

## The fictions of corporate taxation and three ideas to make it fit for the challenges of the digital era

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Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

### Empfohlene Zitierung / Suggested Citation:

Cannas, F. (2021). The fictions of corporate taxation and three ideas to make it fit for the challenges of the digital era. *Public Administration*, 23(3), 39-40. <https://doi.org/10.22394/2070-8378-2021-23-3-39-40>

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# ВЫДУМКИ КОРПОРАТИВНОГО НАЛОГООБЛОЖЕНИЯ И ТРИ СПОСОБА ПОДГОТОВИТЬ ЕГО К ВЫЗОВАМ ЦИФРОВОЙ ЭПОХИ

**ФРАНЧЕСКО КАННАС**, адъюнкт-профессор налогового права  
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**Аннотация:** В ходе Международной конференции, организованной Институтом государственной службы и управления Российской академии народного хозяйства и государственной службы при Президенте Российской Федерации, автор представил свой исследовательский проект, который он уже демонстрировал в нескольких международных учреждениях (Лейденский университет в Нидерландах и Московский государственный университет имени М.В. Ломоносова в Российской Федерации). Работа в данном направлении продолжается и будет завершена не ранее 2022 года в виде одной или нескольких опубликованных статей.

Представленная статья является кратким отчетом о проведенной презентации. В начале автор обсуждает причины, по которым решение проблем налогообложения заключается не столько в изменении правил распределения и принятии новых мер, чтобы предотвратить уклонение от уплаты подоходного налога с предприятий. Во второй части автор утверждает, что решения могут возникнуть в результате реформирования существующих косвенных налогов, основанных на производстве, продаже, использовании или владении товарами и услугами, и исследует возможности решения текущих проблем корпоративного налогообложения.

**Ключевые слова:** корпоративное налогообложение, вызовы, цифровая эпоха

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Статья поступила в редакцию 25 мая 2021 года.  
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Каннас Ф. Выдумки корпоративного налогообложения и три способа подготовить его к вызовам цифровой эпохи. *Государственная служба*. 2021. № 3. С. 39–40.

## THE FICTIONS OF CORPORATE TAXATION AND THREE IDEAS TO MAKE IT FIT FOR THE CHALLENGES OF THE DIGITAL ERA

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**Abstract:** During the International Conference organized by the Institute of Public Administration and Civil Service of the Russian Presidential Academy of National Economy and Public Administration, the author presented a research project he was carrying out and presenting at several international institutions (among others, the University of Leiden, in the Netherlands, and the Lomonosov State University, also in the Russian Federation). The work is still in progress and is expected to be completed not earlier than 2022, in the form of one or more publishable articles.

The presented article is brief report on the presentation held. Firstly, the author discusses the reasons why the solution to the taxation problems does not lie so much in redesigning the allocation rules and adopting new anti-avoidance measures in corporate income taxes. In a second part, the author argues that solutions may arise from reforming existing indirect taxes, based on the production, sale, use or ownership of goods and services and explores the possibilities to solve the current corporate taxation problems.

**Keywords:** corporate taxation, challenges, digital age

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The article was received on May 25, 2021.  
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Cannas F. The fictions of corporate taxation and three ideas to make it fit for the challenges of the digital era. *Gosudarstvennaya sluzhba*. 2021. No. 3. P. 39–40.

## Introduction

The development of economic activities, and the corresponding attribution of income and wealth to economic actors, has undergone various processes of de-territorialization and de-materialization. Those processes have put into light the inadequate character of the traditional corporate taxes, based on concepts such as residence and income. In the first part, the paper discusses the reasons why the solution does not lie so much in redesigning the allocation rules and adopting new anti-avoidance measures in corporate income taxes. In a second part, the paper argues that solutions may arise from reforming existing indirect taxes, based on the production, sale, use or ownership of goods and services and explores three possibilities: VAT-based business tax, excise tax on digital goods and services and business wealth tax.

## Main weaknesses of the current taxation

As to the first part of the paper, the three main weaknesses of the current income taxation were shortly presented:

1) Corporate entities are more than the sum of their members (e.g. a company can sue and be sued in their own name). The tax law borrows a lot from corporate law and adapts its concepts to taxation. One of the best examples is the concept of residence, which is of fundamental importance in shaping public policies (and allocating taxes), but nowadays widely favour artificial manipulations within avoidance schemes<sup>1</sup>.

2) The notion of income. In the 17th century, the taxes were gradually moved from land to the production originating from the land. Subsequently, in the course of the industrial revolution, the income was chosen as the main (but not sole) taxable item. The problem is that the notion of income is rooted in "traditional" accounting rules and is seen as a cash flow<sup>2</sup>. Nowadays, most of the assets and business facts put in place by globalized and digitalized enterprises have no relevance for accounting purposes. It is enough to think about the fact that none of the "Airbnb houses", which are *de facto* assets for the company, are given relevance in its statutory accounts.

3) Enforcement. It is a fiction to affirm that tax laws are effectively enforceable beyond the State's borders. This has a number of reasons, but the main one is that each State act in its exclusive own interest.

All the solutions recently proposed at international level, like for example the OECD BEPS Project, although commendable, are not

going to the very heart of the problem, which is that corporate income taxation was conceived decades ago in an economic environment that was completely different<sup>3</sup>.

## Solutions to the current taxation problems

In the light of this, the author discussed a number of possible solutions to either replace or, more likely, complement the current framework.

They are summarized as the following:

1) Taxing (untaxed) transactions – a Residual Transaction Tax.

Most of the transactions realized by companies are subject to VAT (sometimes deductible in the hands of the payer). A residual transaction tax would potentially cover any payment "departing" from the jurisdiction, which has not been already taxed. Potentially, it could also be extended to payment done "to" the jurisdiction like for example the salaries paid to the corporate top management.

A system of deductibility from taxes paid under different schemes could be envisaged.

From a practical standpoint, it could rely on existing mechanisms of the non-deductible VAT. In any case, banks and financial institutions should be involved, as payments are largely digital nowadays.

2) Taxing the corporate value.

This would mean taxing the value of the company in the hands of its shareholders. It could take different forms, and currently the most explored by the author is the one of a tax on the ownership (and not on the capital gain) of shares referred to listed companies. This would allow to hit the real value of the company and encourage the distribution of dividends (rather than keeping them "parked" in the company).

3) Introducing the in-kind taxation – imposing the public interest obligations.

It is derived from the concept of Corporate Social Responsibility<sup>4</sup> and involves the multinationals being obliged to contribute to the commonwealth by sharing technologies and know-how rather than cash<sup>5</sup>. Nowadays, the government receives cash that it needs to carry out its tasks from private citizens in the form of tax and purchases of the services. The author proposes that the government should be entitled to the benefit from technologies developed by the private sector, in order to better serve the common good and meet the needs of the population. This would involve a radical change in the perspective of corporate taxation and the development of a complex legal framework to prevent the government from harming private businesses.

1 For a general overview, see also – [Shaviro, 2004].

2 For an example of tax structure exploiting the weaknesses of the system, – [Van Den Hurk, 2014]. In the media: <http://www.theguardian.com/business/2012/dec/07/starbucks-tax-repercussions>; <http://www.starbucks.co.uk/blog/an-open-letter-from-kris-engskov/1249>.

3 For a theoretical background on the ultimate purpose of taxation, see in particular – [Avi-Yonah, 2006–2007].

4 On this principle, see among the many [Van Eijdsden, 2013]. More in general, see also – [Canals, 2010].

5 For a background on alternative forms of taxation, see also [Sloterdijk, 2010].

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