

U.S. DIGITAL TAXATION - OVERVIEW

- States continue to enact legislation expanding their sales taxes to digital goods and services and cloud-based goods and services.
 - There continue to be significant differences from state to state in how such goods and services are taxed.
 - Some states have alternative tax regimes where application of those taxes to such goods and services is unclear.
 - Characterization issues: tangible personal property, software, service, digital good, something else. Delivered in tangible form, electronically delivered, electronically accessed, electronically streamed.
- States also continue to evaluate their current authority to tax e-commerce services (e.g., cloud computing services, etc.).
 - States attempt to tax such goods and services through either legislative changes or by applying existing tax laws related to the taxation of software or other tangible goods.
- A few states have specifically exempted digital goods/services or cloud computing services from taxation.

U.S. DIGITAL TAXATION - RECENT DEVELOPMENTS

- § **Massachusetts** H. 4045 introduced August 5, 2019 with 86 co-sponsors.
 - § Introduces new “cost recovery assessment” equal to 5% of streaming entertainment provider’s gross revenues derived from sale, lease, or monetization of streaming entertainment to individuals or businesses.
 - § Defines “streaming entertainment service” as “any paid service with more than \$250,000 in gross revenue from users in the Commonwealth that sells access to audio, video, or computer-generated or computer-augmented entertainment and delivers such entertainment via digital infrastructure.”
 - § Penalties for failure to file total up to 13% of provider’s gross revenue
 - § Authorizes Attorney General or local government (or class thereof) to bring action to recover unpaid assessments and penalties, or enjoin non-compliant entity. Such an action would have a 7 year statute of limitations.
 - § Would be effective January 1, 2020.
- § **Vermont** Legislative study committee set up to develop recommendations on “alternative regulatory and fundraising mechanisms” for public, educational, and governmental (PEG) television. Seeking to replace cable franchise fee with other, potentially broader, taxes.

TAXABILITY MAP – DIGITAL PRODUCTS

