







# Designing Digital Tax Scheme: Case Study on Booking.Com

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**Abstract.** This study aims to design a digital tax scheme based on a case study of the effort to tax Booking.com. This study used a qualitative case study methodology. Articles related to tax subjects and tax objects in a tax treaty are secondary data. Designing a digital tax on a case study on Booking.com starts by determining the tax subject, followed by its tax object. Based on Article 5 (2a) of the tax treaty Indonesia – Netherlands, the term permanent establishment shall include a place of management. The publication of booking.com stated that it was registered and based in Amsterdam in the Netherlands. In Article 5 (2b), the term permanent establishment shall include a branch, and the publication of Booking.com states that support companies do not render the service and do not own, operate, or manage the website or any other website. New designs should add additional criteria to determine whether booking.com is a permanent establishment from an income perspective. This study contributes to both the equity principal tax treaty between domicile and source-country partners. Practically, it can be an alternative to ratifying the tax treaty of Indonesia with potential source income from Indonesia with tax domicile in contracting country partners.

**Keywords:** Digital Tax, Equity, Fairness, Tax Treaty

## 1 Introduction

Consumers feel more comfortable and find it easier to make accommodation booking transactions when traveling online (Belanche et al., 2020; Rahmayanti & Rahmawati, 2020). Multinational companies engaged in the travel industry take advantage of consumer preferences through the provision of online services, such as Booking.com. Booking.com is an online travel agent that provides online accommodation reservations to consumers. An interesting aspect of the online travel agent business process is related to the taxation rights of the country of domicile or the source of income for accommodation services (Polezharova & Krasnobaeva, 2020; Tyutyuryukov & Guseva, 2021).

Taxation rights are an interesting issue discussed by the Organisation for Economic Co-operation and Development (OECD) as a challenge and opportunity for technological development (OECD, 2015; OECD, 2019). The OECD has issued several proposals regarding taxation rights for digital transactions, one of which is related to

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the alternative application of criteria other than physical presence in the form of a physical nexus (Li, 2018; Ponomareva, 2022). The physical nexus, as a concept of an entity that has a physical presence, becomes a tax subject based on the principle of domicile (Darmayasa & Partika, 2024). Technological developments have given rise to cross-jurisdictional transactions, which present challenges related to the relevance of the physical nexus in determining whether an entity is a tax subject in a district.

Empirically, the aspect of justice in leasing rights is the focus of researchers (Fleurbaey & Maniquet, 2018; Lindsay, 2016), the application of the four maxims principle is also the basis for thinking about international tax policy (Polezharova, 2019). Digital transactions have tax potential but have not been optimally exploited (Cahyadi et al., 2021; Darmayasa & Hardika, 2024). The OECD has become important as a reference for countries, especially income-source countries, to create justice in leasing rights. The fairness of leasing rights and the application of the principle of equality to create certainty is the desire of various countries to increase acceptance from the perspective of leasing digital transactions across national borders (Cahyadi et al., 2023).

Currently, Indonesian tax authorities are responding to the OECD's proposal regarding taxation of cross-border transactions through revisions to laws and regulations and their implementation regulations (Darmayasa et al., 2024). Tax authorities are gradually determining that multinational companies are business actors who trade or do business using electronic devices. Electronic-based business actors must collect Value Added Tax (VAT). The VAT is an indirect tax paid by end consumers. In the context of booking accommodation through Booking.com, the one who pays VAT is the consumer who uses Booking.com's services through its management collector. Based on the rapid development of digital transactions in the form of online travel agents, the physical nexus concept is no longer relevant to determining whether a multinational company is a tax subject. This study aims to design a concept of online transaction taxation that reflects the booking.com business phenomenon.

## **2 Methodology**

This study is qualitative, with a literature review approach to cross-border digital transaction taxation policies. The data come from primary data in the form of research participants' views and secondary data in the form of taxation policies on online booking accommodation service providers. The primary data were improved in terms of quality through triangulation tests (Santos et al., 2020). Meanwhile, secondary data are validated by tracing data sourced from the official website of the tax authority and the official page of the Booking.com accommodation. The participants involved in this research were researchers in the field of taxation related to OECD policies, accommodation business owners who use Booking.com services, accommodation business management, and practitioners who provide professional online accommodation booking tax services.

