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Working Paper 107

The Taxation of the Digitalised Economy: An African Study

Mustapha Ndajiwo

June 2020

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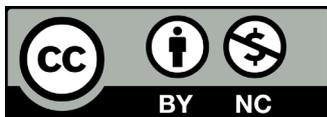
Mustapha Ndajiwo

ICTD Working Paper 107

First published by the Institute of Development Studies in June 2020

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ISBN: 978-1-78118-653-4



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Available from:

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Charity Registration Number 306371

Charitable Company Number 877338

The Taxation of the Digitalised Economy: An African Study

Mustapha Ndajiwo

Summary

The advent of digitalised business models has considerable potential to improve trade in Africa, however, it has greatly exacerbated the two central challenges of international tax. The first challenge is the definition of taxable presence, and the second is the allocation of business profits of multinational enterprises (MNEs) among the different jurisdictions where they operate. This has generated much debate and has seen the rise in unilateral measures in different jurisdictions.

This paper is a case study of six African countries, namely Nigeria, Ghana, Senegal, Kenya, Rwanda, and Uganda. The paper examines the issue of nexus and profit allocation and the presence of digitalised businesses in Africa and recommends immediate and long-term options that are available to African countries.

The paper reveals that the main problem of taxing highly digitalised businesses is not due to their lack of taxable presence in African countries but to the attribution of profits. The study further revealed that while generally, the six jurisdictions studied are considering the taxation of profits arising from the digitalised economy, efforts so far have focused on indirect taxation.

The paper argues that African countries have the immediate advantage of collecting taxes from digitalised transactions through VAT due to its relative administrative ease and the existence of a legal framework, in comparison to corporate taxes. The paper also cautions African countries on transaction taxes, recommending that if African countries decide to impose taxes on transactions, they should be progressive to reduce the regressive impact.

In the long term, the paper recommends that the best way forward for African countries would be to build on the G24 proposal under the Inclusive Framework on BEPS, and press for simple formulaic methods which would allocate profits fairly between countries based on real activities in each.

Keywords: Africa, nexus, profit allocation, OECD, digitalisation, VAT, BEPS, corporate taxation, mobile transactions, non-resident, Uber, Amazon, Google, Jumia.

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Acknowledgements

My sincere gratitude to the ICTD for funding this research and providing a platform to share my findings. I am most grateful to Sol Picciotto for supervising this work and for offering very useful comments on the drafts. I am also thankful to Alexander Ezenagu (ACTG), Nimmo Elmi (ACTG), Attiya Warris, Martin Hearson (ICTD) and Simon Rees (ICTD) for their comments and support.

My gratitude also goes to the officials of the revenue authorities and ministries of finance in the countries of study that helped provide insights into the case studies. These include Anne Maina (KRA), Alex Kombat (GRA), Daniel Nuer (Ghana), Rogers Kasirye Pavlov (URA), Ronald Waiswa (URA), Silajji Kanyesigye (URA), Michael Masembe (URA) Kehinde Kajesomo (FIRS), Olufemi Olarinde (FIRS), Vincent Mucyurabuhoro (RRA), Lawrence Gakwaya, Cheikh Diba (Senegal), Bassirou Sarr (Senegal), Amadou Badiane (Senegal), Oumar Diagne (Senegal) and many others.

I accept full responsibility for all errors and omissions of the working paper.

Acronyms

ATAF	African Tax Administration Forum
B2B	Business-to-business services
B2C	Business-to-consumer services
BEPS	Base erosion and profit shifting
CAMA	Companies and Allied Matters Act (Nigeria)
CGI	Code Général des Impôts (Senegal)
CIT	Corporate income tax
CITA	Corporate Income Tax Act (Nigeria)
DST	Digital services tax
FIRS	Federal Inland Revenue Service (Nigeria)
GRA	Ghana Revenue Authority
IF-BEPS	Inclusive Framework on BEPS
ITA	Income Tax Act
KRA	Kenya Revenue Authority
MNE	Multinational enterprise
OECD	Organisation for Economic Cooperation and Development
PE	Permanent establishment
SME	Small and medium-sized enterprises
URA	Uganda Revenue Authority
VAT	Value added tax
WATAF	West African Tax Administration Forum

Introduction

African countries have difficulties in raising substantial revenues from individual income taxes, largely due to the informal nature of much business activity, leading to a greater reliance on corporate taxes than developed countries, especially from foreign-owned businesses (Crivelli, De Mooij and Keen 2016). However, it is often difficult for developing countries to effectively tax the profits of multinational enterprises (MNEs) operating in their jurisdictions, mainly because the current international taxation framework treats subsidiaries of a multinational corporate group as separate entities for tax purposes.

The international tax implications of the digitalisation of the economy were the focus of Action 1 of the Organisation for Economic Cooperation and Development (OECD) project on base erosion and profit shifting (BEPS). The ensuing reports found that digitalisation has exacerbated the defects of international tax rules, because it further increases the importance of intangibles while reducing the need for companies to have a physical presence in jurisdictions where economic activities are carried out. This enables cross-jurisdictional scale without mass (OECD 2018), although digital platform users also contribute to the value created by the digitalised businesses.

The adoption of unilateral measures by states to tax digitalised businesses led to pressure to find solutions by 2020, through the Inclusive Framework on BEPS (IF-BEPS).¹ Its Policy Note in January 2019 underlined that: 'in the absence of multilateral action there is a risk of uncoordinated, unilateral action, both to attract more tax base and to protect the existing tax base, with adverse consequences for all countries' (OECD 2019a: 2). The OECD and the Inclusive Framework have continued this work and are currently considering a so-called unified approach which has two main components: Pillar One, which addresses the nexus and profit allocation issues, and Pillar Two, which proposes a global minimum tax rate to address tax competition and the lowering of corporate tax rates, otherwise known as *the race to the bottom* (OECD 2020a; Hearson 2020).

It is also important for all states to evaluate not only the proposals that emerge from the Inclusive Framework but also the options that they have for action, which need not be only unilateral but could be taken in parallel or in coordination with other similar states (Rukundo 2020).

This study focuses on six African countries: Ghana, Kenya, Nigeria, Senegal, Rwanda, and Uganda. Questionnaires were distributed and key informant interviews involving the staff of revenue administrations and officials of ministries of finance in the six countries were carried out. Furthermore, the study gathered evidence on the presence of digitalised businesses in the jurisdictions of study and examined the tax laws in the countries and the steps they have taken to tax digitalised businesses. The study aims to analyse this data, as well as to discuss and recommend options that are available to African countries to tackle the challenge of taxing digitalised businesses.

As digitalised businesses operate using different patterns and models, this study focused on three types of digitalised businesses based on their relevance in Africa: online retail; taxi

¹ Participation in the G20/OECD BEPS project was opened up in 2016 to all countries willing to accept the minimum commitments, and wishing to participate in the continuing work, through the IF-BEPS. It now has 137 member jurisdictions; Ghana, Rwanda and Uganda are not members, but the other three countries studied here are, and Mr Gbonjubola of Nigeria is a deputy chair of the Steering Group.

sharing and online advertisements. The digitalised businesses of focus are Amazon, Uber and Google respectively. In addition to the foreign digitalised businesses, the study also looked at Jumia, a regional e-commerce company in Africa, and other local digitalised businesses related to the three models of focus.

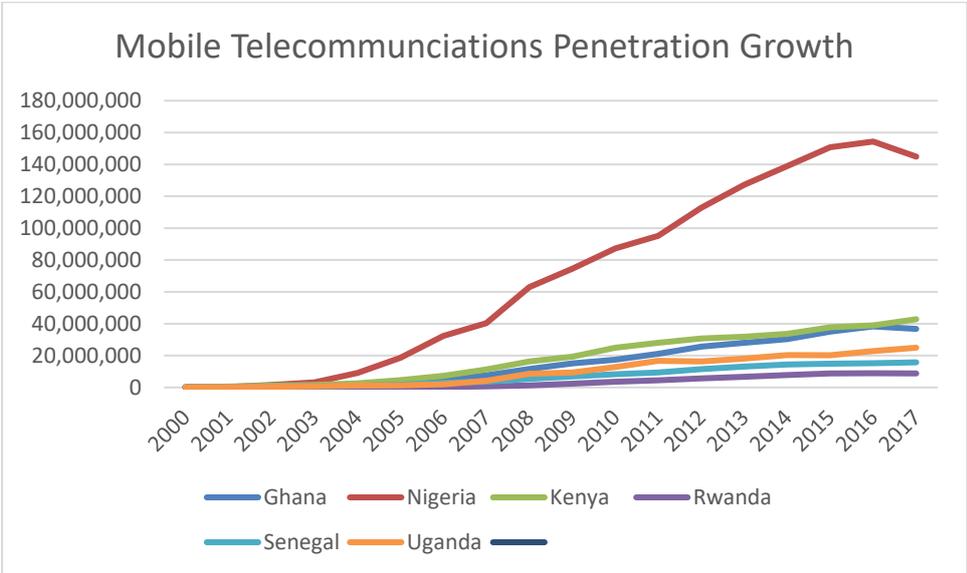
The main part of this paper discusses and analyses the findings of the research. This is followed by the detailed country case studies, and then by conclusions and recommendations, and appendices.

1 Africa’s challenge

African economies need adequate revenues for development, but weak tax laws, illicit financial flows and aggressive tax planning have made it difficult for them to attain their full potential in raising revenue. Furthermore, the advent of digitalised business models, although with considerable potential to improve trade in Africa (ITC 2015), has greatly exacerbated the two central challenges of international tax. The first is the definition of taxable presence, and the second is the allocation of business profits of multinational enterprises (MNEs) among the different jurisdictions where they operate. This has generated much debate and has seen the rise in unilateral measures in different jurisdictions.

Digitalised businesses are growing with increased internet and mobile penetration. Between the years 2000 and 2019, the internet-connected population of Africa grew from 4.5 million to over 526million, reaching 39.3 per cent penetration and accounting for around 11.5 per cent of the global internet population.² Access to mobile telecommunications has also grown tremendously since the year 2000: Figure 1 shows the steady rise in the six jurisdictions of study, with Nigeria having the highest largely due to its population.

