Department A at the request of the TAXE2 Committee in June 2016. The paper analyses direct and indirect tax challenges in the digital economy in light of the conclusions of the OECD's BEPS Project. We have referred to this study paper under the different measures mentioned in this report.

A number of other substantial corporate tax reforms have also been proposed, notably the re-launch of the Common Consolidated Corporate Tax Base (CCCTB) in October 2016. Member States are also working on a common EU list of third country tax jurisdictions that do not conform to international tax good governance standards.

[43] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493230696&id=id&accname=guest&checksum=8E7A22AABBB994EEB4E92787101119E0 p. 116
[44] http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579002/IPOL_STU(2016)579002_EN.pdf
[45] http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579002/IPOL_STU(2016)579002_EN.pdf p 34

4.3 Local - Other initiatives - introduction of specific taxes on the digital economy

4.3.1. Diverted profits tax and similar measures

Diverted profits tax – UK

In 2015, HM Revenue & Customs (HMRC) imposed the diverted profits tax (DPT) in the UK [46], designed to counter the use of aggressive tax planning techniques used by multinational enterprises to divert profits untaxed /low taxed from the UK. Its primary aim is to ensure that the profits taxed in the UK fully reflect the economic activity therein. The DPT has been popularly described as the 'Google tax' because the type of tax planning principally targeted, has typically been used by the multinational tech giants. However, the DPT has a much wider scope and applies to all types of business that meet the relevant conditions.

The DPT aims to deter and counteract the diversion of profits from the UK by large groups that either:

1. Seek to avoid creating a UK permanent establishment that would bring a foreign company subject to UK corporation tax (**avoidance of UK PE**), or
2. Use arrangements or entities that lack economic substance to exploit tax mismatches either through expenditure or the diversion of income within the group (**insufficient economic substance**).

DPT would for example be applicable where a UK company has arrangements in place with a related non-UK entity that reduce UK tax liabilities and those arrangements lack economic substance. For example: a UK company (or branch) transfers IP to a related entity located in a tax haven and then pays a UK tax deductible royalty to such related entity. The tax haven entity does not have the technical and management capacity to develop, maintain and exploit such IP and the transfer is only being undertaken for tax purposes. [47]The DPT is here targeting circumstances where there is an existing UK company (or PE) and arrangements have been put in place to divert profits from that UK company (or PE).

According to the HMRC the DPT is set at a higher tax rate (25 pct.) than corporation tax rate (19 pct.) to encourage those businesses with arrangements within the scope of the DPT to change those arrangements and pay corporation tax on profits in line with economic activity.

With regard to the DPT's interaction with the UK's tax treaties, the HMRC has stated that the DPT is a separate, stand-alone charge on diverted profits. It is not income tax, capital gains tax, or corporation tax and is thus not covered by double taxation treaties.[48]

The legislation is very complex and we will in this report not go into the details of the conditions for the applicability of the DPT. It should however be mentioned that there are several exceptions connected to the DPT, among others for small and medium-sized businesses and companies with limited UK-related sales.

Diverted profits tax – Australia

The Australian government has introduced a diverted profits tax to ensure that entities operating in Australia cannot avoid Australian taxation by transferring profits, assets or risks offshore through related party transactions that lack economic substance, and to discourage multinationals from delaying the resolution of transfer pricing disputes.[49]

The Australian DPT is an extension of the Australian general anti-avoidance rules (GAAR) and apply to multinational groups with global group-wide revenue of $1 billion Australian Dollars (AUD – approximately USD $750 million) or more. The fact that the rules are included as part of the GAAR, differs from the UK DPT, which operates as a tax regime separate from the UK corporate tax or income tax.

The 40 pct. DPT penalty tax rate will apply to arrangements with a principal purpose of obtaining

1. an Australian tax benefit or
2. an Australian tax benefit and foreign tax savings. The DPT liability is generally calculated on the amount of the Australian tax benefit obtained.

Three specific carve-outs can exclude a taxpayer from DPT if:

1. Australian turnover is AUD $25 million or less
2. sufficient foreign tax is paid at an effective rate of at least 24 pct., or
3. sufficient economic substance exists (the draft refers to consideration of the economic substance guidance in the OECD Transfer Pricing Guidelines, however this reference is not included in the statutory text of the ED.)

