SLAUGHTER AND MAY

Taxing the technology companies

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The Autumn Statement included two announcements focused on technology companies selling into the UK.

Royalty withholding tax

The royalty withholding tax changes announced by the Chancellor mark a third major UK tax change in the last three years for technology companies.

In one sense, the royalty withholding tax changes are merely an extension of the withholding tax rules enacted in 2016, though you might not have inferred this from the prominence given to the new rules in the Chancellor's speech. The 2016 rules imposed withholding tax on royalties paid to low-tax jurisdictions where products were sold into the UK through commissionaire or sales support structures, but not where the group has a UK distributor which buys and sells products on its own account. The new rules, which will apply from April 2019, will remove this distinction, so that sales in the UK will be subject to royalty withholding tax regardless of the group's internal route to market.

Given that "double Irish" IP structures will need to be closed down in 2020, however, the revenue-raising impact of these measures may be short-lived. And it is difficult to reconcile the new tax with the Government's statement, in its thoughtful position paper on taxing the digital economy, that it does not believe countries should have a general right to tax profits merely because end-user sales take place there. Isn't that exactly what the royalty withholding tax is doing?

VAT

VAT on digital services provided to UK customers has also been a hot topic in the last few years. The changes made across the EU in 2015 ensured that such supplies were subject to UK VAT, and these changes apparently raised an additional £300m per annum of UK tax. Now the focus is on collection and VAT fraud, particularly in relation to online marketplaces, where the operator will become jointly and severally liable for VAT on sales via its marketplace.

The future

Clearly a long-term solution for taxing digital businesses needs to be identified. It has been argued that all businesses are to some extent digital and so a 'one size fits all' regime was required. The Treasury paper suggests, however, that businesses that develop an online user platform and then collect data, sell advertising or earn commission on sales raise fundamentally different challenges to more conventional businesses.

However you look at it, technology companies seem to have overtaken banks as the preferred source of vote-winning, revenue-raising measures for the Government.