The collected data, which were improved in quality, were then analyzed using interactive analysis patterns, referring to the guidelines provided by (Miles et al., 2019). Considering that qualitative research has the main character of the researcher as the research instrument, the discussion of research themes is closely linked to the contemplation of the researcher's knowledge and experience (Cresswell & Poth, 2018; Darmayasa & Aneswari, 2015).

### **3 Result and Discussion**

#### **3.1 Literature Review and Informant Views**

The exploration of the taxation aspect of online bookings leads to a literature review of the taxation aspect of online booking services, which, in principle, are similar to ordinary conventional services. Technological developments have resulted in online booking services crossing jurisdictional boundaries, but the taxation aspect remains the same. Search results on the official Booking.com page <https://www.booking.com/content/legal.html> state that Booking.com is registered in Amsterdam. Booking.com's operations are internally supported by several representative offices in countries that use online booking services.

Other information related to Booking.com's services and correspondence with Booking.com was addressed directly to Booking.com, which is registered in Amsterdam. Furthermore, the official Booking.com page explains that Booking.com never accepts the assumption that there is a domicile of the Booking.com entity outside the place of registration in Amsterdam and does not recognize the existence of branch offices in other countries. Not all entities that support Booking.com's services officially operate on behalf of Booking.com. Booking.com explicitly states that reservation services can only be provided through Booking.com, which is registered in Amsterdam. After conducting a literature review and search on the official Booking.com page, we then extracted the views of research informants from accommodation business owners, accommodation business managers, tax professional services, and OECD policy researchers.

Mr. Reach

... Booking.com charges 15 percent for every transaction, and there is an additional two-point-five percent payment charge. Recently, there was an 11% tax deduction from a total charge of 15% and 2.5% charge. Booking.com should pay the tax; why is it charged to my company's bill?

Mr. Expert

... Often some payments do not match the guest list, so we must trace the calculations one by one. If there is a guest who checks this month but checks later than this month, Booking.com will calculate the checkout date, so the payment takes a long time. The complicated thing is the recognition of deductions from

Booking.com in the month the guest checks in or when Booking.com makes a payment.

#### Mr. Profesional

According to Booking.com's provisions, it is registered in Amsterdam, so the tax aspect can be obtained only through Value Added Tax (VAT). VAT was collected by Booking.com through the appointment of the Ministry of Finance as the tax authority. Charge 15% and 2.5% of each transaction as the Taxable Basis (DPP), which is the objective of the VAT tax.

#### Mrs. Smart

Sometimes the tax authorities miss the income tax aspect, currently only able to collect on the VAT aspect. In principle, conventional and online transactions have the same characteristics, and subjects and objects are the same. A fair policy is needed to realize equality and certainty in the formulation of cross-border jurisdictional transaction policies; in this case, the OECD plays a very important role.

### 3.2 Discussion

In the discussion section, the relationship between the literature review and the views of the research informants is presented. Similar views were supported by the secondary data from the same discussion themes. The discussion theme begins with the basis of leasing policy, continues with the physical nexus criteria of an entity as a Permanent Establishment (PE), and ends with the design of the criteria for fulfilling the subjects and objects of digital transaction tax.

**Basis of Leasing Policy.** Philosophically, every tax policy, regardless of whether it is local or international across jurisdictional borders, is guided by the principle of the four maxims (Manioudis & Milonakis, 2021; Rahim, 2018). Tax researchers are concerned that the fairness of policies favors the formation of tax awareness (Darmayasa et al., 2016; Darmayasa et al., 2017; Darmayasa et al., 2018; Darmayasa et al., 2022). The view of informant Mrs. Smart as an academic who researches OECD policies related to the fairness of taxation rights between source countries and countries of domicile should be treated equally between traditional transactions and digital transactions. Mrs. Smart's view refers to various research results stating that fairness in taxation policies is an international issue considered by the OECD (Castañeda, 2024; Darmayasa, 2017, 2019; Susilawati et al., 2021).

