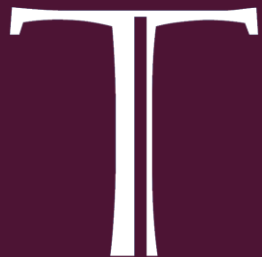

TAXATION AND THE DIGITAL ECONOMY



Tognetti Advocacia

SILVANIA TOGNETTI

TTN CONFERENCE MIAMI

MAY 2018

AGENDA

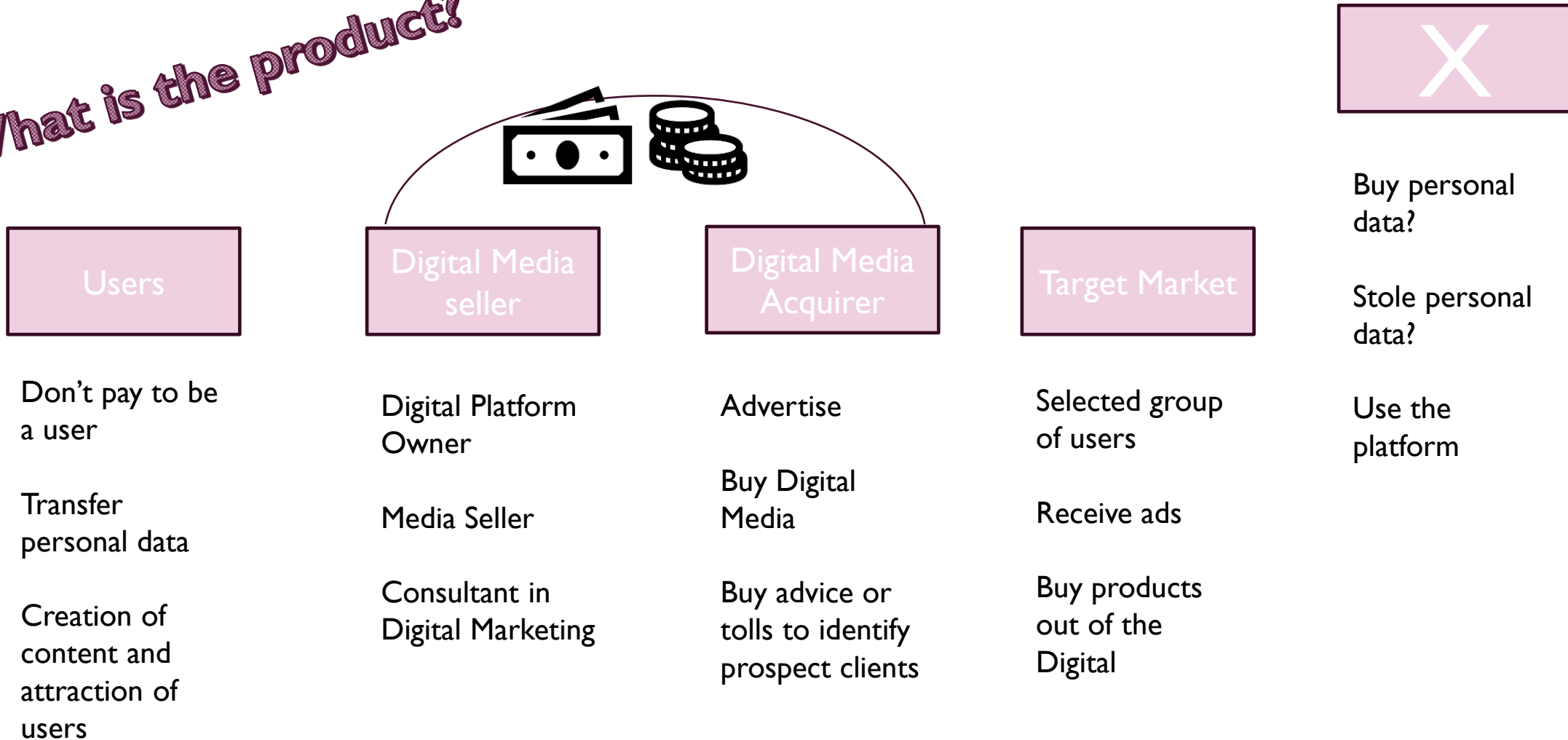
- Digital World:
 - Who are the players? Where are the income, product, establishments?
- Taxation Issues:
 - Corporate income tax? VAT? New Tax? How much?
- International Taxation:
 - What jurisdiction has the right to tax digital business? How jurisdictions will divide taxes? How to avoid double taxation and double non taxation?
- Reactions:
 - Isolated initiatives, OECD proposal (BEPS) and Europe
- Brazilian Perspective:
 - VAT, Withholding income tax, Tax on financial transactions and several disputes for the right to tax.