The tax will come into effect on 1 July 2017 and is expected to raise AU$100 million (£62 million) a year from 2018-2019, according to treasurer Scott Morrison. [50]

According to the Australian Government, the DPT will provide the Australian Tax Office (ATO) with greater powers to deal with taxpayers who transfer profits, assets or risks to offshore related parties using artificial or contrived arrangements to avoid Australian tax and who do not cooperate with the ATO. By imposing a penalty rate of tax, requiring the tax to be paid upfront and expanding the scope for identifying corporate tax avoidance, the Australian Government expects the DPT to:

- increase compliance by large multinational enterprises with their corporate tax obligations in Australia, including under their transfer pricing rules; and
- encourage greater openness with the ATO, address information asymmetries and allow for speedier resolution of disputes.[51]

[46] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480318/Diverted_Profits_Tax.pdf
[47] https://www.taxjournal.com/articles/20-questions-diverted-profits-tax-24092015
[48] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480318/Diverted_Profits_Tax.pdf p 81
[49] https://www.treasury.gov.au/~/media/Treasury/Consultationspct.20andpct.20Reviews/Consultations/2016/Implementingpct.20apct.20divertedpct.20profitspct.20tax/Keypct.20Documents/PDF/Diverted-profits-tax_discussion-paper.ashx
[50] https://www.out-law.com/en/articles/2017/march/australia-introduces-diverted-profits-tax/
[51] https://www.treasury.gov.au/~/media/Treasury/Consultationspct.20andpct.20Reviews/Consultations/2016/Implementingpct.20apct.20divertedpct.20profitspct.20tax/Keypct.20Documents/PDF/Diverted-profits-tax_discussion-paper.ashx

Administration Director of OECD Centre for Tax Policy, Pascal Saint-Amans, has stated in connection to the diverted profits tax that "there is real pressure on governments to be seen to be acting immediately." According to Saint-Amans"- We're halfway there on BEPS, but people want the inefficiencies of the international tax framework fixed now. They want loopholes that allow big global companies to pay so little closed. That is why there has been such willingness among countries to work together on this, but it's also a reason why there is pressure to act unilaterally.[52]

Equalisation levy

The Indian government introduced on February 29, 2016 an equalization levy (6 pct.) on digital advertising revenue by non-resident e-commerce companies earned in India, which became effective on June 1, 2016.

An equalization levy was one of the measures suggested in OECD's BEPS report on addressing the tax challenges in the digital economy. Though, the OECD did not recommend such a levy at that stage, it did mention that individual countries could impose such a levy provided they respect their existing tax treaty obligations.

The equalisation levy is to be deducted from amounts paid to a non-resident who does not have a PE in India, for specified services which includes online advertisement, any provision for digital advertising space, or any other facility or service for the purpose of online advertisement.

Indian resident companies conducting business or non-residents with a PE in India must withhold the equalization levy.

The equalisation levy implies that if an Indian company buys online advertisement services from a global player, the Indian customer has to withhold 6 pct. of the payment.

The Indian payer must electronically file an annual statement in the prescribed form providing details of payments made to non-residents for specified services and details of any equalization levy withheld and deposited with Indian government treasury.

The equalization levy imposed in India is directly aimed on payments for digital advertising revenues and thus such levy would of course have an impact on the challenges identified in this report.

One of the challenges is that we currently are not aware of any applicable tax credit mechanism for this levy, which means that the global player may not get tax credit / deduction in their home country for the equalization levy paid in India. If the global player's home country does not give credit for equalization levy, this could lead to double taxation.

Bandwidth tax

France is considering to tax revenues of tech giants based on their bandwidth/the number of bytes used by a website, rather than on the basis of their reported profits in France. Such tax would be based on the "polluter pays" principle which otherwise is known from the environmental area. A bandwidth tax was also mentioned in the 2014 version of OECD's report on Action 1. A bandwidth tax would be based on the number of bytes used by the website, although in order to introduce an element of progressivity, different tax levels would apply depending on the enterprise size or the turnover. For administrative purposes, such a tax would apply only to businesses that exceed minimum threshold of annual bandwidth used.

The EU Commission has stated that it believes it is absurd to create such taxation based on bits. According to the EU, this would mean that Amazon would be able to sell its goods by only one-click and pay one unit of tax while Spotify would have to pay multiple thousands units of tax as HD quality need several gigabytes to download. [53]

Other local measures

According to International Tax Review, the Turkish Government has proposed to introduce the concept of an "electronic place of business." (electronic PE). An electronic place of business would be considered to exist when the internet, extended intranet, intranet or any similar telecommunication environment or device is used for commercial, industrial or professional activities. The Turkish Ministry of Finance would be allowed to assess tax liability for such place of business and hold its clients or intermediaries severally liable for that tax liability. In our view, such a tax could be problematic towards tax treaty obligations.

The Israel Tax Authority (ITA) published on April 11, 2016 Circular 4/2016 (the Circular), which addresses taxation of foreign companies that operate in Israel through e-commerce and online services. For corporate income tax purposes, the circular focuses on instances in which the digital activity of a foreign company shall be taxable in Israel. It distinguishes between digital activity of a foreign company that resides in a treaty country and a foreign company that is not. For the latter, as no treaty protection is granted, taxation in Israel could apply in wider circumstances including in cases of so-called "significant digital presence".

