





# E-COMMERCE TAXATION AND ITS IMPLICATIONS FOR STATES, WORKERS AND TRADE UNIONS

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# EXECUTIVE SUMMARY

COVID-19 has given a huge boost to online sales worldwide, which are now expected to reach no less than a quarter of total retail sales by the middle of the decade. This development is rapidly exacerbating pre-existing dilemmas related to the oftentimes predatory business models employed by pure e-commerce players. One of the major issues looming large, even before the pandemic, was the way in which big e-commerce companies such as Amazon manage to avoid paying their fair share in taxes, mostly by shifting their profits to various tax havens across the globe. While Amazon and other “Big Tech” companies might be the most visible culprits in this regard, the question remains whether e-commerce, at least in the way it has developed until now, is detrimental to the broad sharing of economic wealth created with the aid of new technology.

The report tackles this question and greatly expands upon the idea of what it would mean for e-commerce companies to pay their fair share. It first assesses the extent to which the global expansion of e-commerce has been bolstered by the pandemic, after which it analyses the tax contributions of major e-commerce players in comparison to their brick-and-mortar peers. The main finding is that e-commerce tends to pay three times less corporate income tax than large brick-and-mortar retail chains. As e-commerce companies go from strength to strength, their expansion is, at least in part, funded by tax avoidance. For public revenues, the impact is massive: globally, the impact of corporate income tax avoidance by multinationals is estimated at around one tenth of total tax revenues, but in some countries it can go as high as one fifth.

E-commerce paying its fair share should in no way whatsoever be limited to corporate income taxes. The question of e-commerce taxation has several other dimensions. The report looks at the ways in which e-commerce players can avoid paying sales taxes by registering transactions in other territories than those where their customers reside. Since consumer taxes such as VAT can comprise over half of government tax revenues in some regions, the potential implications are at least as severe as in the case of corporate income tax avoidance.

Going further, the report shows that payroll taxes can also be a huge issue, since e-commerce business models increasingly rely on non-standard employment, with companies capitalizing not only on the “flexibility” granted by atypical contractual arrangements with their workers, but also on the fiscally advantageous situation of such contracts. The report highlights that e-commerce companies can save as much as 30 per cent of their payroll expenditure by shifting from standard labour contracts to atypical ones. This, however, comes at a huge cost for workers and communities. The use of independent contractors instead of

employees directly threatens the financing of social security and public services such as healthcare, while harming the livelihood of workers and the general population.

Finally, the report argues that the environmental footprint of e-commerce should be paid much more attention. Dominant e-commerce business models can be highly damaging to the environment. Ever-shorter delivery times over increasingly larger distances and at the lowest price possible come at a significant cost for the environment, especially when compared to traditional retail. When we add overpackaging and the energy intensiveness of electronic infrastructure, we begin to understand that the question of environmental impact has to be included in any discussion on the real social cost of e-commerce. Given that more and more governments are considering imposing carbon taxes on economic activity based on environmental costs, this is yet another way in which e-commerce has a long way to go before it pays its fair share.

The challenge of properly taxing e-commerce has so far been discussed mainly at national level, with individual countries imposing more or less idiosyncratic policies aimed at making e-commerce companies pay taxes in line with their revenues or profits. The report discusses these initiatives while also highlighting recent attempts at finding alternatives at international level. The common VAT policy of the European Union and especially the global corporate tax deal recently promoted by the OECD are the best examples of attempts to tackle the question of taxation internationally, mirroring the actual scale of e-commerce economic activity. Despite all the enthusiasm regarding these latest developments, we still have a long way to go before we can say that e-commerce definitely pays its fair share to society. Apart from the unanswered questions related to the global corporate tax deal’s implementation, the agreed 15 per cent rate is far below the 25 per cent demanded by trade unions.

Public authorities do not react to such problems automatically and on their own. More often than not, they have to be pushed to take action, and in certain cases trade unions have proved more than capable of making a difference when it comes to making e-commerce pay a fairer share of taxes. Based on interviews with representatives of UNI Commerce affiliates, the report presents such cases of trade union action from Australia, Argentina, Belgium, Sweden and the United States. The lessons learned are clear: tackling the question of e-commerce taxation requires that unions go outside their comfort zone, by diversifying their agenda and building broad-based coalitions, sometimes even with atypical partners.

# INTRODUCTION

On 9 April 2021, workers at Amazon's Alabama warehouse facility held a historic vote to join the Retail, Wholesale and Department Store Workers Union (RWDSU). Some 738 workers cast their vote in favour of unionization. Another 1,798 employees, however, voted against. Reports quickly came out about Amazon's aggressive union busting tactics: warehouse workers had been bombarded with text messages, fliers posted in bathrooms, leaflets, as well as a dedicated website urging them "to do it without dues".

A week after these events, Jeff Bezos stepped down as CEO of Amazon, not before sharing his vision of the company's future: Earth's best employer and Earth's safest place to work. To achieve this, Amazon's program emphasized body mechanics: the use of sophisticated algorithms to rotate employees between jobs that use different muscle-tendon groups to decrease strain from repetitive motions, advice on what to eat, when to eat, and what shoes to buy so they fit swollen feet at the end of the work shift.<sup>1</sup>

The level of sophistication used by Amazon in deploying anti-union tactics and workforce management is replicated in other issues relevant to workers' livelihoods. It does the same, for example, when it comes to taxation. Amazon, too, strives "to do it without dues", and there is hardly any doubt it is successful: on 12 May 2021, Amazon won in court against the European Commission's order dating back to 2017, which argued that the company had to pay 250 million euro in back taxes. The case was built around an investigation which emphasized that the company benefitted from illegal state aid between 2006 and 2014, resulting from a tax ruling issued by Luxembourg in 2003, which lowered the tax paid by Amazon in the country.<sup>2</sup>

1 Jeff Bezos, "2020 Letter to Shareholders", 15 April 2021: <https://www.aboutamazon.com/news/company-news/2020-letter-to-shareholders>; "Amazon Calls Warehouse Workers 'Industrial Athletes' in Leaked Wellness Pamphlet", Vice, 1 June 2021: <https://www.vice.com/en/article/eprnp7/amazon-calls-warehouse-workers-industrial-athletes-in-leaked-wellness-pamphlet>

2 Tax rulings are written interpretations of tax laws which are issued by tax authorities to corporations and individuals who request clarification of taxation arrangements. In the case of Luxembourg's tax rulings, the ICIJ's LuxLeaks investigation has shown that such tax rulings were confidentially negotiated between Luxembourg tax authorities and big accounting and consultancy firms such as PwC to enable multinational corporations to reduce their taxable income.

In ruling in favour of Amazon, the European General Court pointed out that the Commission's evidence failed to establish how exactly Amazon's corporate tax burden was artificially reduced through intra-group transfer pricing. To be clear, the challenge faced by tax authorities is not that a company like Amazon pays no taxes. Amazon does pay taxes. What is at stake is that Amazon is in reality liable to a significantly larger tax levy, but it avoids paying its fair share through complex accounting practices. In many respects, this conundrum applies more generally to the taxation of e-commerce globally.

The question of e-commerce companies paying their fair share in taxes could not be timelier. Though states' preoccupation with ensuring proper e-commerce taxation long predates COVID-19, the ongoing pandemic has made the issue more pressing than ever: as online consumer spending granted e-commerce companies several years' worth of gains within the span of a few months, national governments' spending also suddenly reached the highest levels in decades. If states are to maintain these levels of public spending, and it is likely that they will have to, they will need to increase tax revenue. Given its explosive growth worldwide and increasing share in overall economic activity, e-commerce would normally have to move beyond the tax breaks and tax cuts it benefitted from before the pandemic.

This report explores national tax initiatives and ongoing international tax reform efforts aimed at ensuring a level playing field between traditional retail business and e-commerce companies. It offers a critical overview of which kinds of tax contributions take precedence in digital taxation debates and which socially consequential issues such as non-standard labour arrangements or the environmental footprint of electronic retail might be overlooked in current debates on e-commerce taxation.

The report is divided into three parts. Part 1 looks at recent global and regional e-commerce developments in light of COVID-19. The boost given by the pandemic to online shopping in 2020 remains strong and the top 10 global e-commerce continue to reap the benefits in terms of both revenues and profits, which spill over into strong cash flows, high R&D expenditure and aggressive expansion strategies.

Though the remarkably high growth rates during the pandemic will eventually slow down, shopping by digital means will continue to expand: the current outlook is that by the middle of this decade at least a quarter of total global retail sales will happen online.

At present, more and more traditional businesses transition to online platforms and adopt hybrid omnichannel models, while e-commerce giants such as Amazon explore the opportunity of opening large department stores.<sup>3</sup> Such trends might make it seem like the lines between brick-and-mortar and electronic retail are not as well defined as they used to be but there is one line that is not getting any blurrier: on average, global e-commerce players still pay three times less corporate income tax than their brick-and-mortar peers. Part 2 of the report probes into the challenges that e-commerce poses for tax jurisdictions. After decades in which corporate tax avoidance schemes have become consolidated and increasingly more sophisticated, states have sought to close the tax gap on e-commerce operations by imposing (1) sales taxes, (2) digital services taxes, while also undertaking (3) coordinated action at international level. The latter has resulted in the 2021 OECD global tax deal as part of which more than 130 signatory states have endorsed a common international tax reform framework for multinational companies. At face value, global e-commerce players would as a result have to pay more taxes in countries where they have their customers and/or users — in other words, where they actually make their revenues and profits.

The tax challenges raised by global e-commerce are not limited to questions of sales tax and corporate income tax. E-commerce also has a labour tax avoidance issue, which is directly related to the types of contracts workers have, the working conditions they have to bear, and the amount of money they are forced to take out of their pocket when they need to cover for healthcare or education. More broadly speaking, the fact that e-commerce does not pay its fair share has concrete implications for workers' livelihoods in general. Workers might have to deal with increasingly lower quality public services and threats to their jobs, since employers find it difficult to compete with e-commerce companies operating with lower taxation costs. Brick-and-mortar businesses might even try to emulate e-commerce business models, resulting in a race to the bottom whose costs would be primarily borne by workers. For all these reasons, trade unions in the commerce sector (and trade unions in general) should be very interested in the ongoing debates surrounding e-commerce taxation. Indeed, in some countries, trade unions have already taken action and attempted to push for fairer e-commerce taxation regimes. Part 3 of the report looks at how e-commerce taxation figures on the agenda of trade unions and how workers' organizations are approaching transformations brought on by electronic retail in the context of the ongoing COVID-19 outbreak and beyond.

It cannot be stressed enough that the tax-relevant innovations brought by e-commerce are constantly evolving along with new technologies and innovative business models. The report concludes by taking stock of the latest e-commerce trends, with an emphasis on challenges that go beyond the tax caps and global corporate turnover thresholds that are currently at the heart of the debate on how to properly tax economic activity at the global level.

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3 "Amazon disrupts retail again with new department stores", Forbes Magazine, 24 August 2021: <https://www.forbes.com/sites/blake-morgan/2021/08/24/amazon-disrupts-retail-again-with-new-department-stores/?sh=2a470a0c3752>

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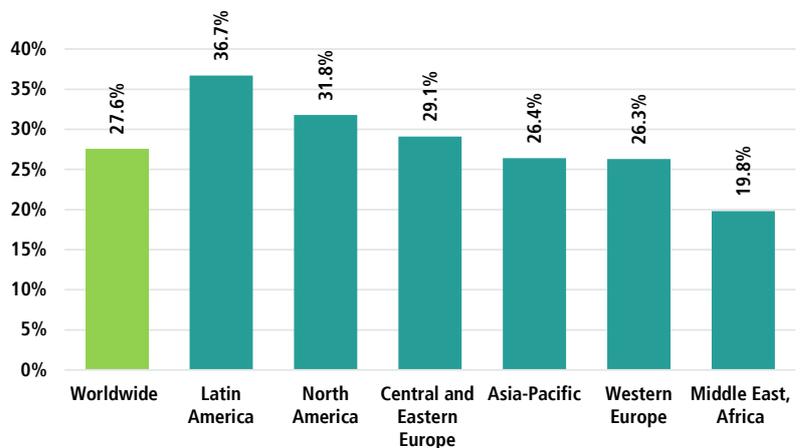
## GLOBAL E-COMMERCE CONTINUES TO BENEFIT FROM ITS 2020 BOOST

### 1.1. Uneven growth and transformation of e-commerce across regions

In 2021, e-commerce has continued to expand globally. The unprecedented impact of COVID-19 is indisputable when one considers that the top 10 e-commerce players in the world have reached a record of almost \$400 billion in combined sales in the first half of 2021, close to double what they had registered two years before. Looked at in more detail, e-commerce growth has been uneven across regions: Latin America saw a growth of 36.7% in 2020, while e-commerce in the Middle-East and Africa grew by “just” 19.8% (figure 1); the other regions registered growth rates between 26 and 32%.

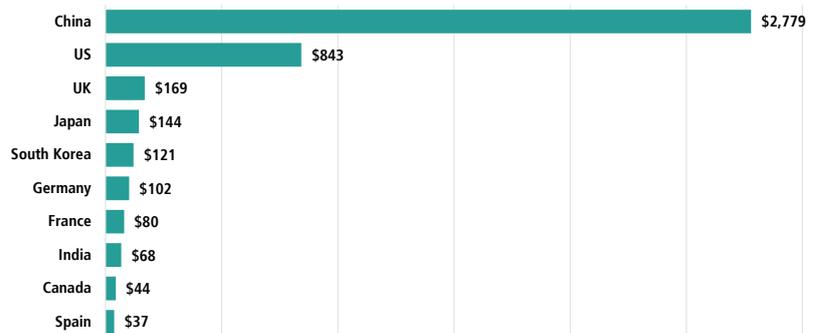
The Chinese and the US markets continue to lead by very large margins when it comes to sheer market size (figure 2). In terms of e-commerce penetration, the Asia-Pacific region continues to be the most advanced. In South Korea, internet sales increased from around one in five transactions in 2019 to more than one in four in 2020. During 2020 and the first quarter of 2021, India, which has the third-largest shopper base in the world, saw a 25% growth of its e-tail sector, driven mainly by online sales in large metropolitan areas. China, of course, remains an absolute leader, with the biggest ecommerce consumer market in the world. The US is still at the top in terms of e-commerce sales per capita, followed closely by the UK, but Chinese citizens spend on average almost twice as much on online sales than citizens in large markets in Western Europe and Japan (figure 3). From this point of view, the biggest contrast is between India and China, which have

Figure 1  
Global ecommerce sales growth by region in 2020



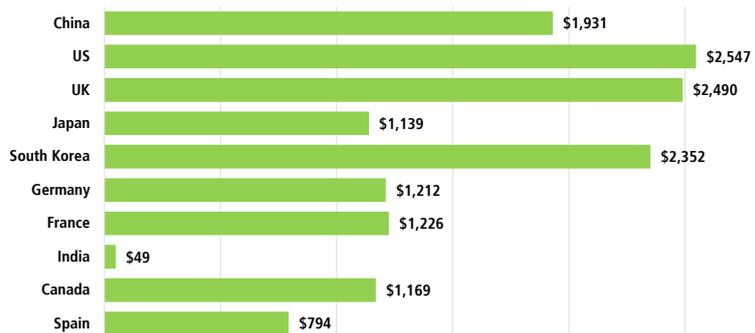
Source: eMarketer

Figure 2  
Top 10 countries ranked by ecommerce sales in 2021 (billion USD)



Source: Oberlo

Figure 3  
E-commerce sales per capita in the largest ten markets in 2021 (thousands USD)



Source: Oberlo, Worldometer

similar populations in terms of size, but diametrically opposed spending per capita figures, mostly likely due to the much more numerous Chinese middle-class. The Indian market has huge potential for e-commerce growth, with major implications for global retail as a whole.

In 2020, Latin America became the world's fastest-growing retail e-commerce market, but it remains unclear whether the pandemic-driven e-commerce high growth rates will remain as high in the upcoming years. Thus far, a handful of countries — Brazil, Mexico, and Argentina — still account for approximately 75% of all online sales across the continent (for approximately 60% of the population), with Chile and Columbia trailing behind. Such intra-regional concentration is also visible in Africa, where e-commerce is dominated by three countries from the sub-Saharan region — South Africa, Nigeria, and Kenya, which together account for more 50% of online retail sales on the continent.<sup>4</sup> Statista estimates the number of online shoppers in Africa at 281 million in 2020; this would mean almost double the number in 2017, but the continent still has the lowest e-commerce penetration rate.<sup>5</sup>

In Europe, the number of e-commerce users will most likely surpass 500 million at the end of 2021 and European-based e-commerce start-ups have been proliferating in the wake of the pandemic. To take one example, in Germany e-commerce has been the second most sought after industry for start-ups in the first quarter of 2021, with a clear increase in popularity compared to the same period of 2020 (Figure 4). We must keep in mind that Germany accounts for the highest number of cross-border web shops in Europe, which now includes seven marketplaces and 55 online pure players.<sup>6</sup>

Growth in global ecommerce remains uneven also when considering product categories (Figure 5). Expectedly, travel, mobility, and accommodation witnessed a 52.6% decrease in 2020 by comparison to 2019 and is projected to rebound only

4 International Trade Center (2020) "Mapping e-Marketplaces in Africa": [https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/B2C-marketplaces-20201221\\_final\\_Low-res.pdf](https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/B2C-marketplaces-20201221_final_Low-res.pdf).

