

Rethinking EU VAT for P2P Distribution

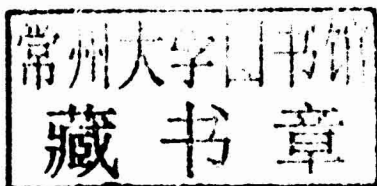
Cristina Trenta



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Rethinking EU VAT for P2P Distribution

EUCOTAX Series on European Taxation

VOLUME 45

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Introduction

EUCOTAX (European Universities Cooperating on Taxes) is a network of tax institutes currently consisting of eleven universities: WU (Vienna University of Economics and Business) in Austria, Katholieke Universiteit Leuven in Belgium, Corvinus University of Budapest, Hungary, Université Paris-I Panthéon-Sorbonne in France, Universität Osnabrück in Germany, Libera, Università Internazionale di Studi Sociali in Rome (and Università degli Studi di Bologna for the research part), in Italy, Fiscaal Instituut Tilburg at Tilburg University in the Netherlands, Universidad de Barcelona in Spain, Uppsala University in Sweden, Queen Mary and Westfield College at the University of London in the United Kingdom, and Georgetown University in Washington DC, United States of America. The network aims at initiating and coordinating both comparative education in taxation, through the organization of activities such as winter courses and guest lectures, and comparative research in the field, by means of joint research projects, international conferences and exchange of researchers between various countries.

Contents/Subjects

The EUCOTAX series covers a wide range of topics in European tax law. For example tax treaties, EC case law, tax planning, exchange of information and VAT. The series is well-known for its high-quality research and practical solutions.

Objective

The series aims to provide insights on new developments in European taxation.

Readership

Practitioners and academics dealing with European tax law.

Frequency of Publication

2-3 new volumes published each year.

The titles published in this series are listed at the end of this volume.

Preface

Peer-to-Peer (P2P) identifies a number of new technologies and social phenomena which allow easy searching, downloading, and sharing of resources online. P2P networks are increasingly becoming an important medium for the exchange of digital information, in both legitimate and illegitimate scenarios, as new business models are prefigured, pioneered, and fostered by early adopters and innovative companies. All digital or digitizable media products, and especially software, films, and music, whose distribution models have been overlaid by the new, different and largely unorthodox technologically-driven social dynamics of large-scale sharing face an unprecedented challenge and an interesting opportunity. Still, the disruptive, personal, many-to-many transactional flows P2P enables have had it framed mostly as a threat, with the risk of legal double-standards looming great on the media and content industries. Taxation is here a particularly critical element, with vast repercussions on the development of a mature, profitable market. Do P2P transactions fall within the field of consumption taxation? Should they? Will they in the foreseeable future? What benefits business enterprises, the international community, the EU and national tax authorities might achieve by considering them fully integrated with their taxation regimes and especially with their different VAT systems? What fiscal, and hence economic, consequences might result from classifying a P2P operation as liable of consumption taxation for all players involved? Would this create a new market and foster economic growth?

This book analyzes in detail what the current framing for digital and media supplies provided through P2P technologies is, through the lens of an interdisciplinary approach. Challenges and opportunities will be assessed in respect to their technological feasibility and opportunity, consumption taxation, and copyright law, and measured against the two foundational powers of a state, the power to apply taxation and the power to punish unlawful action.

P2P networks are already playing a critical role in the distribution of digital content, and their relevance will increase. Whether as a convenient, alternative, economically-sound channel to distribute content through, or as a legal wasteland, that remains to be seen. Hopefully, these pages will help the conversation along.

List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
AVMS	Audiovisual Media Services/Audiovisual Media Services Directive
CCW	Computer Communications Workshop
CETS	Council of Europe Treaty Series
CFI	Court of First Instance
CFREU	Charter of Fundamental Rights of European Union
CRC	Convention on the Rights of the Child
ECC	European Convention on Cybercrime
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECR	European Court Reports
ECtHR	European Court of Human Rights
EHRR	European Human Rights Reports
ETS	European Treaty Series
Eur YB	European Yearbook
EWHC	High Court of England and Wales
ICECR	International Conference on Electronic Commerce Research
INSTICC	Institute for Systems and Technologies of Information, Control and Communication
ILM	International Law Materials
ILR	International Law Reporter
IWGDPT	International Working Group on Data Protection in Telecommunications
OECD	Organisation for Economic Co-operation and Development

List of Abbreviations

P2P	Peer-to-Peer
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the functioning of the European Union
TVWF	Television Without Frontiers Directive
UNTS	United Nations Treaty Series
VAT Directive	Directive 2006/112/EC
VoD	Video on Demand
VoIP	Voice over Internet Protocol

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CHAPTER 1

Introduction

In the past ten years the scientific community has certainly been aware of the Peer-to-Peer (P2P) phenomenon: papers and books have been written, conferences have been held. Peer-to-peer networking has been a topic of discussion in computer science, in economics, in the field of copyright law. All in all, a fairly complete view, with one important missing piece: tax law. I started researching in the area for my first PhD.¹ In 2008 P2P and taxation became the main focus of my investigations. Seven years and a second PhD degree later,² this book is an attempt to clarify the issues at stake, elaborate a tax law framework for addressing them, and kick-start a long due conversation which is still, as of today, by and large yet to come.

Since its inception in the early 1990s, the Internet has expanded into the most pervasive and successful global communication medium: e-mail alone has probably changed the way we think about reaching out to someone forever.³ The World Wide Web, allowing access to an ever increasing pool of resources, has definitely changed our lives and the way we do business, and turned electronic delivery into a mainstream operation.

We are now a few years into yet another change: thanks to the general availability of broadband, including mobile broadband, and the rise of social media, peer user networks are acquiring a prominent role in the delivery of resources over the Internet, as they minimize the infrastructural requirements on the original distributor's side.

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