

Criteria for Defining the Digital Products Tax Base

**Presented to the MTC Digital Products Workgroup
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Initial Thoughts

- Uniformity Committee charge regarding the scope of the project: ...
 - “Analysis of the ways that digital products might be defined, categorized, exempted and sourced.”
- Langenberg suggestions to partially fulfill the charge:
 - The Work Group should identify criteria that states could use to include or exclude digital products in the tax base.
 - The Work Group should identify factors that states should consider in evaluating the criteria.

What Are Some Criteria for Inclusion and Exclusion?

- Output – What is produced
- Input – How it is produced
- Who is buying – e.g., nonprofit, business
- Who is selling – e.g., nonprofit, big business
- Intended use – e.g., resale, business, education
- Other

Example – Texas Data Processing Service

Texas Tax Code § 151.0035.

(a) "Data processing service" includes:

(1) word processing, data entry, data retrieval, data search, information compilation, payroll and business accounting data production, and other computerized data and information storage or manipulation; ...

Output

Input

Example - Inclusion

Washington Digital Automated Service

Washington RCW 82.04.192:

(3)(a) "Digital automated service," except as provided in (b) of this subsection (3), means any service transferred electronically that uses one or more software applications.

Output

Input

Example - Exclusion

Washington Digital Automated Service

Washington RCW 82.04.192:

(3)(b) "Digital automated service" does not include:

(i) Any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service; ...

Input

Output

(xiii) Advertising services. ...

(xv) Data processing services. ...

Example – United Nations Model Double Taxation Convention

Output

Paragraph 12B (5): The term “automated digital services” as used in this Article means any service provided on the Internet or another electronic network, in either case requiring minimal human involvement from the service provider.

Input

https://financing.desa.un.org/sites/default/files/2023-05/UN%20Model_2021.pdf

Example – United Nations Model Double Taxation Convention

Output

Paragraph 12B (6). The term “automated digital services” includes especially: (a) online advertising services; (b) supply of user data; (c) online search engines; (d) online intermediation platform services; (e) social media platforms; (f) digital content services; (g) online gaming; (h) cloud computing services; and (i) standardized online teaching services.

https://financing.desa.un.org/sites/default/files/2023-05/UN%20Model_2021.pdf

Example – South Dakota

S.D.C.L. 10-45-1.14. Gross receipts defined.

*No
Output
Criteria*

For the purposes of this chapter, the term, gross receipts, means the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, any product transferred electronically, or services are sold, leased, or rented, valued in money, whether received in money or otherwise ...

*No
Input
Criteria*

Example – Streamlined Sales & Use Tax Agreement

“Specified digital products” means electronically transferred:

Output

“Digital Audio-Visual Works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any,

*No
Input
Criteria*

“Digital Audio Works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones, and

“Digital Books” which means works that are generally recognized in the ordinary and usual sense as “books”.

Example – Texas Amusement & Cable TV Services

Output

Tex. Tax Code § 151.0028. (a) "Amusement services" means the provision of amusement, entertainment, or recreation, but does not include the provision of educational or health services if prescribed by a licensed practitioner of the healing arts for the primary purpose of education or health maintenance or improvement.

*No
Input
Criteria*

Tex. Tax Code § 151.0033. "Cable television service" means the distribution of video programming with or without use of wires to subscribing or paying customers.

Example – Texas Information Service

Tex. Tax Code Sec. 151.0038. "INFORMATION SERVICE".

(a) "Information service" means:

Output

(1) furnishing general or specialized news or other current information, including financial information, unless furnished to: (A) a newspaper or to a radio or television station ... or (B) a member of a homeowners association...; or

*No
Input
Criteria*

Input

(2) electronic data retrieval or research.

Output

Input Criteria

- South Dakota – None
- Streamlined - None
- Texas amusement service - None
- Texas data processing – Computerized
- Washington – Not primarily human effort
- UN – Minimal human involvement

Output Criteria

- South Dakota – None
- UN – Broad – any service
- Washington – Exclusions
- Streamlined - Inclusions
- Texas - Inclusions

Concluding Thoughts

- Uniformity Committee charge regarding the scope of the project: ...
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