Figure 1 Mobile telecommunications penetration growth



Source: International Telecommunications Union

Jumia group, originally a Nigerian company, has spread across the continent in less than a decade. Jumia operates in 14 African countries, including all six jurisdictions of this study,

² Internet World Stats www.internetworldstats.com/stats1.htm

servicing 1.2 billion consumers and 17 million small and medium-sized enterprises (SMEs).³ It also boasts of 700 million visits per year across Africa, 81,000 active merchants, and more than 29 million products, hotels, restaurants, and other services listed. It has received investment from Rocket Internet of Germany, Goldman Sachs, MTN and Orange, among others.

Uber is often described as belonging to the *sharing economy* because it connects drivers to potential customers using an app based on internet geolocation. By 2017 Uber had about 1.8 million users in Africa, with 267,000 users in Nigeria, 140,000 in Ghana, 48,000 in Uganda, and 53,000 in Kenya (Njanja 2017). Although Uber is widely perceived as a transport company it does not describe itself as one. Uber states that it charges 25 per cent fees on all fares, made up of fees for the use of Uber software to connect drivers and passengers; collection and transfer of fares; credit card commission; and distribution of invoices to clients.⁴ Uber claims that drivers are not Uber employees, but are independent contractors, only licensing the Uber software and other support services.

Google is popularly known as the number one search engine in the world. In fact, Google has about 68 products and services it sells to its customers worldwide, but this paper focuses on one, Google Ads, its online advertisement platform which is one of its most important businesses and one that has significance in the jurisdictions of study. Google Ads can be targeted at customers both as a result of internet searches and on Google-owned platforms such as YouTube and Gmail.

Amazon is one of the largest online retail stores in the world, but although Amazon is not physically present in any of the jurisdictions of study, customers based in the jurisdictions can purchase goods and services from Amazon.

2 Findings

2.1 Nexus and profit attribution

An important finding from this research is that the problem of taxing highly digitalised businesses is not due to their lack of taxable presence in African countries. It has often been said that the main problem digitalisation poses for taxation is that companies can operate in a jurisdiction without a physical presence. However, this study shows that in many cases there is a local affiliate and some physical presence in the jurisdictions, but other more significant problems of profit shifting remain.

For example, Uber has registered local subsidiaries with physical offices in four of the six countries surveyed, where it has a substantial presence. These subsidiaries are set up to provide administrative services but do not own any intellectual property rights and do not receive any revenue from users of the Uber application. The intellectual property is owned by Uber's affiliate in the Netherlands, which receives the payments from users, and pays the drivers while retaining 25 per cent of the revenues.⁵

The payments can be treated in the Netherlands as income for the licensing of the intellectual property rights (IPRs), and hence suffer a minimised tax rate there. Uber

³ Data from Jumia Group <https://group.jumia.com/>

⁴ Data from Uber www.uber.com/en-GH/drive/resources/payments/

⁵ Uber's corporate structure was described by the Employment Tribunal in the UK in 2016 which decided that drivers should be considered as employed workers, upheld by the Court of Appeal in 2018: see www.judiciary.uk/judgments/mr-y-aslam-mr-j-farrar-and-others-v-uber/

considers its drivers to be contractors, not employees. The drivers are required to pay tax on their earnings, and this can be facilitated by arrangements whereby Uber supplies the revenue authorities with data on the payments made to them. There is no evidence that these countries apply a withholding tax on the payments to Uber, for example by treating them as royalties. Uber's local subsidiary is taxed on the remuneration paid to it by its parent company for providing support services, which appears to be calculated on a cost-plus basis, complying with the OECD transfer pricing guidelines.

The limited information available on Google indicates that it supplies services in all six countries of study and is physically present in four. Like Uber, Google has also employed the 'Double Irish with a Dutch sandwich'⁶ structure for tax avoidance, and its local subsidiary appears to be remunerated on a cost-plus basis for supplying support services.⁷ Jumia has a taxable and physical presence in all six jurisdictions, although its corporate structure and tax arrangements are not clear.

Amazon has no physical or taxable presence in the jurisdictions of study. Although it may be considered to have a taxable nexus under the Ghana and Rwanda service permanent establishment (PE) provisions, it seems that no attempt has been made to apply this provision. Also, Nigeria could consider applying the provisions of its Companies and Allied Matters Act (CAMA) to require Amazon, and other similar internet-based companies, to register a local affiliate as a condition of doing business in the country. Instead, Nigeria in 2019 introduced the concept of significant economic presence as a basis for taxable nexus, but there are no details yet on how it would be implemented.

The main problem is not taxable nexus, but attribution of profits. The 'arm's length principle' is interpreted to require each member of a multinational corporate group to be treated as if it were an independent entity. The OECD transfer pricing guidelines (OECD 2017a) specify that each entity must be taxed based on an individual 'facts and circumstances' analysis, to determine its functions, assets and risks (Picciotto 2018). Profit should be attributed in line with those of 'comparable' independent entities performing similar functions. Hence, the affiliates of Uber and Google in the countries studied can declare relatively low levels of profit, on the basis that they perform only administrative support functions. Meanwhile, the substantial revenues flowing to their foreign affiliates can be subject to low taxation.

Since the OECD guidelines are applied in all these countries, it would be hard for the revenue authorities to challenge such an attribution of profits. Nigeria has a legal basis for using a different method, in s.30 of the Corporate Income Tax Act (CITA), in effect a minimum tax of 6 per cent of turnover, which has been used for services provided in Nigeria by non-residents.

2.2 Is VAT a low-hanging fruit?

The OECD's BEPS project reports on digitalisation have strongly advised countries to put in place mechanisms to ensure that VAT can be applied on cross-border transactions, and that it can be effectively collected from non-resident suppliers (OECD 2018: 102-5; OECD 2017b: C3.2 and C3.4). This survey shows that all the six countries have the requisite legal provisions to ensure that VAT is payable on the supply of services in the country even by a non-resident. In these countries, VAT is on a destination basis, which ensures neutrality between local and foreign suppliers. Where digitalised services are supplied by

⁶ This is a tax avoidance scheme used by some multinational entities to avoid paying taxes. The companies use a combination of Irish and Dutch related companies to shift profits to low or zero tax jurisdictions to avoid or significantly minimise corporate taxes.

⁷ See UK House of Commons, Committee on Public Accounts (2013) *Tax Avoidance – Google*, <https://publications.parliament.uk/pa/cm201314/cmselect/cmpublicacc/112/112.pdf>

multinationals which have a local subsidiary, this seems to be effective. In particular, all these countries apply VAT to telecommunications services, including mobile voice and internet data.

However, these countries have been slow to put in place administrative measures to ensure that non-resident digitalised businesses register for VAT. Three of the countries surveyed (Nigeria, Kenya and Rwanda) apply a reverse charge mechanism, which can be effective for business-to-business (B2B) services, since recipient businesses are likely to be registered for VAT and can be made responsible for accounting for the VAT due from the supplier. However, this is not viable for business-to-consumer services (B2C), which are a major part of cross-border digitalised services. All the countries have a legal obligation for a non-resident supplier of services to register for VAT, and some give the revenue authority the power to appoint one. However, they do not yet have mechanisms to facilitate remote registration. Revenue authority officials have reported that there have been difficulties ensuring that non-resident digital services suppliers register for VAT.

The OECD has published reports explaining methods for implementing a simplified registration and compliance regime suitable for B2C services supplied by non-residents (OECD 2017c). However, none of the surveyed countries have yet implemented such a mechanism. The OECD recognises that countries should first consider the costs and other implications of establishing such a mechanism, which can be considerable, and weigh them against the likely benefits. The simplified regime recommended by the OECD would operate separately from the main VAT regime, without the right of recovery of input tax, and with reduced reporting obligations. Effective implementation necessarily entails close cooperation with business. This could be the supplier itself, if it has a high volume of transactions, or an intermediary such as a financial institution facilitating payments, for low-volume suppliers of digital products or services.

It is understandable that revenue administrations have been cautious, in view of the capacity constraints of African revenue authorities. For large firms such as Amazon it may be preferable to require them to appoint an agent to ensure compliance with the normal VAT regime, rather than creating a new separate simplified system. However, in view of the rapid growth of cross-border supply of B2C services, it seems desirable to give consideration to this issue. In view of the commonalities between African countries, this could best be studied in regional groupings, such as the African Tax Administration Forum (ATAF), the West African Tax Administration Forum (WATAF), or the East African Community's Tax Technical Committee. ATAF has made commendable efforts in setting up a technical committee on VAT with membership across its member countries⁸ – the committee has conducted workshops on VAT in e-commerce to bring member countries up to speed on the international best practice on VAT on e-commerce.⁹ However, it is yet to publish any technical guidance for its member countries.

2.3 The efforts African countries are making

The study further revealed that while generally the six jurisdictions studied are considering the taxation of profits arising from the digitalised economy, with Kenya and Nigeria introducing a digital services tax and significant economic presence respectively, efforts so far have focused on indirect taxation. In Kenya, the government imposed excise taxes on mobile transactions, internet data and money transfers. Similarly, in Uganda, the government

⁸ For more details, see www.ataftax.org/foreword-by-the-executive-secretary

⁹ ATAF VAT Technical Workshop, Abuja, Nigeria, 26-28 August 2019.
https://events.ataftax.org/events/index.php?page=event-details&event_id=24

has imposed taxes on mobile transactions, internet data and over-the-top services.¹⁰ In Nigeria there are stamp duties imposed on point of sale transactions and bank transfers.

As already mentioned, all the countries apply VAT to telecommunications services, including internet data, and apply VAT on a destination basis, with an obligation on suppliers to register, although they do not yet have a remote registration facility. Generally, the mobile transactions tax seems to be dominant in East African countries as against West African countries; this may be attributable to the growth in mobile money, the likes of M-pesa, a mobile phone-based money service.

