TAXING RWANDA'S DIGITAL ECONOMY A REFLECTION PAPER

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RWANDA REVENUE AUTHORITY
TAXES FOR GROWTH AND DEVELOPMENT

Taxing Rwanda's Digital Economy: A Reflection Paper

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Summary

Through a series of short-term strategic plans, access to the digital world has been steadily growing in Rwanda since the early 2000s. Utilization of digital services rapidly increased in 2020 as government measures to contain the spread of Covid-19 shifted consumer preferences online. This report discusses the inherent challenges and opportunities this online shift presents to taxation under the current system. As international cooperation on how best to tax multinational enterprises continues to develop, this paper determines where Rwanda is now, where it wants to be, and how it can get there. By initiating a government-wide and private-sector discussion, we develop a roadmap to align Rwanda's tax system to its digital economy. Leveraging publicly available information and a number of consultations with key stakeholders, we recommend a series of short and long-term actions, calling for immediate action on a thorough and deeper analysis of the digital economy in Rwanda to provide advice on the desired policy reforms.

Keywords: digital economy; cross-border e-commerce; digital services; tax challenges

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Acronyms

AEOI	Automatic Exchange of Information
ATAF	African Tax Administration Forum
BEPS	Base Erosion and Profit Shifting
DST	Digital Services Tax
E-commerce	Electronic commerce
EOI	Exchange of Information
EU	European Union
GST	General Sales Tax
GoR	Government of Rwanda
ICT	Information Communication Technology
MNE	Multinational Enterprise
OECD	Organization for Economic Cooperation and Development
OECD	Inclusive Framework OECD Inclusive Framework on Base Erosion and Profit Shifting
RRA	Rwanda Revenue Authority
UNCTAD	United Nations Conference on Trade and Development
UNTC	United Nations Tax Committee
VAT	Value Added Tax
WTO	World Trade Organization

1 Introduction

Since 2000, Rwanda has sought to achieve rapid digitization, through implementing a succession of short-term strategic plans.[4] These policies have resulted in the progressive rollout of digital infrastructure, notable public e-services expansion, despite a very low base start, and initiatives to support digital skills and position Rwanda as a regional Information and Communications Technology (ICT) hub. Today, Rwanda continues to articulate ambitious strategies in relation to many of these areas with the aim of digitally transforming the economy. For instance, through the "SMART Rwanda Master Plan"[5], the government committed to achieving all-Government digital transformation by 2018, and Broadband and digital literacy for all by 2020. Universal access to broadband and digital literacy are key to closing the 'digital divide' and ensuring that all individuals and groups can access and use ICT.[6]

Rwanda as a country, has positioned itself to leverage digital transformation as a means to accelerate growth and reduce poverty.[7] In line with the Rwanda Digital Acceleration Project[8] a government initiative supported by the World Bank, the Government of Rwanda is committed to using digitally enabled solutions, in all possible sectors, to leapfrog traditional approaches and support innovation in service delivery. Under this project, the Government of Rwanda (GoR) is set to accelerate countrywide digital transformation which will facilitate Rwanda's integration in the emerging regional digital market. To further fuel the adoption of digital solutions and increase access to government services by the citizens, the government decided to move most of its services online and, as a result, more Rwandans are now accessing government services through Irembo[9], the online platform, which was set up in 2015.

[4] "Rwanda's [National Information and Communication Infrastructure (NICI)] process began in 1998 with the first phase concentrated on a comprehensive ICT-led Integrated Socio-Economic Development Framework for Rwanda. This was followed by the development of an Integrated ICT-led Integrated Socio-economic Policy for Rwanda in 2000 aimed at facilitating the transformation of Rwanda into an information-rich, knowledge-based society and economy within twenty years." The four NICI Plans, "developed within the framework of the Vision for Rwanda, served as the cornerstone of the Government's socio-economic development plan". Government of Rwanda, *SMART Rwanda Master Plan 2015 - 2020*, Government of Rwanda, 2015. Available online at: https://docs.igihe.com/IMG/pdf/ict_ssp__smart_rwanda_master_plan_.pdf

[5] Ibid

[6] For more on this see: *What is Digital Inclusion and Why is it Important?* Inclusive Docs. Accessed on 24 May 2021, available at: https://inclusivedocs.com/news/what-is-digital-inclusion-and-why-is-it-important/

[7] World Bank, *Rwanda Economic Update: Leveraging Digital Transformation for Sustainable Growth*, World Bank, January 2020. Available online at: https://www.worldbank.org/en/country/rwanda/publication/rwanda-economic-update-leveraging-digital-transformation-for-sustainable-growth

[8] For more on this see: *Rwanda Digital Acceleration Project*, World Bank. Accessed on 24 May 2021, available at: https://projects.worldbank.org/en/projects-operations/project-detail/P173373

[9] See: https://irembo.gov.rw/

The use of digital platforms to access goods and services is now increasing in the Rwandan economy with the emergence of new e-commerce[10] platforms including both domestic and cross-border operators. Examples of the currently registered domestic e-commerce platforms include REGS LTD, Yubeyi, Pikko Stores, Homeness Rwanda, Ihaha Technologies, Hehe Limited, Gemeya, Carisoko, Kasha, hellofood and Rwanda carmart. Meanwhile, companies like Rwandair, different hotels and transport companies have increasingly established substantial online operations. Cross-border e-commerce, on the other hand, is also shaping and is mainly facilitated by Alibaba and AliExpress, which connect businesses and consumers to markets in China and the United Arab Emirates. Moreover, some major global online businesses including Amazon and eBay have gradually ventured into the market, mainly through individual consumers, however the scale of access is difficult to measure without a more coordinated oversight.

Given the current developments, the upward trend in growth of e-commerce is expected to continue and rapidly increase over the next few years. The opportunities presented by the digital economy are immense; with some of the notable examples such as online banking and mobile money payments providing the opportunity to track the movement of money and collect information about revenue generation in different sectors, this could permit easier detection of money laundering, tax evasion or tax avoidance. However, there are also associated risks such as data and information insecurity and privacy concerns, increasing cases of fraud, phishing schemes, online scams, hacking and other cybercrimes.[11] Digitalization has transformed value chains, given rise to new business models and ways of accessing consumers or users of products and services. These developments in the digital economy have made it more difficult to determine the tax residency of foreign entities generating income in Rwanda given the increasing ability to conduct business in a jurisdiction without the need for physical presence therein. In addition, certain income earned both by natural and legal persons through the use of digital platforms or marketplaces may fall outside the ambit of the current tax laws and there is now a need to reflect on how to re-capture this income within the tax system.

The taxation of the digital economy has been a topic of concern for countries everywhere both on a multilateral basis, through international organizations including the Organization for Economic Cooperation and Development (OECD) Inclusive Framework and the United Nations Tax Committee (UNTC), regionally and unilaterally. Considering the current economic hardships

[10] What constitutes e-commerce is often difficult to define as it continues to grow and evolve, and in many cases, different business sectors engage in e-commerce and traditional commerce simultaneously. See: OECD Statistics, *Electronic Commerce*, Glossary of Statistical Terms. Available online at: https://stats.oecd.org/glossary/detail.asp?ID=4721

[11] For more on this issue see for example: OECD, *Digital Security Risk Management*, OECD, 2015. Available online at: https://www.oecd.org/sti/ieconomy/digital-security-risk-management.htm; David Ferbrache, *How vulnerable are governments to cyber crime?* KPMG, 2 April 2016. Accessed on 18 May 2021, available at: https://home.kpmg/xx/en/home/insights/2016/05/how-vulnerable-are-governments-to-cyber-crime.html ; or Newman U. Richards & Felix E. Eboibi, *African governments and the influence of corruption on the proliferation of cybercrime in Africa: Wherein lies the rule of law?* International Review of Law, Computers & Technology, 2021. Available online at: https://doi.org/10.1080/13600869.2021.1885105

caused by the ongoing pandemic, countries are now struggling to raise revenues at the time of the most far reaching and unprecedented contractionary economic shock in modern times[12]. In response to this situation, the identification of additional revenue generation avenues has received increasing attention in international discourse with a specific focus on the taxation of wealthy individuals and e-commerce across developed and developing countries.

Solutions for the taxation of e-commerce have included indirect and direct tax options. Excise taxes have been widely adopted across Africa including the Over the Top Tax (OTT or social media tax) in Uganda, and taxes on mobile money services in Uganda, Zimbabwe and Kenya. South Africa introduced the application of Value Added Taxes (VAT) to the digital supply of services in 2014, and a similar policy recently became operational in Kenya as of 1 January 2021. Direct taxes have not been as straightforward given the lack of physical presence and the need for a higher level of transparency on the part of multinationals regarding their use of data, related value creation and the unique business models used to generate revenue in a jurisdiction. Proposals for the collection of corporate income tax continue to be subject to negotiation within the OECD Inclusive Framework and the UNTC. Finally, a number of countries have opted to introduce the somewhat controversial Digital Services Tax (DST) including, most recently, Kenya.