The Circular lists the following indicators of significant digital presence: 1) a substantial number of digital service contracts are executed online with Israeli residents, 2) services that the foreign company provides are used online by many customers in Israel, 3) the foreign company provides online services tailored to Israeli customers or users, such as through the use of the Hebrew language or Israeli currency.
In the case of a foreign company resident in a treaty country, a physical presence or dependent agent would still be required for taxing situations of significant digital presence.

[52] https://www.acuitymag.com/finance/uk-complicates-oecds-plans-to-stop-corporate-tax-dodges
[53] http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579002/IPOL_STU(2016)579002_EN.pdf

Overview of alternative measures

Measure:	Description:	High level on pros and cons:
A new nexus in the form of a significant economic presence	Create a taxable presence on the basis of a company's significant interaction with the economy.	+ Taxation of global player would not be dependent on physical presence. ÷ Would require substantial changes to key international tax standards, including profit attribution rules. Risk of double taxation.*
Withholding tax on digital transactions	A withholding tax on payments made by residents (and local PE's) for goods/ services purchased online from non-resident providers.	+ Taxation of global player would not be dependent on physical presence. ÷ Challenges related to trade obligations and EU law. Does not take into consideration profitability.*
Equalisation levy	Similar to a withholding tax, but can be structured to include a wider area of transactions/factors.	+ Taxation of global player would not be dependent on physical presence. Would not require new profit attribution rules. ÷ Challenges related to trade obligations and EU law. Risk of double taxation.*
Diverted profits tax	A penalty tax levied on profits artificially diverted from the state where the profit is generated.	+ Taxation not dependent on PE-status. Examples of global players changing their business operations following the introduction of such tax. ÷ Complex legislation. Unilateral implementation of measures may hinder international cooperation which in turn could result in incongruous tax policy across jurisdictions. DPT may dilute the concept of PE.*
Bandwidth tax	Taxation of technology companies based on bandwidth/ number of bytes used by a website.	+ Would generally allow countries to impose a tax in situations where a global player derives considerable sales income from the country without a physical presence therein. ÷ Unclear how such tax would be calculated.*

* All unilateral measures must be prepared/implemented within the framework of double tax treaties, trade obligations and EU/EEA law.

5.

Going forward

5.1 Anticipated effect of proposed measures

OECD expects that the recommended BEPS measures will have a substantial impact on BEPS issues previously identified in the digital economy.

With regard to the anticipated effect on taxation in the market countries, it is a common view that the recommended changes to the PE definition could have a levelling effect in cases where the global players have some sort of physical presence in the Nordic countries. For instance, if the global player has local sales force which habitually plays the principal role in the conclusion of contracts with prospective clients, such presence will create a taxable presence if the contracts are concluded without material modification by the global player.

We are aware that the global players today have presence in forms of offices and personnel in many countries, including the Nordic countries. **The question is however, to what degree the global players need a physical presence in the Nordic countries in order to derive digital advertising revenues from Nordic customers**. Due to digital development, we find it highly likely that the global players can carry out core business activities related to the sale of advertising services via websites, smart phone applications or from servers located outside the Nordic region. Thus, the global players will most likely be able to avoid a taxable presence in the Nordic region also after an implementation of the BEPS change to the PE definition.

With regard to the other recommended measures pointed out by the OECD with regard to the challenges in the digital economy, especially the recommendations on designing CFC-rules and Transfer Pricing, it is difficult to say anything concrete at this point as to whether the recommended measures will be sufficiently effective.

With regard to Transfer Pricing, the BEPS measures could have an effect because OECD has now stated that legal ownership to intangible property in itself will not imply an unconditioned right to profits connected to the assets in question, and that such rights will depend on the functions it carries out, the assets it contributes and the risk it acquires. Thus, a legal owner without substance related to the IP, i.e. functions, assets and risks related to the IP, will with the new transfer pricing regulations be entitled to less consideration than before and the companies where the functions, assets and risks are located will be entitled to a larger part of the consideration. This should make it more difficult for global players to stream large parts of the profits related to IP from high tax jurisdictions to low tax jurisdictions. It could however in our view be expected that the global players will reassess their structure to meet the new rules and requirements. Thereby they can continue to minimize the group's tax burden.

Summed up, the effect of the measures recommended by the OECD are at best uncertain. The developments within the digital economy continues with rapid speed. This makes it even more difficult to predict future developments with any degree of reliability, and thus also the effectiveness of the recommended measures for the media industry and digital advertising revenue.