From both a legislative and administrative perspective, mobile transactions taxes seem to be easy choices for African countries because they are relatively simple to collect. However, evidence points to negative impacts on low income earners due to the regressive nature of the taxes. This adds further to the costs of these services for consumers, who already bear the burden of the VAT on telecommunications data services, and other non-tax barriers such as high interest rates on mobile money. African countries must rethink their strategy on taxing mobile transactions.

Ideally, African countries should focus on large MNEs such as Uber, Google and Amazon; however, this seems to require international coordination. The difficulty in taxing the corporate profits of the highly digitalised businesses should not push African countries to choose negatively impacting choices. Mobile money offers an avenue to digital inclusion, financial inclusion and the formalisation of the informal sector among other things. So if African countries decide to tax it, it should be done in a progressive manner that does not undermine the advantages it offers.

2.4 Other alternatives

Given the difficulty in taxing the profits of highly digitalised businesses effectively, what other models are available for African countries? The main alternatives developed in other countries so far that target highly digitalised businesses are the digital services tax (DST), especially in Europe, and India's equalisation levy. Both are a form of turnover tax, applied at a low rate (generally between 2 and 6 per cent) on gross revenues.

India's equalisation levy, introduced in 2016, initially applied only to digital advertising, and was collected by withholding from payments made by the customer. Hence, it did not fall directly on the profits of a supplier, although it did have an impact on the competitiveness of the remote supplier versus local providers of similar services, hence the term 'equalisation'. However, it has been revised with effect from 1 April 2020, to extend the scope to all non-resident e-commerce operators, defined as providers of digital platforms making or facilitating sales of goods or provision of services, at the rate of 2 per cent of revenues, to be paid by the operator (Finance Act 2020, Part VI). It applies to sales to Indian residents, and also to advertising targeted at, and sales of data from, Indian residents.

The DSTs, introduced so far by countries including France, Italy, Spain and the UK, apply to a wider range of internet-based services. For example, the directive proposed by the European Commission in 2018 would have applied to revenues derived from a digital interface (such as a website or mobile application), covering advertising, facilitating the supply of goods or services, and transmission of data collected about users from their

¹⁰ These are video or streaming services that give access to viewers. An example of an OTT service is Netflix.

activities on digital interfaces.¹¹ Like the equalisation levy, the tax is likely to be passed on to customers in most cases.

However, France's DST has been found to be discriminatory and unreasonable under US trade laws. Consequently, the US Trade Representative has proposed retaliatory action, through tariffs on key imports from France.¹² Countries that have introduced DSTs have said that they would be withdrawn if and when a solution is reached by the Inclusive Framework on an alternative which they could introduce. If these efforts fail, the DSTs could provoke trade wars (Christensen, Corlin and Hearson 2019).

2.5 Merits and drawbacks of indirect taxes

VAT is easier to collect in comparison to turnover taxes. Such taxes entail establishing new mechanisms for administration and involve difficulties such as how to ascertain the relevant turnover of foreign-based digitalised companies. Also, turnover taxes have the tendency to pass the burden of taxation to the consumers, particularly if the companies wield some level of monopoly or market power. Hence, a turnover tax may end up being another VAT in disguise which exerts an unfair burden on consumers in the country. This also applies to the use of withholding taxes on online transactions: the burden is likely to be shifted to the customers in African jurisdictions while the foreign digitalised businesses pay no taxes on profits.

It is important to note that VAT is not an alternative to corporate income tax (CIT): in principle, companies doing business and making profits in any jurisdiction should pay their fair share of taxes therein. However, ensuring that such companies remit VAT is also important, and has international support, so it could be implemented immediately.

2.6 The OECD and Inclusive Framework proposals

The current negotiations at the OECD through the Inclusive Framework on BEPS now focus on a unified approach under Pillar One (OECD 2020a). This would define a new taxable nexus without the physical presence requirement. Such a provision would involve changes in existing tax treaties. In effect, however, its significance may be limited, as many of the businesses already have a physical presence in the six jurisdictions of study. This is not the case for Amazon, as well as other internet-based firms supplying purely digital services, such as Netflix. Countries could introduce a measure such as the CAMA in Nigeria, requiring foreign firms wishing to do business in the jurisdiction to form a local subsidiary.

The key issue, as shown by this study, is profit allocation. A significant step forward has been the acceptance that the starting point should no longer be the arm's length principle but should involve methods for allocating the global consolidated profits of the MNE. Developing countries in particular have stressed the need for simplified methods, which should entail ending the functional analysis based on individual 'facts and circumstances' of each MNE. The G24 group of developing countries tabled proposals for 'fractional apportionment' (G24 2019), a form of unitary taxation that would allocate profits based on the real activities in each country (employees, physical assets and sales) (Picciotto 2017). India has published proposals to adopt fractional apportionment in its domestic law (India-CBDT 2019).

However, the OECD's unified approach at present proposes a rather complicated methodology. First it would bifurcate routine and non-routine profits, then allocate a

¹¹ European Commission (2018) *Proposal for a Council Directive on the Common System of a Digital Services Tax on Revenues Resulting from the Provision of Certain Digital Services*, COM(2018) 148 final, 21.3.2018.

¹² See <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax>

proportion of non-routine profits (Amount A) to the market jurisdiction. The proportions are still to be decided, but Amount A seems likely to be a small percentage of the global profits. A further allocation to the market country, Amount B, would be attributable to marketing and distribution, using a formulaic method. However, the allocation of the bulk of the global profits, Amount C, as well as the attribution of routine profits, would still depend on applying the faulty and challenging arms-length principle.

It is therefore unclear whether the new proposed framework would significantly benefit African countries (Hearson 2020). The best way forward for them would be to build on the G24 proposal, and press for simple formulaic methods which would allocate profits fairly between countries based on real activities in each. Work is also continuing on Pillar 2, a proposed anti-base-erosion tax. It is being designed in two parts: an income inclusion rule (to protect the residence country tax base), and a tax on base eroding payments (to protect the tax base of the source country). A key issue here will be which has priority; clearly from the perspective of developing countries as source countries, the tax on base eroding payments should have priority.

As it stands, it is unclear if there will be a consensus solution from the OECD and the Inclusive Framework to address the tax challenges arising from the digitalised economy.

3 Country analyses

3.1 Nigeria

Nigeria is the largest economy in Africa, with over 91 million internet users,¹³ and the largest B2C market in Africa (UNCTAD 2018a: 13). Yet, the country has a ratio of tax to GDP of only 5.7 per cent in 2017, well below the continental average (OECD/ATAF/AUC 2019: 28).

3.1.1 *Nexus and source rules*

The Companies Income Tax Act (CITA, s.9) charges tax on ‘the profits of any company accruing in, derived from, brought into, or received in, Nigeria’: However, for non-Nigerian companies the scope used to be more restricted, due to CITA s.13(2), which introduces a physical presence test.¹⁴ This essentially imported into Nigerian law the physical presence requirement of the ‘permanent establishment’ (PE) test in tax treaties, for taxing the profits of non-resident entities. It requires either a fixed base in Nigeria, habitual operation through a person authorised to conclude contracts on its behalf, or activities involving a single contract for surveys, deliveries, installation or construction.

Nevertheless, a non-Nigerian company can be prevented from benefiting from this limitation. This is because the Companies and Allied Matters Act (CAMA) s.54 requires any foreign company intending to carry on business in Nigeria to incorporate a separate entity in Nigeria for that purpose, failing which its acts would be void (Arogie, Ajetunmobi and Iyizoba 2014). It seems that to comply with this legislation, MNEs intending to do business in Nigeria generally do incorporate a local affiliate. Nevertheless, they frequently also continue to use non-resident affiliates to supply related services, the income from which they consider not to be taxable in Nigeria under s.13 of CITA. However, the Federal Inland Revenue Service (FIRS) has recently challenged such arrangements, resulting in litigation.

¹³ Data from The Communicator (2017) ‘Nigeria’s Internet Users Rise to 91.6m’, 27 July, www.ncc.gov.ng/thecommunicator/index.php?option=com_content&view=article&id=1572:nigeria-s-internet-users-rise-to-91-6m&catid=32&Itemid=179

¹⁴ Nigeria has now introduced the Significant Economic Presence to address this challenge. See section 4.1.6.

In the Saipem case (2014), Saipem contracted to supply services to Shell Nigeria through three of its affiliates: Saipem Contracting Nigeria, Saipem Portugal and Saipem SA (resident in France). The Federal High Court held that payments made to Saipem Portugal and Saipem SA for services under this contract constituted income 'derived from Nigeria for the purposes of the CITA', because it was a single contract (Saipem 2014: 93). The Court also accepted the argument of FIRS that Saipem's Nigerian affiliate constituted the fixed base for the other affiliates. Hence, all the payments on the contract should be treated as income derived from Nigeria, and subject to both VAT and income tax, even if some payments were made outside Nigeria.

There was a different outcome in the later case of JGC (2016), although on different facts. In this case, JGC contracted to supply services to Mobil Nigeria, but through two separate contracts. JGC itself entered into an 'offshore' contract, for services to be performed 'wholly outside Nigeria'. At the same time, JGC's Nigerian subsidiary, together with another company, entered into a separate 'onshore' contract with Mobil. FIRS assessed JGC as liable to be taxed because the contracts were for the same project, arguing that (as in the Saipem case) it had a fixed base in Nigeria through its Nigerian subsidiary. This was rejected by the Federal Court (allowing an appeal from the Tax Tribunal), because there were two contracts, and the 'offshore' contract specified that the services under that contract were to be delivered outside Nigeria.

Both the Saipem and JGC cases involved contracts for the supply and installation of oil facilities in Nigeria, but in the JGC case the elements involving manufacture and construction of equipment taking place outside Nigeria were split off into the 'offshore' contract (Obayemi 2014).

Hence, for digital services, a taxable nexus would depend on whether (i) the foreign supplier can be held to be carrying on business in Nigeria under the CAMA s.54 and so be required to form a local subsidiary, and (ii) they can distinguish between services delivered inside and outside Nigeria. If they can be required to create a taxable nexus, the next issue would be how to determine the profit attributable to that entity.

