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A systematic analysis of how artificial intelligence systems create value, where that value accrues under current PE and transfer pricing doctrine, and why OECD nexus rules will need to evolve.

DGTS - RESEARCH PAPER

AI, Value Creation and Taxing Rights

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Explores how artificial intelligence systems create value, where that value accrues under current PE and transfer pricing doctrine, and why OECD nexus rules will need to evolve.

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EXECUTIVE SUMMARY

Artificial intelligence is fundamentally reshaping how multinational enterprises create value. AI systems generate value through algorithmic decision-making, cross-border data inputs, and automated transactions that existing tax doctrine was not designed to address.

This paper examines where value is created in AI systems under existing PE doctrine, how transfer pricing applies when the function is algorithmic, why nexus requirements need redefinition, and the regulatory timeline for OECD clarification.

1. The PE Problem: Presence Without Substance

The OECD's Permanent Establishment rules require a fixed place of business or dependent agent to create nexus. An AI system creates ambiguities regarding whether servers constitute a fixed place of business and whether AI systems can be dependent agents.

2. Transfer Pricing and Algorithmic Functions

Transfer pricing doctrine allocates profit based on functions performed, assets employed, and risks assumed (DEMPE framework). For AI systems, questions arise about how to apply DEMPE analysis when the function is a trained neural network, not human labor.

3. Data as a Value Driver

AI systems depend on data as the primary input to value creation. This creates regulatory gaps in how transfer pricing doctrine should value and allocate profit from data inputs that cross borders.

4. The Nexus Question

The OECD has signaled that the definition of PE may need to evolve. For AI, the question is: at what point does an AI system's cross-border activity create nexus for the jurisdiction where it operates?

5. Timeline: When Will OECD Clarify?

Clarification is likely to emerge over three timeframes: Short Term (general guidance), Medium Term (position papers and formal guidance), and Long Term (tax law changes and court precedent).

6. AI and Pillar Two Substance

Pillar Two relies on substance indicators—employee headcount and payroll. AI disrupts this by allowing substantial revenue generation with minimal local employment.

7. Implications for MNE Strategy

Three key risks: PE Risk (data centers as fixed place), Transfer Pricing Risk (profit allocation), and Nexus Risk (demand for local presence). Strategic mitigation is essential.

CONCLUSION

Artificial intelligence creates value in ways that current international tax doctrine was not designed to address. The application of existing PE, transfer pricing and nexus concepts to increasingly autonomous AI systems is likely to become an area of further OECD analysis and guidance.

The firms that anticipate these changes and adjust their structures proactively will capture significant value. Those that wait for regulatory clarity will face retroactive assessments, double taxation, and dispute costs.

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