As described above, several countries outside the Nordics are imposing additional domestic measures in order to ensure that global players pay taxes in the countries with significant economic presence, for instance the diverted profits tax in UK and Australia or the equalization levy in India. The fact that countries impose such additional measures now instead of waiting for the implementation of the BEPS measures could indicate a lack of faith in the BEPS measures with regard to effect.

Such domestic measures may be effective with regard to ensuring that global players pay taxes in the countries where they have significant digital advertising revenues and thus assist with levelling the competitive environment.

However, it should be noted that imposing such additional measures may raise some concerns because it may be viewed as a hinder against international cooperation which in turn could result in incongruous tax policy across jurisdictions.

The European Commission has according to a study paper raised doubts about the introduction of specific taxes on the digital economy because of their impractical, irrational or temporary nature, while not excluding the possibility for some out-of-the

box thinking within the boundaries of the existing system. EU states that they will monitor the situation to see if general anti-avoidance measures (as opposed to specific measures aimed at the digital sector) are enough to address digital risks.

The diverted profit tax may on the one hand be viewed as disruptive of tax treaty conventions because it is fundamentally against the physical presence standard of PE status outlined in the MTC. If countries continue to adopt DPT-like policies, then the traditional concept of PE status could be at risk of being eroded and may even become obsolete. However, it could also be argued that the diverted profits tax may protect the concept of PE status instead of threatening it. By specifically targeting income shifting by multinational corporations, the DPT eliminates the necessity to modify and dilute the current concept of PE status to address income shifting. [54]

Administration Director of OECD Centre for Tax Policy, Pascal Saint-Amans has for instance stated "that if governments move unilaterally we risk ending up with a patchwork that is not compatible and might even cause the whole international tax system to unravel."[55]

When considering whether to impose domestic additional measures, it is in our view important to ensure that such measures are not prepared in a way that endanger or stifle innovation and the continued use of information and communication technology (ICT) which increases both business efficiency and productivity. As stated by both the OECD and the EU, the economy cannot be separated into digital versus non-digital because almost all sectors of the economy use ICT to deliver products and services. Consequently, any measures that are considered will affect all businesses and must be evaluated accordingly.

5.2 Going forward – what happens next?

5.2.1 Status on the implementation of measures

The above mentioned changes requires amendments of the double tax treaties. In order to implement these changes as effectively as possible, OECD has developed a multilateral convention that will amend a significant amount of tax treaties at the same time.

Each state can choose which articles in the convention they want and which countries the articles shall apply to. Where there is a match between the wishes of two states, they can go forward with entering into a new tax treaty where the new articles replaces the old ones.

The OECD plans for a formal signing ceremony in June 2017. We know that Norway, Finland and Denmark plans to sign the convention in June. We do not know at this point whether Sweden plans to do the same. After signing, the convention will be presented to the Norwegian Parliament for approval and consent to implementation. The multilateral convention enters into force when five countries has ratified the convention.

It is difficult to say which double tax treaties will be changed and when the changes will enter into effect. The changes will at the earliest enter into effect as of next year (2018).

The OECD has expressed that the conclusions reached in the final BEPS reports of October 2015 may evolve as the digital economy continues to develop, and that it is thus important to continue working on these issues and to monitor developments over time. OECD has thus prepared for a future work in consultation with a broad range of stakeholders, inclusive a post-BEPS monitoring process. [56]A report reflecting the outcome of the continued work in relation to the digital economy shall according to the OECD be produced by 2020.

[54] http://tpmindsfocus.com/dpt-diversion-beps/
[55] https://www.acuitymag.com/finance/uk-complicates-oecds-plans-to-stop-corporate-tax-dodges
[56] http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1493230696&id=id&accname=guest&checksum=8E7A22AABBB994EEB4E92787101119E0 p 138

5.2.2 Summary/conclusion

The main output from our work included in this report is that there are differences with regards to taxation of Nordic media players' and global players' net digital advertising revenue from Nordic customers.

The deviation in taxation implies a competitive advantage for the global players.

The challenges mentioned in this report have for several years been, and still are, high up on the international agenda. G20 and OECD have lead the way internationally with its BEPS project where considerable amount of work has been put into addressing different types of challenges related to the current tax and VAT environment.

We find it not likely that the recommended BEPS measures which aims to ensure local taxation (PE threshold) will have sufficient effect due to the likely lack of need for physical presence in the digital advertising business. Further, there are a lot uncertainties connected with regard to the attribution of profits to potential new PE's. The fact that a PE is created will not necessarily lead to more profits being taxed in the relevant market country.

With regard to the recommended measures that aims to ensure fair/correct taxation on a global level (group level), for instance CFC and Transfer Pricing regulations, we find that such measures could have an effect with regard to ensuring that the total taxation level for the global players increases. However, at this stage it is difficult to say anything concrete about the anticipated effects of these measures and whether it is likely that the global players can restructure around new rules.

