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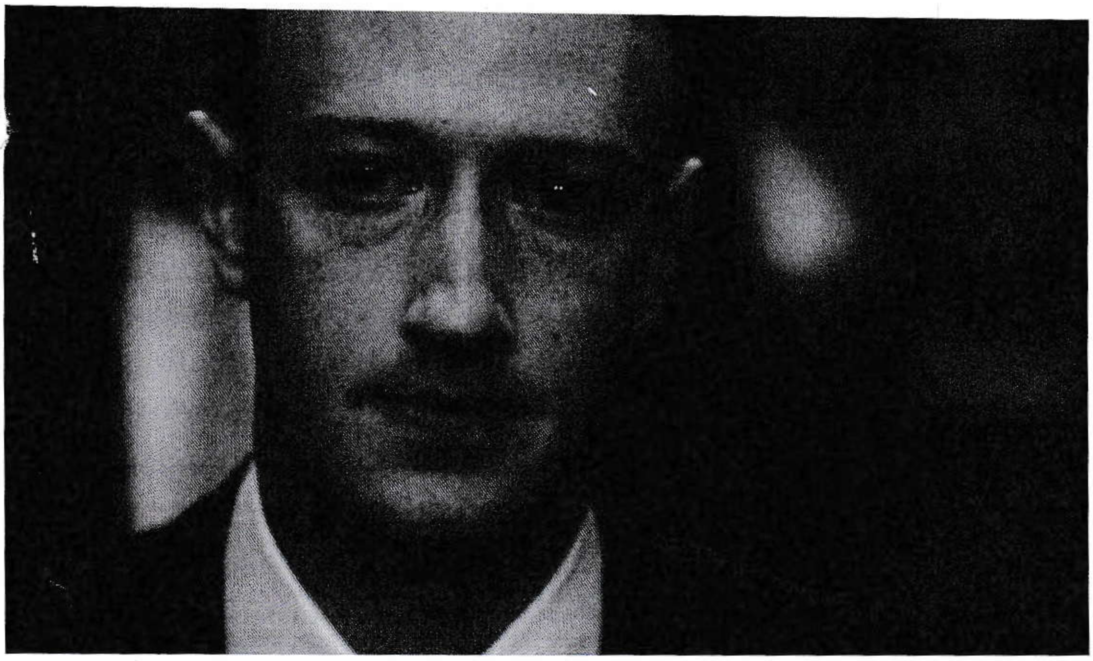

FACEBOOK CO-FOUNDER, CHAIRMAN AND CEO MARK ZUCKERBERG TESTIFIES BEFORE A COMBINED SENATE JUDICIARY AND COMMERCE COMMITTEE HEARING IN THE HART SENATE OFFICE BUILDING. (IMAGE: CHIP SOMODEVILLA/GETTY IMAGES)

NZ's Facebook tax suggests the day of digital reckoning draws near

Duncan Greive | Managing Editor
Commentary

Does yesterday's surprise announcement around the tax status of digital giants indicate a willingness to tackle the vast problems they create?

Yesterday was just another Monday for the global tech giants: a select committee in the UK referred to Facebook as "digital gangsters" (not in an admiring way) for their response to privacy concerns, speculation continued about the EU's desire to see them

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broken up for antitrust purposes – and little old New Zealand announced an intention to impose a tax to capture revenue they currently siphon off-shore.

It's now an accepted part of life: we as a species gaze in horror at these very young, very powerful titans of commerce and try and figure out what the hell to do with them. They have provided us extraordinary services – interactive GPS-driven maps, free worldwide multimedia communication, platforms to launch businesses and movements – yet the challenges they present still seem to dwarf what they offer us.

To gain access to those free services you nearly always give up your privacy to them. They make major decisions with far-reaching consequences without telling you why, and with no ability to appeal them, regardless of whether the entity impacted is a small business or a democracy. They enter your nation by stealth, transcending borders through communications networks to devices we keep around us at all times, their scope, power and revenue growing enormously without anyone in any official capacity monitoring their growth or considering its consequences.