3.1.2 Profit attribution

In determining the taxable profits attributable to a Nigerian company, the starting point is its accounts, adjusted for tax purposes as required by the CITA. In the case of a company that is part of a corporate group, CITA s.22 allows appropriate adjustments to be made by FIRS to counteract 'artificial or fictitious' transactions between related persons. To implement s.22, Nigeria introduced transfer pricing regulations which are based on the arms-length principle. Consistent with the OECD's transfer pricing guidelines, Nigeria's transfer pricing regulations provide the framework for the allocation of profits of multinational groups with affiliates in Nigeria. The transfer pricing regulations were first introduced in 2012 and updated in 2018.

However, the CITA also includes an important provision which is very relevant to taxation of the digitalised economy. Section 30 of the CITA provides power for FIRS to assess tax on a 'fair and reasonable percentage' of turnover. This applies where it appears that 'the trade or business produces either no assessable profits or assessable profits which in the opinion of the Board are less than might be expected to arise from that trade or business or, as the case may be, the true amount of the assessable profits of the company cannot be ascertained'. This is in effect a minimum tax, which it seems the FIRS uses to charge the CIT rate of 30 per cent of the 20 per cent 'deemed profit' of the turnover, an effective tax rate of 6 per cent on the turnover of the non-resident company (Odinna 2018).

In the Saipem case, the Federal Court ruled that all the income under its contract with Shell was taxable in Nigeria under CITA s.13(2) and s.30 (Saipem 2014: 99). If this precedent holds, income derived from delivering services in Nigeria by digital means could be considered taxable in Nigeria and taxed under CITA s.30.1.b.(i) on 'such a fair and reasonable percentage of that part of the turnover attributable to the fixed base', perhaps at the effective rate of 6 per cent of the turnover.

3.1.3 Treaties

The scope of taxation in Nigeria is also restricted by any agreement to prevent double taxation concluded by Nigeria, which overrides the provisions of the Act (CITA s.45). A basic provision of tax treaties is that taxation of business profits is limited to the profits attributable to a 'permanent establishment', as defined by the treaty in question (articles 5 and 7 of the OECD's Model Tax Convention on Income and on Capital). These apply a concept of physical presence, similar to that in CITA s.13, based on the OECD's model convention. Most of Nigeria's 14 tax treaties¹⁵ are based on the OECD model in this respect (those with Belgium, Canada, China, France, Pakistan and the United Kingdom). Only three treaties include a provision for the services PE based on the United Nations Model Double Taxation Convention between Developed and Developing Countries (those with the Netherlands, Romania, and South Africa).

However, in the Saipem case the Federal Court ruled that Saipem did have a fixed base in Nigeria through its Nigerian affiliate, and that all the payments under the contract were attributable to that fixed base. It ruled that there was no conflict with Nigeria's double taxation agreement with France in respect of Saipem SA (which was a French resident), on the grounds that the income was derived from Nigeria, while the treaty covered income 'from their global operations' (Saipem 2014: 99).

3.1.4 Presence of digitalised businesses

The large numbers of people that have access to the internet, as well as the large numbers of mobile phone users, are some of the reasons why Nigeria has a large B2C e-commerce market, which makes it a good target for foreign digitalised businesses. Google, Amazon and Uber all operate in Nigeria. Nigeria is also home to many local digitalised businesses. According to the Domestic Tax Group of the FIRS, Uber's local rivals include Oga Taxi, Carxie, Rideme, Jekalo, Ofero, and Gokada. Although there are no businesses that are entirely similar to Google, there are some online advertisement platforms in Nigeria; notable among them are Nairaland, Lindalkejisblog.com and Bellanaija.com. Jumia is often referred to as the Amazon of Africa as it operates the same way that Amazon online retail does – it sells and also provides a platform for others to sell. Jumia has grown from a Nigerian company to a company present in many African countries. Besides Jumia, there are many local online retail businesses in Nigeria such as Konga.com, jiji.com, perfume.com.ng and YDS online stores.

Google and Uber both have locally registered subsidiaries in Nigeria: Uber Technologies Systems Nigeria Limited and Google Global Services Nigeria Limited. They are both registered to pay CIT and VAT in Nigeria. However, although Amazon supplies services to Nigeria, according to the FIRS Domestic Tax Group, it does not have any form of physical presence or legal representation in the country. Hence, besides the economies of scale and market power that Amazon enjoys, its non-payment of taxes in Nigeria gives it an undue advantage over the likes of Konga in the country. Even for Uber and Google, the important

¹⁵ For list of treaties, see www.firs.gov.ng/TaxResources/TaxTreatiesNew

question remains: what income can be considered attributable to their affiliates in Nigeria, and taxable as 'derived from' Nigeria?

3.1.5 VAT in Nigeria

Nigeria operates a destination-based VAT system, which means VAT is paid where the consumption of a good or service takes place. Under the VAT Act s.10, foreign suppliers are required to register with the FIRS using the address of the person with whom they have a subsisting contract. The person that receives the supply of goods or services in Nigeria is to remit the VAT in the currency of the transaction. This is known as 'the reverse charge', one of the models recommended by the OECD.

Since Uber and Google both have affiliates in Nigeria which are registered to pay tax, they could be made liable to pay VAT on any payments for services that they are considered to deliver in Nigeria. In the case of Amazon, the 'reverse charge' mechanism could be applied. However, Nigeria does not have a simplified registration and compliance system for cross-border suppliers, as suggested by the international VAT/GST guidelines (OECD 2017b, section 3.3). Online suppliers without a physical presence in Nigeria may be reluctant to register in all the countries in which they operate, and for transactions to individual consumers it is not possible to apply the reverse charge.

3.1.6 Efforts to tax the digitalised economy

The Finance Act 2019, which came into force in January 2020, addressed multiple tax policy and administration issues. In particular, it introduced a provision that would treat income from digital services of a non-resident company as derived from Nigeria if it 'transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity' (Federal Republic of Nigeria 2019: 4). However, the Act does not include a definition of significant economic presence, but instead gives power to the Minister of Finance to issue an order doing so. Nor does it specify how taxable profit would be calculated, or the rate applicable.

In May 2020, the Nigerian Government published an official gazette entitled Companies Income Tax (Significant Economic Presence) Order, 2020. The Executive Order provides for the definition of the SEP following the introduction of the provision in the Finance Act 2019. According to the order, a foreign company will be deemed to have a SEP in Nigeria where in any assessment year, such foreign company derives a gross income that is equal to or greater than 25 million Naira or its equivalence in other currencies from any of the activities, or a combination of the activities listed in the Finance Act 2019.

The provision has a wide definition for digitalised sales with a low threshold that can capture many into the tax net. Furthermore, section 2 of the order seems to go beyond digitalised businesses and covers all services with no specific threshold. This means even remote services carried out in the extractive sector will become liable to tax in Nigeria. However, questions remain on the profit attribution, as Nigeria still relies largely on the OECD transfer pricing guidelines.

The SEP order is an interim measure before a consensus is reached at the Inclusive Framework on the way forward on taxing the digitalised economy. The justification suggested in the BEPS project reports is that if a person or entity participates in the economic life of a

force,²³ generally based on the OECD model. In determining when business is carried out in the country, it seems that the PE concept is applied. However, the CGI includes a provision specifying that for companies headquartered outside the country, headquarters' expenses can be charged as costs in proportion to the share of global revenues, up to a maximum of 20 per cent of local revenues (art. 9(5)).

The CGI includes a provision on transfer pricing (art. 17), allowing adjustment of the accounts of related entities to deal with profit shifting, if necessary by referring to comparison with the profits of similar independent enterprises. There is also a documentation requirement for such related entities, applying to Senegalese companies with an annual turnover of 5 billion CFA (around US\$ 8.2 million) or more (CGI arts. 638-9). Additional documentation requirements were enacted in 2018 to implement the BEPS project recommendations, including on country-by-country reporting.²⁴

3.2.2 Presence of digitalised businesses

Recent reports show that over 58 per cent of Senegalese have access to the internet,²⁵ which indicates a potential thriving market for digitalised companies.

Although Uber is not present in Senegal, it has plans to launch in the country, according to industry reports.²⁶ Jumia, Amazon, and Google, however, all supply services in Senegal. Yet, according to officials of the Ministry of Finance and the revenue authority, foreign digitalised businesses are not currently being taxed on their corporate income in Senegal. Nevertheless, the officials all agreed that digitalisation is a serious issue that needs to be tackled.²⁷

Google does not have a local digital rival in Senegal and its presence in the country affords it all the opportunities to generate income from online advertisements placed by customers in Senegal, using data from online searches for information that identify user preferences, interests and other factors. Officials at the Ministry of Finance opined that user data should be taxed; they, however, highlighted the challenge in valuing this due to its intangible nature. According to an advisor to the Minister of Finance: 'the feasible way to tax user data generated by the likes of Google is by taxing online advertisements.'²⁸

Amazon supplies services to Senegal. However, delivery of tangibles directly from Amazon USA is limited due to the additional costs and time delays of shipping.²⁹ Customers based in Senegal often rely on other agents like USgobuy.com to purchase the items and ship to them.³⁰ Amazon's digital books and streaming services are obviously available in Senegal, and it does have significant French-language content.

3.2.3 VAT in Senegal

Senegal's VAT is imposed on suppliers of goods and services and applies to goods delivered in Senegal (CGI art. 356) and services used in or delivered to a resident of Senegal (CGI art. 357). It applies to telecommunications services, including internet data, calls and SMS

²³ With Belgium, Canada, France, Italy, Lebanon, Luxembourg, Morocco, Norway, Portugal, Qatar, Spain, Taiwan, Tunisia, UAE and the UK.

²⁴ Law 2018-10 of 30 March 2018.

²⁵ For more details see www.internetworldstats.com/stats1.htm

²⁶ Reuters (2017) 'Uber Has Its Sights Set on Greater Expansion in Africa', *Fortune*, November 7, <http://fortune.com/2017/11/07/uber-drivers-africa/>

²⁷ Interview with officials of Ministry of Economy and Finance, Dakar, November 2018.