5 Statista "Number of online shoppers in Africa from 2017 to 2025", 23 September 2021: <https://www.statista.com/statistics/1190579/number-of-online-shoppers-in-africa/>. Statista numbers on B2C e-commerce shoppers in Africa might, however, be a gross overestimation. UNCTAD instead estimated the number of online shoppers in Africa to be around 5% of the population (approx. 65 million) in 2019. See "Online shopping in Africa: somewhere between smartphones and paper catalogues", 14 December 2019, DW: <https://www.dw.com/en/online-shopping-in-africa-somewhere-between-smartphones-and-paper-catalogues/a-51662266>

6 Cross-Border Europe (2021) "TOP 16 Countries Cross-Border Europe", 3rd Edition: <https://www.cbcommerce.eu/press-releases/the-third-edition-of-the-top-16-countries-cross-border-europe-an-annual-ranking-of-the-best-16-european-countries-in-cross-border-online-shopping/>

Figure 4  
Number of e-commerce start-ups in Germany (2020-2021)

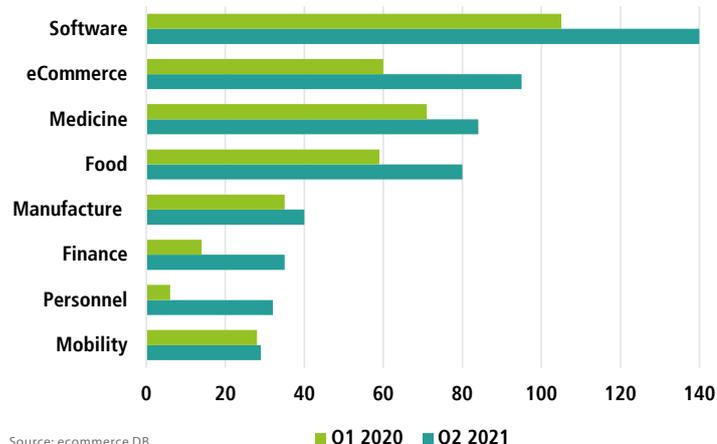


Figure 5  
Top online shopping categories worldwide in 2021 (billion USD)



beginning with 2023, while the online sale and delivery of food and groceries will most likely continue to grow at an accelerated rate.<sup>7</sup> For example, in Asia, the frequency of online food purchases in 2020 increased by 16% to 70%, depending on the country.<sup>8</sup> In June 2020, for example, MissFresh, a top Chinese online grocery retailer, reported it delivered 1 million orders of fresh grocery in Beijing per day.<sup>9</sup> E-commerce start-ups in sub-Saharan Africa have also been quick to capitalize on the increased demand for online sales and delivery of fresh food as states imposed physical distancing rules. In Kenya, Twiga Foods, a marketplace which supplies retailers with fresh produce from farms, has partnered with Jumia (Africa's so-called Amazon) to allow middle class households to order and receive foodstuffs, while in Nigeria the agri-tech platform FarmCrowdy launched an e-commerce platform for fresh produce to satisfy rising demand from middle class families.<sup>10</sup>

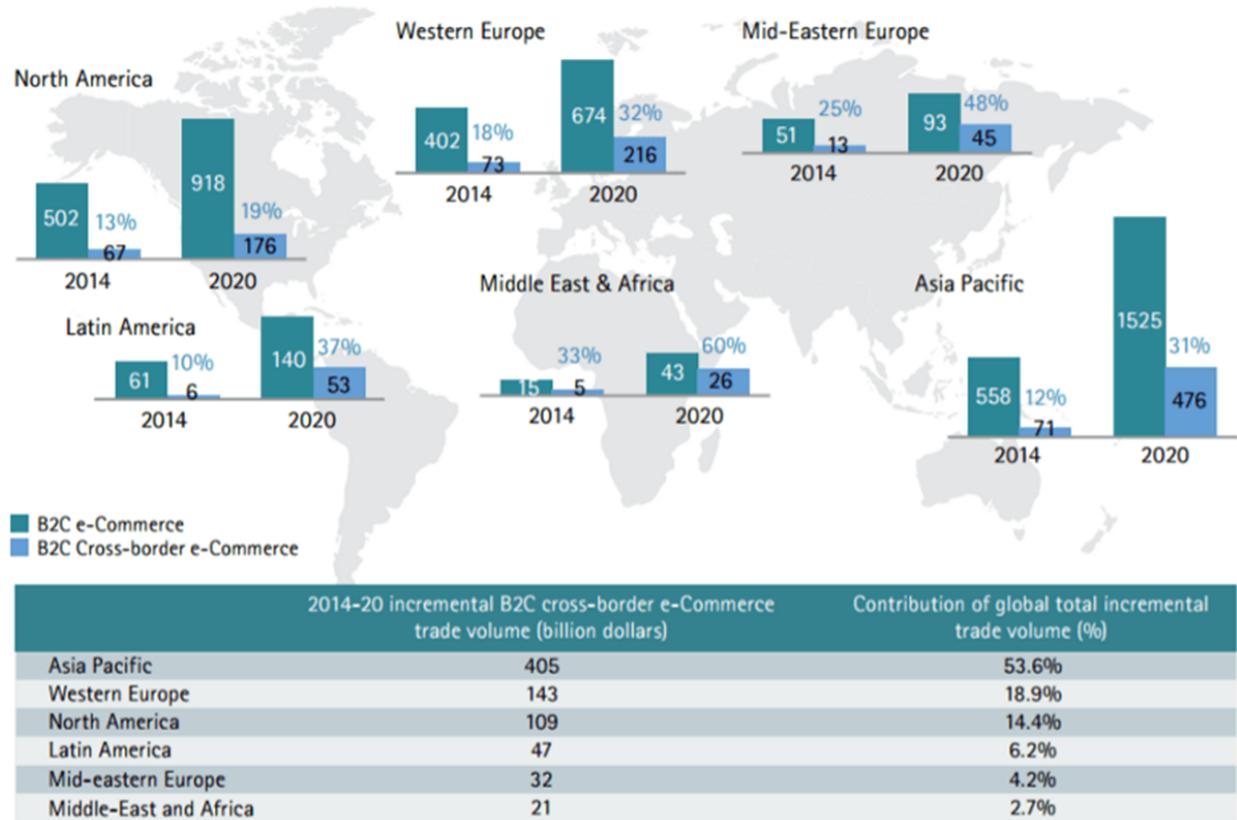
7 <https://weareuv.com/the-worlds-fastest-growing-e-commerce-markets/>

8 "Reimagining food retail in Asia after COVID-19," McKinsey: <https://www.mckinsey.com/industries/retail/our-insights/reimagining-food-retail-in-asia-after-covid-19>.

9 Thomas Reardon et al. (2021), "'Pivoting' by food industry firms to cope with COVID-19 in developing regions: e-commerce and 'co-pivoting' delivery-intermediaries", Agricultural Economics.

10 "African e-commerce is getting a much-needed boost from co-

Figure 6  
Global cross-border e-commerce transaction value, 2014-2020 (billion USD)



Source: Accenture, Global Cross Border E-Commerce Market 2020, June 2015

A focus on grocery and food e-tail start-ups is also visible in Europe. In Sweden, for example, Curb was founded in 2020 as a food delivery business aiming to create food menus that are readily changeable according to consumer demand.<sup>11</sup> In France, Cajoo is a food e-commerce start-up founded in February 2021 that already operates in ten cities and has more than 100,000 users to whom it offers deliveries of nearly 2,000 food and non-food products in under 15 minutes, while ensuring extensive operating hours.<sup>12</sup>

COVID-19 has also positively impacted the global e-commerce furniture market and it is expected that by 2022 furniture sales will account for over 14% of total retail e-commerce sales.<sup>13</sup> In the US, for example, Amazon and Wayfair accounted for nearly 60% of all furniture and bedding online sales, but it remains to be seen whether at global level e-commerce pure players will increasingly take

over this segment or whether the omnichannel approach including the click and collect hybrid model of the larger brick-and-mortar players will be the winner.<sup>14</sup>

It is important to note that even though e-commerce growth is a truly global phenomenon, the majority of online retail transactions take place within national borders — domestic online sales continue to outweigh cross-border B2C sales and will continue to do so for some time (Figure 6). It is in fact likely that the impact of COVID-19 on international trade has primarily boosted domestic e-commerce and not cross-border sales. In Latin America, the pandemic has strengthened the already dominant position of homegrown e-commerce player, Mercadolibre while Jumia has benefitted from a similar development in Africa — unsurprisingly, Jumia continues to push for market growth and expansion across the African continent but has yet to turn profitable since its founding in 2012.<sup>15</sup>

ronavirus lockdowns”, Quartz Africa, 19 May 2020: <https://qz.com/africa/1855227/africas-e-commerce-boosted-by-coronavirus-lockdowns/>

11 “10 promising Sweden-based startups to watch in 2021”, EU-Startups, 3 February 2021: <https://www.eu-startups.com/2021/02/10-promising-sweden-based-startups-to-watch-in-2021/>

12 “French startup Cajoo promises grocery delivery in 15 minutes”, Ecommerce news, 5 February 2021: <https://ecommercenews.eu/french-startup-cajoo-promises-grocery-delivery-in-15-minutes/>

13 “Why more furniture will continue to be sold online after the pandemic”, Surface Magazine, 23 April 2021: <https://www.surfacemag.com/articles/why-more-furniture-will-continue-to-be-sold-online-after-the-pandemic/>

14 “E-commerce reaps benefits from 2020’s stay-at-home model”, Furniture Today, 2 August 2021: <https://www.furnituretoday.com/research-and-analysis/e-commerce-reaps-benefits-from-2020s-stay-at-home-model/#:~:text=According%20to%20analysis%20of%20U.S.,an%20increase%20of%20about%2024%25.>

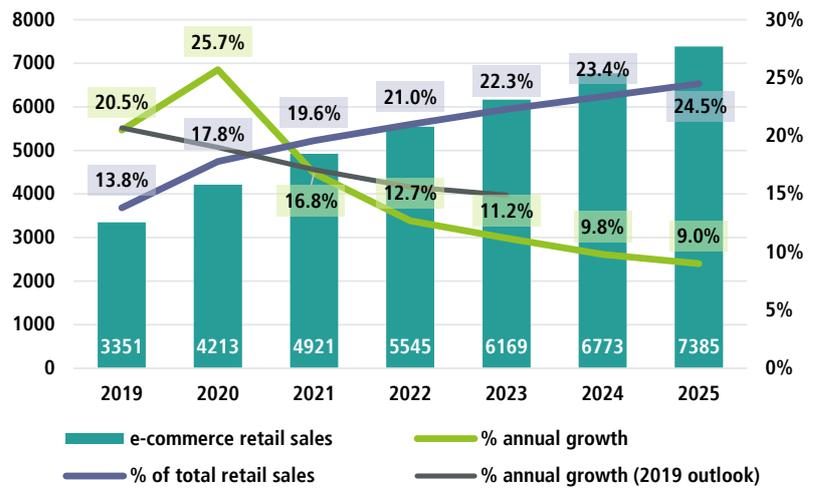
15 Maile McCann, “Jumia is still in search of profitability as it seeks to dominate African e-commerce”, Modern Retail, 14 May 2021: <https://www.modernretail.co/startups/jumia-is-still-in-search-of-profitability-as-it-seeks-to-dominate-african-e-commerce/>

## 1.2. A strong growth outlook

There can be no doubt that COVID-19 has given a historical boost to e-commerce. Global e-commerce activity is today not only substantially larger than it would have been without the pandemic, but it is also set to continue growing at very high rates. An estimate by eMarketer indicates that global e-commerce sales will reach 4.9 trillion USD this year, up from 4.2 trillion in 2020 and 3.4 trillion in 2019 (Figure 7). The pre-COVID outlook indicated much slower growth rates for 2020 (19% vs. 25.7%) and current expectations are that post-COVID annual growth rates will be lower than forecasted before the pandemic. Over the medium-term, the pandemic boost is expected to dissipate, with e-commerce sales volume returning to its historical trajectory. Still, e-commerce is moving extremely quickly in comparison to traditional retail: its share in total retail sales is set to grow from 13.8% in 2019 to no less than 24.5% in 2025. In other words, by the middle of this decade a quarter of total global retail sales could happen online.

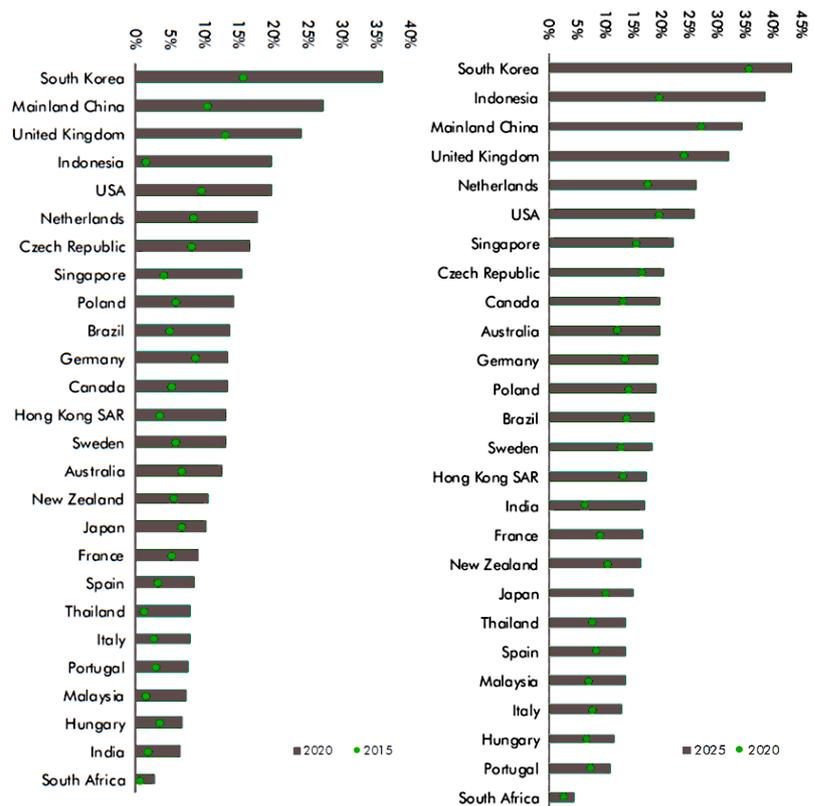
E-commerce development remains highly heterogeneous. At present, South Korea, Indonesia and the UK are the only countries with an e-commerce share of over 20% of total retail sales, while in large markets such as India or France the share remains below 10% (figure 8). The country-by-country forecast nonetheless shows a massive advance in most countries by the middle of the decade, with Asian countries registering by far the highest growth: in South Korea, e-commerce is expected to have a market share of close to 45% by 2025, while the most spectacular advances are forecasted in Indonesia (from approximately 20% to nearly 40%) and India (from around 5% to over 15%). Even though e-commerce growth is a truly global phenomenon, impacting all countries across the world, it is still highly uneven. The major point remains that while today e-commerce has a share of 5% to 15% in most countries, in five years' time we could speak of 15% to 20%.

Figure 7  
Global e-commerce 2021 retail sales growth outlook (billion USD)



Source: eMarketer, May 2021

Figure 8  
E-commerce sales as % of total retail sales 2015-2012 and 2020-2025 outlook



Source: CBRE, June 2021.

## 1.3. The financial performance of e-commerce giants

The immediate impact of COVID-19 is visible in the fact that in the second quarter of 2020 the combined quarterly sales of the top 10 global e-commerce players exceeded the volumes registered in the last quarter of 2019, which is highly atypical — normally, sales during the winter holiday season are higher than mid-year (figure 9). In the fourth quarter of 2021, the combined sales of the analysed companies surpassed 200

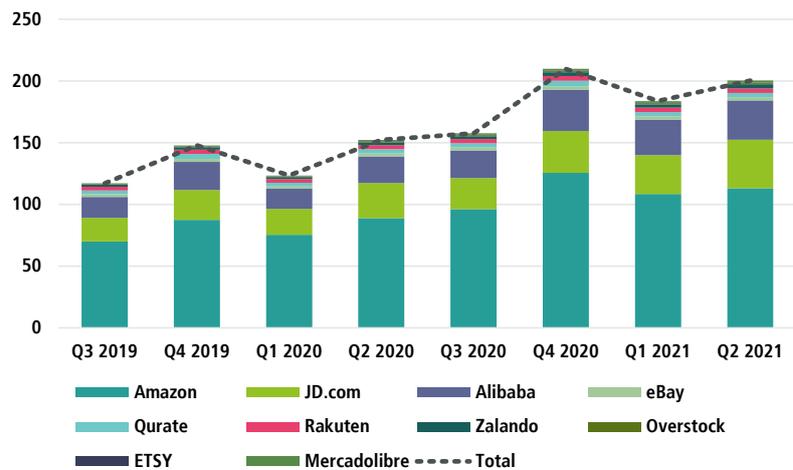
billion USD for the first time, registering a staggering 42% growth versus the same period of 2019. In 2021, sales rose by 49% year-on-year in the first quarter and by no less than 32% in the second quarter in comparison to the same period of 2020, when sales had received a major boost due to the global wave of lockdowns.

With the exception of the tourism-dependent Rakuten, all major e-commerce companies registered double-digit growth during the first lockdowns (Q2 2020), with Chinese companies (JD.com, Alibaba), marketplaces (eBay, ETSY, Mercado Libre) and furniture stores (Overstock) witnessing the largest increases (table 1). Marketplaces like eBay and Mercadolibre continued to have strong sales growth even in the third quarter of 2020, when sales registered a slight decline for companies like JD.com, Qurate, Zalando and Overstock in comparison to the second quarter. The 2020/21 winter season was the best ever for all retailers except Overstock: on average, sales increased by 33%, with Alibaba having a 49% increase versus the third quarter. In some cases (JD.com, Zalando, Overstock and Mercado Libre) this was more than compensated in the second quarter of 2021, when sales again registered record highs. The total sales value of the top 10 global e-commerce players in the second quarter of 2021 was approximately 50% higher than two years before.

In terms of profitability, the combined gross profits of the ten analysed companies rose in line with sales and exceeded 70 billion USD for the first time in Q4 2021 and then again in Q2 2021. Looking at the gross profit ratio (as % of sales), we can see the results of the different business models that characterize these companies (figure 10):

- Pure marketplaces that do not sell their own goods but connect sellers with buyers have typically a gross profit margin higher than 75% (eBay, ETSY), as these companies do not consider the full price of the products sold on their platforms as revenues and take into account only the commissions received from customers.
- Players that both sell their own products and provide platforms for external sellers (and even diversify into other businesses such as cloud services or fintech) usually register a gross profit margin of around 40% (Amazon, Alibaba, Mercado Libre).