The fact that OECD opens up for countries implementing additional safeguards in forms of local measures, indicates that the recommended measures will not be sufficient with regard to tackling the tax challenges in the digital economy.

We note that several countries outside the Nordics are already imposing additional domestic measures in order to ensure that global players pay taxes in the countries with significant economic presence. The seriousness of today's situation for the Nordic media industry, implies in our view a need for the Nordic Governments to conduct an assessment of the competitive situation between Nordic and global players with regard to taxation of digital advertising revenues. In particular, our analysis indicates that it should be considered whether there is a need for imposing domestic measures.

Internet Advertising example from OECD BEPS Action 1

The RCo Group provides a number of Internet services (e.g. search engines) to customers worldwide. Many of these online services are offered free of charge to consumers, whose use of the online services provides the RCo Group with a substantial amount of data, including location-based data, data based on online behaviour, and data based on personal information provided by users. Over the course of many years of data collection, refinement, processing, and analysis, the RCo Group has developed a sophisticated algorithm that targets advertisements to those users who are most likely to be interested in the products advertised. RCo Group derives substantially all of its revenues from the sale of advertising through its online platform, for a fee that is generally based on the number of users who click on each advertisement.

The technology used in providing the advertisement services, along with the various algorithms used to collect and process data in order to target potential buyers were developed by staff of RCo, the parent company of the Group situated in State R. The rights to exploit this technology in the T/S region are owned by a dual resident subsidiary of the group, XCo.

The latter company is incorporated in State T but effectively managed in State X. The technology rights for the T/S region were acquired by XCo under a cost-sharing arrangement whereby XCo agreed to make a "buy in" payment equal to the value of the existing technology and to share the cost of future enhancement of the transferred technology on the basis of the anticipated future benefit from the use of the technology in the T/S region. In practice, XCo does not actually perform any supervision of the development activities carried out by RCo in State R.

XCo licenses all of the rights in the technology used to operate the platform to a foreign subsidiary resident in State Y, YCo. The latter then sublicenses the technology to TCo, a company organised and resident in State T, earning a small "spread" between the royalties it receives and the royalties it pays on to XCo. YCo and TCo are hybrid entities that are treated as corporations for tax purposes in State Y and State T, but as transparent for tax purposes in State R. The physical presence of XCo in State X is minimal, both in terms of personnel and tangible assets (equipment, premises, etc.). In fact, neither XCo nor YCo has any employees on its payroll, and each company's activities are limited to board meetings taking place in an "office hotel" where the company regularly rents different offices.

TCo acts as the regional headquarters for the RCo group's operations in the T/S region, and employs a substantial number of people in managing the group's activities in that region. It operates the websites offering free online services to consumers in the T/S region, and serves as the legal counterparty for all sales of advertising in the T/S region. However the servers that host these websites may be placed throughout the region and/ or located in State R and operated by RCo. Dependent on the time of the day, different members of the group may be responsible the maintenance of the website and fixing any network issues in the region.

Advertisement services contracts with TCo can be concluded electronically through TCo's websites on the basis of standard agreements, the terms of which are generally set by RCo. Advertisers located in the T/S region that wish to purchase advertising targeting users of RCo's products can thus do so directly through a website operated by TCo without having any interaction with the personnel located in State T. This advertising is available to local businesses in the T/S region, whether they are targeting customers in the T/S region or customers elsewhere.