²⁸ Interview with officials of Ministry of Economy and Finance, Dakar, November 2018.

²⁹ See <https://flycrates.com/amazon-shipping-to-senegal>

³⁰ See www.usgobuy.com/en/send-to/senegal.html

(GSMA 2017). Non-resident companies that supply goods or services to Senegal must appoint a tax representative in Senegal to be responsible for filing returns and paying taxes (CGI art. 355). However, Senegal does not have any system in place for foreign online suppliers to register for VAT remotely.

3.2.4 Efforts to tax the digitalised economy

According to a director Direction Générale des Impôts et des Domaines, Senegal is waiting for the position of the OECD before making any attempts at taxing foreign digitalised businesses. He stated that current efforts in taxing digitalised businesses are limited to domestic digitalised transactions for which the revenue authority is currently developing guidelines with assistance from the World Bank. The revenue administration is also undertaking a reform that involves digitising the tax administration.³¹

3.3 Kenya

Kenya, with a tax to GDP ratio of around 18 per cent (OECD/ATAF/AUC 2019: 157) has an economy that mainly thrives on agriculture and tourism.

3.3.1 Nexus and profit attribution rules

Kenya's income tax applies to all the income of any person, resident or non-resident, 'which accrued in or was derived from Kenya' (Income Tax Act (ITA) s.3(1)). This includes the gains or profits of a business, employment or services rendered in Kenya and dividend and interest income derived in Kenya (ITA s.3(2)). Although there is a definition of a PE in ITA s.2, there is no provision that limits taxation of profits accrued in or derived from Kenya to those attributable to a PE. Hence, income derived from providing services in Kenya, even by a non-resident, is taxable in Kenya. However, if a non-resident has no physical presence in Kenya, the only effective mechanism for taxing income derived from Kenya is a withholding tax. The taxation of fees for some services is governed by ITA s.10, which states that the whole amount of payments made by a Kenyan resident or a PE of a non-resident constitutes taxable income. This includes management or professional fees, and royalties. This income is taxed by means of a withholding tax on the payment, collected from the person making the payment, currently at the rate of 5 per cent and 20 per cent of the gross payment of management, profession fees and royalty for resident and non-resident persons respectively (ITA Schedule III, s.3a and 5f).

This is subject to tax treaties, since ITA s.41 provides that tax treaties override all other provisions except for the anti-avoidance rule in s.41(5). Kenya has some 15 tax treaties³² in force, which all include a PE provision based on the OECD model, although some also include a 'services PE' based on the UN model treaty. Hence, any entity resident in one of these treaty partner countries would only be taxable on profits derived from Kenya that are attributable to a PE, as defined in that treaty.

The ITA includes a general provision (ITA s.18(3)) specifying that the profits of a resident person carrying on business with a related non-resident 'shall be deemed to be the amount that might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm's length'. Following an unsuccessful attempt by the

³¹ Interview with officials of Revenue Authority, Dakar, November 2018.

³² Canada, Denmark, France, Germany, India, Iran, Norway, Qatar, Seychelles, South Africa, South Korea, Sweden, United Arab Emirates, United Kingdom, Zambia

Kenya Revenue Authority (KRA) to apply this provision (Waris 2017), Kenya introduced transfer pricing regulations in 2006, based on the OECD's transfer pricing guidelines.

3.3.2 Presence of digitalised businesses

The digitalised economy in Kenya has been largely influenced by mobile money popularly known as M-pesa, which is widely used. M-pesa has permeated all sectors and strata of society, from the urban to rural, thriving on the wide access to mobile phones in Kenya. There are 54.5 million active mobile subscriptions (greater than the total population), and 39.6 million internet subscriptions, of which 22 million are on broadband.³³

The growing internet access in Kenya provides opportunities for the sharing economy. Uber operates in Kenya, and has a locally registered subsidiary, which is registered for tax in the information and communication economy sector. However, the payments made by users of the Uber app for transport services are made directly to a different Uber affiliate, which is non-resident. Uber deducts its fee of 25 per cent from this and remits the remainder to the drivers. No evidence suggests that Uber provides information on these payments to the KRA, and there is no evidence of KRA withholding any taxes from the 25 per cent of the payment retained by Uber.

Uber has many competitors in Kenya, including Bolt (formerly Taxify), Little Cab (partnered with the telecoms giant Safaricom), Click Cabs, Sendy, Wasili, and SafeBoda. Unlike Uber, these are mostly taxi companies, based only in Kenya. Hence, they do not pose problems relating to characterisation of the nature of their activities, or attribution of profits.

Google also has a locally registered subsidiary in Kenya which is registered to pay CIT and VAT. However, it is likely to be treated similarly to Uber Kenya, remunerated on a cost-plus basis for the support services it provides to its parent company.

Amazon also supplies services to Kenya but it is not physically present there and does not legally operate through an agent: it relies on the postal system to deliver tangible goods to Kenya and its customers in Kenya can access its digital content. Due to this, Amazon is not a registered taxpayer in Kenya. However, Kenya is listed as an Amazon seller country, which means residents of Kenya can sell their items on Amazon and ship to anywhere in the world as long as they have a valid phone number and an internationally chargeable credit card.³⁴ Jumia, on the other hand, which is like a regional version of Amazon, is locally registered in Kenya and is liable to pay CIT and VAT. However, given that it is also a multinational, it is not publicly known how profit is attributed to its Kenyan operations. Naivas supermarket, and Killmall are local Kenyan companies that offer online retail services similar to Amazon and Jumia.

3.3.3 VAT in Kenya

Kenya's VAT is applied on the destination basis and VAT is charged on telecommunications services, including calls and internet data. A reverse charge mechanism applies to imported goods and services (Value Added Tax (VAT) Act 2013, s.10). Any person subject to VAT but having no fixed place of business in Kenya is required to appoint a representative, failing which the Commissioner can do so (VAT Act s.9). However, Kenya does not offer any means for remote registration of foreign suppliers.

³³ Communications Authority of Kenya (2020) *Second Quarter Sector Statistics Report for the Financial Year 2019/2020 (October-December 2019)*: 5 and 7, <http://ca.go.ke/consumers/industry-research-statistics/statistics/>

³⁴ Countries accepted by Amazon for seller registration:
https://sellercentral.amazon.com/gp/help/external/200405020?language=en-US&ref=mpbc_200417280_cont_200405020

3.3.4 Efforts to tax the digitalised economy

The Kenyan government has made efforts to tax digitalised business, mainly with indirect taxes, particularly a mobile transactions tax. Kenya introduced an excise tax on mobile phone-based financial transactions in 2013 at 10 per cent, increased to 12 per cent in 2018, while it currently taxes money transfer services by banks at 20 per cent. Additionally, Kenya imposes a 15 per cent excise tax on mobile phone services (voice, SMS and data). Ndung'u points out that the contribution of mobile money related taxes is less than 1 per cent of Kenya's aggregate tax revenue, and that they have a negative impact on financial inclusion (Ndung'u 2019). He argues that they will only incentivise taxpayers to revert to using cash, which will make the policy ineffective.

The Finance Act of 2019, s.3, extended the scope of Section 3 of the ITA to include 'income accruing through a digital marketplace'. The term 'digital marketplace' is defined as 'a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means'.³⁵ Broadening the definition of income chargeable gives some clarity, but it did not specify how the taxable income will be assessed, nor what the tax rate would be. Following the 2019 Finance Act, the Kenyan government on 5 May 2020 released its Finance Bill 2020 with a proposed amendment introducing a digital services tax of 1.5 per cent of the gross transaction value of services payable by a person whose income is either derived from or accrues from Kenya through a digital marketplace. Although the Kenyan proposal follows proposals and laws in the EU and other countries, it is unclear if it is designed as an interim measure since the Inclusive Framework is yet to conclude on a solution to tax the profits of digitalised businesses.

Kenya is the first African country to draft a proposal on digital services tax; if this becomes a law, its experience implementing it would offer important lessons to other African countries.

3.4 Uganda

Uganda is located in East Africa and has an economy that relies mainly on agriculture (World Bank 2018) with a tax to GDP ratio of 13.5 per cent (OECD/ATAF/AUC 2019: 157).

3.4.1 Nexus and profit attribution rules

Uganda taxes residents on income 'derived from all geographic sources', but non-residents only on income from 'sources in Uganda' (Income Tax Act (ITA) ITA s.17(2)). A company is resident if it is either incorporated under the laws of Uganda, has its management and control in Uganda, or carries out the majority of its work in Uganda (ITA s.10). Income is defined as sourced in Uganda if it is 'attributable to any ... activity which occurs in Uganda, including activity through a branch in Uganda' (ITA s.79(s)). The term 'branch' is defined broadly in ITA s.78 as 'a place where a person carries on business', including through a dependent agent, a place where a person has, is using or is installing substantial equipment or substantial machinery for 90 days or more, and a construction, assembly or installation project of 90 days or more.

However, this is subject to tax treaties, which are given effect under ITA s.88 to override other provisions, except for the anti-abuse provision in s.88(5). Currently, Uganda has treaties with nine countries.³⁶ The ITA also gives the Commissioner broad anti-avoidance

³⁵ Section 18 of the Act also clarified that VAT should apply to 'supplies made through a digital marketplace', also to be implemented by regulations.

³⁶ See <https://taxsummaries.pwc.com/uganda/individual/foreign-tax-relief-and-tax-treaties>

powers, including powers to allocate income between taxpayers who are associates, as necessary to reflect the income that would have been realised 'in an arm's length transaction' (ITA s. 90). To implement these powers, transfer pricing regulations were enacted in 2011, which specify use of the OECD transfer pricing methods.

3.4.2 Presence of digitalised businesses

According to UNCTAD (2018b: 1), 70 per cent of Ugandans have access to a mobile phone and there were 9.8 million internet subscribers as of March 2018. Mobile money is the most used means of payment for digitalised transactions in Uganda; currently, about US\$16.3 billion worth of transactions are carried out via mobile money, equalling half the GDP of the country (UNCTAD 2018b: 1).