Figure 9  
Quarterly sales of top 10 global e-commerce players



Source: Syndex

Table 1  
Quarterly sales growth for the top 10 global e-commerce players

	Q4 2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020	Q1 2021	Q2 2021
Amazon	24.9%	-13.7%	17.8%	8.1%	30.6%	-13.6%	4.2%
JD.com	26.1%	-13.6%	35.5%	-11.3%	34.6%	-7.5%	25.4%
Alibaba	35.1%	-28.6%	32.5%	3.3%	49.0%	-13.4%	10.2%
eBay	7.3%	-18.6%	28.3%	11.5%	10.1%	-8.0%	1.1%
Qurate	35.1%	-30.0%	17.2%	-1.1%	31.6%	-25.0%	5.0%
Rakuten	10.7%	-7.7%	6.2%	5.5%	16.8%	-7.2%	-0.5%
Zalando	30.1%	-23.6%	33.3%	-3.5%	42.0%	-12.1%	22.1%
Overstock	6.9%	-8.4%	125.9%	-4.6%	-6.5%	-3.5%	20.4%
ETSY	36.4%	-15.5%	87.9%	5.3%	36.7%	-10.8%	-3.9%
Mercadolibre	11.8%	-3.3%	34.7%	27.0%	19.0%	3.8%	23.5%
Total	26.2%	-16.5%	23.4%	3.5%	33.1%	-12.4%	9.1%

Source: Syndex

- Aggressive players with very fast growth rates, such as JD.com, register very low profit margins (around 15%), likely due to predatory pricing practices.
- Rakuten, which has a strong stake in on-line travel services, suffered during the pandemic due to the severe decline of tourism.

Overall, most pure players maintained their gross profit ratio flat during the pandemic, despite a substantial increase in sales. The exceptions were Rakuten, which had a negative gross profit ratio during the pandemic, and ETSY, which saw a 10% boost in gross profit ratio due to increased demand.

R&D expenditure has become even more of a priority (figure 11). Amazon has steadily increased its R&D spend from less than 10 billion USD per quarter before the pandemic to almost 14 billion in the second quarter of 2021. Alibaba has likewise substantially increased its R&D budget, from 1.6 billion USD per quarter to over 2 billion. In its turn, eBay has doubled its quarterly R&D expenditure in comparison to pre-COVID times; while considerably smaller, Mercado Libre and ETSY have done the same. Such developments clearly

indicate that pure players intend to pursue aggressive growth strategies and want new technologies to serve as a competitive advantage. Overall, in the first half of 2021, Amazon spent 28% of its gross profit on R&D, JD.com spent 13%, Alibaba 19%, Overstock 16%, ETSY 15%, and Mercado Libre 20%.

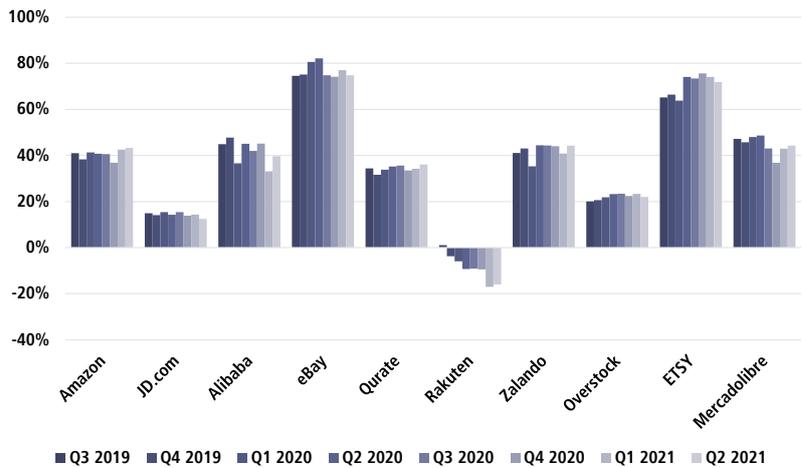
In order to assess whether all these developments have improved e-commerce’s potential for generating profits, we can look at companies’ reported earnings before interest taxes depreciation and amortization (EBITDA, figure 12). The comparison with gross profits can give us an idea of how expenses related to marketing or transportation evolved. We saw already that gross profit ratios have remained largely stable, meaning that the direct costs of the goods sold have not increased. EBITDA developments nonetheless indicate a potentially substantial reduction in operating expenses for Amazon (+43% EBITDA in the first half of 2021 vs. same period of last year). eBay, Qurate, Zalando, ETSY and Mercado Libre have likewise increased their EBITDA at a visibly faster rate than their gross profits. On the other hand, Chinese pure player Alibaba saw its EBITDA fall sharply (15% of sales in Q2 2021 versus almost double in Q2 2020 and before), likely as a result of increase freight costs for international sales.

In terms of net profit, the situation has visibly improved for the likes of Amazon (under 4% net income ratio before the pandemic, closer to 7% today), Qurate, Zalando, Overstock and ETSY. JD.com’s net profitability peaked during 2020, but returned to very low levels, while Alibaba’s continues to be very high, with some volatility in the first part of the year (table 2). Higher profits can mean better cash generation capacity, as it is indeed visible from Amazon’s cash from operations. Amazon’s aggressive investment strategy is obvious from its likewise large capital expenditures, which renders the company’s free cash flow performance somewhat modest in comparison to its other financial metrics (figure 13).

In general, the cash flows of pure e-commerce players were impacted by several factors during the pandemic. First, there was a positive impact of increased demand on the operating cash flows, especially visible in Q2-Q4 2020. Subsequently,

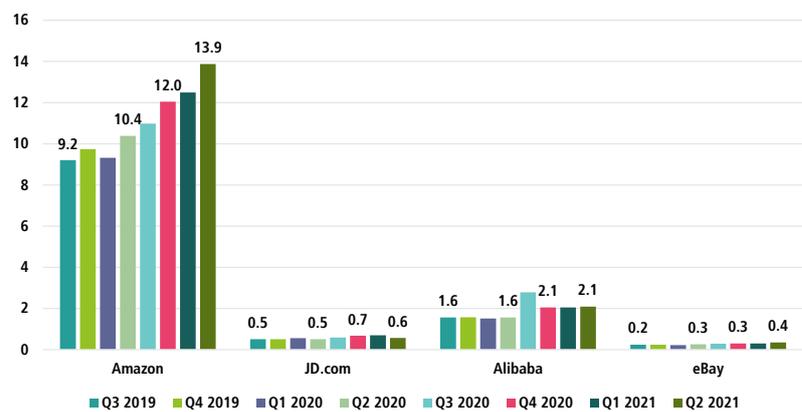
the increase in prices and higher stocks meant an increase in working capital in the first quarter of this year (Amazon’s working capital rose by \$20 billion in the first half of 2021). In the meantime, favourable market prospects stimulated pure player’s investment: cash spent in investing activities almost tripled compared to the pre-pandemic period. In the

Figure 10  
Gross profit ratios of top 10 global pure e-commerce players (% of sales)



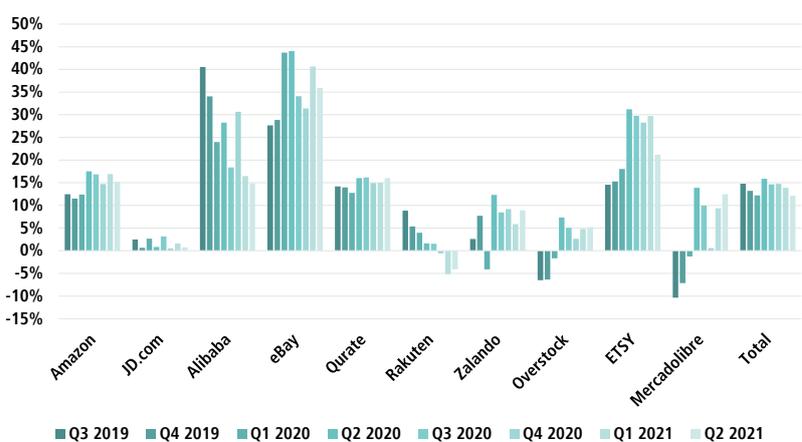
Source: Syndex

Figure 11  
R&D expenditure (billion USD)



Source: Syndex

Figure 12  
EBITDA margin (% of sales)



Source: Syndex

second half of 2019 pure players spent around \$17.8 billion in investments – the amount rose to \$58.7 billion in the second half of 2020 and \$50.8 billion in the first half of 2021.

### 1.4. Implications in terms of taxation

What does this all mean in terms of taxation? Do these companies pay their fair share in terms of corporate income taxes? A face-value analysis of the period 2015-2020 shows a large diversity of tax situations (table 3). The tax provisions mentioned on companies' income statements appear high for Alibaba, Amazon and Qurate (over 15% of cumulated profits before tax over the entire period), especially when compared to the much lower ratios of ETSY and JD.com, or the negative ratio of eBay. The situation can nonetheless differ radically when we look at the taxes actually paid, and not just at the tax figures presented on paper in income statements. Here we see that Alibaba, Qurate and JD.com pay slightly less cash tax than on their income statements, while eBay pays substantially more. Amazon, on the other hand, is the big outlier, with just 6.2% cash tax paid out of its profit before tax, a similar ratio to JD.com, which has much more modest financial results.

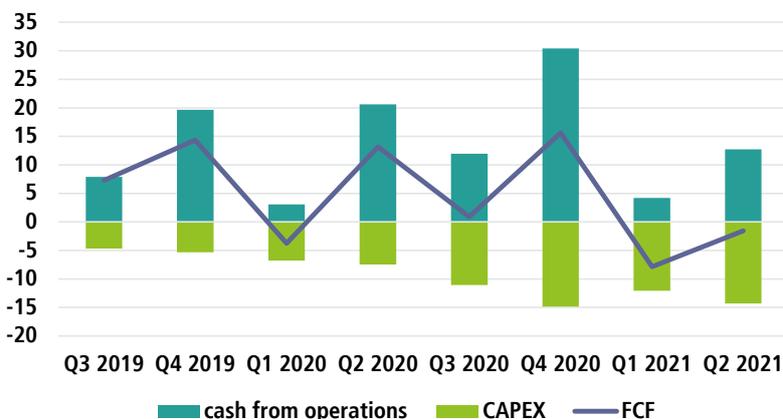
This perspective offers us no clear indication about e-commerce in general and even about the tax behaviour of, say, Amazon in comparison to Alibaba. Differences in taxes declared on income statements and taxes paid in cash can have many explanations, not all of which having to do with tax avoidance. Still, it is notable that the largest e-commerce pure player pays substantially less tax relative to profits than its immediate competitors. A comparison with traditional brick-and-mortar retailers is, however, much more revealing. Table 4 compares seven of the largest e-commerce companies with seven of the largest hypermarket retailers in the world according to three metrics. First, the profit before taxes declared on the income statements: we see here that Walmart and Alibaba yield the highest absolute profits, followed at a significant distance by Amazon and Costco; overall, the seven e-commerce players have slightly higher cumulated profits before tax (186.6 billion versus 180.2 billion). The second metric refers to taxes actually paid in cash, where we see a substantial difference emerging between e-commerce players, who paid 21.1 billion in tax between 2015 and 2020, while hypermarket retailers paid no less than 53.6 billion. The third set of figures makes this difference more visible: the cumulated effective tax rate for e-commerce players (calculated as cash tax payments as part of profits before tax) was almost three times lower than for hypermarket retailers (11.3% vs. 29.8%).

Table 2  
Net income ratio (% of sales)

	Q3 2019	Q4 2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020	Q1 2021	Q2 2021
Amazon	3.0%	3.7%	3.4%	5.9%	6.6%	5.8%	7.5%	6.9%
JD.com	0.5%	2.1%	0.7%	8.2%	4.3%	10.8%	1.8%	0.3%
Alibaba	60.9%	32.4%	2.8%	31.0%	18.6%	35.9%	-2.9%	21.9%
Qurate	-24.9%	3.4%	-0.7%	6.4%	10.0%	15.0%	6.2%	6.3%
Rakuten	-35.8%	-5.0%	-10.7%	2.3%	-12.2%	-10.3%	-6.4%	-10.0%
Zalando	-0.9%	4.3%	-5.7%	6.0%	3.2%	5.1%	1.5%	4.4%
Overstock	-8.9%	-7.3%	-4.9%	4.8%	3.2%	1.8%	2.6%	36.3%
ETSY	7.5%	11.6%	5.5%	22.5%	20.3%	24.1%	26.1%	18.6%
Mercadolibre	-24.2%	-8.0%	-3.2%	6.4%	1.3%	-3.8%	-2.5%	4.0%

Source: Syndex

Figure 13  
Amazon free cash flow (billion USD)



Source: Syndex

Table 3  
Tax situation of select e-commerce players  
(cumulated figures for 2015-2020, in M USD)

	profits before taxes	tax provisions on income statements		cash taxes paid	
		M USD	% of profits before taxes	M USD	% of profits before taxes
Alibaba	99588	15863	15.9%	13332	13.4%
Amazon	58681	10524	17.9%	3658	6.2%
Ebay	15750	-1326	-8.4%	2506	15.9%
ETSY	502.8	9.8	1.9%	30.8	6.1%
JD.com	7489	585	7.8%	442.4	5.9%
Qurate	4252	672	15.8%	517	12.2%

Source: Syndex

How can this be? Theoretically, there are many possibilities, ranging from states adopting tax laws that are friendly to e-commerce companies in particular to these companies shifting their profits to jurisdictions that impose less tax on corporate profits. The bottom line is that, on average, major global e-commerce players pay three times less corporate income tax than their brick-and-mortar peers. This does not even consider strategies of reducing declared profits in order to pay less tax, nor does it account for other ways in which e-commerce players can reap additional tax benefits from different VAT regimes or employment arrangements. We look at these issues in more detail in the next section.

In 2020, as the COVID-19 outbreak engulfed one country after another, Amazon registered record sales income in Europe in the amount of €44 billion. Strangely or not, the company's European retail division could at the same time report losses of €1.2 billion to the Luxembourg tax authorities, making it exempt from paying corporate income tax. The reported loss also meant the company received €56 million in tax credits, which it could use to offset future tax bills — of course, only if it declared a profit in the future.<sup>16</sup> How was this possible?

<sup>16</sup> "Amazon had a big year, but paid no tax Luxembourg, its European headquarters", The New York Times, 4 May 2021: <https://www.nytimes.com/2021/05/04/business/amazon-corporate-tax.html>.

Table 4

**Comparative analysis of tax situation of e-commerce companies versus brick-and-mortar hypermarket retailers (billion USD, cumulated for 2015-2020)**

	profit before taxes	cash taxes paid	effective taxa rate (cash tax / profit before tax)
Walmart	109.4	31.7	28.9%
Alibaba	99.6	13.3	13.4%
Costco	28.9	6.8	23.4%
Seven Eleven	15.5	5.4	35.1%
Aeon	7.9	4.7	59.4%
Amazon	58.7	3.7	6.2%
Ebay	15.8	2.5	15.9%
Ahold Delhaize	11.4	2.4	21.0%
Tesco	6.7	1.4	20.3%
Casino	0.4	1.3	302.6%
Mercadolibre	0.3	0.6	195.9%
Qurate	4.3	0.5	12.2%
JD.com	7.5	0.4	5.9%
ETSY	0.5	0.03	6.1%
<b>7 e-commerce companies</b>	<b>186.6</b>	<b>21.1</b>	<b>11.3%</b>
<b>7 hypermarket companies</b>	<b>180.2</b>	<b>53.6</b>	<b>29.8%</b>

Source: Syndex

## 2

## THE HIGH STAKES OF E-COMMERCE TAXATION

After the 2014 investigation by the International Consortium of Investigative Journalists (ICIJ), known as LuxLeaks, there were legitimate grounds to believe that tax authorities in the EU and the US would seek to address Amazon's large tax avoidance scheme. Based on confidential documents from PwC, one of the global top accounting and financial consulting companies, the ICIJ journalists reviewed paperwork covering the 2002-2010 period and offered valuable insight into how tax rulings for hundreds of Luxembourg-based subsidiaries of multinational companies were negotiated in private meetings between PwC accountants and Luxembourg tax officials, with the sole purpose of significantly reducing or even eliminating taxable income in the companies' accounts.

In the case of Amazon, leaked documents showed how it used royalty pricing between two of its European subsidiaries to effectively reduce its taxable profit in Luxembourg and then, through another set of intra-group payments, finance R&D projects undertaken in the US (Figure 14). In 2009, for example, Amazon EU S.à.r.l., based in Luxembourg reported more than €519 million in royalty expenses while the limited partnership Amazon Europe Holding Technologies SCS, also based in Luxembourg, had an influx of the same amount "based on agreements with affiliated companies".<sup>17</sup> Both the IRS (Internal Revenue Service) in the US and the European Commission in the EU sued Amazon in connection to Project Goldcrest<sup>18</sup>, which is how Amazon's Luxembourg-based tax avoidance scheme came to be known.

Both lost. In 2019, the US Ninth Circuit Court of Appeals upheld the Tax Court's 2017 ruling in Amazon's favour and rejected the IRS's claim to charge the e-commerce company for its transfer of an estimated \$2.2 billion worth of intangible

Figure 14  
Amazon tax avoidance scheme in the EU



Source: European Commission

assets to Luxembourg in 2005 and 2006.<sup>19</sup> In 2021, Amazon also won in Court against the European Commission's order dating back to 2017, which held that the company had to pay 250 million Euro in back taxes because of its tax dealings in Luxembourg. In both cases, the Courts pointed out that for the time frame in question (2005-2006 for the US lawsuit and 2003-2014 for the European one), Amazon was in compliance with existing regulations regarding transfer pricing, regulations which in both cases date back to the 1990s.

The fact that e-commerce giants can operate complex tax avoidance schemes and get away with it happens because the international tax system, as it stands now, allows for it. How we got here and why is it that the cross-border activities of e-commerce businesses can easily be played against the territoriality of tax authorities is discussed in more detail in the following section.

### 2.1. Corporate income tax avoidance

Ordinarily hailed as the preferred instrument of attracting foreign direct investment, low corporate tax rates policies have been implemented by governments across the world in an effort to seemingly secure job growth and economic growth. From industry-focused tax exemptions to quasi tax-free geographically confined areas such as special economic

<sup>17</sup> "Leaked Documents Expose Global Companies' Secret Tax Deals in Luxembourg", ICCJ, 5 November 2014: <https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/>.