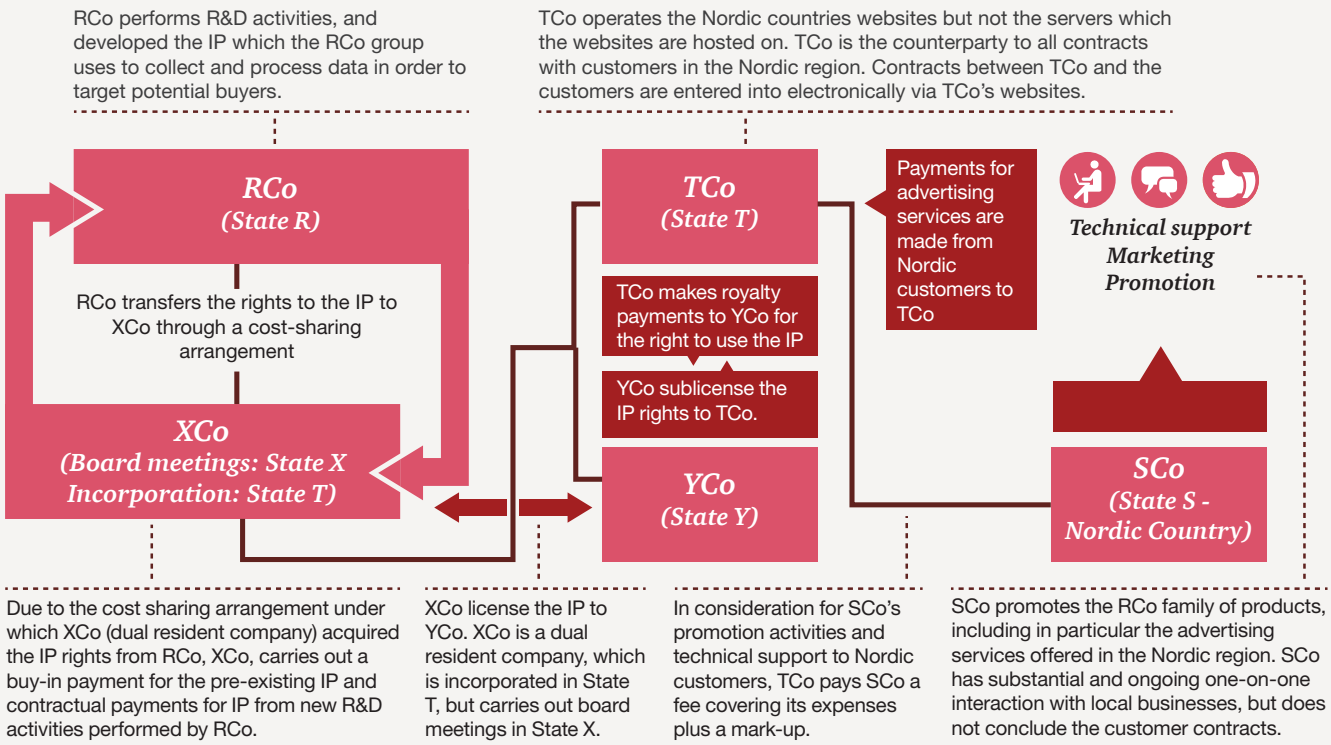
For larger markets and in order to deal with key clients, the group has established a number of local subsidiaries. To promote the purchase of such advertising by businesses active in the T/S region, TCo has local affiliates, such as SCo, a company resident in State S, whose purpose is to promote the RCo family of products, including in particular the advertising services offered in the region. Local subsidiaries like SCo provide education and technical consulting to users and potential advertising clients, as well as marketing support in order to generate demand for the RCo advertising services. Local staff members have substantial and ongoing one-on-one interaction with local businesses,

particularly the largest customers in the local market, many of which end up purchasing advertising. Compensation for the staff is partially based on the number of advertising contracts concluded between TCo and customers in State S and the income generated by TCo from the clients they support. In consideration for its promotion activities and technical support, TCo pays SCo a fee covering its expenses plus a mark-up. In general, customers supported by local affiliates such as SCo have no interaction with TCo staff.

The structure used by the RCo Group can be depicted as shown in Figure B.2.

The manner in which RCo's business activity is structured has significant consequences from a tax perspective. Due to contractual arrangements among the different group companies, the bulk of the Group's income is allocated to State X, and only minimal taxable profits are allocated to State S, State R, and State T. More specifically, the following paragraphs describe the consequences that would arise in the different States concerned.

Figure B.2 Internet advertising



Internet Advertising example from OECD BEPS Action 1

Direct tax consequences in state S

SCo is allocated minimal taxable income, based on the position that SCo's functions are limited to those of a service provider. All revenues from sales of advertising in State S, including advertising purchased by State S residents and other regional customers, are treated as the revenues of TCo. The lack of authority for SCo staff to legally conclude contracts and the use of standardised contracts and on line contract acceptance by TCo result in TCo not being considered to have a PE in State S. As a result, State S does not tax the profits derived from these activities either because it has no right to do so under its domestic law or because the relevant double tax treaty prevents it from doing so in the absence of a PE of TCo in State S to which the income is attributable.

Direct tax consequences in state T

State T imposes corporate tax on the profits earned by TCo from its various activities in the T/S region. TCo's income, however, is almost entirely offset by the royalty paid to YCo for its sublicense of the technology used by TCo to provide Internet services. This payment is not subject to withholding under the relevant double tax treaty. State T does not impose corporate income tax on XCo, due to it not being a resident under State T's domestic legislation.

Direct tax consequences in state Y

State Y imposes corporate income tax on the profits of YCo, but those profits are limited to a small "spread" between the royalties received by YCo and the royalties paid by YCo to XCo. State Y does not impose any withholding on the payment of royalties under its domestic law.

Direct tax consequences in state X

State X does not impose a corporate income tax.