The ability to tax the digital economy in Rwanda, like in several other jurisdictions, is generally weak with only limited taxation mechanisms available. Currently, the Rwandan tax code does not adequately address the taxation of e-commerce and does not provide a firm position for the government in relation to taxing this emerging but rapidly growing industry in Rwanda. This presents a high potential for additional revenue collection, at least on a gradual basis as Rwanda continues to embrace e-commerce. This review of the taxing options also acknowledges that the lack of effective tax policy may restrict its expansion and should, therefore, take into consideration the potential constraints that taxation may introduce for e-commerce in general. Moreover, Rwanda has not yet joined some major global efforts in curbing international tax avoidance such as the OECD Inclusive Framework on BEPS. However, there is a wave of tax law reforms ongoing in the country that would consider the potential for the tax system to extend its application to the digital economy.

A variety of approaches are indeed available, as well as a number of constraints that will need to be evaluated on an ongoing basis in order to determine their appropriateness for the Rwandan economy. On this basis, the Rwanda Revenue Authority (RRA) recognises the need to continually evaluate and learn from the current practices and emerging trends in e-commerce, while acknowledging the importance of creating an enabling environment that supports and facilitates the industry in Rwanda. In this regard, the main objective of this research is to initiate a government-wide and private-sector discussion about how best to align the tax system to the digital

[12] Gita Gopinath, *A long, uneven and uncertain ascent*, IMF Blog, 13 October 2020. Accessed on 18 May 2020, available at: https://blogs.imf.org/2020/10/13/a-long-uneven-and-uncertain-ascent/

economy to develop a policy paper that evaluates the current landscape for the taxation of the digital economy in Rwanda and beyond. In particular, it will provide an overview of the tax policy measures being discussed and introduced globally, regionally and nationally and provide a review of the challenges and merits of selected measures for the Rwandan economy. The overall aim is to identify the tax options that effectively raise revenue while maintaining an enabling environment and provide a foundational discussion for the RRA that will lead to increased discourse and a potential roadmap towards consultations and agreement with the Ministry of Finance regarding the most viable options to tax the digital economy.

2 Understanding the digital economy - a global and national overview

2.1 Defining the digital economy, terminology and delineating the sector

The opportunities provided by digitalization have changed the ways in which businesses can access foreign markets and consumers. Today, "technology is being harnessed to redefine traditional business models, [providing] new ways for buyers and sellers to interact both locally and globally, and support flexible working arrangements".[13] A number of multinational enterprises (MNEs) have benefitted from the emergent opportunities arising from the use of technology and, in the process, secured market dominance whilst boosting profitability.[14] Several factors have contributed towards the growth of the 'digitalized sector' with implications for tax systems everywhere[15]:

- "Increasingly sophisticated information technology systems - including the internet...have facilitated a surge in remote cross-jurisdictional sales"[16]. This has diminished the need for physical and economic presence and "displaced traditional physical stores".[17]

- More companies are deriving increasing value from intellectual property and other intangible assets that are easy to transfer across jurisdictions and difficult to value.[18] This frustrates current international tax norms like the arm's length principle.[19]

- The customer or 'user', "is now considered by many as being a critical driving force behind the value of digital services...digitalization has allowed businesses to harvest data and information about their users at an unprecedented scale"[20]. This is a new and emergent

[13] Aqib Aslam & Alpha Shah, *Tec(h)tonic Shifts: Taxing the "Digital Economy",* IMF Working Paper, WP/20/26, 2020, p.5
[14] Ibid
[15] Ibid
[16] Aslam & Shah (2020), n.6 at p.5
[17] Aslam & Shah (2020), n.6 at p.5
[18] Aslam & Shah (2020), n.6 at p.5
[19] Aslam & Shah (2020), n.6 at p.6
[20] Aslam & Shah (2020), n.6 at p.6

aspect of value creation that has not previously been recognized by the international tax framework.

All of these factors represent new business models arising from the use of digitalization which are likely to expand and change, "as the world is only at the early stages of digitalization, the evolving digital economy and several other related economic terms lack widely accepted definitions."[21]For instance, 'e-commerce', has been defined by the Organization for Economic Cooperation and Development (OECD) as "the sale or purchase of goods or services conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders"[22]. These goods or services "are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online"[23]. These transactions can be undertaken between businesses, businesses to consumers, consumers to consumers, government to businesses or government to individuals. Whilst the World Trade Organization (WTO) defines e-commerce as the "production, distribution, marketing, sale or delivery of goods and services by electronic means".[24] The WTO approach has a more expansive definition that may cover aspects not anticipated by the OECD definition with significant implications for the interaction between the trade rules (governed by WTO) and the tax standards (influenced by the OECD).

In general, the United Nations Conference on Trade and Development (UNCTAD), recognizes that trying to cement a definition now will likely block progress and the development of a common understanding of major concepts.[25] Since the sector itself is rapidly evolving, definitions need to be flexible, but there should be "some common ground on the meaning of the terminology used".[26] The factors identified above demonstrate that digitalization is not only giving rise to new business models, but it is also increasingly being adapted into existing ones and "becoming increasingly inseparable from the functioning of the economy as a whole".[27] UNCTAD identify three broad aspects representing the different technologies and economic aspects of the digital economy[28]:

- "Core aspects" - these are fundamental innovations that provide the infrastructure for the operation of the digital economy like telecommunications devices, internet, networks, computers, processors etc.

[21] UNCTAD, *Digital Economy Report - Value Creation and Capture: Implications for Developing Countries*, UNCTAD, 2019, p.3
[22] OECD Glossary of Statistical Terms: https://stats.oecd.org/glossary/search.asp
[23] Ibid
[24] WTO, Electronic commerce: https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfecom_e.htm#:~:text=Electronic%20commerce%2C%20or%20e%2Dcommerce,and%20services%20by%20electronic%20means%22.&text=These%20WTO%20bodies%20were%20instructed,WTO%20agreements%20and%20e%2Dcommerce.
[25] UNCTAD (2019), n.11 at p.3
[26] UNCTAD (2019), n.11 at p.4
[27] UNCTAD (2019), n.11 at p.4
[28] UNCTAD (2019), n.11 at p.4

- "Digital and information technology sectors - which produce key products or services that rely on core digital technologies, including digital platforms, mobile applications and payment services."[29] These products or services are also used by traditionally physical sectors - some examples include mobile money services, advertising platforms and marketplaces on social media and accommodation service platforms, amongst others.

- "A wider set of digitalizing sectors - which includes those where digital products and services are being increasingly used (e.g. for e-commerce). Even if change is incremental, many sectors of the economy are being digitalized in this way."[30] Based on the previous aspect, consider the changes occurring in the financial industry, tourism and media and the impact on labour (increased digital literacy).[31]

These aspects are being used to develop definitions of the digital economy in general, one common definition provided by Bukht and Heeks[32] identifies it as "that part of economic output derived solely or primarily from digital technologies with a business model based on digital goods or services." Even broader definitions not linked to the specific aspects provided above may be used, however, UNCTAD recommends that any definition should focus on the broader trends of the digital economy (growing e-commerce, digital data, the use of platforms, digitalizing of sectors) to permit recurrent analysis of change.[33]

This discussion captures only a fraction of the challenges related to defining the digital economy and selecting the preferred terminology. What is clear is that policymakers must take a broad approach, acknowledging that the sector is still in its early stages of growth and that new technologies continue to emerge and defy current approaches and norms with spillover effects for other sectors of the wider economy. Having this in mind, tax policymakers and administrators seeking to expand the coverage of the tax system to include the profits generated by the digital economy should use initial policy tools to amass data that will provide a baseline.

2.2 Emergence of the digital economy

The expansion of telecommunication technology from the 1960s, combined with advances in network computing, resulted in improvements in ICT software and hardware. Steep price declines led to widespread uptake of mobile technologies: personal computers, email, the Internet and mobile telecommunications, transforming social interactions and business productivity. This third industrial revolution was predominantly centred in wealthy countries as limited access to new technologies prevented low-income societies from fully harnessing its potential. The twenty-first century has ushered in a new era, with low-income governments recognising the importance of the digital economy particularly across the African continent. Major opportunities have been created

[29] UNCTAD (2019), n.22 at p.4
[30] UNCTAD (2019), n.22 at p.5
[31] Ibid
[32] As quoted in UNCTAD (2019), n.11 at p.5
[33] UNCTAD (2019), n.11 at p.5 and 6

in the digital space, facilitating rapid growth of the world's poorest people, transforming access to financial services, health, and education.