<sup>18</sup> The name comes from Goldcrest, a protected bird species in Luxembourg.

<sup>19</sup> Josh White, "Amazon beats the IRS in US intangibles case", International Tax Review, 20 August 2019: <https://www.internationaltaxreview.com/article/b1h0491smp8t21/amazon-beats-the-irs-in-us-intangibles-case>

zones, public policies have facilitated the global corporate flight from taxation since the 1980s.<sup>20</sup> It is a common practice for multinational companies to rely on shifting profits between their various subsidiaries and eventually moving them into so-called empty shells incorporated in offshore tax havens with zero or close to zero tax rates.<sup>21</sup> Estimates for 2018 point out that, globally, multinational firms shifted more than \$900 billion in this way.<sup>22</sup> This is estimated to have reduced global corporate tax receipts by 10% (Figure 15), with countries like the US, the UK, France and Germany losing at least 20% of their tax revenue in this way. Of course, the costs of diminishing tax revenues are borne by public finances and, eventually, by the quantity and quality of public services available to ordinary citizens.

Heightened attention to e-commerce companies not paying their fair share has a lot to do with revelations about the systematic corporate tax avoidance that has been going on for decades in other economic sectors with cross-border business operations. In the wake of the 2007-2008 financial crisis, questions about who pays tax, who dodges it, how much is really due, and what it is ultimately used for became very much tied to reclaiming a social justice agenda vis-à-vis public spending. As low- and middle-income working families were losing their jobs, their homes or both, massive public bailouts were rolled out for the banking industry in

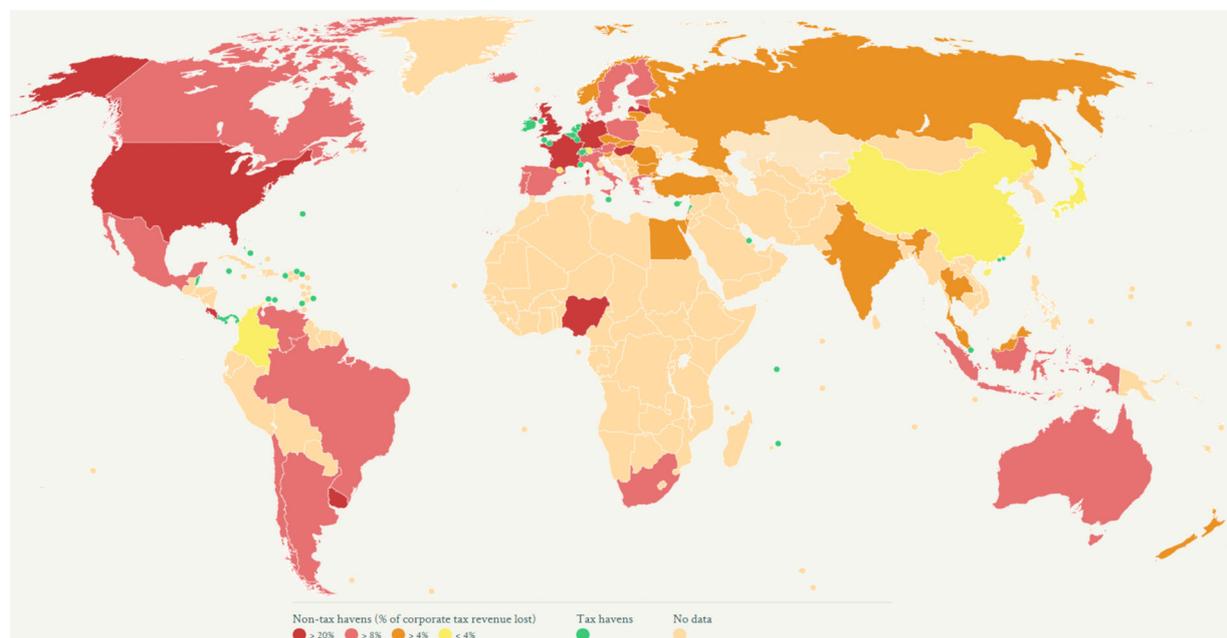
Europe, the US, and elsewhere. Throughout the 2010s, this grim picture was compounded by several major information leaks revealing just how much of the value and wealth produced globally remained largely outside the purview of taxation because of multinational corporations shifting income and profits away from jurisdictions where higher taxes were due.<sup>23</sup>

Complex tax arrangements put together by law and accounting firms are not specific to large multinationals from traditional economic sectors. On the contrary, the channelling of billions away from where tax payments were due by top digital players was identified as a crucial aspect in the erosion of countries' public finances.

As far as e-commerce is concerned, tax authorities across the world, and especially in large consumer markets, have grappled with the challenges brought by online retail since as early as the 1990s.<sup>24</sup> As the geographic complexity of e-commerce grew, governments have increasingly struggled to secure tax revenues from cross-border transactions by global digital players. Overall, these policy efforts have so far been modest. As we have seen with the Amazon example, aggressive tax planning by electronic businesses has persisted and it continues to cause significant tax revenue losses across national jurisdictions.

Figure 15

**Percentage of corporate tax revenue lost by shifting income to tax havens, 2018 estimates**



Source: Missing profits of nations research project

20 Puerto Rico became a de facto special economic zone, in the late 1940s. On the other side of the Atlantic, early initiatives can be traced back to the Shannon Zone in Ireland in late 1950s. For a comprehensive history of economic zones, see Patrick Neveling (2020) *The Political Economy of Special Economic Zones: Pasts, Presents, Futures*.

21 Kimberly Clausing et al (2021) *Ending Corporate Tax Avoidance and Tax Competition: A Plan to Collect the Tax Deficit of Multinationals*.

22 Thomas Tørsløv, Ludvig S. Wier, and Gabriel Zucman, "Close to 40% of multinational profits are shifted to tax havens each year", August 2021.

23 A series of leaked electronic documents reached investigative journalists across the world in what came to be known as the Offshore Leaks (2013), the Luxembourg Leaks (2014), the Panama Papers (2016), the Paradise Papers (2017) and most recently, the Luanda Leaks (2020) and the Pandora Papers (2021). The combined international efforts of journalists resulted in a series of comprehensive reports dealing with corporate tax avoidance and tax fraud. These reports are available on the International Consortium for Investigative Journalists' (ICIJ) webpage: <https://www.icij.org/investigations/>

24 OECD (1997) *Electronic commerce: the challenges to tax authorities and tax payers*. An informal roundtable discussion: <https://www.oecd.org/tax/treaties/1923232.pdf>

While tax loopholes have been at the disposal of multinational corporations for decades, an e-commerce business adds layers of complexity to the question of national taxation and international tax reform. Concretely, when taxing e-commerce, any fiscal jurisdiction faces the following challenges<sup>25</sup>:

- **scale without mass:** e-commerce firms can grow in trans-continental scale but their physical presence in the consumer markets they serve can be extremely low.

Brick-and-mortar stores have always been subject to a bundle of tax policies by virtue of their physical presence, whereas e-commerce companies have up until very recently faced less or no scrutiny by virtue of its scale without mass. The idea of taxation based on companies' digital presence builds upon the existing architecture of the international tax system by acknowledging that irrespective of where e-commerce companies might have their fiscal residence, taxation should account for the substantive connection they have to their consumer markets and users.

- **high reliance on intangible assets:** e-commerce and big tech firms rely on assets such as computer software, licenses, trademarks, patents, intellectual property rights, which again lack physical presence.

For example, a 2012 United States Senate Investigation showed that between 2009 and 2011 Microsoft shifted nearly \$21 billion in net revenue, or almost half of its retail sales, by transferring certain intellectual property rights to a Puerto Rican subsidiary. In this way, Microsoft avoided paying just over \$4 million in taxes per day.<sup>26</sup>

- **centrality of digitally generated data:** digitalized retail businesses typically collect information on user's features and shopping behaviour. Using this data, companies can adjust prices and set up targeted advertising to increase sales, which translate into higher revenues, profitability, and market shares.

According to the investigation on big tech companies done by The House Judiciary antitrust subcommittee in the US in 2020, Amazon leverages its access to third-party sellers' data to identify popular products from among the hundreds of millions of listings on its marketplace.<sup>27</sup> Amazon subsequently either 1) replicates the product under a competing private

label or 2) sources the product directly from the original manufacturer and attempts to cut the third-party seller out of the equation.

## 2.2. Sales tax avoidance

Governments have a hard time collecting tax revenues from e-commerce activities not just in relation to corporate incomes, but also when it comes to individual sale transactions. Sales tax or VAT are general consumption taxes and constitute a significant source of tax revenue across world regions (Figure 16). Though much of the discussion on tax avoidance focuses on corporate income taxes, sales tax/VAT avoidance can be much more harmful for public finances, especially given the weight of these taxes in total tax revenues and the already substantial share of e-commerce in total retail sales worldwide.

Practically by definition, cross-border e-commerce is the culprit when it comes to sales tax or VAT avoidance. In the United States or the European Union, this can happen without any significant effort from those who benefit: a company can easily make a sale in a certain US state or EU country with a certain sales tax/VAT level and register it in

Figure 16  
Sources of tax revenue by region in 2019



Source: Tax Foundation

another where taxes are lower. The same situation applies in countries that have a special tax regime applying to cross-border retail sales: a common example is for no sales tax/VAT to be applied for goods valued under a certain threshold. Such arrangements allow e-commerce companies to either cash in additional profits that brick and mortar stores end up paying as tax or lower prices and increase their market share.

The impact on public finances is oftentimes substantial. For example, EU VAT losses from cross-border e-commerce resulting from the exemption of low-value consignments are estimated to be as high as €5 billion per year and growing.<sup>28</sup>

<sup>25</sup> OECD identifies these three aspects of digitalization as the most challenging ones for taxation. These challenges extend to any business that is heavily reliant on digital technology, including e-commerce.

<sup>26</sup> Permanent Subcommittee on Investigations (2012) Offshore Profit Shifting and the U.S. Tax Code, Part 1 Microsoft & Hewlett-Packard.

<sup>27</sup> The House Judiciary antitrust subcommittee (2020) Investigation of competition in digital markets.

<sup>28</sup> European Court of Auditors (2019) "Special Report no.12 E-com-

This is a massive amount that can otherwise go into funding better public services. In the United States, too, the tax losses from e-commerce sales are significant: it is estimated that sales tax losses are of at least \$8 billion and can go as high as \$33 billion every year.<sup>29</sup>

### 2.3. Labour-related tax avoidance

While most public attention is focused on how e-commerce players play tax jurisdictions against one another to pay as little sales and corporate income taxes as possible, other tax-related issues remain largely ignored, even though they are just as important for e-commerce business models and their impact on public finances can be quite severe. One example is labour-related tax avoidance, which in addition has major direct implications for workers' incomes and working conditions. Concretely, evolving e-commerce business models are increasingly dependent on non-standard forms of employment, which have rapidly become prevalent in certain activities such as logistics. The principle is the same as in the case of sales and corporate income taxes: e-commerce companies achieve substantial cost savings on the back of public budgets, with deleterious impact on workers' livelihoods.

A recently published study on e-commerce and traditional retailers in France over the period 2007–2016 shows that e-commerce is significantly associated with higher labour tax avoidance when compared to brick-and-mortar retail. A more significant share of e-commerce workers are not covered by social insurance schemes that are typically mandatory for standard employment.<sup>30</sup>

The study highlights that such a situation “produces effects on employees' welfare and social cohesion” as “it usually degrades the quality of life for people subject to abusive employment conditions” while putting additional pressure on the financing of “the provision of public health, medical care and pension security”. COVID-19 has certainly made things worse in this regard, due to the exponential growth of in-person service delivery platforms.<sup>31</sup> The rise of delivery platforms has boosted the push for increased labour flexibility, which most of the time means shifting from the standard employment relationship based on a labour contract to a relationship where workers are formally self-employed and are forced to bear the cost of social security and income taxation on their own, on top of the costs related to equipment and unforeseen developments like work accidents or demand volatility.

To be sure, app-based delivery services have become a way for small brick-and-mortar retailers to subsist during lockdowns, but also a way for large conventional and/or multichannel retailers to offer additional delivery options to their customers in an effort to offset the unfair competitive advantages that pure online retailers have over traditional sellers.<sup>32</sup> While work arrangements in the app-based food delivery world can differ significantly from country to country, they do tend implicate nonstandard employment as the norm: couriers can be hired as individual entrepreneurs (United States), can be directly hired on part-time 2-hour work contracts (Romania) or can be fitted under new work categories such as TRADE<sup>33</sup> (Trabajador Autónomo Económicamente Dependiente – Economically Dependent Autonomous Worker), which Spain introduced in 2007. Each kind of work arrangement includes different types of risks. When working as an individual entrepreneur in the US, no health or unemployment benefits are covered; being hired in Romania on a 2-hour individual work contract offers certain social security and health coverage but people generally work longer hours than the usual (more than 10 hours a day in practice) for no additional pay, a situation made easy by the fact that work contracts are signed with “partner firms” instead of the actual beneficiary, who formally can renounce all responsibility regarding working conditions. In the Spanish case, being a TRADE worker offers people who make at least 75% of their income from a single contractor some kind of legal protection such as minimum wage, severance pay for unjustified termination, family-related or sick leave.

App-based delivery platforms that are used directly by the final customer are just the tip of the iceberg. E-commerce in general is rapidly heading toward a generalization of various forms of non-standard employment for ensuring last-mile delivery services. The push for faster and faster delivery times requires increased flexibility for last-mile delivery operations, which are typically labour intensive. The largest e-commerce players (Amazon, Alibaba, JD.com) have explicitly sought competitive advantages by promising second- or even same-day delivery as the standard. Maintaining such a service can be hugely challenging in both organizational and cost terms, which is why these companies have sought alternatives to making deliveries by using people employed on standard labour contracts. In the long run, automation is supposed to be the right solution, but since delivery drones and robots are not yet operationally and financially viable options, companies typically go for aggressive labour flexibilization plans. Amazon Flex is probably the best-known example: deliveries are made by an ever-flexible army of self-employed contractors using their own vehicles and equipment, while Amazon sets workloads, schedules, and remuneration via its Flex app. This allows Amazon to offer an otherwise luxury

merce: many of the challenges of collecting VAT and customs duties remain to be resolved”: <https://op.europa.eu/webpub/eca/special-reports/e-commerce-12-2019/en/>.

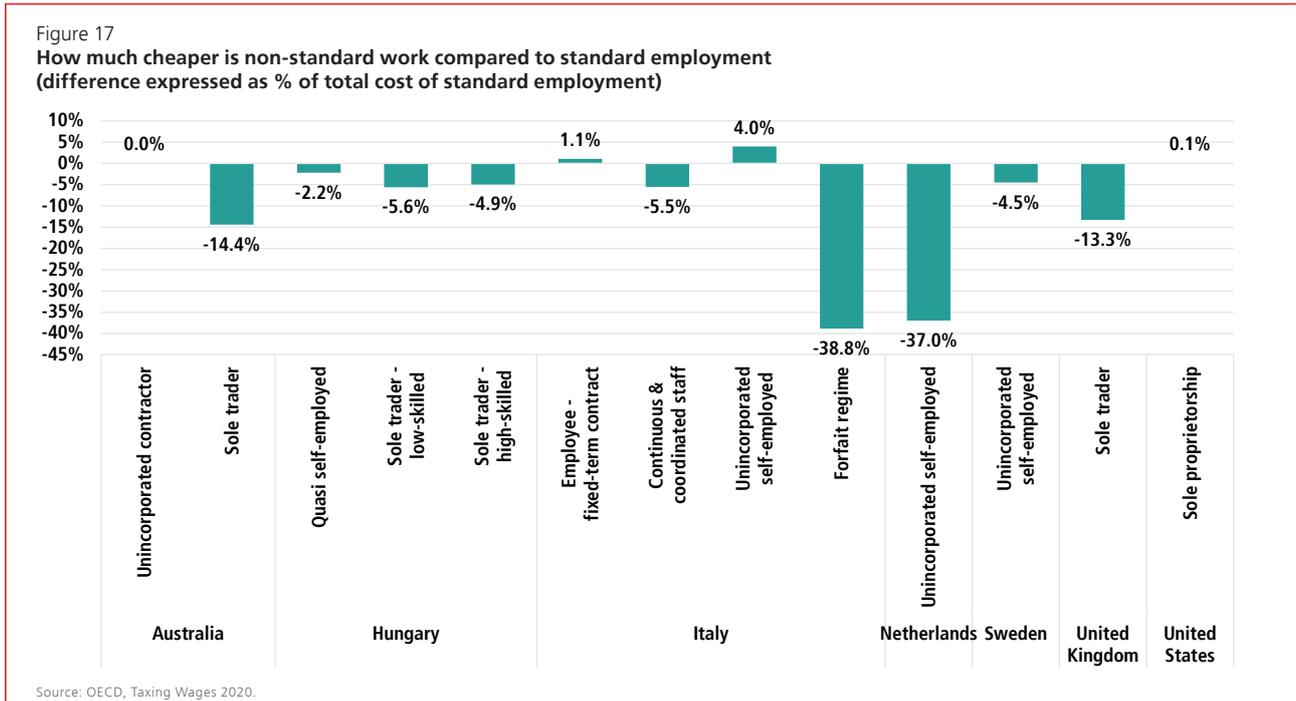
29 Supreme Court of the United States (2018) *South Dakota vs. Wayfair Inc.*: [https://www.supremecourt.gov/opinions/17pdf/17-494\\_j4el.pdf](https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf)

30 Josep Argiles-Bosch et al. (2020) “E-commerce and labour tax avoidance”, *Critical Perspectives on Accounting*.

31 Deliveries are organized via apps, which are managed by firms such as Glovo, Foodora, Uber eats, Deliveroo etc. The service is out in-person by workers who can become, depending on the country, part of different work arrangements.

32 For instance, in 2020 retailer Carrefour Romania eventually switched from its own app and online store to Bringo, an app which was bought by Carrefour in 2018 and currently serves as Carrefour's delivery system. In terms of work arrangements, Bringo can hire a person directly or as an independent contractor, if she is willing to set up a limited company.