Along with an extraordinary amount of innovation – initially accomplished internally through research, latterly externally through buying up competitors – they also take advantage of legal and taxation systems designed for a different world. It's one of the least-remarked upon drivers of the success of the tech giants: our systems were designed for an era of physical goods and services. You needed plant and people, import licences and distribution networks. This meant that where problems arose, we as nation-states could get eyes on them and arms around them. It also meant that scaling was invariably a time and capital intensive exercise – so that our legislative systems could creak along at a similar pace and still not get overwhelmed.

That's long been out the window. The internet and the smartphone changed it all forever. Now Facebook can be the biggest media company in New Zealand without a New Zealand office that anyone can find (a Stuff story from 2017 talks about it being "somewhere in Britomart"). Our whole system of multilateralism, of working out solutions within the context of groups like the OECD or APEC – it plays directly into the hands of these businesses. You can build an Uber in the time it takes us to settle on a definition of profit shifting, let alone decide how to respond to it. All our time working through discussion papers and educating working groups and debating how to conceive of an innovation – that time is as important as money in propelling the tech giants' growth.

So let's talk about money. The other signature of these businesses is their indifference to making any. The established model is to lose a little at first, gradually losing more and more until they're losing the cost of Auckland's city rail link a year. Eventually, once they have acquired major market dominance and tech power, they can start making a lot of it.

Uber is currently in the pit of this money burn, losing US$1.8bn over the past year, while at the same time it's thought to be worth US$120bn. Many in the traditional business sector look at these numbers and shake their heads – the idea of losing money year after year is anathema to everything they've ever been taught. Sometimes it fails, spectacularly – look at Theranos or the parlous state of Vice. Yet it often works: Amazon and Facebook and Google are all profitable now, immensely so, emerging from the breakneck pace of building something into a more orderly era where your code becomes a giant ATM.

Yet spending years and years acquiring a dominant position while losing money causes havoc for tax and commerce legislation, which assumes a business will only survive if it mostly makes more than it spends. When you add that to the stealth I mentioned before – the way they slide into a nation without people or plant – you have a recipe for a tax nightmare. You have enormous corporations which pay negligible amounts of GST and company tax, while competing with local companies which pay both.

This is not a new proposition for our politicians. In 2014 David Clark attracted ridicule from the then-government for a threat to ban Facebook if they didn't pay more tax. Two years later, John Key really ripped into Zuckerberg, saying it "wasn't a good look" that their tax bill was so low. That clearly didn't quite have the desired effect, as it's 2019 and Facebook doesn't charge The Spinoff GST on the six figure bill we alone get from them each year – despite the threshold for GST registration for the average courier or landscaper being $75,000.

It's an understatement, then, to suggest the government's announcement is overdue. They're proposing a very modest revenue-based tax of two or three percent, to get around the way these businesses shift their profits offshore. They suggest it might bring in $30m-$80m, though Australia's experience suggests that they'll lose a good portion of that on legal fees fighting with these incredibly well-resourced businesses in the courts.

Whatever it takes, it's worth it. While the usual suspects have already talked about these costs being passed on to consumers, that's the nature of all taxes and not in and of itself a reason not to impose them. What this is about is, as finance minister Grant Robertson noted, something far more basic than that: fairness.

"Highly digitalised companies, such as those offering social media networks, trading platforms, and online advertising, currently earn a significant income from New Zealand consumers without being liable for income tax. That is not fair, and we are determined to do something about it," Robertson said.

It's what he said next which really got to the nub of it though. "International tax rules have not kept up with modern business developments. In the longer term this threatens the sustainability of our revenue base and the fairness of the tax system."

This is the point which needs making, over and over until we really absorb it. When two companies offer identical services – say, digital advertising from New Zealand businesses targeting New Zealand consumers – it's absurd that only one should be liable for tax on that service. This isn't about protecting local business, it's about ensuring the integrity of our tax system.

And it's only the start. There are hundreds of other loopholes being merrily exploited, from Netflix's not using our film and TV classification rules to Uber casting its full-time drivers as contractors rather than employees. A huge tranche of our legislation needs updating to reflect the realities of the digital era. The task is vast, exhausting to contemplate. But it's also amongst the most important our government faces today as without it our whole society is at risk of eroding. So yesterday's announcement, while it might bring in a relatively tiny amount of revenue, can also be viewed as a first step towards a new tax deal. It stands as a stake in the ground against the idea that the digital giants can do business here without paying their share of our upkeep.

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