The digital economy continues to rapidly evolve as the rate of technological change accelerates. In 1992, there were 100 gigabytes of Global Internet Protocol traffic per day; by 2022 it is estimated that there will 150,700 gigabytes per second[34]. Data-driven frontier technologies are leading recent transformations in the digital economy. Blockchain, data analytics, artificial intelligence, 3D printing, the Internet of Things, cloud computing and robotics are digitizing how we live, work, consume and produce, diffusing the digital world into most sectors, leading some to term the new era a "Fourth Industrial Revolution"[35]. The new digital economy is increasingly expanding into the non-digital world, however the gains are concentrated in wealthy economies. There is a large digital divide as half of the world remains offline and only 20 percent of people in low-income countries have access to the internet.[36]

2.3 Overview of the emerging digital economy in Rwanda

Regulatory reforms over the past decade have enabled Rwanda's digital economy to flourish, as Internet penetration increased from 5% in 2010 to 60.4% in 2019[37]. Substantial public investment in digital infrastructure and government services laid the groundwork for impressive growth, enabling Rwanda to emerge as a top regional player. Access to undersea cables in Kenya and Tanzania combined with a national fiber optic network improved availability of the Internet, increasing access to international bandwidth ten-fold between 2013 and 2018. Rwanda also has some of the highest 3G and 4G mobile coverage on the continent, where in 2019, 4G LTE services geographic coverage and population coverage in Rwanda were 97.6% and 98.9 % respectively[38]. While 3G and 3.5G services remained at the rate of 92.3% of geographic coverage and 97.4 % of population coverage. The number of active mobile-cellular telephone subscriptions was around 9.9 million SIM cards by June 2020, and mobile-cellular subscriptions were 77.9 registered for every 100 people while for fixed telephone subscriptions were 0.1%.[39]

The launch of the government's e-service portal 'Irembo' in 2015 further excelled the speed of reform, with tax services such as e-filing and e-declarations also transitioning online, showcasing the commitment to digitization.

Transforming attitudes to transition from a cash-based to a digital economy was supported by the Central Bank. In 2017, digital payment systems were embraced following a Central Bank

[34] UNCTAD (2019), n.22 at p.
[35] Schwab, K. 2016. "Fourth Industrial Revolution". World Economic Forum: Switzerland.
[36] UNCTAD. 2019. *Digital Economy Report 2019*. United Nations: New York p.2
[37] MINICT. 2019. *ICT Sector Profile 2019*. Available from: https://www.minict.gov.rw/fileadmin/user_upload/minict_user_upload/Documents/ICT_Sector_Profile/ICT_Sector_Profile-_2019.pdf
[38] Ibid
[39] RURA Annual report, 2019-20

campaign promoting digital financial services. Ecobank was the first to launch its mobile app in 2017 with other banks following suit. Accordingly, the total volume of internet banking transactions increased by 6% in 2019-20 from 1,004 billion to 1,064 billion. This growth was mainly due to measures put in place to mitigate the spread of the COVID-19 pandemic and the Government's program to achieve a cashless economy[40]. The World Bank estimate as presented by DATAREPOTAL website, indicate that 4.6% of the Rwandan population aged 15 and above made online purchases and/or paid bills online by January 2021[41] this transformation has enabled small businesses to transition online, with more than 29 e-commerce platforms as of May 2020 servicing business to customer needs and interlogistics between businesses. The speed of digitization in Rwanda has resulted in an improved World Bank *Ease of Doing Business* rank from 70th in 2010 to 38th in 2020.

Market disruptions caused by the COVID-19 pandemic have accelerated the usage and adoption of mobile money and other electronic payment services in Rwanda. The volume of transactions via mobile payment services was up by 51% in 2020 compared to 2019, representing an increase in value of 81%[42]. The marked increase of cashless payments suggests that lockdown and social distancing rules associated with COVID-19 have shifted consumer preferences online. Part of the increase can also be attributed to the removal of taxes on mobile money transactions implemented by the Government of Rwanda to promote contactless payments as part of COVID-19 measures. Between June 2019 and June 2020, the value of mobile banking increased by a record 131% and the volume of internet banking jumped by 33%. Furthermore, the reduction in taxes on retail payment systems resulted in an increase of e-payment-to-GDP, from 34.6% to 54% from June 2019 to June 2020[43].

3 The opportunities and constraints of the digital economy

Digitalization of the economy presents new opportunities and challenges in trade and development[44]. It can reduce transaction costs for businesses and facilitate access to new customers, both in domestic and foreign markets, deploys efficient payment systems, and lowers storage cost, delivery logistics and customer services. For example, online businesses may be able to cut delivery costs, especially for digitally provided content. It can also help businesses, in particular micro, small and medium-sized enterprises, to overcome barriers to expansion as e-commerce allows easier access to global markets that would otherwise be out of reach for such businesses. Digitalization can therefore enhance the productivity of enterprises and offer new

[40] BNR, 2020. BNR Annual Report 2019/20
[41] DATAREPORTAL, Digital 2021: Rwanda. https://datareportal.com/reports/digital-2021-rwanda

[42] BNR, 2020. BNR Annual Report 2019/20.
[43] Ibid
[44] UNCTAD (2019), n.22 at p.

opportunities for entrepreneurship, innovation and job creation through business partnerships and collaboration on innovation and access to alternative funding such as cloud funding.

The digital economy has provided a window of opportunity for business growth at the time when traditional businesses have been severely hit by COVID-19 measures the world over. In Africa, e-commerce operators including new entrants have reported increased income and in some cases more staff have been hired to meet the unprecedented surge in demand for their products and services[45]. The digital economy, consequently presents an untapped source of revenue for African governments to explore and compensate for the falling revenues amid the wake of COVID-19 pandemic.

On the flip side, while the digital advances have generated enormous wealth in record time, that wealth has been concentrated in small numbers of individuals, companies and countries, creating a situation that limits full realization of the benefits from adopting and using digital trade platforms[46]. As a result, people with limited education and low levels of literacy, people without access to devices who are unable to connect to the internet, and small, micro and medium enterprises would be likely to find difficulty in harnessing the full benefits of the digital economy. Moreover, due to the growing complexity of the ways of generating revenue or doing business online, governments currently face capacity challenges to adapt tax policy to the rapidly changing business models in the digital economy.

3.1 Continuing transformation and growth

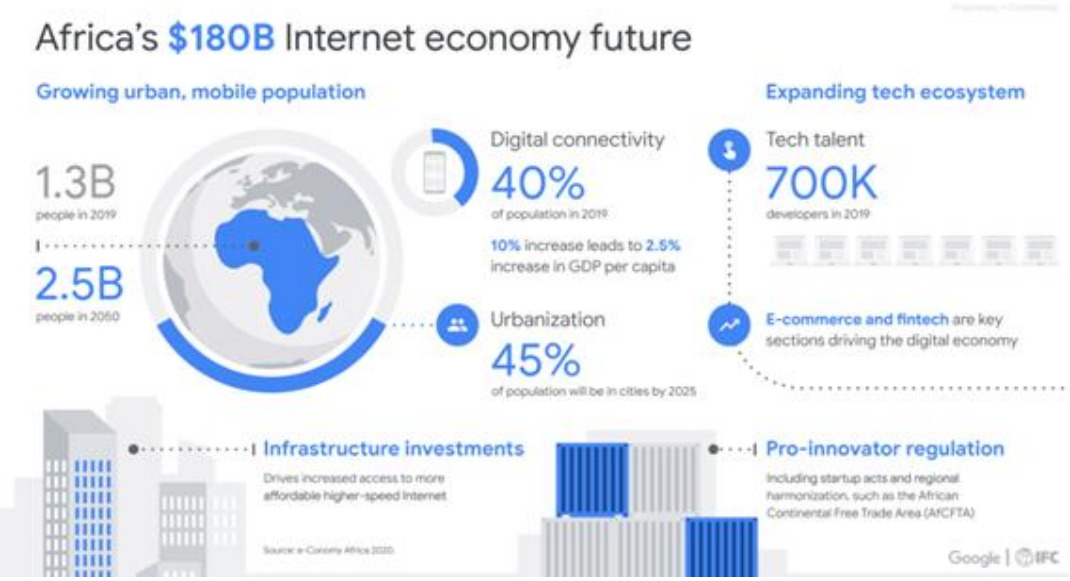
Digitalization has seen rapid development especially after the adoption of the Tunis Agenda for the Information Society in 2005[47], with the number of internet users reaching above half the world population in 2018, greater digital capabilities and devices, new technologies and services have been developed and they represent higher stakes for development[48]. As a result, "growth, productivity and human development will increasingly be determined by the level of integration into the digital economy"[49]. Most recently, internet usage in Africa has seen a special boost from COVID-19 pandemic with up to 20% more people, businesses, and governments shifting their activities online as they complied with movement restrictions[50]. Such measures that were implemented by countries across the African continent and worldwide have led to e-Commerce behaviors that may outlive the pandemic period.