Direct tax consequences in state R

State R imposes corporate income tax on the profits derived by RCo, notably the buy-in payment received in consideration for the transfer of pre-existing technology to XCo and the annual payments received under the cost sharing arrangement. However, because of the absence of a significant track record of RCo's performance at the time of the transaction, RCo may take the position that the value of those intangibles was very low, so that the actual amount of gain subject to corporate tax in State R would be very small. Further, the annual payment – compensation for the costs supported by RCo for developing the intangibles without any markup – could potentially be at a rate much lower than the amount of royalties received by XCo. Finally, depending on the domestic law of State R, RCo may be entitled to R&D tax credits for a significant fraction of its expenditures, thereby further reducing its tax liability for corporate tax purposes.

Under its controlled foreign company (CFC) rules, State R would under some circumstances treat royalties received by XCo as passive income subject to current taxation in the hands of RCo. However, because YCo and TCo are considered for tax purposes as transparent entities in State R, the latter's CFC rules would disregard the royalty transactions concluded between XCo, YCo and TCo. The income of YCo and TCo would be considered as having been earned directly by XCo, and would be treated as active income that would be taxable in State R only when paid to RCo.

Appendix A

Tax and VAT of advertising income in Nordic countries

Taxation of advertising revenues

Norway

Subject to corporate income tax (CIT)	CIT rate	Exemption rules
A Norwegian tax resident company is as the main rule subject to CIT on its world-wide income, including advertising income. Non-resident companies' business income, will only be subject to CIT in Norway if the non-resident is deemed to have a permanent establish-ment in Norway in accor-dance with an applicable double tax treaty. With respect to double tax treaties, Norwegian tax authorities will to a large extent, follow the OECD Commentaries when interpreting the relevant tax treaty, including the definition of a permanent establishment. If Norway does not have a double tax treaty with the relevant country, the nonresident's tax liability in Norway depends on whether the non-resident is engaged in business which is either conducted in or managed from Norway.	24 pct. in 2017. Please note that the Government plans to reduce the rate down to 23 pct. in 2018.	No exemption rules related to taxation of advertising income.

WHT	Special taxation regimes	VAT	Proposals regarding measures aimed at the digital economy
The only withholding tax Norway currently levies is wht on dividends payments. Currently there is no wht on advertising revenues, royalty payments or interest payments. However, the Government has stated that wht on royalty payments is something that most likely will be introduced within a relatively short time frame.	No	25 pct. The business customer will report VAT reverse charge on non-established player's supply of the advertising service, but Norwegian VAT reporting obligations apply normally for a nonestablished supplier in a B2C context.	We are not familiar with proposals specifcly aimed at tackling the tax challenges in the digital economy other than the OECD BEPS recommender measures.

Tax and VAT of advertising income in Nordic countries

Sweden

Taxation of advertising revenues

Subject to corporate income tax (CIT)	CIT rate	Exemption rules
Companies tax resident in Sweden are subject to CIT on their worldwide income, including advertising income. A non-resident company is only subject to Swedish CIT should it be deemed to have a permanent establishment in Sweden in accordance with domestic rules and applicable double tax treaties. The domestic PEregulation/definition in Sweden is based on Article 5 in the OECD MTC. Hence, the Swedish Tax Authority tends to use the comments to Article 5 in the OECD MTC to interpret the domestic legislation.	22 pct.	No exemption rules related to taxation of advertising income.

WHT	Special taxation regimes	VAT	Proposals regarding measures aimed at the digital economy
Sweden levies WHT on dividends, royalties and certain rentals to non-resident corporations and individuals. The WHT rate vary according to domestic rules and tax treaties. Swedish-source royalties and certain rental fees are treated as a special form of PE, taxable at the corporate tax rate, subject to treaty reduction or waiver. Royalties payed from Sweden to a company within the EU should on certain terms not be subject to WHT in Sweden. Royalties and certain rentals paid by Swedish licensees are treated as business income taxable in Sweden and WHT do not incur.	Printed advertising is subject to advertising tax. Advertisement in printed periodical publications at a rate of 2.5 pct. and other printed advertising at a rate of 7.65 pct. Digital advertising is not subject to the Swedish advertising tax.	Supply of printed news-papers and books is subject to a reduced VAT rate of 6pct. (provided that these are not mainly or entirely for the purpose of advertising). Supply of advertising space inmedia (printed or digital) is subject to VAT of 25 %. Advertising is in some cases VATexempt (e.g. members' bulletins, staff magazines etc.). Supply of electronic dissemination of news and digital advertising online is subject to 25pct.VAT. When supplying advertising services B2B crossborder, the reverse charge rule is applied. A Swedish supplier does not have to report VAT on digital advertising space to nonbusiness customers outside of the EU, while Swedish VAT has to be reported on such supplies to.	We are not familiar with proposals specifcly aimed at tackling the tax challenges in the digital economy other than the OECD BEPS recommender measures.