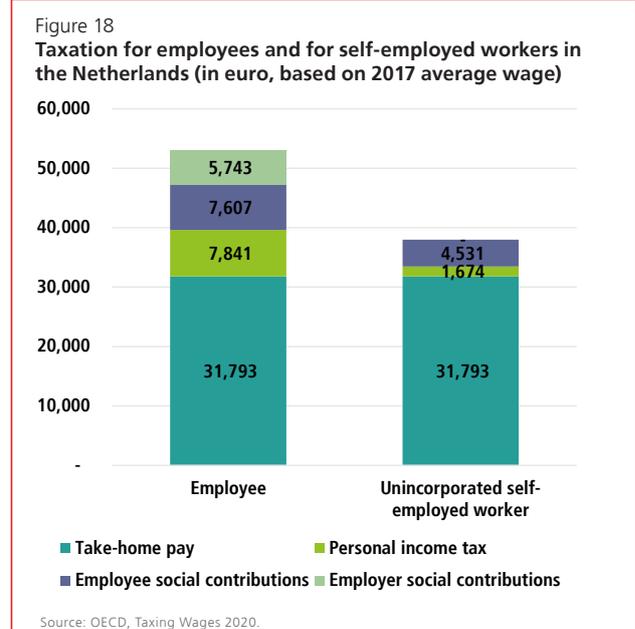
33 International Social Security Association (2019) “Social security for the digital age”: <https://www1.issa.int/sites/default/files/documents/events/2-Digital%20economy-264063.pdf>



service at a relatively affordable price without having to bear the majority of the additional costs.

These costs are nonetheless borne by workers and public budgets. There can no doubt that they are significant. After all, if it did not mean anything, why would Amazon be willing to pay their own US employees 10 thousand dollars and 3 months’ pay in advance just to shift to self-employment?<sup>34</sup> The cost savings are not just related to the more flexible use of labour per se, but can also involve more or less substantial cost savings related to labour taxation. An OECD study published in 2020 on seven member states shows that self-employed labour can be up to 38.8% cheaper simply due to differences in the way it is taxed in comparison to standard employment arrangements (figure 17) — note that the OECD analysis does not consider the various ways in which even these highly favourable labour tax laws can be circumvented even further by companies operating with self-employed workers.

To take one concrete example from the same OECD study, in the Netherlands a self-employed worker is 28.3% cheaper than an employee simply due to the employer paying zero social contributions and the worker paying substantially lower social contributions and income tax (figure 18). In other words, an employer can reduce their labour costs by almost 30% by shifting from standard employment to independent contractors — if the average wage is considered, we are talking about almost 15 thousand euros annual cost savings per worker. The respective company can allocate these savings to cut prices, fund investment, or increase profits. Of course, public service budgets would be deprived by same amount, which translates into increased pressure on public



finances (budget deficits, indebtedness) and eventually lower quality public services for the general population, including for the worker who does not necessarily experience a decrease in net pay as a result of the new contractual arrangements.

While we know that e-commerce growth is a major driver for the increased incidence of such labour tax avoidance worldwide, it is difficult to assess exactly what the exact impact is on public finances. First, because labour tax arrangements are very different from country to country and, second, because the taxation of self-employed workers is not monitored and reported with the same attention as that of employees (which is another reason why it is attractive for employers). We do know, for example, that by definition no employer social contributions are paid for self-employed

34 “Why Amazon Is Giving Employees \$10,000 to Quit”, Wired.com, 14 May 2019: <https://www.wired.com/story/amazon-delivery-paying-employees-to-quit/>.

workers, which theoretically can mean that it is more advantageous for employers to hire independent contractors in some countries than in others. Indeed, the share of employers' social contributions in total labour tax can be of over 50% in countries such as Czechia, Estonia, Mexico, or Russia, but it can also be zero in countries like Australia or New Zealand (figure 19) — on average, they comprise 33% in the EU, 25% in Asia, 23% in South America, 15% in North America and 14% in Oceania. This should only be regarded as a vague indication of where the shift to self-employed workers is more advantageous for companies since other taxation components can vary from one type of employment to another in each country. In some cases, such as the one of the Netherlands presented above, the cost savings due to not paying employers' social contributions are compounded by lower social contributions paid by the employee and a significantly reduced personal income tax.

The implications for public budgets can likewise be highly diverse. The social contributions associated with standard employment (paid by employers and employees) can add up to over a third of total tax revenues in countries such as Slovenia, Japan, or Germany, while in the vast majority of OECD countries it comprises over one fifth of total taxation (figure 20). Given the rapidly growing share of e-commerce in total retail sales and the strategic shift of e-commerce players toward non-standard forms of employment, the impact of e-commerce related labour tax avoidance on public finances should increase substantially. The pandemic and the emulation of e-commerce business models by traditional retailers and logistics operators in general serve as additional catalysts. Again, the consequences will be felt primarily by workers and, more broadly speaking, by ordinary citizens whose livelihoods will remain dependent on public services.

Figure 19  
Employers' social contributions as % of total labour tax per employee

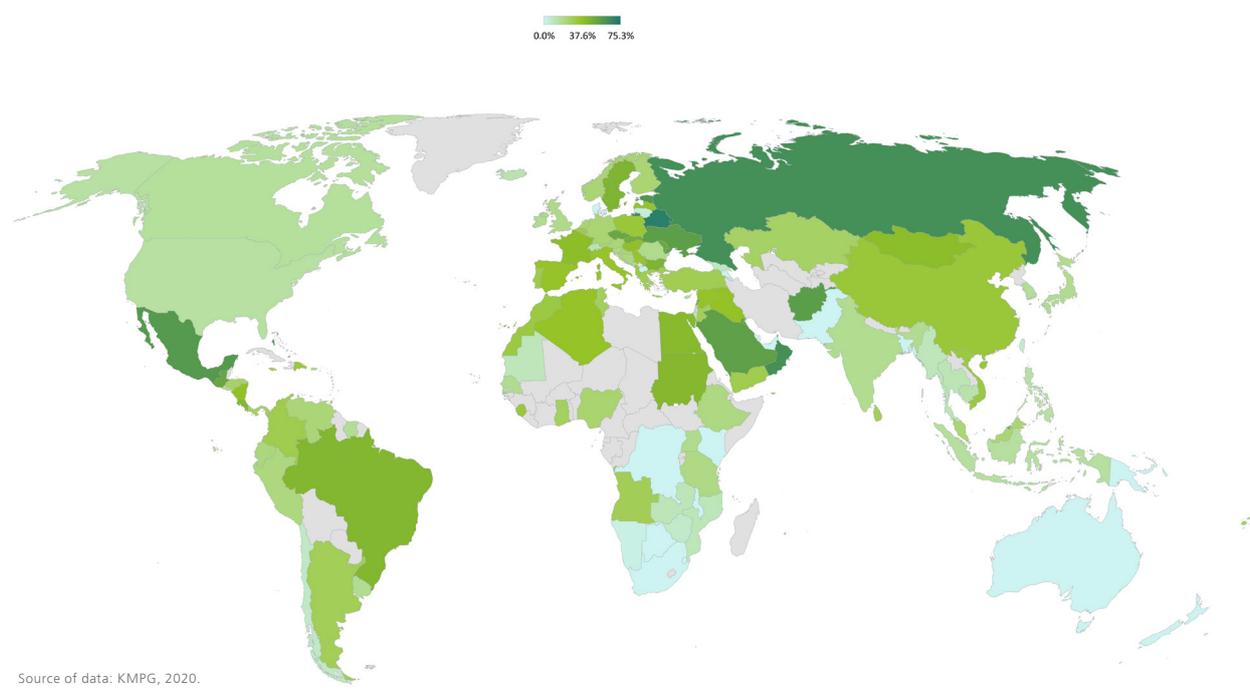


Figure 20  
Share of employers' and employees' social contributions in states' total tax revenues, 2019 (%).

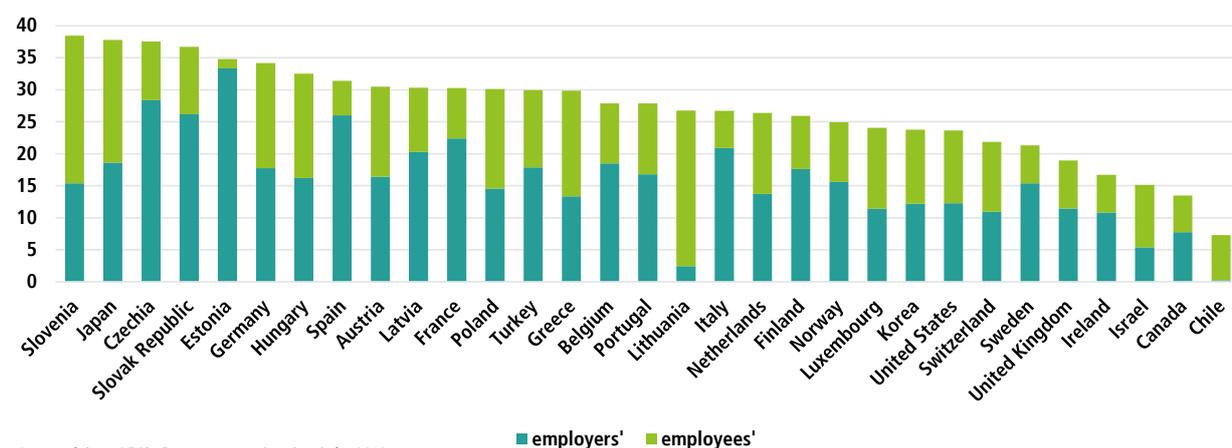
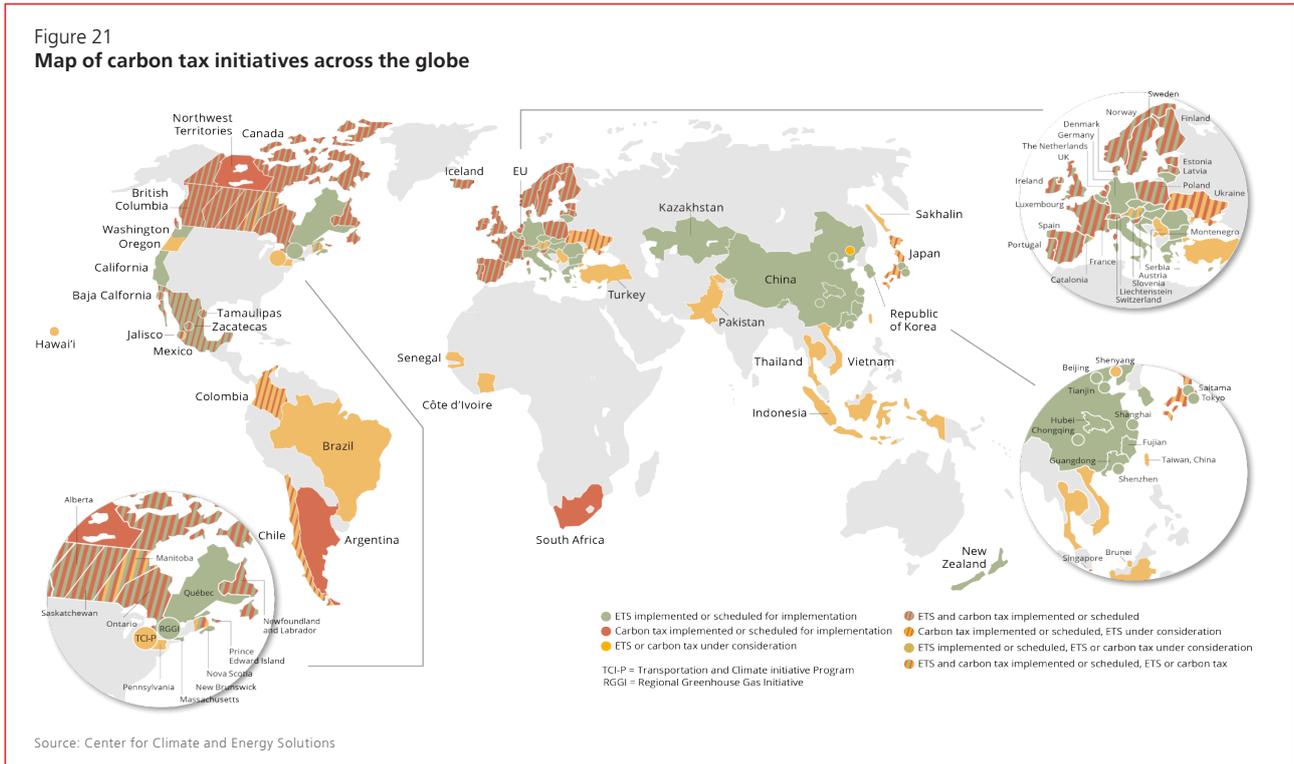


Figure 21  
Map of carbon tax initiatives across the globe

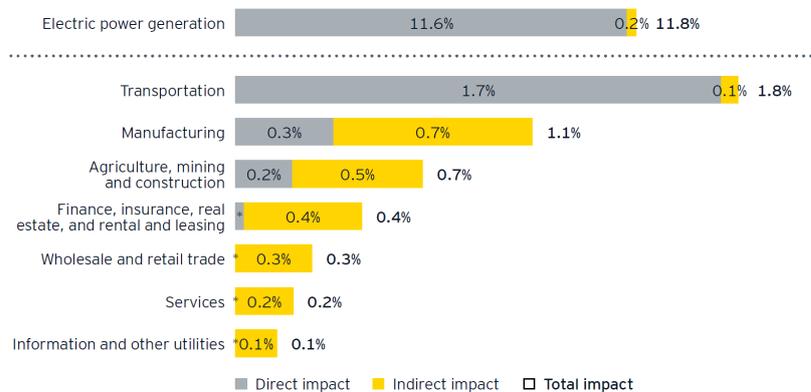


## 2.4. The tax implications of e-commerce's environmental footprint

In recent years, environmental sustainability has become a major point of interest not just for states and citizens, but also for businesses. Assessing an economic activity's environmental footprint in terms of greenhouse gas emissions has quickly become a standard approach for setting objectives and devising policies to improve environmental performance — typically, this is reduced to carbon emissions. Companies face increasingly varied pressures regarding their environmental footprint, from mutations of customer demand in favour of sustainable goods and services, to state policies aiming to curb the environmental impact of economic activity via restrictions and rendering pollution costly — either via an emissions trading system or via direct taxation of pollution. In this latter respect, the global policy landscape is very mixed, with carbon taxing per se being implemented only in a few countries across the globe (figure 21). The direction is nonetheless certain: the need for companies to “pay their fair share” increasingly means bearing the true costs of the impact their activity has on the environment.

Some industries are, of course, more liable than others to a potential carbon tax. An estimate by Ernst & Young for the US shows that a potential 25\$/ton of emissions tax would raise the costs of electric power generation by 11.8%, the vast majority of this increase being due to the emissions directly resulting from electric power generation, with the rest 0.2% resulting

Figure 22  
Estimated impact of a 25\$/ton carbon tax on production costs



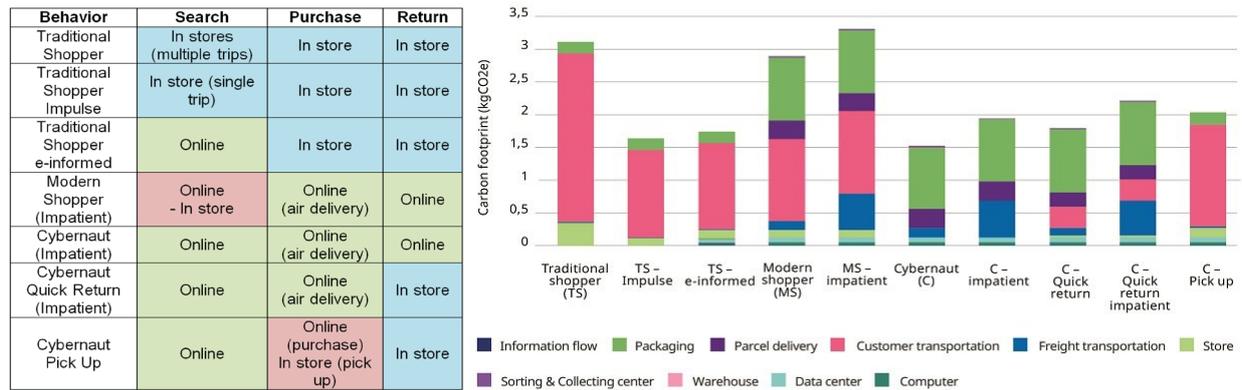
from more expensive inputs (figure 22). Costs in wholesale and retail would increase by just 0.3% (due to more expensive inputs), while transportation costs would go up by 1.8% (mostly because of direct emissions taxation). This might not seem like much, but the tax used in this assessment is very low by comparison to what is already in place in many countries today: Sweden has a €116/ton carbon tax with France and other Scandinavian countries also having taxes ranging from €45 to €62/ton.<sup>35</sup>

When it comes to e-commerce, how would it fare in comparison to traditional retail? Would pure e-commerce

<sup>35</sup> According to Tax Foundation: <https://taxfoundation.org/carbon-taxes-in-europe-2021/>.

Figure 23

**Consumer behaviour types and the emissions footprint of buying a toy in an urban area**



Source: Dimitri Weideli (MIT), schroders.com

players pay more or less carbon tax than brick-and-mortar retailers? There is no definite answer to these questions. A recent “independent study commissioned by Amazon” argued that in most situations e-commerce is more environmentally friendly than traditional retail, even when the latter’s customers don’t drive to stores and despite the former using substantially more transportation services, packaging, and energy-intensive ICT infrastructures.<sup>36</sup> However, other studies show a very different picture. A popular analysis by Dimitri Weideli from MIT breaks down the environmental impact of retail shopping by types of customer behavior (figure 23). Indeed, traditional shoppers have a relatively high carbon footprint, but only if they use automobiles for transportation — public or emissions-free transport would severely reduce the environmental impact of traditional shopping. On the side of e-commerce, there is great variability, but it is clear that the environmental footprint is typically much higher than for brick-and-mortar retail (excluding the use of personal automobiles). Impatient shoppers looking for a rapid shopping experience (which Amazon and other major e-commerce players increasingly favour) have a particularly high impact on the environment.