In Africa, the Internet economy is transforming development by fostering economic opportunities, creating jobs, and providing innovative solutions to complex challenges, like access to healthcare,

[45] Deloitte, 2021
[46] Ibid
[47] UNCTAD (2019), n.22 at p.
[48] Ibid
[49] Ibid
[50] e-Conomy Africa 2020 - Africa's $180 Billion Internet Economy Future: e-Conomy-Africa-2020.pdf (ifc.org)

education, and finance[51]. According to e-Conomy Africa 2020**,** Africa's Internet economy has the potential to reach $180 billion by 2025, accounting for 5.2% of the continent's gross domestic product (GDP) and the projected potential contribution could reach $712 billion, 8.5% of the continent's GDP, by 2050.

The new digital and frontier technologies underpinning the virtual economy, are constantly evolving with implications on productivity, trade, employment and equity- issues central to sustainable development. This situation calls for comparable global efforts to regulate, monitor and devise appropriate policies that will not only support current trends but mitigate the resulting risks.



Source: IFC, 2021

3.2 Information accessibility

Digital platforms are key players in the digital economy, hosting virtual environments where transactions between producers and consumers can take place. There are numerous types of platforms including social media, knowledge sharing, media sharing and service-oriented, each one interacting with users differently[52]. Media sharing digital platforms like Google, Facebook, and YouTube provide a free-space for users to interact with the platform and charge advertisers to access their users[53]. This structure allows platform owners to obtain a wealth of information on both sets of users while producers and consumers have limited access to information about other users[54]. Such information asymmetry brings about a situation of moral hazard on the side of the

[51] Ibid
[52] Watts, 2020
[53] OECD
[54] UNCTAD (2019), n.22 at p.

platform owner, who is able to use the information to manipulate markets and have complete control over the price structure[55].

The expanding importance of data for value-creation in the digital economy proves difficult when designing tax policies. User data is the main income generating asset for platform owners who leverage the data in a variety of ways but assigning an objective value of the data which can then be taxed is complex[56]. If the data is determined to be self-created by a firm, it wouldn't show on standard balance sheets and would traditionally not be taxed[57]. Furthermore, the value of the data may be intrinsically linked to the value of the business - the data itself has no value, it is what the company does with the data that makes it valuable. Therefore, looking at the cost of data when it is sold is not sufficient for tax purposes[58]. Attempting to value the data firms have on individuals raises privacy questions on the ownership of personal data, whether it is considered property of the individual or the business[59]. Tax authorities are therefore faced with a difficult situation, they are blind to the contents of the data and also to how the value is made.

3.3 Diminishing physical presence

Due to the nature of the digital economy, physical presence is no longer a necessity for individuals and companies seeking to generate revenue in a foreign jurisdiction. UNCTAD has acknowledged that "governments may find it difficult to obtain statistical information about activities of digital platforms that are active in their countries but that lack a physical presence there".[60] Indeed, "with increasing digitalization, many economic activities are taking place online without the need of a physical presence".[61] Taxable presence or nexus has long been a fundamental element of the ability of countries to tax a business or commercial transaction and, with the advent of the digital economy, the concept is no longer fit for purpose.

"The growth in cross-border trade in digital services has energized concerns that a lack of physical presence of a foreign supplier in the market state coupled with the use of data resources the supplier obtains from its customers in the market state erodes the legitimate income tax base of the market state".[62] The ability of transnationals to transcend borders and relocate in low-tax jurisdictions creates issues with such source-based taxation[63]. The issue is further complicated when trying to determine where value is created.

> "The location of servers, software and intellectual property could serve as the profit-based jurisdiction, but these can usually be easily moved. Location-specific data collected from one country using technology of another country, may be processed in another country and

[55] Rochet, J. and Tirole, J. (2006), Two-sided markets: A progress report, Rand Journal of Economics, 35, 645-667.
[56] OECD (2013), Action Plan on Base Erosion and Profit Shifting, Paris
[57] OECD
[58] ibid
[59] ibid
[60] UNCTAD (2019), n.22 at p.49
[61] UNCTAD (2019), n.22 at p.142
[62] Chris Noonan & Victoria Plekhanova, *Taxation of Digital Services under Trade Agreements*, Journal of International Economic Law, 23, 2020, p.1018
[63] Gresik, T. (2001), The taxing task of taxing transnationals, Journal of Economic Literature, 39, 800- 838.

used to improve offerings in another. Furthermore, data sources may be combined to create value."

3.4 Trade and investment obligations

The interaction between taxation and trade agreements post-BEPS has been a growing concern as countries have increasingly introduced either defensive tax measures (both direct and indirect) or competitive tax policies in response to increasing pressure to attract foreign direct investments. For quite some time, an underlying tension has existed between taxation, trade and investment policy objectives and "the [advancement] of the digital economy has exacerbated this conflict"[64]. As tax policymakers and administrators have taken action to address aggressive tax avoidance and tax evasion, the policies they have designed, both to discourage businesses and individuals from engaging in arbitrage and to halt the use of low or no tax jurisdictions, have begun to infringe upon trade and investment obligations. The outcome has been an increase in dispute settlement processes undertaken through investor state dispute settlement (ISDS) provided for under international investment agreements (IIA) and an emerging number of cases between states at the World Trade Organization Dispute Settlement Body (WTO DSB).[65]

Although a majority of free trade agreements and IIAs include tax carve outs[66], the growing body of cases has demonstrated that these are no longer sufficient. This should be a key concern since investment arbitration and DSB are expensive processes that can be long drawn out and may mean tax authorities cannot implement policies until a decision is made. In addition, countries now need to be aware that "taxation measures that are not related to income tax and not covered by DTAs are more vulnerable to challenges under the WTO".[67]

Countries will also need to strongly consider the implications of e-commerce negotiations being undertaken at the WTO. Since 2017, a number of countries at the WTO have been involved in negotiations for new rules on e-commerce. The current moratorium, first adopted in 1998, has

[64] John Bush & Rachel Thrasher, *Taxing the digital economy: Options, trade considerations and a solution*, Tax Notes International, 27 July 2020. Available online at: https://www.bu.edu/gdp/files/2020/07/Taxing-the-Digital-Economy-Options-Trade-Considerations-and-a-Solution.pdf

[65] More recently, the Vodafone I and II investment arbitration cases which concerned tax measures undertaken by the Indian authorities that violated investor protections. Claims were made by Vodafone under India's IIAs with the UK and Netherlands, in regards to the retrospective taxation of a transaction that took place outside of India. For more on this see: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/581/vodafone-v-india-i-
From a trade perspective the 2012 Panama v Argentina case concerned measures that Argentina had adopted in line with the EU guidance on sanctions for non-compliant jurisdictions for tax purposes. Panama argued that these actions violated non-discrimination provisions. For more see:
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds453_e.htm
Finally, a series of subsidies cases within the WTO DSB have included preferential tax treatment as measures constituting state aid - see for instance:
https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_ATA(2020)659347#:~:text=Following%20a%20long%2Dstanding%20dispute,authorised%20to%20impose%20retaliatory%20tariffs.

[66] In the area of IIAs a number of solutions have been provided by the United Nations Conference on Trade and Development (UNCTAD) in a recent publication - UNCTAD, *International Investment Agreements and their Implications for Tax Measures: What Tax Policymakers need to Know*, UNCTAD, 2021. Available online at: https://unctad.org/webflyer/international-investment-agreements-and-their-implications-tax-measures-what-tax

[67] Noonan & Plekhanova (2020), n.39 at p.1025

stopped countries from imposing customs duties on electronic transmissions.[68] This moratorium is estimated to have cost African countries US$2.6 billion in 2017.[69] In addition to extending the moratorium, negotiating countries propose to liberalize e-commerce by limiting regulation of the space. The Africa Group at the WTO have so far opposed a majority of the proposed rules, seeking to "preserve their right to regulate e-commerce" and calling for "a thorough examination of the opportunities and risks associated with digital transformation and e-commerce".[70] The limitations that may arise from the negotiations are likely to have implications for tax policymaking in respect of the digital economy and tax authorities must pay keen attention to the outcomes of these negotiations.[71]

Finally, given that Rwanda, and a multitude of African countries, have joined the African Continental Free Trade Agreement (AfCFTA), the introduction of new taxing solutions will need to be considered in the context of this agreement.