NICE TO MEET YOU DIGITAL WORLD!



WHO ARE THE PLAYERS? DIGITAL MARKETING

What is the product?



WHO ARE THE PLAYERS? BUSINESS INTERMEDIATION

What is the product?

Seekers Users

Don't pay to be a user.

Transfer personal data

Buy on line for the real world

Quality controller

Business Intermediator

Digital Platform Owner

Intermediation Provider (Broker? Matching?)

Logistic and Payment services provider

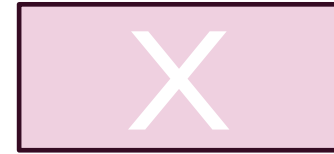
Provider Users

Pay to be a user

On line sales

Logistic and Payment services buyer

Quality Certified



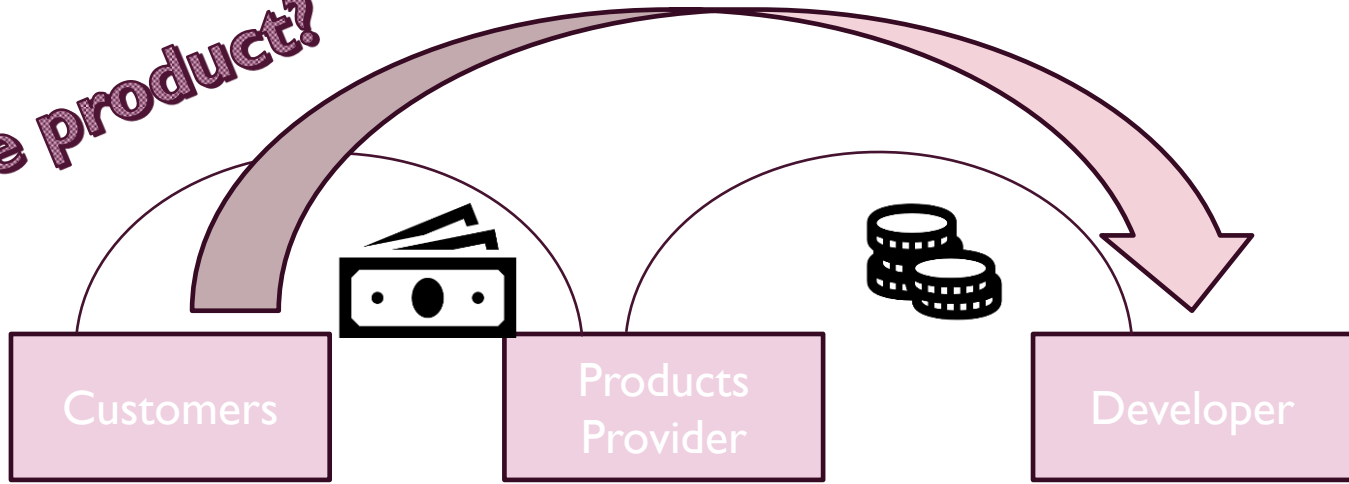
Check out Provider?

Logistic Provider?

Use the platform for digital marketing?

WHO ARE THE PLAYERS? DIGITAL PRODUCTS

What is the product?



Pay for the digital product, to be a user or access content.