The high energy requirements of increasingly sophisticated and extensive information infrastructures, increasingly flexible and fast shipping, as well as overpackaging are intrinsic to the way e-commerce operates and certainly add to its environmental footprint relative to traditional retail. If paying a fair share means caring not just for workers incomes and public finances, but also for the environment, the question of taxing e-commerce should take this dimension into consideration, on top of sales, corporate income, and labor taxation.

36 Oliver Wyman, “Is e-commerce good for Europe? Economic and environmental impact study,” 2021: <https://www.oliverwyman.com/our-expertise/insights/2021/apr/is-e-commerce-good-for-europe.html>.

## 3

## EXISTING NATIONAL AND GLOBAL POLICY INITIATIVES

The stakes behind e-commerce taxation require reforming national tax systems in ways that can meaningfully account for how digital technologies have transformed and will continue to impact economic activity. E-commerce paying its fair share requires not only a more complex adaptation of national fiscal regimes but also better and more effective coordination instruments at international level.

The Organization for Economic Co-operation and Development (OECD) spearheaded global tax reform talks in relation to the question of e-commerce. Since 1998, the OECD has made strides to ensure wider levels of dialogue and cooperation between countries on issues of tax reform. The question of coming up with a taxation system adapted to contemporary economic realities was given a strong push by the 2008 global financial crisis and subsequent revelations of how systematic profit shifting by multinational companies severely diminished state revenues.<sup>37</sup>

This was the context leading to the OECD's 2013 Base Erosion and Profit Shifting (BEPS) initiative. Though BEPS did not single out e-commerce, the basis for the initiative was the perceived need to design and implement new tax rules able to respond to challenges arising from the increased digitalization of economic activity.<sup>38</sup> At the time, countries generally agreed to adopt a set of minimum standards such as preventing treaty shopping, implementing country-by-country reporting, fighting certain harmful tax practices, and improving dispute resolution. In 2016, a further step was taken when the G20 endorsed the BEPS initiative, thus bringing China, Russia, Brazil, India, and South Africa into the coordination effort. Nevertheless, the process of building up broader international consensus proved very slow.

In the meantime, glaring cases of profit shifting involving either e-commerce pure players or big tech companies kept making headlines. For example, the EU estimated that, by attributing most of its European earnings to an Irish head office, Apple avoided paying roughly €13 billion in taxes between 2004 and 2014.<sup>39</sup> Similarly, in 2011 Facebook

moved over half a billion dollars into an Irish sister company, which then shifted the money into a subsidiary registered in the Cayman Islands.<sup>40</sup> Under such conditions and given the very slow pace of international talks, various governments proceeded with their own legislative packages on taxation reform, focusing precisely on the challenges brought on by giant e-commerce players and big tech companies.

### 3.1. E-commerce sales taxation

The virtual space in which online transactions take place between consumers and non-resident online businesses forces tax authorities to come up with ways to prevent the fragilization of public finances and ensure fair play between traditional retail and the ever-expanding world of online shopping. Most countries have by now enacted national sales tax/VAT legislation addressing cross-border B2C e-commerce (Figure 24). With very few exceptions, these initiatives tend to be of recent date, and in 70 countries the adopted legislation has followed the OECD guidelines.<sup>41</sup>

Generally, e-commerce sales tax initiatives enacted and modified between 2018 and 2021 require non-resident companies selling goods or digital services to register for VAT. Importantly, more recent changes point to the necessity of eliminating any threshold regarding low value goods, since exempting low value goods from VAT or GST tax has unforeseen negative consequences. To take one example, online sellers can divide goods that otherwise would not meet the low-value threshold criteria across multiple transactions (by, for example, disassembling high-value goods) in order to avoid paying GST/VAT.

One example of recent tax reform addressing such problems is the new EU VAT e-commerce regulation taking effect in July 2021, which bring significant changes in the way

vely allowed the company to avoid paying taxes on billions of euros obtained from sales not just in Europe but also Africa, the Middle East and India. See "Apple's Irish company structure key to EU tax finding", The Irish Times, 2 September 2016: <https://www.irishtimes.com/business/economy/apple-s-irish-company-structure-key-to-eu-tax-finding-1.2775684>.

40 "Facebook funneled nearly half a billion pounds into the Cayman Islands last year", The Daily Telegraph, 23 December 2012: <https://www.theguardian.com/technology/2013/dec/05/facebook-tax-cayman>.

41 OECD (2021) "OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors", April 2021: [www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-april-2021](http://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-april-2021).

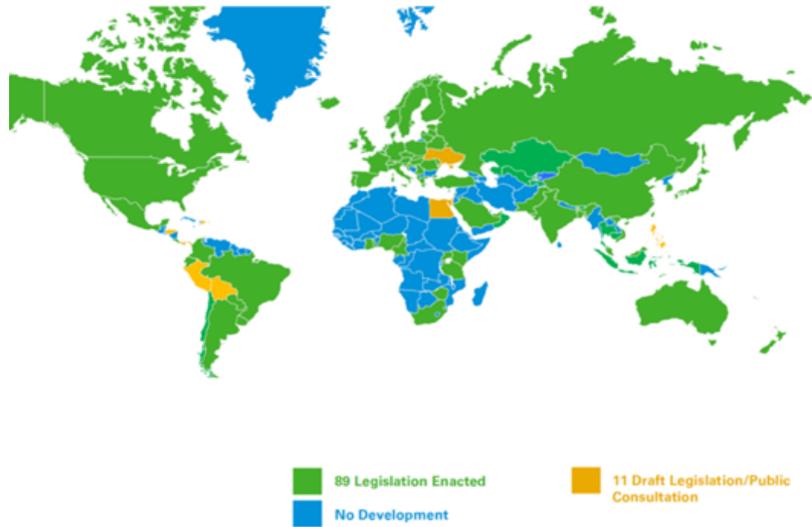
37 Arthur J. Cockfield (2020) "Tax wars: How to end the conflict over taxing global digital commerce", Berkeley Business Law Journal.

38 OECD (2013) "Declaration on base erosion and profit shifting": [https://www.oecd.org/mcm/C-MIN\(2013\)22-FINAL-ENG.pdf](https://www.oecd.org/mcm/C-MIN(2013)22-FINAL-ENG.pdf)

39 The Irish Revenue Commissioners ruled specifically for Apple that it could use a single Irish company split into two branches, which effecti-

electronic retail will be conducted. These changes are explicitly aimed at reducing various forms of tax avoidance; EU authorities estimate that the previous low-value threshold alone allowed e-commerce companies from outside the EU “to undercut their EU competitors and costs an estimated 7 billion euro a year in fraud, leading to a bigger tax burden for other taxpayers”.<sup>42</sup> The new regulations are also explicitly meant to facilitate cross-border e-commerce within the EU, by imposing a unitary VAT collection regime for cross-border purchases.

Figure 24

**National sales tax initiatives for e-commerce goods and services**

Source: KPMG, Taxation of the digitalized economy, September 2021

### The EU VAT E-commerce package, effective July 2021<sup>43</sup>

#### Online goods bought from outside the EU

- All imported goods to the EU will be subject to tax; there are no more exemptions for low-value goods imported into the EU. Previous regulations allowed for goods valued at less than 22 euros to be imported without paying VAT.
- For goods valued at less than €150, online sellers can either register on an EU online platform to declare and pay VAT (instead of obtaining VAT registrations in each EU country where they sell goods), or VAT can be directly collected from the customers by postal and courier operators.
- An online marketplace like Amazon will have to collect VAT when non-EU and EU third-party sellers using its platform make sales in the EU below €150.

#### Online goods bought across EU member states' borders

- Companies making distance sales across the EU valued below €10,000 will declare and pay VAT in the EU member state where they are registered. This new threshold replaces all previous national thresholds.
- Companies making distance sales across the EU of over €10,000 have to pay VAT in the countries where their customers are located. A new online infrastructure has been set up to facilitate tax registration and collection.

In the US, one of the largest consumer markets in the world, the only comprehensive e-commerce-focused development in terms of sales tax is still the 2018 South Dakota v. Wayfair Supreme Court decision addressing the question of distance sales to US customers.<sup>44</sup> The Supreme Court held that states may require remote businesses (whether US-based or foreign) to collect and remit sales tax even if the business has no in-state physical presence. Consequently, 45 states and the District of Columbia adopted regulations imposing online sales taxes on their territories.<sup>45</sup> However, because of the large differences in sales taxes between states and given the lack of federal regulation, it remains easy to avoid buying and selling where greater sale taxes have been implemented and register transactions in states with lower sales taxes.<sup>46</sup>

In the Asia-Pacific region, most countries have implemented e-commerce sales taxation. Since 2016, India, for example, requires non-resident providers of digital services to collect GST and since 2018, homegrown retailers selling goods on e-commerce platforms must withhold GST based on the net value of their transactions. In Indonesia, the taxation of e-commerce sales has only recently been implemented: since 2020, the cross-border sales of digital goods and services is subject to a 10% VAT rate. In this regional context, the Chinese example stands out, not least because of the peculiarities of the Chinese online retail market: China has been the world's largest online retail market for years and it appears that online sales might have already surpassed traditional retail sales.<sup>47</sup> Crucially, the Chinese domestic

42 European Commission (2021) VAT: New e-commerce rules in the EU will simplify life for traders and introduce more transparency for consumers: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3098](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3098).

43 European Commission (2020) Explanatory Notes on VAT e-commerce rules: [https://ec.europa.eu/taxation\\_customs/system/files/2020-12/vat-e-commerce-explanatory\\_28102020\\_en.pdf](https://ec.europa.eu/taxation_customs/system/files/2020-12/vat-e-commerce-explanatory_28102020_en.pdf).

44 Supreme Court of the United States (2018) South Dakota vs. Wayfair Inc.: [https://www.supremecourt.gov/opinions/17pdf/17-494\\_j4el.pdf](https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf).

45 “States with Internet sales tax 2021”, World Population Review: <https://worldpopulationreview.com/state-rankings/states-with-internet-sales-tax>.

46 “Online sales taxes not a boon. It’s all about clicks, not bricks”, Federal Reserve Bank of Minneapolis, 19 December 2019: <https://www.minneapolisfed.org/article/2019/online-sales-taxes-not-a-boon-its-all-about-clicks-not-bricks>.

47 “As China becomes first country to see ecommerce surpass 50%

market is dominated by domestic e-commerce retailers such as Alibaba, JD.com, or Pinduoduo, accounting for nearly 80 percent of the total online retail sales in the country.<sup>48</sup>

As far as cross-border transactions are concerned, according to China Internet Watch, 60% of online shoppers buy products from abroad through domestic e-commerce channels, while 40% use overseas global e-commerce websites. Non-domestic purchases in high demand are usually cosmetics and personal care products, food and beverages, baby products, apparel and accessories from the US, followed by Hong Kong, Malaysia, the Netherlands, and South Korea.<sup>49</sup> To better regulate cross-border online purchases of goods, Chinese authorities adopted the 2018 Parcel or Postal Tax, which aims to 1) encourage online purchases from authorized buyers as opposed to existing Daigou practices and 2) facilitate direct orders of high-end products from overseas e-commerce sites such as Amazon or Rakuten.<sup>50</sup> Tax brackets ranging from 15% to 50% apply depending on the type of goods, and shoppers are exempted from paying anything if the levy is calculated at less than \$8 — in other words, the maximum transaction value that is tax free is of around \$50.<sup>51</sup>

Effective January 2019, the Chinese state has also implemented the Composite Tax for Qualified Cross-border E-commerce, but the law does not enact any new taxation regime for online distance sellers from outside China.<sup>52</sup> Rather, the law specifies (1) who qualifies as a non-resident online vendor (2) how e-commerce operators must register, report, and collect VAT on their B2C sales of good and services, (3) how they should ensure the protection of consumers' rights and personal data and 4) which financial penalties apply in case e-commerce operators break Chinese laws. In this respect, it seems China would rather wait to see how the OECD agreement on a global tax deal works out.

of retail sales", Internet Retailing, 16 February 2021: <https://internetretailing.net/international/international/-as-china-becomes-first-country-to-see-e-commerce-surpass-50-of-retail-sales-22714>.

48 <https://www.statista.com/statistics/880212/sales-share-of-the-leading-e-commerce-retailers-in-china/>

49 "China Adopts E-commerce Law – Its Tax Implications", Mazars, May 2019: <http://www.mazars.cn/Home/Insights/Our-publications/Tax-publications/China-Tax-Newsletter/May-2019-China-Adopts-E-commerce-Law>

50 Daigou refers to the selling of foreign goods by domestic dealers (sometimes referred also as unofficial personal shoppers or sales agents) who buy products abroad on behalf of Chinese consumers without import documentation.

51 A tax rate of 15% applies to metal products, food and beverage, telephones and other small electronic devices, furniture, recording devices and digital storage, earphones, computers and parts, books, magazines, prints, education materials, games, stationery toys. A tax rate of 25% applies to footwear, non-luxury watches, diamond jewelry, personal care, skin care, hair care, deodorant, cleansing products, textiles, clothes, textile accessories, home textiles, leather-made clothes, bags, suitcases, luggage, electrical appliances, art collections, sports products, bicycles, and bicycle parts. A tax rate of 50% is applicable to alcohol and alcoholic drinks, cigarettes, luxury watches, luxury jewelry (pearls, non-diamond gems), perfume, toilet water, cosmetics, golf, and related accessories.

52 E-Commerce Law of the People's Republic of China: [https://ipkey.eu/sites/default/files/documents/resources/PRC\\_E-Commerce\\_Law.pdf](https://ipkey.eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf).

On the African continent, South Africa has been an early legislator in matters of applying VAT to e-commerce. In 2014, the 1994 VAT Act was amended so that foreign vendors of digital services to South African customers have to register and collect VAT. Most governments otherwise have yet to legislate taxation rules for electronic retail, but some recent initiatives indicate a shift in this direction. In Cameroon, for example, at the end of 2019, VAT rules were changed to extend them to foreign and local e-commerce platforms, with no minimum sales threshold.<sup>53</sup> Starting with 2020, Nigeria imposed a 5% VAT on online transactions by resident and non-resident sellers of goods or digital services, though it remains unclear what this means in practice given the enforcement failures of previous tax laws.<sup>54</sup> Finally, Kenya legislated a 16% VAT rate applicable from March 2021 on B2C sales by non-resident businesses via digital marketplaces and websites.<sup>55</sup>

### 3.2. Digital services taxation

The updating of VAT and sales taxes is not enough to tackle the realities of e-business. Harking back to the OECD's BEPS initiative, one main concern in 2013 was that tech giants were able to avoid paying corporate income taxes in countries where they were actually conducting business. This problem runs at least partially in parallel with the one of sales tax/VAT avoidance: e-commerce companies can reap higher profits by avoiding sales taxes/VAT, but even if they pay such taxes at a level equivalent to traditional retailers, they can still attempt to avoid paying taxes on revenues or profit.

Digital services tax (DST) initiatives are meant to address this latter problem. As opposed to sales tax/VAT-related policies, there are far fewer DST measures currently in place worldwide. (Figure 25). Concretely, the rule of thumb for DSTs is to ensure fair taxation of top companies selling digital goods (such as streaming digital content; online games, apps and software etc.) and services (accommodation services, digital content services, advertising services etc.) Typically, a DST tax is levied on the gross revenue derived from of a multitude of digital goods and/or services and what is applicable to varies greatly depending on the country. Specific thresholds on global revenue have been adopted mainly by EU member states such as France or Italy, which require a worldwide revenue threshold of €750 million and a domestic taxable services revenue of €25 million, but the criteria are much stricter in many countries. There are also countries like Kenya, where no thresholds apply, and all companies must submit to DST regulations regardless of size.

53 "Early 2020 changes as Algeria and Cameroon apply VAT to online sales", Taxamo, 19 February 2020: <https://blog.taxamo.com/insights/algeria-cameroon-vat-2020>.

54 "Analyzing Nigeria's bid to tax Global Tech companies and the problem with enforcement", Technext, July 2021: <https://technext.ng/2021/06/28/analysing-nigerias-bid-to-tax-global-tech-companies-and-the-problem-with-enforcement/>.

55 <https://kra.go.ke/images/publications/Draft-VAT-Digital-Supply-Regulations-2020---29-05-2020.pdf>.

The UK, for example, adopted a DST in 2019 that addresses both e-commerce and other issues of concern regarding digital activities. It imposes a 2% tax on the VAT-exclusive revenues derived from UK sales or users on large businesses that run 1) a social media service, 2) a search engine or 3) an online marketplace. UK tax authorities define large businesses as companies with annual global revenues of over £500 million out of which at least £25 million can be attributed to UK sales. As far as e-tailers are concerned, an online marketplace is defined in relation to its main purpose, which is 1) to facilitate the sale (or hire) of goods or services offered by users or 2) to enable users to sell or advertise; importantly, this definition includes marketplaces which bring users together, even if sale transactions do not technically occur on the platform.<sup>56</sup>

At a European level, the EU-wide Digital Services Act and Digital Markets Act are still in the proposal stages.<sup>57</sup> In the meantime, individual member states have been adopting digital services taxation legislation on their own.<sup>58</sup> France, for instance, adopted a 3% tax in 2019 to be levied on share of revenues companies make in France, which is determined by applying digital presence ratios to companies' global digital services receipts. Such taxation is applicable to US tech giants like Google, Facebook, Amazon, Apple, or Microsoft but also impacts companies like the French online advertising firm Criteo. In Italy, Austria, and Spain, similar DST initiatives have been put in place and they all refer to companies whose total global revenues are of at least €750 million, although each country has different thresholds when it comes to the revenues such companies make on their territory.<sup>59</sup> These DSTs primarily seek to ensure that online advertising and the use of data collected from users become subject to tax. On the other hand, Germany, where the Federation of German Industries has strongly condemned any plans for a European Union's proposed digital services tax, has until now rejected the adoption of a DST.