3.5 How this has affected taxation in general.

"The digital economy is growing two and a half times faster than global GDP, and governments are trying to tax the resulting revenue—mostly jurisdictions that are not home to the largest companies in the digital economy"[72]. However, the invisible nature of digital exchange between borders proves difficult for governments to "identify and tax value generated in their jurisdictions through conventional approaches to revenue collection"[73]. The ability to deliver services over the Internet makes physical jurisdictions less constraining. Transfer pricing and profit shifting to low-tax jurisdictions through subsidiaries has become increasingly common as a way to reduce the tax burden and erode the tax base[74]. This has particularly and disproportionately affected Developing economies, with an estimated $100 billion lost annually in tax avoidance schemes by multinationals (MNEs)[75].

The situation is made even worse as most online purchases in low-income countries are imports from the developed world, where companies are able to make a lot of income while avoiding taxes because they don't have to have physical presence in these jurisdictions where they are selling via

[68] For more on this see, General Council of the WTO, *WTO members agree to extend e-commerce, non-violation moratoriums*, WTO, 10 December 2019. Accessed on 8 March 2021 at: https://www.wto.org/english/news_e/news19_e/gc_10dec19_e.htm

[69] Rashmi Banga, *Growing Trade in Electronic Transmissions: Implications for the South*, UNCTAD, February 2019, p.17

[70] Ashley Hope & Puseletso Sauli, *Africa and the WTO's e-commerce agenda*, TRALAC Blog, 19 January 2018. Accessed on 8 March 2021 at: https://www.tralac.org/blog/article/12598-africa-and-the-wto-s-e-commerce-agenda.html

[71] For more on this see: Jane Kelsey, John Bush, Manuel Montes & Joy Ndubai, *How Digital Trade Rules Would Impede Taxation of the Digitalized Economy in the Global South*, Third World Network, 2020. Available online at: https://twn.my/title2/latestwto/general/News/Digital%20Tax.pdf

[72] Bloomberg Tax, 2021

[73] Patrick Low, 2020

[74] UNCTAD, 2019

[75] UNCTAD, 2015

online medium. This creates an unfair trade competition for domestic businesses from big and powerful foreign online businesses and it also intensifies financial and political pressures on governments with unprecedented falling GDP growth as a consequence of the Covid-19 economic destruction.

Addressing the tax challenges raised by digitalization has been a top priority of the OECD/G20 Inclusive Framework in BEPS since 2015[76]. However, BDO 2021[77] draws attention to the OECD's work towards a global solution, in the absence of consensus and the time that it is likely to take to agree on a workable global framework. The 137 members of the Inclusive Framework have not yet reached agreement on a specific, implementable plan[78] and while the OECD initially intended to reach an agreement by the end of 2020, the OECD announced that it expects an agreement by mid-2021.

Further, as the OECD continues to look for a multilateral agreement, some countries have pressed ahead and adopted unilateral measures. The first jurisdiction to suggest such measures was the EU in 2018 in the form of a digital service tax (DST), although this proposal was never implemented due to opposition by some member states, several EU- and non-EU-countries have modeled their proposed DSTs after the EU proposal. The shift of the deadline by the OECD to reach a consensus-based agreement, has sparked renewed interest in DSTs among countries, with the EU threatening to propose a DST structure should the if the OECD failed to reach an agreement and in September 2020, the African Tax Administration Forum (ATAF) published a paper on the Suggested Approach to Drafting Digital Services Tax Legislation, which includes a model DST law[79].

Unilateral measures are however, seen by many as creating other major challenges. For example, BDO says that these individual measures "take a range of forms and even where they align in concept - for example, a digital services tax - the base for taxation can differ significantly"[80]. It also observes that the inconsistency of unilateral measures increases the complexity for businesses who seek to comply with the rules and can increase the overall tax burden.

4 Policy options emerging in other jurisdictions and internationally

In response to the quickening expansion of the digital economy and its resultant increasing value, tax policy makers globally have attempted to develop solutions to create or extend tax liabilities within their jurisdictions. At the domestic or unilateral level, these solutions have varied between direct and indirect tax proposals, whilst at the global or multilateral level the main proposal under discussion has focused on corporate taxation. Each of these proposals, discussed below, have their own constraints and benefits that authorities and policy makers in Rwanda will need to reflect

[76] Bloomberg Tax, 2021
[77] BDO Global
[78] Ibid
[79] ATAF,2020
[80] BDO Global

upon in evaluating the most fitting approach for the country. In addition, in order for a number of these policy proposals to be implemented whilst meeting the objectives of simplicity, effectiveness and certainty for taxpayers, some features of the tax system will need to be operating efficiently with an enabling legal framework, existing administrative capacities and systems both for the collection of information and revenue.

4.1 Direct taxation

OECD Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework)

Since 2019, the Inclusive Framework has been consulting (both publicly and with members) on the proposed solutions to the tax challenges arising from the digitalization of the economy. The outcome has been two solutions set out as Pillar One, focusing on the nexus and profit allocation, and Pillar Two, dealing with the global minimum tax which is intended to address the remaining Base Erosion and Profit Shifting (BEPS) issues. In brief, the two pillars propose the following:

- Pillar One (the Unified Approach) - "seeks to adapt the international income tax system to new business models through changes to the profit allocation and nexus rules applicable to business profits."[81] This approach introduces the concept of the market jurisdiction, or the jurisdiction where the customer or user of a service is located. It expands taxing rights to these countries where "there is an active and sustained participation of a business in the economy of that jurisdiction through activities in, or remotely directed at, that jurisdiction".[82] Pillar One has three key elements[83]:
    1. Amount A[84] - the new taxing right for market jurisdictions applied to the residual profits of the multinational enterprise (MNE) calculated at group level (as opposed to a separate entity basis). This will operate alongside current nexus and profit allocation rules (being the arm's length principle) and likely apply to entities above a specific revenue threshold. The residual profits will be determined based on a formulaic approach.
    2. Amount B - a fixed amount of profits for the baseline marketing and distribution activities that are carried out physically in the market jurisdiction, this is based on the arm's length principle.
    3. Tax certainty - effective dispute prevention and resolution mechanisms particularly where Amount A is concerned.
- Pillar Two (the Global anti-base erosion proposal) - addressing the remaining BEPS challenges, Pillar Two is "designed to ensure that large internationally operating businesses pay a minimum level of tax regardless of where they are headquartered or the jurisdictions

[81] OECD Inclusive Framework, *Tax Challenges Arising from Digitalization - Report on Pillar One Blueprint*, OECD, 2020, p.11
[82] Ibid
[83] Ibid
[84] "This represents a simplified proxy of the portion of the residual profit of a business that can reasonably be associated with the sustained and significant participation of that business in the economy of a market jurisdiction." - OECD Inclusive Framework (2020), n.58 at p.123

they operate in".[85] It proposes to, "(i) ensure minimum taxation while avoiding double taxation or taxation where there is no economic profit, (ii) cope with different tax system designs by jurisdictions as well as different operating models by businesses, (iii) ensure transparency and a level playing field, and (iv) minimize administrative and compliance costs"[86]. It includes four main mechanisms:

1. The income inclusion rule - which would tax the income of a foreign branch or a controlled entity if that income was subject to tax at an effective rate below the minimum rate.
2. Switch over rule - permits a jurisdiction to override the exemption method in order to apply the income inclusion rule to the profits of a permanent establishment.
3. Under-taxed payments rule - this rule is a backstop to the income inclusion rule. It provides for a top-up tax where the income inclusion rule does not apply.
4. Subject to tax rule - in order to enable source countries to protect their tax bases, this rule will apply to specific categories of payments (potentially interest, royalties etc.) that present BEPS risks and permits countries to deny treaty benefits if the payment is subject to no or low rates of taxation.

United Nations Tax Committee (UNTC)

The UNTC expressed a number of key concerns about the Inclusive Framework proposals that are relevant for developing countries[87]:

- Regarding the scope, the choice to target consumer facing businesses as opposed to the original objective of tax issues related to digital companies without physical presence is a concern.
- The economic thresholds proposed will need to be low enough in the interest of developing countries, the current revenue threshold of €750 million will unnecessarily restrict the potential to tax companies delivering a substantial amount of digital services to developing countries. Thresholds may need to be country specific.
- Carve-outs for specific sectors are necessary since the market jurisdiction approach may deprive source jurisdictions of their right to tax. In particular, extractives and commodities should be discussed extensively, whilst the financial services sector should be considered.
- The proposal is highly complex and developing countries could face challenges in relation to implementation, administration and the coherence of their legal systems.