Transfer personal data

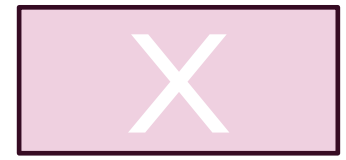
Buy on line digital products

Digital Platform Owner

Create or buy from developers digital products for sale

Develop digital products for sale

Sale direct to consumers or for products providers




Check out Provider?

Use the platform for digital marketing?

DIGITAL WORLD: WHERE ARE THE INCOME, PRODUCT, ESTABLISHMENTS?

- Link between transaction and jurisdiction is more complex. End of geographical boundaries
- Digital economy covers an increasingly wide range of products that often have little in common apart from being “digital”.
- Intangibles difficult to evaluate. Customers can create value by simply using the digital product (sharing, adding reviews, checking-in, creating new content or customizations)
- Main service may not need to be monetized ever or for sufficiently long periods of time, while the business derives benefit from auxiliary sources such as advertising or selling customer data
- New services are launched every day that did not exist before. Existing products are modified and enhanced with new features, or discontinued if not successful. More to come as more digital technologies continue to transform the world



The “Digital World” does not create new problems for the existing tax systems. It exacerbates problems these systems already have.

TAXATION CHALLENGES – CORPORATE INCOME TAX



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- Income tax based on revenues of a company domiciled or with a permanent establishment in a jurisdiction.
- Tax evasion is easier in digital world.
- Permanent Establishment concept traditionally consider assets, risks and aggregated value. The digital platform can be anywhere.
- Main assets are intangibles (algorithms, personal data, network effects) that are difficult (or impossible) to identify its location.
- Place of decision: Board meetings take place over videoconference with members joining from different countries
- Expenses necessary to generate the income are incurred in many jurisdictions. Human resources are decentralized.

TAXATION CHALLENGES – VAT

- Multiple jurisdiction agents. Users are mobile and take digital products with them around the globe
- Enforcement of tax when those that normally remit and collect tax are not physically present.
- New Rules:
 - for distance selling type
 - Marketplace operators (platform owners) may be taxed
 - Payment system operators can withhold the tax due in a transaction
 - Sales B2B and B2C will need different rules
 - Transactions between individuals may be exempt with thresholds in number of transactions and value
- Digital products and services interact and mix with each other and with non-digital products, to the extent you can no longer put a label on them for tax purposes
- Because of constant change on the products, tax treatment cannot be agreed in advance for a long term with a desirable degree of certainty.
- Taxation of activities that are not taxed when performed in the real world: inequality in taxation



In digital economy is much easier for all aspects of a business to be spread across the globe.

INTERNATIONAL TAXATION

- Traditional principles of profit sharing among jurisdictions to avoid double taxation are insufficient
- Major platforms choose the location of their activities for tax reasons
- Inconsistency in the tax treatment of diverse and hybrid products across jurisdictions allow tax planning
- Transfer Pricing:
 - Arm's length may not be relevant.
 - Methods to value synergies
 - Allocation of profit to subsidiaries
 - Users can aggregate value
- Sufficient presence of a company in a country for it to be taxed there (SEP – Significant Economic Presence): users presence, local of transaction
- Control of tax events: *bots* can create a huge number of users or transactions in a jurisdiction to reduce or increase tax in a jurisdiction
- Control of IPs when VPN can show an IP that doesn't correspond to users' physical location

INTERNATIONAL TAXATION

- Open a link in a jurisdiction may attract taxation: service tax?
- A jurisdiction may tax a company that owns a e-commerce platform when consumer, seller and goods are in a different jurisdiction?
- A company in one jurisdiction could be taxed because a resident in another country included information on a publication on line?
- The personal data of a resident in a country A, collected by a company in a country B and acquired by a company in a country C could allow all these countries to tax the transaction?
- Freelance developers and customer service teams can work from home and collaborate via instant messaging and social networks. Which jurisdiction would have the right to tax this company without material presence?

CONCLUSION



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Thank you!
Obrigada!



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