Google ads are available in Uganda and customers based in Uganda can make payments to Google.³⁷ According a Uganda Revenue Authority (URA) official, Google has a local subsidiary with records of payment of income tax as well as VAT remittance.

Amazon customers based in Uganda can access services from Amazon; this means they can make purchases from Amazon and have them delivered in Uganda. For digital goods, they can be downloaded or accessed in Uganda. According to Amazon's website, Uganda is one of the countries designated as a seller country, which means in addition to making purchases on Amazon, residents of Uganda can also sell on Amazon's platform.³⁸ Amazon appears to have no physical presence in Uganda and it does not pay taxes there, even though it makes revenue from both its own sales and from supplying digital services. Because not all sellers ship directly to Uganda, Ugandans have to rely on services such as those of MyUS.com, a shipping forwarder. A resident of Uganda will buy and send the item to MyUs.com, which will later forward the item to the Ugandan resident at a fee.³⁹ There are independent local e-commerce websites such as masikini.com that facilitate purchase and delivery from Amazon to Ugandan customers.⁴⁰

Uber launched in Uganda in 2016, with services not limited to cars, but including commercial motorcyclists popularly known as 'boda-boda'. It has an office situated in Kampala⁴¹ and is a registered taxpayer. According to officials at URA, Uber has a locally registered company in Uganda and it pays CIT and VAT. However, it is not clear how its taxable income is calculated, or the relationship of the local affiliate to Uber in the Netherlands or elsewhere.

Jumia is both virtually and physically located in Uganda, and like in other countries where it has a presence, it has a dedicated website in the country, its main business being online retail, where it both sells directly and provides a platform for other sellers.⁴² Jumia is a registered taxpayer in Uganda, and according to a URA official, pays both CIT and VAT.⁴³

3.4.3 VAT in Uganda

VAT in Uganda applies to goods and services if the supply takes place in Uganda, and if the business of the supplier takes place in Uganda (VAT Act s.16). However, this was amended in 2011 to apply to a supply of services by a person outside Uganda, particularly electronic

³⁷ Interview with URA officials, Kampala, Uganda, July 2018.

³⁸ Countries accepted by Amazon for seller registration:
https://sellercentral.amazon.com/gp/help/external/200405020?language=en-US&ref=mpbc_200417280_cont_200405020

³⁹ Borderoo, 'How to get Amazon shipped to Uganda', <https://borderoo.com/pages/how-to-get-amazon-shipped-to-uganda/>

⁴⁰ See <https://masikini.com/about.php>

⁴¹ Uber Contact in Uganda, www.uber.com/en-UG/drive/resources/contact-us/

⁴² Jumia Uganda, www.jumia.ug/

⁴³ Personal communication with an official of Uganda Revenue Authority, 5 April 2020.

services delivered through a telecommunications network to a person in Uganda. It was again amended in 2018 to apply to any electronic services delivered remotely. VAT is payable by the supplier of goods or services, but for imports of goods or services, it is paid by the recipient (VAT Act s.5). This was amended in 2011 to extend also to the recipient of imported services. Hence, for example, a person in Uganda paying Google for advertising services would be responsible for payment of VAT. This mechanism is obviously unworkable for consumer services. Hence, in 2018 a provision was added for the Minister to designate persons responsible for withholding and remitting the tax. This was activated by a notice requiring any non-resident person that supplies electronic services in Uganda to register and account for VAT, and a further amendment in 2019 clarified that the tax would be 6 per cent of the taxable value of the services supplied.

This has now established a legal and administrative basis for companies such as Amazon to remit VAT on their sales and Google on its ads.⁴⁴ The list of electronic services covers '(i) websites, web hosting or remote maintenance of programs and equipment; (ii) software and the updating of software; (iii) images, text and information; (iv) access to databases; (v) self-education packages; (vi) music, films and games including games of chance; or (vii) political, cultural, artistic, sporting, scientific and other broadcasts and events including television.' (VAT Act s.16).

This does not explicitly mention e-commerce, but the URA considers that it is included. However, as of January 2020, an official of URA mentioned that they are yet to ensure tax compliance with regard to VAT on e-commerce.⁴⁵ Uganda, like most countries, also charges VAT on telecommunication mobile services, including voice and data.

3.4.4 Efforts to tax the digitalised economy

In May 2018, through an amendment of the Excise Duty Act (2014), the Ugandan government introduced an over-the-top services (OTT) tax, popularly known as the social media tax. The tax is a daily levy of around 200 Ugandan Shillings (around US\$0.05) to gain access to OTT services – mainly social media platforms in Uganda. The proposal was received with widespread criticism particularly because it was perceived as a way of stifling citizens' voices. The government maintained that the aim was mainly to generate revenues, and that the tax could help reduce the budget deficit of the next financial year.⁴⁶ However, according to industry reports, within three months of imposing the so-called social media tax there was a decline in the number of internet users, reducing the total revenue collected.⁴⁷ Research shows that 'in relative terms, the 200 shillings (roughly \$0.05) per day tax is large... annualising the \$0.05 per day gives a tax burden of the social media tax at roughly 1 per cent of Uganda's GDP per capita' (Boxell and Steinert-Threlkeld 2019: 5).

Recent reports reveal that the OTT tax is becoming ineffective, as taxpayers evade the taxes by adopting the use of virtual private networks (VPN). Due to this, suggestions are that there should be a policy shift to tax data instead.⁴⁸ However, there is already VAT collected on data in Uganda and an additional excise tax may lead to significant increase in the tax burden which may be perceived as being regressive and unfair.

⁴⁴ A URA official confirmed that they are currently working on charging VAT on Google Ads in Uganda.

⁴⁵ Personal communication with URA official, January 2020.

⁴⁶ Biryabarema, E. (2018), 'Uganda Plans Tax on Social Media Use from July, Rights Activists Cry Foul', *Reuters*, 12 April, <https://af.reuters.com/article/africaTech/idAFKBN1HJ25D-OZATP>

⁴⁷ Adegoke, Y. (2019) 'More African Countries Are Looking to Tax Mobile Money Transactions', *Quartz Africa*, 12 August, <https://qz.com/africa/1685571/africas-financial-inclusion-at-risk-from-mobile-money-taxes/>

⁴⁸ Kyeyune, M. (2020) 'URA Wants to Shift Tax to Data, Decries Increased Evasion of OTT', *Daily Monitor*, 14 January, www.monitor.co.ug/News/National/URA-wants-to-shift-tax-data-decries-increased-evasion-OTT/688334-5417762-31rrdbz/index.html

Similarly, in 2018, the government of Uganda introduced a mobile money transactions tax of 1 per cent which applies to receiving money, making payments and withdrawing money. However, following a series of protests, the government reduced the rate to 0.5 per cent, applied only to withdrawals.⁴⁹ Some of the criticisms of the mobile transactions tax are that it targets the movement of money, so it harms the efforts of formalisation and undermines the country's efforts towards financial inclusion. Furthermore, it harms the poor as it is a regressive tax that does not take into cognisance the level of income.

From a tax administration perspective, when URA officials were asked about the options for enforcement on foreign digitalised businesses should they fail to pay taxes, some responded that it would be difficult but mentioned that technology can be used to block their sites or payments to their site, while others opined that MNEs are usually wary of reputational damage which is why they mostly engage in tax avoidance rather than blatant evasion, and for that reason they will pay the taxes, but that if they fail to there will be a need for a multilateral approach.⁵⁰

3.5 Ghana

Ghana has a GDP of US\$65 billion, and a tax to GDP ratio of 14.1 per cent (OECD/ATAF/AUC 2019: 157). Located in West Africa and projected to have grown faster than any economy in Africa in 2019, the country's economy is largely reliant on gold, oil and cocoa (Edmond 2019).

3.5.1 Nexus and profit attribution rules

Residents of Ghana are taxed on their income from any source, but non-residents only on income from a source in Ghana; or if the non-resident has a PE in Ghana, on all income connected with it irrespective of the source (Income Tax Act (ITA) s.3).⁵¹ The definition of a PE in s.110 is in line with the OECD model tax treaty, but with one additional broad provision, that states 'the provision of services in the country'. Although this does not specifically refer to digitalised businesses, it could cover delivery of services by digital means in Ghana with or without physical presence.

Ghana has 11 tax treaties in force.⁵² These generally include the standard definition of a PE according to the OECD pre-2010 model. However, some also include a 'services PE', based on Article 5.3.b of the UN model. This specifies that a PE will arise when an enterprise furnishes services within a contracting state through its employees or other personnel for the same or connected project for an aggregated period of not less than 183 days within any 12-month period.⁵³ However, in the treaty with Mauritius, the personnel must be employed in the state where the services are delivered, which is a significant limitation.

Ghana has transfer pricing regulations based on the OECD transfer pricing guidelines, enacted in 2012.

⁴⁹ Excise Duty (Amendment) Act, 2018. See Mulondo, M. (2018) 'Mobile Money Tax Reduced to 0.5%', *New Vision*, 2 October, www.newvision.co.ug/new_vision/news/1486921/mobile-money-tax-reduced-05

⁵⁰ Interview with URA officials, August 2018.

⁵¹ Income from Ghana includes 'a payment that has a source in the country' (ITA s.104(1)(b)), further defined as payments made in respect of 'an activity in the country' (ITA s.105(m)).

⁵² With Belgium, Denmark, France, Germany, Italy, Mauritius, Netherlands, Singapore, South Africa, Switzerland, and the UK.

⁵³ Income Tax Treaty between Ghana and Singapore.

3.5.2 VAT and communications services tax

Under Ghana's Value Added Tax Act 2013 s.1 (VAT Act), VAT applies to any supply of goods or services in the country. It is normally payable by the person making the supply, but for imports of goods, by the importer, and for imported services, by the recipient (VAT Act s.2). However, s.16(1) of the VAT Act requires a non-resident who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country to register, to appoint an agent. There is a very wide definition of telecommunications and electronic commerce, including '(i) website supply; (ii) web hosting; (iii) distance maintenance of programmes and equipment; (iv) images, text and information and making databases available; (v) music and games, games of chance and gambling games; (vi) political, cultural, artistic, sporting, scientific and entertainment broadcasts and events; and (vii) distance teaching'.