Tax and VAT of advertising income in Nordic countries

Taxation of advertising revenues

Denmark

Subject to corporate income tax (CIT)	CIT rate	Exemption rules
As a main rule, a Danish tax resident company is subject to CIT on its worldwide income, including advertising income. Non-resident companies' business income will only be subject to CIT in Denmark if the non-resident is deemed to have a permanent establishment in Denmark in accordance with an applicable double tax treaty.	22 pct.	No exemption rules related to taxation of advertising income.

WHT	Special taxation regimes	VAT	Proposals regarding measures aimed at the digital economy
Denmark levies WHT on dividend payments on portfolio shares to a foreign shareholder with 27 pct., and 15 pct. if the portfolio shareholder is situated in a country, which Denmark has a tax information agreement with. WHT of 22 pct. is levied on interest with a number of exceptions. Royalties are subject to a 22 pct. WHT for royalties accrued or paid on 1 March 2015 or later, and 25 pct. before this date subject to reduction in accordance with the treaties. The rate is zero if covered by the Interest/Royalty Directive.	No.	Danish law zero rates the supply of newspapers, however the electronic dissemination of news is not exempt from VAT. The electronic supply of news-papers as well as digital advertising are liable to 25 pct. VAT in case of Danish business supplying to a nonregistered customer. Non-EU providers of online newspaper / digital advertising services to Danish customers, would also be liable to register for Danish VAT and charge 25 pct. VAT subject to the use & enjoy-ment of these services is in Denmark.	We are not familiar with proposals specifcly aimed at tackling the tax challenges in the digital economy other than the OECD BEPS recommender measures.

Tax and VAT of advertising income in Nordic countries

Finland

Taxation of advertising revenues

Subject to corporate income tax (CIT)	CIT rate	Exemption rules
Non-resident companies' business income will only be subject to CIT in Finland if the non-resident is deemed to have a permanent establishment in Finland inaccordance with an applicable double tax treaty. If Finland does not have a double tax treaty with the relevant country, the non-resident's tax liability in Finland depends on whether the non-resident is engaged in business which is either conducted in or managed from Finland.	20 pct.	No exemption rules related to taxation of advertising income.

WHT	Special taxation regimes	VAT	Proposals regarding measures aimed at the digital economy
Finland does not levy WHT on interest payments. Finland levies WHT on certain dividends payments (20/30pct.) Finland levies WHT onroyalties (20/30 pct). However, there is no tax on royalty payments to associated companies. Applicable DTT can reduce the WHT rate.	No.	Online advertising services are taxed in the country of the purchaser irrespectively whether the services are supplied to another company or to consumer. Reverse charge mechanism is, in general, applicable in B2B sales. Reduced VAT rate of 10pct is applicable to the sale of newspapers and periodi-cals in the form of a sub-scription for at least one month. Electronically supplied newspapers or single copy supplies are subject to general VAT rate of 24 pct.	We are not familiar with proposals specifcly aimed at tackling the tax challenges in the digital economy other than the OECD BEPS recommender measures.

Overview of important regulators

Domestic/national regulators

The legislative authority to impose tax legislation in Denmark, Finland, Norway and Sweden are the Danish, Finish, Norwegian and Swedish Parliament respectively.

In addition to the domestic tax rules, the tax legislation of a country also consists of double tax treaties with other countries. The purpose of double tax treaties is to regulate the countries taxing rights in regards to taxation of cross border activity/ income. Double tax treaties can only imply limitations on a country's taxation rights. Double tax treaties must be approved by the Nordic Parliaments respectively and incorporated to the relevant Nordic country's domestic law.

International regulators

As Sweden, Denmark and Finland are all members of the European Union they are all obliged to incorporate the EU's tax and VAT legislation.

Within the EU the legislative authority is shared between the European Parliament and the Council of Ministers. The legislative proposals are prepared by the European Commission, and must be approved by both the Parliament and the Council in order to become EU-law.

Norway is only a member of the European Economic Area (EEA). As tax is not part of the EEA-agreement Norway is not obliged to impose EU legislation within the tax and VAT area. However, the Norwegian Parliament's authority to impose domestic tax legislation may be limited by the EEA-agreement regulations concerning the four freedoms (free movement of goods, capital, persons and establishment) and rules regarding state aid.

Another important international regulator on the tax and VAT area is the OECD (Organisation for Economic Co-operation and Development). OECD influences national policies through soft laws, by issuing "recommendations", and "guidelines" and does not have the power to coerce a country to alter its policy.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