[85] OECD Inclusive Frameworks, *Tax Challenges Arising from Digitalization - Report on Pillar Two Blueprint*, OECD, 2020, p.14
[86] Ibid
[87] Committee of Experts on International Cooperation in Tax Matters, *Tax consequences of the digitalized economy - issues of relevance for developing countries*, UNTC, 22 June 2020. Available at: https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-06/CICTM%2020th_CRP.25%20_%20Digitalized%20Economy.pdf

- The ability to obtain the information required to enforce the unified approach and effective engagement in the new administrative processes required will also be a concern. At a primary level countries need fully operational automatic exchange of information (AEOI) and country-by-country reporting requirements.

The UNTC suggests the remodeling of the unified approach into a simpler version, perhaps through the use of withholding taxes. The independent work undertaken by the UNTC on this issue has tried to identify a simplified approach, this has focused on the expansion of nexus under tax treaties to create a taxable presence in the market jurisdiction. Specifically, they recently revised the UN Model Tax Convention (UN MTC) to include Article 12B on the income from automated digital services. In brief the draft provision provides[88]:

- Income from automated digital services arising in a contracting state and paid to a resident of the other contracting state may be taxed in that other state.
- It includes any payment in consideration for any service provided on the internet or an electronic network requiring minimal human involvement from the service provider. it does not include royalties, or fees for technical services (already covered by Article 12A)
- This income will only be taxable in the market jurisdiction where a permanent establishment or a fixed base in connection with which the obligation to make the payment was incurred.

The UN MTC further provides for the taxation of technical service fees via Article 12A, the provision covers the following:

- Taxation of fees for technical services in the source jurisdiction.
- Fees for technical services include any payments in consideration for any service of a managerial, technical or consultancy nature unless made to an employee of the person making the payment, for teaching purposes or by an individual for services for the personal use of an individual.
- The obligations will arise where a person has a permanent establishment or a fixed base in connection with which the obligation to pay the fees was incurred and those fees are borne by either the permanent establishment or the fixed base.

In order to enable this provision to operate effectively, the UN MTC has expanded the concept of a permanent establishment to include:

- The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose but only if they continue in the contracting state for an aggregate of 183 days in a 12 month period.

It is likely that its scope will be further expanded for purposes of Article 12B to establish a significant economic presence based on common factors relating to digital activities.

[88] See UNTC, *The proposed draft for a new Article 12B and its Commentary*, UNTC, 2020. Available at: https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-10/CITCM%2021%20CRP.41_Digitalization%2010102020%20Final%20A.pdf#page=9

Africa Tax Administration Forum (ATAF)

ATAF has provided extensive guidance to its members regarding the OECD Inclusive Framework proposals and how effective they may be in addressing the challenges faced by African countries. Helpful guidance, in the form of technical notes, has been prepared and published by the secretariat to inform member countries about the progress of the consultations.[89]

> "In ATAF's view, for the [Globe anti-base erosion proposal] to be effective in stemming artificial profit shifting through excessive base eroding payments...the minimum effective tax rates must be set at a high enough rate to remove the incentive for such profit shifting. Statutory corporate income tax rates vary across African countries, but most African countries have rates between 25% and 35%. If the minimum effective rate is substantially below these rates, we consider it is unlikely to lead to a change in taxpayer behavior in respect of such profit shifting."[90]

ATAF further recommends that African countries should apply the Undertaxed payments rule to "assist in stemming the very substantial loss of tax revenues in Africa through base eroding payments, but also assist in addressing the current imbalance in the allocation of taxing rights, which inappropriately favors residence jurisdictions to the disadvantage of low income countries, which are usually source jurisdictions".[91] If this is too difficult, the subject to tax rule should be considered as a mandatory rule for all developing countries as it may help to address the imbalance in allocation of taxing rights.

Nigeria[92]

In May 2020, Nigeria published the Companies Income Tax (Significant Economic Presence) Order, 2020 (the Order). The concept of significant economic presence (SEP) was first introduced in Nigeria via the Finance Act, 2019, with the intention of expanding the scope of the application of corporate taxes to foreign companies earning income from digital activities in Nigeria. SEP expands the nexus, by establishing a tax residence in Nigeria where a foreign company:

- Derives an annual gross turnover of approx. US$ 65,000 in the country by way of:
    - Streaming or downloading services of digital contents - including movies, videos, music, applications, games, e-books etc. - to any person in Nigeria.
    - Transmission of data collected about Nigerian users generated from their activities on a digital interface including websites or mobile applications.
    - Provision of goods or services directly or indirectly through a digital platform to Nigeria.
    - Provision of intermediation services by way of a digital platform, website or other online applications that link suppliers to customers in Nigeria.

[89] See for instance, ATAF, *Technical Note - Inclusive Framework issues Statement on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalization of the Economy*, ATAF, 2020.
[90] Ibid, at p.10
[91] Ibid, at p.10
[92] Wole Obayomi, *Minister of Finance issues order on significant economic presence by non-Nigerian companies*, KPMG, 20 June 2020. Accessed on 8 March 2021 at: https://home.kpmg/ng/en/home/insights/2020/06/minister-of-finance-issues-order-on-significant-economic-presence-by-non-nigerian-companies.html

- Uses a Nigerian domain name or registers a website address in Nigeria; or
- Has purposeful and sustained interaction with persons in Nigeria by customizing its digital page or platform to target persons in the country, including reflecting the prices of its products or services in Nigerian currency or providing options for billing or payment in Nigerian currency.

In addition, foreign companies providing technical, professional, management or consultancy services shall also establish a SEP in Nigeria if it earns any income or receives any payment from a person resident in Nigeria, or a fixed base or agent of a foreign company in the country.

4.2 Indirect taxation

OECD

The OECD has provided guidance on the application of Value Added Tax (VAT)/Good and Services Taxes (GST) to online sales.[93] In brief, Working Party No. 9 on Consumption Taxes has been engaged in work on "possible approaches to further increase the efficiency of VAT/GST collection, particularly on online sales to final consumers (business to consumer trade)".[94] They were keen to explore the role of digital platforms in the collection process which could enhance the effectiveness of VAT/GST. Digital platforms include platforms that electronically enable direct interactions between two or more customers or participant groups. The OECD's findings can assist tax authorities in evaluating and developing measures to involve digital platforms in VAT/GST collection on online sales, "with particular guidance on transactions involving the importation of goods, with a view to maximizing the effectiveness of such measures and their consistency across jurisdictions".[95]

ATAF

ATAF has prepared a technical note for member countries on VAT policy and administrative considerations for African countries with respect to the digital economy.[96] Some key observations are made about the potential challenges and opportunities for tax administration:

> "VAT implications must be carefully appraised considering that the ability not to own inventory/assets or have physical nexus results in low or no visibility on e-commerce transactions by the tax administrations. Thus, VAT being a consumption tax charged on supply of goods and services will be highly affected by the dynamics of e-commerce."

There are a number of opportunities to be drawn from the growth of the digital economy including the potential to automate tax administration, increased cross-border transactions that can be

[93] OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*, OECD, 2019. Available at: https://www.oecd-ilibrary.org/docserver/e0e2dd2d-en.pdf?expires=1615288345&id=id&accname=ocid177428&checksum=888FEE0ED91E216003CF0571840B0676
[94] Ibid, p.9
[95] OECD (2019), n.73 at p.10
[96] ATAF, *Digital Economy & Cross Border Transactions: Value-Added Tax (VAT) Policy and Administrative Considerations for African Countries*, 2020.

subjected to tax, and inspiration to update the tax law framework given the new business models.[97] Countries should also be aware of the risks including[98]:

- The lack of or inadequate visibility and transparency of online transactions can result in low data integrity for administration of VAT and may give rise to recurrent fraud and revenue leakage.
- Late and/or poor remittance of VAT due to the inability of revenue authorities to have visibility of transactions or enforce compliance on foreign suppliers.
- Inaccurate implementation of VAT where the rules are unclear on the VAT implication of cross-border transactions.
- Growth of a hidden economy with no visibility on online transactions.

In order to extend the scope of VAT to include the services supplied via the digital economy ATAF recommends that countries should[99]:

- Expand the definitions of the supply of goods/services so that intangibles and rights are not outside the scope.
- Services should cover intangibles.
- The place of supply should be expanded to take into consideration the supply of intangibles - countries may consider the use of a proxy like residence of the procurer of services, the billing address etc.
- Simplified registration frameworks will need to be provided for foreign suppliers, the use of a local tax representative or withholding VAT (for business to business) may also be considered.
- The solution adopted will need to enable the digitalization of administration for VAT to be effective.