The adoption of digital services taxation rules in certain European states and in India, as well as pending DST

56 <https://www.gov.uk/government/publications/introduction-of-the-digital-services-tax/digital-services-tax>

57 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2347](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2347)

58 France, Italy, Spain and Austria are among the states that have legislated DST taxation at national level.

59 The Italian 3% DST (adopted in 2019, effective January 2021) also concerns companies which obtain revenues inside the country equal to or exceeding €5.5million; the Austrian DST (approved September 2019, effective January 2020) is a 5% tax on revenue applicable to companies with an annual turnover of €25 million or more from operations inside the country; in Spain, the DST (adopted October 2020, effective January 2021) is levied at a rate of 3% for companies whose revenue within the country is equal to or exceeds €3 million.

Figure 25  
Digital Services Tax initiatives across the globe



Source: KPMG, Taxation of the digitalized economy, September 2021

legislation in countries such as Brazil or Indonesia have already been met with retaliatory responses on the part of the US government, which considered that these regulations disproportionately target American-based social media companies and tech firms. In June 2021, the US announced 25% tariffs on certain goods being imported from the UK as well as on goods imported from Turkey, India, Austria, Italy, and Spain, precisely in connection to these countries' DST initiatives; these tariffs were suspended for 180 days immediately after their announcement, meaning they should come into force starting with 2022.<sup>60</sup>

In the US, the issue of collecting adequate tax revenues from top tech companies is also on the government's agenda, but it is not as straightforward as in other countries. On the one hand, there is growing consensus that high income businesses, e-commerce included, need to be adequately taxed and big tech players and top multinational corporations in various sectors are bracing for a revised anti-trust legislation and new taxation rules.<sup>61</sup> Until the proposed bills pass in both Congress and Senate, tax avoidance by some of the largest US corporations (top e-commerce players included) remains widespread. Moreover, pre-COVID-19 tax breaks dating back to 2017 as well as tax breaks enacted as a response to the pandemic have made it so that at least 55 of the largest corporations in the United States paid no federal corporate income taxes in 2020 and collectively enjoyed corporate tax

60 Office of the United States Trade Representative (2 June 2021) "USTR Announces, and Immediately Suspends, Tariffs in Section 301 Digital Services Taxes Investigations": <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/ustr-announces-and-immediately-suspends-tariffs-section-301-digital-services-taxes-investigations>. The US administration applied similar measures in the case of France. In June 2020, it imposed a 25% tariff on cosmetics, handbags, and other imports from France, which it suspended indefinitely in January 2021.

61 "House Democrats are prepping 5 antitrust bills to take on Big Tech", CNN, 10 June 2021: <https://edition.cnn.com/2021/06/10/tech/house-tech-antitrust-bills/index.html>.

breaks in the amount of \$12 billion, of which \$8.5 billion in tax avoidance and \$3.5 billion in tax rebates.<sup>62</sup>

The current US administration places a lot of emphasis on taxing tech giants in its upcoming bill proposals.<sup>63</sup> If these bills pass in their current form, the new federal corporate income tax rate will increase from 21% to 26.5% in a progressive manner: the corporate income tax rate will be 18% for corporations with taxable income that does not exceed \$400,000, 21% on income for companies with taxable income up to \$5 million, and will reach a maximum tax rate of 26.5% for corporations with taxable income over \$5 million. At the same time, the US administration will undoubtedly want to preserve sufficient room for manoeuvre as the question of taxing the income of top multinationals is scaled up globally. As mentioned earlier, the various DSTs initiatives in Europe and elsewhere have been met with immediate retaliatory measures in the form of higher import tariffs on countries which then got suspended in order to facilitate negotiations during the upcoming OECD talks on a global tax deal.

For the moment, South American countries appear less interested in adopting DST regulations, which might have to do with the relatively low e-commerce penetration in this region before COVID-19.<sup>64</sup> However, 2020 marked a significant expansion for electronic retail: the number of new orders registered on Mercado Libre more than doubled in Chile and Colombia, while in Brazil the increase of users who bought products and services online during the pandemic has been especially pronounced for lower-income and middle-aged segments of the population.<sup>65</sup> Argentina, which witnessed the biggest e-tail growth in 2020 (+79%), had already adopted special tax legislation in 2019. Its DST has a rate of 8% and applies to the acquisition of goods and services from many types of non-residents, including e-commerce companies.<sup>66</sup>

In Sub-Saharan Africa, mainly Nigeria and Kenya lead the way. Both countries have recently adopted digital services taxation on income resulting from a wide range of e-commerce operations such as application stores, high frequency trading, electronic data storage, online adverts,

participative network platform, online payments, and others. In Nigeria, the law is applicable to digital companies with a turnover of more than \$64,600 from the provision of streaming or downloading services, the transmission of Nigerian user data, and the sale (or intermediation of sales) of goods and services via digital platforms.

In Asia, India has set the tone on digital service taxation. The Indian DST is applicable to companies with revenue over \$2.6 million and over 5 hundred thousand users. The taxable revenue includes advertisement, sale of data, and sales of goods and services to customers who reside in India or who use Indian IP addresses. A recent IMF research paper, however, argues that unilateral DST taxes might not have the desired result of increasing tax revenue in all Asian countries. Specifically, “investment hubs such as Singapore and Hong Kong SAR could lose up to 0.15 percent of GDP in corporate tax revenue because the profits currently declared in these countries by multinationals exceed the local share of total sales. Whereas high-income countries with large domestic markets—Australia, China, Japan, Korea—would gain revenue, developing countries such as Vietnam could lose revenue.”<sup>67</sup> According to the IMF assessment, Asian states might be better off by imposing VAT on non-resident suppliers of digital services and e-commerce marketplaces, which would translate into “an additional \$166 million in Bangladesh, \$4.8 billion in India, \$1.1 billion in Indonesia, \$365 million in the Philippines, and \$264 million in Vietnam.”

Similar to dynamics observed in the US and in the EU, the Chinese government intends to better regulate the tech sector overall, and ensure more tax revenue from giant tech firms and e-commerce players. To this end, the state has released new anti-monopoly guidelines in February 2021, which specifically target homegrown digital companies, as well as a new law on personal digital data in August 2021, which specifies which kind of customer data these companies can gather, how it must be stored, and how it can be traded.<sup>68</sup>

At the same time, it seems that the preferential 10% tax rate enjoyed by homegrown e-commerce, fintech and social media companies might be soon phased out and replaced with a 25% corporate rate.<sup>69</sup> Also, the Chinese state is thinking of imposing more stringent tax reduction requirements for digital firms. For example, at present an online platform in China which sets an R&D centre and attributes its profit to that centre, can benefit from a

62 According to the calculations done by the Institute on Taxation and Economy Policy (ITEP), the \$8.5 billion in tax avoidance refers to what collectively the 55 US corporations under consideration would have paid if they had been subject to the standard federal statutory corporate income tax for their 2020 income. See ITEP, “55 Corporations Paid \$0 in Federal Taxes on 2020 Profits”, 2 April 2021: <https://itep.org/55-profitable-corporations-zero-corporate-tax/>.

63 The US House of Representatives (September 2021) “Responsibly funding our priorities”: <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SubtitleSxS.pdf>.

64 Countries in South America are characterized by a substantial unbanked population, complicated logistics connections and general lack of trust in online methods.

65 UNCTAD (2021) “Covid-19 and E-commerce. A global review”: [https://unctad.org/system/files/official-document/dtlstict2020d13\\_en\\_0.pdf](https://unctad.org/system/files/official-document/dtlstict2020d13_en_0.pdf)

66 “Argentina was the country where e-commerce grew the most in 2020”, Latin America Business Stories, 26 January 2021: <https://labsnews.com/en/news/business/argentina-was-the-country-where-e-commerce-grew-the-most-in-2020/>.

67 Era Dabla Norris et al., “How to tax in Asia’s digital age”, 14 September 2021/ <https://blogs.imf.org/2021/09/14/how-to-tax-in-asia-digital-age/>. “Digitalization and taxation in Asia”: <https://blogs.imf.org/2021/09/14/how-to-tax-in-asias-digital-age/>.

68 “China’s new anti-monopoly rules for tech companies”, IFLR, 25 March 2021: <https://www.iflr.com/article/b1r3bt1z7g1771/primer-china-as-new-anti-monopoly-rules-for-tech-companies> and “China passes major data protection law as regulatory scrutiny on tech sector intensifies”, CNBC, 20 August 2021: <https://www.cnbc.com/2021/08/20/china-passes-key-data-protection-law-as-regulatory-scrutiny-increases.html>.

69 “Why ‘Common Prosperity’ Has China’s Billionaires Running for Cover”, Time Magazine, 1 July 2021

reduced 15% corporate rate instead regular tax rate of 25%.<sup>70</sup>

Finally, the Chinese state has been initiating multiple investigations of digital companies' business operations. As a result, Alibaba has recently been fined \$2.8 billion following an anti-monopoly investigation by Chinese regulators, who found that the company abused its market position.<sup>71</sup> At the same time, online merchants selling on large e-commerce platforms in China are facing increased scrutiny over "order brushing" — using fake accounts to "buy" their own products to boost their sales numbers and ratings on various e-platforms.<sup>72</sup> Stricter regulation of livestreaming e-commerce, which has grown significantly during the pandemic, is also on the government's agenda. Livestream e-commerce is done by celebrity live streamers who usually register as sole traders to benefit from a lower tax regime, even though the size of their business operations would effectively fall under higher taxation.<sup>73</sup>

### 3.3. The 2021 global corporate tax deal

The recent tax row between the US and several large consumer markets in the EU and Asia (India) regarding DSTs has everything to do with timing. In June 2021, the G7 countries (followed shortly by the G20) agreed on creating a global minimum corporate income tax of at least 15%.<sup>74</sup> All in all, tax jurisdictions representing more than 90% of global GDP eventually backed the proposal, which is based on the two pillars of the 2013 BEPS initiative.<sup>75</sup> Pillar One was originally concerned with the adequate taxation of profits made by tech giants in countries where they have large consumer markets, while Pillar Two set out to establish a framework for a global minimum corporate income tax rate for both digital and non-digital businesses.<sup>76</sup>

70 "Why China plans to tax the booming digital economy", Nikkei Asia, 19 January 2021: <https://asia.nikkei.com/Spotlight/Caixin/Why-China-plans-to-tax-the-booming-digital-economy>.

71 Alibaba accepted paying the penalty without appealing the decision. See "Alibaba accepts record China fine and vows to change", BBC, 12 April 2021: <https://www.bbc.com/news/business-56713508>.

72 This is an unintended consequence of big data analysis performed by e-platforms with regards to revenue obtained from sales by third party sellers. Tax authorities noticed significant discrepancies between revenues third party sellers declared in their tax forms and the third-party sales information analyzed by e-platforms sales. See "Big data allows tax authorities to collect on 'brushed' e-commerce sales", Technode, 12 June 2020: <https://technode.com/2020/06/12/big-data-allows-tax-authorities-to-collect-on-brushed-e-commerce-sales/>.

73 "Why-China-plans-to-tax-the-booming-digital-economy", Nikkei Asia, 19 January 2021: <https://asia.nikkei.com/Spotlight/Caixin/Why-China-plans-to-tax-the-booming-digital-economy>.

74 "130 countries back global minimum corporate tax of 15%", Reuters, 2 July 2021: <https://www.reuters.com/business/countries-backs-global-minimum-corporate-tax-least-15-2021-07-01/>.

75 Some of the countries that opposed the proposal at the time include Ireland, Hungary, Estonia, Kenya, Nigeria, Peru, Sri Lanka, Saint Vincent and the Grenadines, and Barbados. See "Global tax deal reached despite vocal opposition", Politico, 1 July 2021: <https://www.politico.eu/article/oecd-global-tax-deal-reached-g20/>.

76 European Commission, "Global Agreement on Corporate Taxation", 10 July 2021: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_3564](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3564).

Even though 130 countries have signed the 2021 OECD Agreement in June 2021, the global tax deal still faced several stumbling blocks as low corporate jurisdictions like Ireland, Estonia, or Hungary opposed the idea of a 15% corporate tax rate. By October 2021, however, only Kenya, Nigeria, Pakistan, and Sri Lanka chose to remain outside the agreement.<sup>77</sup>

The OECD Agreement depends on countries abandoning "unilateral" digital service tax initiatives, but the debate surrounding digital services is bound to re-emerge if the rolling out of the OECD deal proves difficult. At the same time, the high turnover thresholds for corporations in the OECD Agreement means that the new rules will apply to fewer than 100 companies worldwide. Most importantly, the 15% global minimum corporate tax rate is far below trade unions' demand for a minimum of 25% global corporate tax.<sup>78</sup>

In these conditions, the 2021 OECD Agreement looks increasingly like a missed opportunity. An indication of this is the denunciation of the deal by various international tax advocacy groups but also the quick positive reaction of companies such as Amazon, Apple, Facebook, and Google offered to the announcement of the new global minimum corporate income tax rate.<sup>79</sup> A 15% global tax means big tech might be getting a very good deal after all, a far cry from expectations of fair taxation publicly affirmed by government officials.

#### The 2021 OECD agreement

##### Pillar 1: Profit relocation

- *Multinational companies with a global turnover above €20 billion and profitability before tax above 10%.*
- *Between 20% and 30% of profit above 10% of revenue to be allocated to countries where goods are sold and services rendered.*
- *The turnover threshold is to be lowered to €10 billion 7 years after the rule comes into force.*
- *Extractive industries, regulated financial services, and the shipping industry are exempted.*

##### Pillar 2: Global minimum corporate tax

- *Multinational companies with global consolidated annual income exceeding €750 million.*
- *Global minimum corporate tax rate of 15%.*
- *The rate might increase above 15%, depending on the successful implementation of the agreement.*

77 "136 out of 140 countries join OECD global tax deal", RTE, 8 October 2021: <https://www.rte.ie/news/2021/10/08/1252439-corporate-tax-reform/>.

78 ITUC is one of the confederations which explicitly called for a 25% global corporate income tax. See Fair corporate taxation – key ITUC demands: [https://www.ituc-csi.org/IMG/pdf/fair\\_corporate\\_taxation.pdf](https://www.ituc-csi.org/IMG/pdf/fair_corporate_taxation.pdf).

79 "136 countries agree to global minimum tax for corporations in 'historic' OECD deal", ICCJ, 8 October 2021: <https://www.iccj.org/investigations/paradise-papers/136-countries-agree-to-global-minimum-tax-for-corporations-in-historic-oecd-deal/>; "Big Tech Says Global Tax Deal Is a Win", The Wall Street Journal, 1 July 2021: <https://www.wsj.com/articles/big-tech-says-global-tax-deal-is-a-win-11625167555>.

## 4

## TRADE UNION ACTION IN RELATION TO E-COMMERCE TAXATION

Tax regulation does not figure among trade unions' traditional core objectives. Nonetheless, trade unions in general, and trade unions in the commerce sector in particular, should pay much more attention to this subject, since it can have a major impact on workers' lives both on and off the job.

Systematic tax avoidance impoverishes public budgets and directly harms the quality of public services on which workers' livelihoods depend. Indirectly, tax avoidance has a negative impact on the purchasing power of wages, as workers are forced to compensate for public service decline from their own pockets. At the same time, the spread of poorly-taxed non-standard employment directly harms workers' incomes, working conditions and overall quality of life, while adding substantial pressure on unionized workers in traditional retail. Lastly, as e-commerce gains market share on the back of weak regulation, traditional retailers might become increasingly interested in emulating e-commerce players' behaviour, making matters much worse for workers and unions across the retail sector as a whole.

These aspects are perhaps part of the reason why the 2021 OECD's agreement on a global minimum income tax has received a lukewarm welcome from the International Trade Union Confederation.<sup>80</sup> The expected global deal on a 15% global minimum corporate tax, instead of the 25% unions demanded, and the postponement or elimination of national digital services taxes are inimical to the objective of securing higher tax revenues for governments as well as with the broader concerns that trade unions have expressed in connection to data protection, labour rights, and environmental safeguards.<sup>81</sup> Unions have also demanded that more consideration be given to an additional wealth tax on corporations.

In contrast to the ambiguous outcomes at the international level, some national and sub-national trade unions have proved more successful in addressing the question of e-commerce taxation. In order to provide an accurate picture

of trade unions' achievements and ongoing efforts, Syndex has interviewed trade union officials and experts from Argentina, Australia, Belgium, the US, and Sweden.

### 4.1. Building broader coalitions

In the US, success in passing an e-commerce sales tax in the state of New York — known as the Marketplace Facilitator Sales Tax, introduced starting with 1 June 2019 — was the result of a broad coalition. The RWDSU (Retail, Wholesale and Department Store Union), the Teachers' Union, the Fiscal Policy Institute and other NGOs from New York joined efforts and advanced the proposal at state level. Their initiative greatly benefitted from the fact that the New York Chamber of Commerce did not have a clear and unified message on this issue, as traditional retail employers welcomed the opportunity of levelling the playing field in relation to e-commerce companies registering their New York sales in states with lower taxes.

In Sweden, Handels (The Commercial Employees' Union) has been involved in a complex 4-year research project with the aim of mapping the e-commerce sector in Sweden and defining better recruitment strategies vis-à-vis e-commerce workers. Sweden has many local e-commerce start-ups, where both employers and employees have not had much experience with trade unions and collective bargaining. In this context, Handels has been very successful in increasing the number of trade union members working in e-commerce and in getting a significant number of e-tail companies to endorse collective labour agreements. The focus on e-commerce has also facilitated collaboration with two other trade unions interested in workers in last mile delivery services.

In Australia, the SDA (Union for Retail, Fast Food and Warehousing workers) worked for over a decade to lower the 1,000 dollars GST threshold for imports that was set in 2005. The high value of this tax threshold encouraged Australian consumers to make online orders from abroad and made sales tax avoidance easy (by, for example, dividing expensive goods over multiple transactions), diminishing both tax revenues and demand for traditional retail. Starting with 2007, the SDA and retail employers lobbied to eliminate this GST exemption. Conservative politicians eventually supported the idea, enticed by the fact that traditional retailer businesses brought significant tax revenue. Once Labour

80 ITUC (2021) "Minimum global tax rate: a positive step but concerns remain": <https://www.ituc-csi.org/Minimum-global-tax-rate>.