The VAT Regulations of 2016 s.7 make provision for the foreign supplier of such services to register and to account for the tax by electronic means as recommended in the OECD's international VAT/GST guidelines. However, by the end of 2019 it seems that such arrangements had not been put in place.⁵⁴

In addition to VAT, Ghana imposes a communications services tax on the use of communication services, collected from users by the service provider. The rate of the tax was initially 6 per cent but was increased to 9 per cent.⁵⁵ The service providers must be locally registered in Ghana⁵⁶ and they include national fixed network and mobile cellular network operators; internet service providers (ISPs); public/corporate data operators; providers of radio (FM) broadcasting services; and providers of free-on-air and pay-per-view television services.

3.5.3 Presence of digitalised businesses

At least one in three Ghanaians have access to the internet, which serves as the basis for digitalisation to thrive (UNCTAD 2017). This has seen Jumia and Uber operate and grow in Ghana. Jumia and Uber both have a physical presence in Ghana; while Amazon is not physically present, it supplies services to Ghana – it ships physical goods to Ghana⁵⁷ and customers based in the country can access digital content.

Google has an office in Accra,⁵⁸ and reports show that Google launched an AI lab in the country (Adeoye 2019). Google is utilised as a search engine, which provides it with user data; customers are also able to place ads on Google Ads, so that Google generates revenue from the clicks received. According to an official of the Ghana Revenue Authority, Google's local subsidiary is registered for VAT but not CIT.⁵⁹

3.5.4 Efforts to tax the digitalised economy

According to information from Ghana Revenue Authority officials, some staff have been trained in the area of taxation and digitalisation,⁶⁰ and unilateral measures could be

⁵⁴ See this news report: GhanaWeb (2019) 'GRA Loses Millions in Revenue As It Lacks Data to Tax Online Companies', *GhanaWeb*, 7 November, www.ghanaweb.com/GhanaHomePage/business/GRA-loses-millions-in-revenue-as-its-lacks-data-to-tax-online-companies-796961

⁵⁵ Section 1 of the Communications Service Tax Act 2008, (Act 754).

⁵⁶ National Communications Regulations 2003 (LI 1719).

⁵⁷ See <https://www.amazon.com/gp/help/customer/display.html?nodeId=201118310>

⁵⁸ Google, <https://careers.google.com/locations/accra/>

⁵⁹ Personal communication with Ghana Revenue Authority official, October 2019.

⁶⁰ Email communication with Ghana Revenue Authority official, March 2019.

introduced should there be no international consensus on measures to tax digitalised businesses,⁶¹ but there is no evidence of preparations to do so yet.

Recent reports suggest that Ghana is planning to tax mobile money transactions, although focusing on the revenue of mobile operators from the fees, not the mobile transaction itself.⁶²

3.6 Rwanda

Rwanda is an East African country with a population of over 12 million people and a GDP of \$9 billion.⁶³ The tax to GDP ratio of Rwanda for the year 2017 was 16 per cent, 1 per cent below the continental average (OECD/ATAF/AUC 2019: 157).

3.6.1 Nexus and profit attribution rules

Rwanda taxes residents on their worldwide income, and non-residents on the income from specified activities in Rwanda, including activities through a PE in Rwanda (Law on Direct Taxes on Income Act 2018 art. 5). The definition of a PE is based on the OECD model, but also includes 'a place of provision or services ... carried on by a person, with the support of employees or other personnel' for 90 days or more in a year (art. 6).

Rwanda has six tax treaties in force, with Belgium, Jersey, Mauritius, Singapore, South Africa and Barbados. All of them include a PE provision based on the UN model, including the 'services PE', without modification (even the Mauritius treaty).

The Law on Direct Taxes on Income includes a provision on transfer pricing (art. 33), requiring related persons involved in controlled transactions to provide documentation to show that their prices conform to the arm's length principle. Art. 10 of Ministerial Order 004/07 of 2007 specified the methods to be used as three of the OECD methods (comparable uncontrolled price, resale price and cost-plus), plus 'any other method that the fiscal administration deems appropriate'.⁶⁴

Responding to the question of the arms-length principle and how the experience has been with transfer pricing in Rwanda, the officials interviewed for this study believed that the current transfer pricing rules were fine, but highlighted some of the challenges they experience. These challenges include but are not limited to treaty shopping and the challenge of finding comparable transactions.

3.6.2 VAT in Rwanda

VAT applies to goods and services supplied in Rwanda. According to the VAT Law of 2012 (art. 2.7(d)), 'services shall be regarded as provided in Rwanda if the services provider (...) has no headquarters in Rwanda but it has it elsewhere and the recipients of the services need it or benefits from them in Rwanda'. For imported services, a reverse charge applies to the local recipient of services from a foreign supplier, but the recipient may not claim the input VAT, unless no person in the local market can deliver identical or similar services (VAT

⁶¹ Interview with Ghana Revenue Authority official, June 2018.

⁶² Teiko Larnoh, M. (2019) 'The Ghanaian Government is Planning on Taxing Mobile Money', *Pulse Business Insider*, 20 May, www.pulse.com.gh/bi/finance/the-ghanaian-government-is-planning-on-taxing-mobile-money/eky6n2q

⁶³ For more details see www.afdb.org/en/countries/east-africa/rwanda

⁶⁴ See www.rra.gov.rw/typo3conf/ext/complete/Resources/Public/download/pdf/Ministerial_Order_No_004-07_Of_09.05.2007_Governing_the_Implementation_of_the_Law_No_16-2005_of_18.08.2005_on_Direct_Taxes_on_Income.pdf

Law art. 12). Hence, there is not yet any mechanism for collecting VAT from a non-resident supplier of services.

3.6.3 Presence of digitalised businesses

There is an almost 100 per cent coverage of mobile usage with accessibility to fibre-optic networks that enable fast internet connectivity in Rwanda.⁶⁵ Building on this, the Rwandan Government in partnership with Alibaba launched Africa's first Electronic World Trade Platform⁶⁶ to provide an enabling environment for small businesses to carry out electronic trade in Africa. Alibaba is the largest e-commerce platform in the world currently, and the functions of the platform include the lowering of tariffs and harmonisation of taxation.⁶⁷ However, no detail is provided on what this means. Officials at the Rwanda Revenue Authority said Alibaba does not have a physical presence in Rwanda, and at the time of the interview it was not tax registered in Rwanda.⁶⁸

Currently, Uber does not operate in Rwanda. In 2019, Move by Volkswagen, a locally developed taxi sharing app, was launched. Volkswagen Mobility Solutions Rwanda is a fully owned subsidiary of Volkswagen Group South Africa.⁶⁹ Move is registered as a local company with a physical presence and registered to pay CIT and VAT in Rwanda.

Google, Amazon and Jumia all operate in Rwanda as customers can access their services, but only Jumia has a physical presence in the country through its subsidiary Jumia food. In addition, Yubeyi, a locally developed e-commerce platform, was established in Rwanda in 2015.⁷⁰ Unlike Amazon, Yubeyi is registered for and subject to both CIT and VAT in Rwanda.

3.6.4 Efforts to tax the digitalised economy

According to the Rwanda Revenue Authority, they are currently developing strategies to tax e-commerce businesses, both local and cross-border e-commerce.

4 Conclusions and recommendations

While negotiations are ongoing at the OECD and Inclusive Framework to find a consensus solution, many OECD countries have taken steps to tax digitalised businesses through a digital services tax, while India has enacted an equalisation levy, now extended to all sales by a non-resident through a digital platform, both being gross taxes on revenues. African countries with the exception of Kenya⁷¹ have not introduced such taxes, probably because they would find it challenging to impose taxes on companies that are not tax resident in their jurisdictions and may not have the means to ascertain the revenues generated therein.

This has resulted in African countries relying on indirect taxes, both VAT and new taxes such as a mobile transactions tax. An immediate priority for African countries should be to strengthen VAT and review any mobile transactions taxes by making them progressive to reduce regressivity. From the data gathered from the countries of study, the legislation is in

⁶⁵ UNCTAD (2017) 'Increased Innovation Key to Rwanda's Continued Success', 27 October, <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1591>

⁶⁶ Kwibuka, E. (2018) 'Kagame, Alibaba's Jack Ma Launch Africa's First Electronic World Trade Platform', *The New Times*, 1 November, www.newtimes.co.rw/news/kagame-alibabas-jack-ma-launch-africas-first-electronic-world-trade-platform

⁶⁷ Electronic Trade World Platform, www.ewtp.org/about/introduction.html

⁶⁸ Interview with Rwanda Revenue Authority officials, 2018.

⁶⁹ Move, www.move.rw/about

⁷⁰ Yubeyi, www.yubeyi.com/about-us

⁷¹ As at the time of writing, Kenya is yet to start implementing this as it is a proposal in the 2020 Finance Bill.

place to raise revenues from VAT on both domestic and cross-border digitalised companies. However, the countries will need to strengthen their legislation by providing definitions of what constitutes taxable digitalised services to bring about clarity. It is also important to ensure that VAT registration thresholds represent the economic realities of the country to avoid excessive administrative and compliance costs. From the administrative perspective, the countries should consider implementing a simplified collection and compliance mechanism with an easy means to register remotely through a simple portal for online registration.

The OECD (2019b) is currently carrying out some work on the sharing and gig economy which focuses on platforms and how information received from platforms could improve compliance in the sharing and gig economy. Although the work is focused on direct taxation, it has features that will be useful for indirect taxation such as VAT, particularly from the transactional information generated from the platforms. The OECD suggests that tax administrations can enter into agreements with platform owners to integrate their systems such that they are able to receive information on transactions and also work to reduce the compliance burden of the platform owners. This would provide transaction information and audit trails which would be useful for both direct and indirect taxation. The OECD has recently published a public consultation document in this regard to further the work (OECD 2020b).