South Africa

In 2014, South Africa introduced VAT on e-commerce transactions at the standard rate of 14%.[100] Local and foreign suppliers of e-commerce services are required to register as VAT vendors in South Africa. The amendment was intended to "compel suppliers of electronic services to South African residents where payment for such services originates from a South African bank to register as VAT vendors".[101] Electronic services include the supply of internet-based auction services; games including electronic betting; e-books, music, audio visual contents etc.; subscription services including magazines and newspapers; and educational services including internet-based courses or education programmes. To register for VAT suppliers should meet the domestic voluntary registration threshold for annual revenue.

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[97] Ibid, p.3
[98] Ibid, p.3
[99] Ibid
[100] Graeme Palmer, *VAT and e-commerce*, SAIT, 30 April 2014. Accessed on 9 March 2021 at: https://www.thesait.org.za/news/170960/VAT-and-e-Commerce.htm#:~:text=Advances%20in%20technology%20have%20seen,the%20standard%20rate%20of%2014%25.
[101] Ibid

Kenya[102]

The Finance Act, 2019 introduced VAT to the supply of services via a digital marketplace. According to the recently enacted VAT (Digital Marketplace Supply) Regulations[103], the digital marketplace is defined as a "platform that enables the direct interaction between buyers and sellers of goods and services through electronic means". The scope extends to downloadable digital content, subscription based media, streaming services, software programmes, website filters/firewalls, warehousing services, file-sharing and cloud storage, supply of distance teaching or e-learning and supply of services on online marketplaces (including transport hailing apps), amongst others. This mainly applies to business to customer transactions and non-residents are provided with a simplified tax registration framework or the option to appoint a local tax representative. The place of supply of services will be in Kenya where:

- The payment proxy (including debit or credit card information) and bank details are in Kenya; or
- The residence proxy (including the billing or home address) or access proxy (including the internet address or mobile country code) is in Kenya.

VAT is applicable at the standard rate of 16% and suppliers should qualify for the annual turnover threshold of approx. US$ 50,000 to register for VAT.

EU

The European Union (EU) has introduced a number of measures to enable the application of VAT to the digital economy. The VAT Mini One Stop Shop (MOSS) is an electronic system designed to support the suppliers of telecommunication services tv and radio to declare VAT on telecommunication, broadcasting and electronic services (TBE) in the EU.[104] It has, so far, successfully enabled TBE service providers to register for VAT in one Member State and account for VAT due in other Member States therein.[105] This system will be expanded to other business to customer services, intra-Community distance sale of goods and certain domestic supplies of goods, ultimately resulting in a larger One Stop Shop (OSS).[106]

The European Commission expects that the proposals made in the 2017 VAT e-commerce package (further developed in 2021), will come into force in July 2021.[107] The amendments will affect VAT rules applicable to cross-border business to consumer e-commerce activities. Taxable persons

[102] EY Global, *Kenya introduces VAT regulations on supply of digital services*, EY, 19 June 2020. Accessed on 9 March 2021 at: https://www.ey.com/en_gl/tax-alerts/kenya-introduces-vat-regulations-on-supply-of-digital-services

[103] For more see: ALN, The *Value Added Tax (Digital Marketplace Supply) Regulations, 2021 - Legal alert*, ALN, 2021. Available at: https://www.africalegalnetwork.com/kenya/wp-content/uploads/sites/22/2020/10/AK-The-Value-Added-Tax-Digital-Marketplace-Supply-Regulations.pdf

[104] European Commission, *Explanatory notes on VAT e-commerce rules*, September 2020. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/vatecommerceexplanatory_notes_30092020.pdf

[105] Ibid, p.6

[106] Ibid, p.6

[107] European Parliament, *Taxation of the digital economy: Latest developments*, EP, December 2020. Available at: https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/659414/EPRS_ATA(2020)659414_EN.pdf

facilitating the distance sale of goods through an electronic interface will collect VAT on those sales via the OSS framework.[108]

4.3 Digital Services Taxes (DST)

A number of countries have introduced and even implemented proposals for Digital Services Taxes (DSTs). The first version of the DST was first proposed by the EU in 2018 by way of a draft Directive on a common system to tax revenues resulting from the provision of certain digital services. The EU DST was proposed at a rate of 3% on gross revenue (net of VAT and similar taxes) derived in the EU through: advertising on a digital interface targeted at users of that interface; providing a multi-sided interface permitting users to interact with another and which may facilitate the provision of underlying supplies of goods or services between users; or transmitting data collected about users and generated from their activities on digital interfaces.[109] Only entities with a total annual worldwide revenue above EUR 750 million and a total annual taxable digital revenue in the EU above EUR 50 million would have been subjected to the DST[110] however the proposal was never implemented.

Since then, and following the global discussions regarding the tax challenges of the digitalized economy which arose in 2019, several countries including France, Australia, United Kingdom and Kenya, amongst others, introduced domestic proposals. The DSTs that have been implemented or proposed "are a mix of gross receipts taxes and transaction taxes...on receipts from the sale of advertising space, provision of digital intermediary services such as the operation of online marketplaces, and the sale of data collected from users".[111] By and large, the DST ring-fences the digital economy from the rest of the economy and mainly targets digital advertising services. In general the DSTs that have been introduced or proposed so far have been found to differ in scope and in the thresholds applied (if at all) which means that in some instances more companies may be required to remit this tax in one jurisdiction compared to another.[112] In addition, it is still unclear whether these taxes can be considered to be taxes on income and may, therefore, not necessarily fall under the scope of tax treaties. This means that there is a likelihood of double taxation that may remain unaddressed. Finally the potential for retaliation from the United States has been a concern since July 2019 when the US Trade Representative initiated an investigation against France's DST on the basis that this tax would likely target large U.S. based tech companies. This was later confirmed as a Section 301 investigation of France and a number of other countries including Austria, Brazil, Czech Republic, the EU, India, Indonesia, Italy, Spain, Turkey and the UK in 2020.

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[108] European Commission (2020), n.81 at p.13

[109] For more on this see: PWC, *EU Direct Tax Newsalert*, PWC, 21 March 2018. Available online at: https://www.pwc.com/gx/en/tax/newsletters/eu-direct-tax-newsalerts/eudtg/european-commission-proposes-new-rules.pdf

[110] Ibid

[111] Amie Ahanchian, Donald Hok, Philippe Stephanny & Elizabeth Shingler, *Digital Services Tax: Why the World is Watching*, Bloomberg Tax, 6 January 2021. Accessed on 9 June 2021, available online at: https://news.bloombergtax.com/daily-tax-report/digital-services-tax-why-the-world-is-watching

[112] Ibid

ATAF

ATAF has published a guide for member countries considering the adoption of a DST. Recognizing that "there is a significant risk for African countries in simply waiting to see whether the OECD Inclusive Framework can achieve an international solution"[113]ATAF has developed a suggested approach to drafting DST legislation with a series of options for countries. Their proposal will be based upon a fixed rate applicable to gross turnover, applicable to specific services, and not creditable against income tax (since it will not qualify as an income tax and therefore not fall under the framework of tax treaties). It will be an addition to income tax charges (rather than in lieu of). Some of the recognized benefits include:

- Relatively simple to calculate and administer compared to the income tax.
- Although revenue raised will be a nominal amount, it could provide more information to tax authorities about the nature of business, transactions and income being earned with respect to the digital economy.

Some challenges and drawbacks:

- Both the DST and Income tax could be applicable to a person, particularly those resident in Rwanda, whilst nonresidents will be paying a fairly low tax.
- Firms operating at a loss will still be required to pay the DST, although this is mitigated by the low rate.
- It should not impede upon the growth of the sector.
- They have been challenged by the US as discriminatory on the basis of trade obligations and investigations have been initiated to query this.

France[114]

In July 2019, France introduced the DST and, despite opposition from the US and threats to impose sanctions on the grounds of discrimination, will likely become operational in 2021. At 3% of the revenues deemed to have been generated in France by digital companies (wherever they have been established) with annual supplies of taxable services exceeding €25 million in France and €750 million globally. It applies to advertising revenue earned from services reliant on data collected from internet users, "revenues from the provision of a linking service between internet users and the sale of user data for advertising purposes".[115] Online sales and provision of digital content are excluded.

Kenya[116]

[113] ATAF, *Domestic Resource Mobilisation: Digital Services Taxation in Africa*, ATAF Policy Brief, Issue 1, June 2020, at p.1

[114] Eglantine Lioret & Valerie Farez, *France to resume collection of digital tax*, Pinsent Masons, 4 December 2020. Accessed on 10 March 2021 at: https://www.pinsentmasons.com/out-law/news/france-to-resume-collection-of-digital-tax#:~:text=The%203%25%20digital%20services%20tax,France%20and%20%E2%82%AC750m%20worldwide.&text=These%20two%20instalments%20correspond%20to,digital%20tax%20due%20in%202019.