81 ITUC, TUAC and ITF (2018) "A workers' agenda for e-commerce": <https://www.ituc-csi.org/WTO-public-forum-2018-workers-agenda-for-e-commerce>; ETUC (2020) "ETUC position on the plurilateral negotiations on e-commerce": <https://www.etuc.org/en/document/etuc-position-plurilateral-negotiations-e-commerce>.

Party government members also got on board, the SDA's long-term approach paid off. In 2018, the standard GST was extended to low-value goods shipped from abroad.<sup>82</sup>

## 4.2. Tackling non-standard employment in last-mile delivery services

In Argentina, where the truck drivers' union is quite powerful, e-commerce last-mile delivery is oftentimes performed by workers employed informally. The slow development of the logistics sector favours Mercado Libre, but hinders the entrance of global e-players such as Amazon in the region. This state of affairs leaves last mile delivery workers in a particularly precarious situation: while plenty are self-employed, much of the delivery work is not based on any formal contractual arrangements. While e-commerce taxation per se is not on the trade unions' agenda, FAECYS-AR and many other trade unions in Argentina seek to curb informality and ensure that workers are covered by legal work contracts and collective labour agreements.

In Belgium, ACV-CSC has been cooperating since 2017 with the Collective of couriers to negotiate with Deliveroo and Uber Eats to improve the working conditions of delivery workers — but so far, the delivery platforms have not conceded to an agreement. In 2019, the trade union also set up a dedicated team, the United Freelancers, to support platform and other types of self-employed workers. The trade union is also closely following that, after the repeal in 2020 of the law on supplementary income by the Constitutional Court, a similar idea is not relaunched without providing adequate social protection, since e-commerce firms are known to push for non-standard labour agreements. The law on supplementary income was initially adopted in 2016 to ensure that a flat tax rate would be applicable to revenue obtained from activities rendered via an electronic platform. In 2018, however, the law was extended to various services rendered between individuals or between individuals and associations and these services became tax-free and exempted from social security contributions if income obtained did not exceed €6.000/per year.<sup>83</sup> It is this 2018 extension of the law which trade unions opposed and which determined the Constitutional Court to deem the law discriminatory. The decision was based on the observation that services rendered as part of the sharing economy replicated similar services rendered as full time employees whereas the former were tax-free.<sup>84</sup>

In the US, a major obstacle for securing better work contracts for last mile delivery employees is the independent contractor law. Once delivery workers register as independent contractors, they are not covered by the US Labour Law. Among the US states, California has been a forerunner in curbing this kind of work flexibilization. Popularly known as the "gig worker bill", the AB5 bill came into effect in January 2020 and requires companies hiring independent contractors to reclassify them as employees based on a test. In response, companies such as Uber, Lyft and Door Dash have launched an aggressive marketing campaign and managed to generate a citizen-based initiative which seeks to overturn the AB5 bill. Moreover, though the House Democrats passed something akin to a federal AB5, an amendment attached to the bill clarifies that its ABC test does not pre-empt individual state laws governing wages, work hours, workers' compensation, or unemployment insurance. Unsurprisingly, this vastly diminishes the effectiveness of the federal bill. Generally, the continued playing of one state jurisdiction against another in a context of weak federal regulation will continue to be a challenge for unions in the US.

In Australia, a similar back-and-forth dynamic can be observed. A significant advantage for delivery workers has been that, since Amazon's entry on the Australian market, most deliveries were handled through the state-owned Australia Post. More recently, however, Amazon has been trying to introduce its standard practice of using independent contractors, a move facilitated by the change of leadership at Australia Post. At the same time, Menulog, Australia's second-largest food ordering and delivery platform, looks to regularize its couriers under a new occupational award. In Australia, employees can be covered by an industry award or occupational award. An award practically sets out "the minimum conditions and terms of employment, such as rates of pay, hours of work, and allowances in accordance with the National Employment Standards in the Fair Work Act."<sup>85</sup> In many respects, the fact that Menulog seeks to turn its couriers into employees means that the homegrown e-commerce company wants to depart from the 'gig economy' business model, which competitors such as UberEats and Deliveroo rely on. Though Menulog wants to implement hiring its couriers on minimum pay on a trial basis and only in Sydney, the move marks a significant departure from the typical delivery app business model and has garnered the support of the Transport Workers' Union.<sup>86</sup> However, it remains to be whether Menulog's new occupational award will be an improvement for workers in the delivery sector or will simply lead to a situation in which "workers are employed but can still be insecure and poorly paid."<sup>87</sup>

82 Australian Government (2019) "Applying GST to low value goods imported by consumers": [https://treasury.gov.au/sites/default/files/2019-03/C2016-042\\_Q\\_and\\_A\\_Applying\\_GST\\_to\\_low\\_value\\_goods.pdf](https://treasury.gov.au/sites/default/files/2019-03/C2016-042_Q_and_A_Applying_GST_to_low_value_goods.pdf).

83 PwC (2020) "Specific regime for income from the collaborative economy annulled": <https://www.lexgo.be/en/papers/tax-law/individual-tax/specific-regime-for-income-from-the-collaborative-economy-annulled,136176.html>.

84 PwC, "Constitutional Court of Belgium annuls specific regime for income from the collaborative economy", 24 April 2020: <https://news.pwc.be/constitutional-court-of-belgium-annuls-specific-regime-for-income-from-the-collaborative-economy/>.

85 "New Modern Award for On Demand Delivery Drivers?", Specialist Employment Lawyers, 29 September 2021: <https://www.eilegal.com.au/blog-news/new-modern-award-for-on-demand-delivery-drivers/>.

86 "Menulog announces trial to improve pay for delivery riders, union applauds move as 'watershed moment'", News.com.au, 12 April 2021: <https://www.news.com.au/finance/work/at-work/menulog-announces-trial-to-improve-pay-for-delivery-riders-union-applauds-move-as-watershed-moment/news-story/6a564847772b761cd16798edc7231987>.

87 "Did somebody say workers' rights? Three big questions about

### 4.3. Diversifying the trade union agenda

Public policy initiatives on taxation often lack traction with trade union members and translating such initiatives into something that is meaningful for workers might require some effort.

In the US, public policy on e-commerce sales tax would not see a lot of worker mobilization whereas capital gains and corporate income taxes (when translated in terms of fairness and social justice) tend to generate plenty of interest among employees, particularly in conjunction with local, state-wide, and federal electoral cycles. In the upcoming 2022 elections in the State of New York, retail trade unions alongside fellow unions in the AFL-CIO (The American Federation of Labour and Congress of Industrial Organizations) plan to mobilize around a comprehensive bill package addressing some of the tax loopholes that benefit e-commerce players and major corporations. Concretely, the objective is to tax income from investments in the same manner as income from wages, and to introduce a progressive tax on large inherited wealth. It also proposes a small tax on Wall Street financial transactions which has the potential to raise between 12 and 29 billion US dollars.

Australia, on the other hand, offers a cautionary tale when it comes to mobilizing workers around the question of taxation. In 2019, Australia's Labour Party lost what was considered an unlosable election. The Labour Party campaigned on the basis of an ambitious tax program, which the SDA backed, aimed at reducing inequality. Partly as a result of an aggressive social media campaign which twisted critical parts of the tax program, the Labour Party paradoxically lost voters among working class and lower-income citizens. Given the upcoming election cycle in Australia, the SDA is unlikely to address tax issues directly and will instead focus on the potential negative effects of unfair e-commerce practices on job security in traditional retail.

In Sweden, retail trade unions are not primarily focusing on sales or capital income taxation. Instead, Handels has sought to indirectly relate taxation to other public policy concerns. One potential area of future intervention might be an environmental tax addressing e-commerce overpackaging, which would respond to concerns for climate change expressed by trade union members themselves. Another potential area of intervention is the taxation of technology to compensate the loss of tax revenues due to automation. As economic activity becomes more capital intensive, traditional tax regimes focused on income from labour are proving more and more inefficient in securing sufficient tax revenue and are increasingly out of touch with the structural transformations of the economy. Finally, Handels has also been making efforts to raise public awareness on the implications of digitalization for personal data protection.

In Belgium, the Confederation of Christian Trade Unions (ACV-CSC) has pushed for environmental concerns to become part of the new EU VAT regime during consultation sessions with the Government. The ACV-CSC has been active in writing taxation proposals at national and EU level covering issues such as the need for absolute transparency in corporate income statements, progressive taxation on income, taxation of corporate financial and real estate assets, and the introduction of a 0.1% European tax on financial transactions.

Regardless of specific national circumstances, it is clear that trade unions share first and foremost a common objective of ensuring that the advance of e-commerce does not promote precarious work arrangements. Since e-commerce-led experimentation with non-standard employment relations is currently most prevalent in logistics, close cooperation between retail and transport trade unions in addressing the situation of last-mile delivery workers will likely prove essential for protecting workers across the entire value chain. Innovations, like Amazon Flex, introduced by e-commerce giants and the proliferation of local small and medium-sized start-ups that are heavily reliant on platform work and other non-standard employment arrangements are likely to increase the risk of precarisation first for logistics and then for retail workers in general. This is something that is immediately palpable for union members and corresponds to trade unions traditional agenda. In this particular case, addressing the question of precarious labour is intrinsically tied to questions of taxation, which allows trade unions to seek broader coalitions and make connections between workers' interests and a broader citizens' agenda.

## CONCLUSION

The global expansion of e-commerce poses several major challenges for taxation as it has been understood historically. Not all countries are capable and prepared to deal with these challenges in an effective manner. In terms of sales tax or VAT, certain tax jurisdictions have the adequate resources to track and enforce compliance, whereas others are unlikely to be able to do the same. As far as corporate income taxes are concerned, the OECD global tax deal seems to improve upon existing taxation regimes in countries such as Ireland or Luxembourg, who have so far allowed tech giants to relocate profits from the consumer markets where they are generated. Nevertheless, the global minimum corporate tax, at least as it stands now, falls short of demands for fair taxation and will likely not reverse the already glaring socio-economic global inequalities. At the same time, questions of tax avoidance related to non-standard employment and e-commerce's environmental footprint continue to be largely unaddressed in public policy debates.

The complexity of the obstacles facing initiatives aimed at making e-commerce pay its fair share in all of the above respects cannot be underestimated. As national tax administrations go digital in an increased effort to crack down on tax evasion, tax fraud and tax avoidance, they are creating new capabilities to interact with taxpayers.<sup>88</sup> This has the potential to increase tax compliance, but the degree of rule enforcement greatly depends on whether governments have the financial and human resources to undertake such a task within a reasonable time horizon. Unlike national tax authorities, major e-commerce players face no such obstacles and are already exceedingly well positioned to handle upcoming changes related to taxation. After all, there is an entire global industry hiring armies of highly skilled professionals and making massive amounts of money by aiding big companies with their tax planning.<sup>89</sup> Any substantive international tax reform will have to consider the implications of e-commerce taxation not only in relation to traditional retail, but also in relation to third-parties such as law and accounting firms that make up the global professional infrastructure providing tax planning expertise.<sup>90</sup>

Assuming that tax-relevant information becomes increasingly digitalized and internationally shared, it remains to be seen whether attempts at imposing fairer taxation will result in e-commerce companies appealing to international tax arbitration. Under arbitration, the interpretation of international tax agreements is ceded to panels of transnational tax adjudicators, whose decisions can be imposed on individual tax jurisdictions. These adjudicators are private actors, most of them tax lawyers, who are empowered to issue binding opinions about which countries get to tax which bits of multinational economic activity and by how much.<sup>91</sup> Arbitrations typically takes place in secret, under strict confidentiality rules, which means they can easily bypass democratic political accountability.

If the international tax system becomes more consolidated around common reporting standards and international agreements, the volume of tax data transferred and stored will increase exponentially. In this scenario, the willing cooperation of big technology companies (including some e-commerce companies like Amazon) could become increasingly important, since governments would most likely rely on global IT&C infrastructures that are owned by these private enterprises. Amazon, for example, through its AWS operations, owns almost half of the world's public cloud infrastructure and it is already a significant partner for various state institutions and public agencies that require such services.<sup>92</sup> The proliferation of such partnerships raises additional questions concerning political accountability and tax data management.

Other challenges pertain to the relentless transformation of e-commerce and the spillover effects vis-à-vis traditional retail. Take the rapid development of business-to-business-to-customer (B2B2C) sales, which has significant implications in terms of labour relations and workers' rights. B2B2C means that two companies partner up to sell a product or a service to the end consumer. Shopping services are one example of B2B2C: consumers order goods sold by one company, but another company does the shopping for them and makes the deliveries. The case of Instacart in the United

88 EY Global (2019) "Why more digital tax administration may mean more risks for boards": [https://www.ey.com/en\\_qa/tax/why-more-digital-tax-administration-may-mean-more-risks-for-boards](https://www.ey.com/en_qa/tax/why-more-digital-tax-administration-may-mean-more-risks-for-boards).

89 Prem Sikka and Hugh Willmott (2013) "The Tax Avoidance Industry: Accountancy Firms on the Make": [https://www.tax.mpg.de/fileadmin/user\\_upload/Paper\\_Prem\\_Sikka\\_Hugh\\_Willmott.pdf](https://www.tax.mpg.de/fileadmin/user_upload/Paper_Prem_Sikka_Hugh_Willmott.pdf).

90 Corporate Europe Observatory (2018) Accounting for influence. How the Big Four are embedded in EU policy-making on tax avoidance: <https://corporateeurope.org/sites/default/files/tax-avoidance-industry-lob-by-low-res.pdf>.

91 Martin Hearson and Tod Tucker (2021) "An Unacceptable Surrender of Fiscal Sovereignty", Perspectives on Politics: <https://www.cambridge.org/core/journals/perspectives-on-politics/article/an-unacceptable-surrender-of-fiscal-sovereignty-the-neoliberal-turn-to-international-tax-arbitration/C3E4CDD17A00C985AEFC782CB3ADC2D0>.

92 "Amazon Owns Nearly Half Of The Public-Cloud Infrastructure Market Worth Over \$32 Billion", Forbes, 2 August 2019 : <https://www.forbes.com/sites/jeanbaptiste/2019/08/02/amazon-owns-nearly-half-of-the-public-cloud-infrastructure-market-worth-over-32-billion-report/>.

States exemplifies the problems of B2B2C business models in terms of workers' rights: shoppers are typically hired as independent contractors, unionization is blocked, there is no hazard pay and no provision of adequate protective gear even in exceptional situations such as COVID-19, while job security is virtually non-existent. The growth of such platform-based electronic commerce of goods and services has been spectacular during the pandemic and is a clear reason of concern for the future.

Another important development is the emergence of social and mobile commerce. These refer to the buying and selling of goods or services directly on social media platforms or via social influencers. Current estimates indicate that the global market for social commerce could grow by as much as 31.4% every year on average between 2020 and 2027.<sup>93</sup> In China, Pinduoduo, founded in 2015, has had a tremendous success in a very short time. The company created the largest agriculture-focused technology platform in China, through which it connects farmers and distributors with consumers in an interactive shopping experience. Pinduoduo is also said to have pioneered the social commerce business model and is now one of the biggest e-commerce companies in China, with a market valuation bigger than those of eBay or Twitter. Social commerce has also spread amongst small scale traditional retailers, and it became a means of subsistence during recurrent lockdowns, as evidenced in the case of Argentina and other South American countries.

Yet another global trend is the growth of e-commerce enablers. These are companies that provide end-to-end solutions to traditional retailers seeking to develop e-commerce businesses. In the past, traditional retailers would look for support from digital agencies or tech houses that developed webstore solutions, but this approach has proved costly and inefficient. This led to the emergence of specialized companies, so-called e-commerce enablers, that have an integrated approach to the development of e-commerce, providing digital solutions, marketing strategies, logistics infrastructures and customer service. E-commerce enablers basically provide a business client with all the necessary services and infrastructure necessary to sell efficiently online.

When traditional retailers develop their e-commerce branches with extensive use of e-commerce enablers' services, they become increasingly dependent on these companies' expertise. This could mean that only the least complex operations are performed by the retail company, while the more complex tasks are done by the e-commerce enablers (who can also function as subcontractors). In the long term, this growing trend could limit the upskilling potential for retail workers or could even lead to deskilling if they are left with performing only the most routine tasks.

As more pressure from e-commerce growth accumulates and brick-and mortar retailers are pushed online, e-commerce pure players might also seek to invest in physical store infrastructures. For example, Amazon plans to open large department stores in the US, focusing on the sale of groceries, books, and fashion apparel.<sup>94</sup> Such developments clearly suggest that the lines between e-commerce and traditional retail are getting blurrier, which risks further aggravating the negative taxation implication described in this report.

Recent VAT/sales e-commerce tax initiatives and the upcoming global tax deal on a minimum corporate tax rate might not be enough to level a playing field where for a long-time e-commerce players have gained unfair advantages over brick-and-mortar retailers. For unions, a direct approach of the challenges e-commerce raises for corporate income and sales taxation is bound to remain difficult, as some of the examples discussed in this report show. If needed, unions in the commerce sector would have to seek new alliances with peers in sectors such as transportation or the public sector and might even need to collaborate with those who are oftentimes on the other side of the barricades (employers or political parties). It is perhaps in the field of labour tax avoidance that labour unions can be most effective and make a direct positive difference in workers' lives. Though giant e-commerce players dominate the online retail market at global level, small and medium-sized e-commerce start-ups are also on the rise in many countries, and they too tend to rely on non-standard employment arrangements. Indeed, it often happens that these smaller companies that are active locally and nationally promote new business models based on increasingly "flexible" labour arrangements, which are subsequently taken over across the market. As one of the cases we presented shows, reaching out to these new companies on the question of collective labour agreements for their workers can become a way to ensure adequate protection of labour rights for all retail workers.

93 "Global Social Commerce Market Worth \$604.5 Billion by 2027", Global Newswire, 7 September 2: <https://www.globenewswire.com/news-release/2020/09/07/2089546/0/en/Global-Social-Commerce-Market-Worth-604-5-Billion-by-2027-COVID-19-Updated.html>.

94 <https://www.forbes.com/sites/blakemorgan/2021/08/24/amazon-disrupts-retail-again-with-new-department-stores/?sh=61620f493752>