If African countries consider it necessary to tax mobile transactions, such taxes should be progressive and based on thresholds to limit their negative impact. Social media taxes should be phased out as they lack merit and constitute a form of double taxation since VAT already applies to telecommunications data services. Furthermore, these are taxes that have the likelihood of limiting the voice of the citizens.

This survey shows that the problem of taxation of MNEs is not limited to highly digitalised companies. Companies with significant activities in African countries can minimise the tax they pay, by using structures similar to those of the digitalised companies analysed here, such as the 'Dutch sandwich'. This includes, for example, beer and beverage companies (Brooks and Hearson 2010), and those in key sectors such as natural resources (ActionAid 2013; Ezenagu 2020; Lundstol, Raballand and Nyirongo 2013).

Most African countries have also long been aware of the problem of taxation of services supplied in the country by non-residents. Under their tax laws, including those of the six countries studied here, non-residents are taxable on activities within the country, including services supplied there. Yet these tax rights are restricted by tax treaties, which generally limit source taxation to profits attributable to a permanent establishment. Some countries have nevertheless found ways to assert source taxation rights: for example, Kenya's withholding taxes on fees for professional services, and Nigeria's tax on deemed profits applied to engineering and construction services in the oil sector. Such measures can be effective and easy to administer, but they apply to gross revenues, so disregard each company's actual profitability.

Hence, African countries urgently need a more comprehensive solution to the problems of taxing MNEs effectively. Digitalisation has exacerbated the defects of the rules, and these are now impacting also on OECD countries, which have been primarily responsible for formulating them. Now more than ever it is time for a re-evaluation of international tax rules which takes the perspective of developing countries fully into account.

Appendices

Appendix A Different business models under digitalisation

Model	Social networks	Search engines	Intermediation platforms	Online content providers	E-retailers	Digital software/hardware
How they operate	These are platforms that enable user interaction and provide a medium for users to share their content.	These platforms allow users to connect with content and easy access to information, thereby involving very high user participation.	These platforms match pools of users and rely on users to provide content, thereby generating a mass of demand and supply.	These platforms provide online content.	These are businesses that sell acquired goods online.	These businesses develop digital solutions in the form of hardware and software.
	These are social media platforms such as Facebook.	Google is a good example of a search engine that involves high user participation and data input.	These are sharing economy platforms such as Airbnb and Uber.	Streaming services such as Netflix and YouTube fall into this category.	E-retailers such as Amazon, eBay, OLX and Jumia fall into this category.	Examples of these types of business are Apple, Google and antivirus businesses such as Kaspersky.

Appendix B Internet access in jurisdictions

Country	Population (2020 est.)	Internet users 31-Dec-2000	Internet users 31-Dec-2019	Penetration (% population)	Internet growth % 2000-2020
Ghana	31,072,940	30,000	11,737,818	37.8 %	39,026 %
Kenya	53,771,296	200,000	48,870,422	87.2 %	23,335 %
Nigeria	206,139,589	200,000	126,078,999	61.2 %	62,939 %
Rwanda	12,952,218	5,000	5,981,638	46.2 %	119,532 %
Senegal	16,743,927	40,000	9,749,527	58.2 %	24,274 %
Uganda	45,741,007	40,000	18,502,166	40.4 %	45,155 %

Source: www.internetworldstats.com/stats1.htm

Appendix C

Mobile-cellular telephone subscriptions																		
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Ghana	130,045	243,797	386,775	795,529	1,695,000	2,874,560	5,207,242	7,604,053	11,570,430	15,108,916	17,436,949	21,165,843	25,618,427	28,026,482	30,360,771	35,008,387	38,305,078	36,751,761
Nigeria	30,000	266,461	1,569,050	3,149,473	9,147,209	18,587,000	32,322,202	40,395,611	62,988,492	74,518,264	87,297,789	95,167,308	112,777,785	127,246,092	138,960,320	150,830,089	154,342,168	144,920,170
Kenya	127,404	600,000	1,187,122	1,590,785	2,546,157	4,611,970	7,340,317	11,349,412	16,303,573	19,364,559	24,968,891	28,080,771	30,731,754	31,830,003	33,632,631	37,715,944	38,982,188	42,815,109
Rwanda	39,000	65,000	82,391	130,720	137,271	222,978	314,201	635,137	1,322,637	2,429,252	3,548,761	4,446,194	5,690,751	6,689,158	7,747,019	8,759,619	8,921,533	8,819,217
Senegal	250,251	301,811	553,449	782,423	1,121,314	1,730,106	2,982,623	3,630,804	5,389,133	6,901,492	8,343,717	9,352,868	11,470,646	13,133,772	14,379,729	14,959,477	15,186,485	15,758,366
Uganda	126,913	283,520	393,310	776,169	1,165,035	1,315,300	2,008,818	4,195,278	8,554,864	9,383,734	12,828,264	16,696,992	16,356,387	18,068,648	20,365,941	20,220,273	22,838,486	24,948,878

Appendix D Registration and tax status of digital businesses in the jurisdictions studied

Digitalised business	Nigeria	Ghana	Senegal	Kenya	Uganda	Rwanda
Google	Locally registered as Google Global Services Nigeria Limited as the service provider (agent) on behalf of Google Ireland. Registered and pays CIT and VAT.	Registered a local subsidiary liable to VAT.	No evidence of physical presence but carries on business. Not registered for corporate tax or VAT.	Registered a local subsidiary that is liable to both CIT and VAT.	Registered locally and pays CIT and VAT.	No physical presence but carries on business. Not registered for corporate tax or VAT.
Uber	Registered a local subsidiary. Physical presence and carries on business in the jurisdiction. Registered to pay CIT and VAT.	Physical presence and carries on business. Tax status unclear (inadequate information).	No physical presence and no economic presence.	Registered a local subsidiary. Physical presence and carries on business in the jurisdiction. Registered to pay CIT and VAT.	Registered a local subsidiary. Physical presence and carries on business in the jurisdiction. Registered to pay CIT and VAT.	No physical presence and no economic presence.
Amazon	No physical presence but carries on business. Not registered for CIT.	No physical presence but carries on business. Not registered for CIT.	No physical presence but carries on business. Not registered for CIT.	No physical presence but carries on business. Not registered for CIT.	No physical presence but carries on business. Not registered for CIT.	No physical presence but carries on business. Not registered for CIT.
Jumia	Physical presence, a dedicated website for the country and registered for CIT.	Physical presence, dedicated website. Tax registration unclear.	Physical presence, dedicated website. Tax registration unclear.	Physical presence, a dedicated website, registered for CIT and VAT.	Physical presence, dedicated website, registered for CIT and VAT.	Physical presence, dedicated website. Unclear if registered for tax.

Appendix E

Efforts to tax the profits of digitalised businesses in the jurisdictions of study			
Jurisdiction	Existing taxes	New legislation/bill	Plans
Nigeria	Foreign companies can be required to have local affiliate to do business in Nigeria, which can be taxed on income from sources in Nigeria, if necessary, on a fair and reasonable % of turnover. Otherwise the arm's length principle applies. Destination-based VAT, with reverse charge for non-resident supplier, no simple registration method for non-resident.	Significant economic presence under the Finance Act 2019. Executive Order on Significant Economic Presence. The order follows the introduction of the SEP in 2019. It explains the modalities of the SEP.	Plans to implement the significant economic presence.
Ghana	Residents or PE taxed on income from all sources, non-residents on income from Ghana, including from services supplied in Ghana. Transfer pricing regulations based on OECD guidelines. VAT on goods or services supplied in Ghana, reverse charge on imports. Non-resident supplier of electronic services or e-commerce must register or appoint agent, no simplified regime.	Nil	Looking into it.
Senegal	CIT applied to income from business in the country, PE concept applied. Accounts of related entities can be adjusted in line with comparable independent business. VAT on destination basis, non-resident supplier must appoint a tax representative, no simple registration method.	Nil	Waiting for the OECD and Inclusive Framework.
Kenya	Tax on all income derived from Kenya, applied on non-residents by withholding tax, e.g. on management and professional fees, subject to treaties. Related entities must comply with transfer pricing regulations based on OECD guidelines. VAT on destination basis, non-resident must appoint a representative or Commissioner can do so, no simple registration method.	Finance Act 2019: amendment of Section 3 of ITA: income chargeable to tax includes the income accruing through a digital marketplace, i.e. a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means. VAT extended to sales through digital marketplace Finance Bill 2020: the proposal of a Digital Services Tax on services provided through a digital marketplace which will be taxed at the rate of 1.5% on the gross transactional value.	
Uganda	Non-residents taxed on income from Uganda. Arm's length principle applies to related entities, transfer pricing regulations based on OECD.	VAT applies to any electronic services delivered remotely since 2018, non-residents must appoint a representative or Minister	Carrying out studies.

	VAT on destination basis, reverse charge for B2B.	may do so, no simplified registration.	
Rwanda	Non-residents taxed on income of a PE in Rwanda, including delivery of services through personnel for 90 days or more. Arm's length principle for related entities, using three traditional OECD methods or any other method fiscal administration deems appropriate. VAT on destination basis, reverse charge for B2B. No method of registration for non-resident.	Nil	Unclear

Appendix F

Indirect tax measures and plans		
Jurisdiction	Current tax measures	Plans
Nigeria	1. 50 Naira stamp duties on any point of sale transaction above 10,000 Naira 2. VAT on internet data	Introduction of VAT split for e-commerce
Ghana	1. VAT on internet data 2. Communications services tax	VAT on e-commerce
Senegal	1. VAT on internet data	VAT on e-commerce
Kenya	1. Excise duty on mobile transactions 2. VAT on internet data 3. Money transfer services by banks at 20 per cent 4. Mobile phone-based financial transactions at 12 per cent	Over-the-top tax (OTT)
Rwanda	1. VAT on internet data	VAT on e-commerce
Uganda	1. Mobile transactions tax 2. Over-the-top tax (social media tax) 3. VAT on internet data	VAT on e-commerce

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