Mrs. Smarts' view as a researcher in the field of taxation emphasizes that currently, the tax authorities have not optimally taxed digital transactions; there needs to be awareness and understanding that the characteristics of taxation of digital and traditional transactions are the same. This paradigm is based on the belief that the tax treatment should be the same when the tax object is the same. This similarity in treatment is the application of the principle of tax collection, which prioritizes the

principle of equity. (Darmayasa et al., 2016; Darmayasa et al., 2017; Gangl & Torgler, 2020; Partika & Darmayasa, 2024; Susilawati et al., 2021).

**Physical Nexus Criteria.** In practice, informant Mr. Reach as an accommodation owner provides the view that ideally, Booking.com service providers are required to pay taxes on reservation service transactions. This view illustrates that Booking.com's policy of appointing VAT, according to the current applicable rate of 11%, reduces the contribution margin of accommodation owners. Another view is conveyed by Mr. Expert as an accommodation manager who uses Booking.com services, providing the view that the cut-off for payment recognition is not in line with payment, considering the possibility of guests canceling their orders.

Mr. Profesional who has knowledge and experience related to the calculation of tax aspects of Booking.com's services, is that the tax aspect that currently appears is only the VAT aspect. Mr. Profesional's view is in line with the results of research related to taxation rights against PE, which conflict with Article 5 of the Tax Treaty (Darmayasa & Partika, 2024; Polezharova & Krasnobaeva, 2020; Ponomareva, 2022; Suwardi et al., 2020).

In practice, the accommodation company actor, Mr. Profesional, does not consider the application of the principle of equity important in the taxation of accommodation transactions by Booking.com. This is different from Mr. Expert's view, who was able to bridge Mr. Profesional's lack of understanding that Booking.com refers to the provisions of the Indonesian tax treaty with Amsterdam, which has not met the criteria for a PE, so that taxation rights are only limited to VAT (Darmayasa & Partika, 2024). What concerns Mr. Profesional is that the profit margin of the company he manages has decreased because of the obligation to collect VAT from Booking.com. Therefore, according to Mr. Profesional, ideally, it should not be charged to accommodation service users.

**Design Criteria for Fulfillment of Subjects and Objects of Digital Transaction Tax.** Legally, the taxation stages begin by determining the tax subject first, followed by determining the tax object. Based on Article 5 (2a) of the Indonesia-Netherlands tax treaty, the term permanent establishment shall include a place of management. The physical nexus criterion is irrelevant to cross-border digital service-based transactions. It is appropriate for the design of taxation policies to refer to the OECD proposal to address technological developments in digital transactions. Various studies have described the efforts made by several countries to revise the provisions for determining a PE that does not depend on the physical nexus but does not necessarily provide the certainty aspect of the country of domicile of a PE (Darmayasa & Partika, 2024; Mann, 2023).

Observing the booking.com business transaction model, which can only be taxed from the VAT aspect, results in a potential tax from income tax not being optimal. Regarding the aspect of tax collection, the aspect of fairness feels like it cannot be applied optimally, especially in countries where income comes from, such as Indonesia. The OECD is currently only compiling guidelines that are not mandatory; this does not immediately become a reference for the country of domicile of an entity. A review is

needed on the aspect of international policy that is mandatory in the form of consensus, so that the aspect of fairness can be realized for both the source country and the country of domicile, which can realize equality and certainty.

## 4 Conclusion

Referring to the research objective of designing a digital transaction taxation concept reflecting the booking.com phenomenon, two conclusions are drawn. First, the terminology of the physical nexus criteria is no longer relevant for application to digital-based transactions across jurisdictional borders. The second conclusion leads to the urgency of consensus among OECD members to formulate policies that prioritize fairness from the source country and the country of domicile. Further research can be conducted by conducting comparative studies with other digital transaction models across countries, starting in the ASEAN region.

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