[115] Ibid

[116] EY Global (2020 & 2021), n.64

The DST was introduced 1 January 2021 at a rate of 1.5% of the gross transaction value applicable to income from services provided through a digital marketplace in Kenya. The Income Tax (Digital Service Tax) Regulations, 2020 became effective in January 2021 and provide guidance on the operation of the tax. It is payable by way of a withholding tax system at the time of the transfer of payment by the customer. The digital service provider, digital marketplace provider or their tax representative will be required to pay DST on the 20th day of the following month in which the service was provided. A taxpayer may be appointed as a DST agent to withhold and remit taxes to the revenue authority. The DST will be a final tax for non-residents without a permanent establishment in Kenya and, for residents or persons with a permanent establishment, that tax will be offset against income tax payable in the respective financial year.

Non-residents without a permanent establishment may register under the simplified tax registration framework or, as mentioned above, appoint a tax representative. The DST could expand to a number of business models and persons in Kenya including, digital content creators, streaming services, and hotels using travel websites to attract customers, amongst others.

India[117]

In 2016, India introduced the equalization levy (EL) applicable to "any specified person making a payment to a nonresident for online advertisement and related services"[118]. The EL amounted to a deduction of 6% of the gross consideration paid. This essentially operated as a withholding tax to be deducted and paid by users/customers in India.

This was later amended in 2020 to expand the scope and cover consideration received or receivable by nonresident e-commerce operators for ecommerce supply or services provided in India at the rate of 2%. This shifted the obligation to pay the levy from the consumer of the service to the supplier. The supplier is required to provide the details of consideration received/receivable on a quarterly basis and the statement of taxes paid is filed electronically via the digital signature or through an electronic verification code (EVC). The levy will be applicable where the supplier receives consideration from:

- A person resident in India;
- A nonresident where the sale of advertising targets customers resident in India or customers who access the advertising through an IP address located in India; the sale of data, collected from a person resident in India or from a person using an IP address in India; or the person buys goods or services or both using an IP address located in India.

This levy seems to operate as a tax on income earned by the nonresident supplier, but is not provided for under the Indian Income Tax.

[117] EY Global, *India releases implementation rules for Equalization Levy on e-commerce supply and services*, EY, 2 November 2020. Accessed on 10 March 2021 at: https://www.ey.com/en_gl/tax-alerts/india-releases-implementation-rules-for-equalization-levy-on-e-ccommerce-supply-and-services

[118] Ibid

4.4 Country Experiences in Operationalizing Proposals

Only a handful of these proposals have been fully implemented and become operational however, there are key considerations for authorities evaluating the most appropriate solutions for their jurisdictions:

South Africa - VAT on E-commerce

According to the National Treasury of South Africa, between June 2014 and September 2017 the South Africa Revenue Services (SARS) collected R.2 billion (*approx.* US$ 161 million).[119] Over 200 new foreign suppliers registered for VAT with an average registration time of less than four days. However they found that the legislation at the time had limited application since it specified that "only supplies of services that were specified in a list in the...Regulations would be subject to VAT".[120] As a result, "a large proportion of inbound services supplied electronically fell out of this net and were...not subject to VAT".[121] Amendments to the regulations were then made in 2015, 2017 and 2018, to eliminate the list and extend coverage to all services. In addition, South Africa later adopted the concept of a "deemed supplier" to address the role of digital platforms (which provide local suppliers with the ability to access customers or provide advertising services etc.), which places the VAT liability in the hands of the digital platform.

Kenya - DST

In June 2020 the Kenya Revenue Authority (KRA) established a specialized unit to track the revenues generated by digital transactions in the country.[122] The unit is mainly focused on digital companies without a physical presence in Kenya, online businesses and digital marketplaces. KRA indicated plans to partner with the Communications Authority of Kenya (CAK) with the intention of obtaining information from telecommunications companies and internet service providers on online activities of Kenyans.[123]

France - DST

Following the introduction of the DST in France, the United States (U.S.) urged the country to refrain from adopting such a law.[124] However, following France's decision to go ahead with the dst, the United States Trade Representative initiated a Section 301[125] of the Trade Act, 1974, investigation. The investigation found that France's DST discriminated against digital companies

[119] See - National Treasury of South Africa, Legal Tax Design, Tax and Financial Sector Policy Unit - Presentation, 2018. Available online at: https://www.un.org/esa/ffd/wp-content/uploads/2018/05/2018-ECOSOC-ICTM_SM_Digital_ABaig.pdf

[120] Ibid

[121] Ibid

[122] Emmanuel Paul, *Kenya sets up a unit to track revenues from all digital transactions*, Techpoint Africa, 29 June 2020. Accessed on 7 Aug 2021, available online at: https://techpoint.africa/2020/06/29/kenya-track-digital-transactions/

[123] Ibid

[124] United States Trade Representative, *Section 301 Investigation - Report on France's Digital Services Tax*, December 2019. Available online at: https://ustr.gov/sites/default/files/Report_On_France%27s_Digital_Services_Tax.pdf

[125] This section sets out three types of acts, policies or practices of a foreign country that are actionable: (i) trade agreement violations; (ii) acts, policies or practices that are unjustifiable (defined as those that are inconsistent with U.S. international legal rights) and burden or restrict U.S. commerce; and (iii) acts, policies or practices that are unreasonable or discriminatory andb urder or restrict U.S. commerce.

from the U.S. on the basis that the DST targeted U.S. digital companies and not French companies, the selection of services and applicable carve-outs target U.S. companies and the DST's relationship to other taxes discriminates against U.S. companies.[126] In July 2021, France indicated that it was willing to make a legal commitment to withdraw the DST to secure a global agreement to address the tax challenges of the digitalized economy.[127] This commitment will only be fulfilled once the global deal (being negotiated the OECD/G20 Inclusive Framework has been implemented.

4.5 Recent developments

Global

Due, in particular, to the ongoing negotiations at the Inclusive Framework and related reform processes, the international tax system has been in a state of transition. As a result, new proposals are emerging that will have implications for all countries. For instance, in April 2021, the Biden Administration released the Made in America Tax Plan[128] which proposes to end the global race to the bottom in corporate income tax by increasing the Global Intangible Low-Taxed Income (GILTI) minimum tax to 21%[129]; introducing SHIELD (Stopping Harmful Inversions and Ending Low tax Developments) by denying US MNEs tax deductions by reference to payments made to related parties that are subject to a low effective tax rate, this tax rate will either be based upon the Inclusive Framework agreement or if yet to be decided 21% to incentivize other countries to adopt a minimum tax on foreign earnings; and a 15% minimum tax on book income or the profit that large corporations report to their investors.[130]

The 15% minimum tax proposal has since been discussed by G7 finance ministers who have expressed "strong support for the Inclusive Framework efforts to address the tax challenges arising from globalization and digitalization of the economy and to adopt a global minimum tax".[131] In this regard they proposed that market jurisdictions should be "awarded taxing rights on at least 20% of profit exceeding a 10% margin for the largest and most profitable multinational enterprises".[132] They also commit to "provide for appropriate coordination between the application of the new international tax rules and the removal of all [DSTs]" and to "a global minimum tax of

[126] Ibid

[127] William Horobin, *France pledges to remove digital tax when OECD deal implemented*, Bloomberg, 6 July 2021. Accessed on 7 August 2021, available at: https://www.bloomberg.com/news/articles/2021-07-06/france-pledges-to-remove-digital-tax-when-oecd-deal-implemented

[128] US Department of the Treasury, *The Made in America Tax Plan*, US Treasury, April 2021. Available online at: https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan_Report.pdf

[129] GILTI addresses the income of foreign affiliates of US Companies from intangible assets such as Intellectual Property rights, and seeks to tax this income if it arises in countries with tax rates below the prevailing US corporate tax rate. Previously the GILTI rate was between 10.5% to 13.125%.

[130] US Department of the Treasury, *The Made in America Tax Plan*, US Department of the Treasury, April 2021. Available online at: https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan_Report.pdf

[131] *G7 Finance Ministers and Central Bank Governors Communique*, G7/HM Treasury, 5 June 2021. Available online at:https://www.gov.uk/government/publications/g7-finance-ministers-meeting-june-2021-communique/g7-finance-ministers-and-central-bank-governors-communique

[132] *Ibid*

at least 15% on a country by country basis".[133] These proposals will likely have implications for all countries including Rwanda, particularly considering the most recent investment regime which provides for a preferential corporate tax rate of 0%.

On 1 July 2021, the OECD/G20 Inclusive Framework on BEPS, registered one of its greatest milestones, by approving the statement on a two-pillar solution to address the tax challenges arising from the digitalization of the economy. As of 9 July, 132 members of the Inclusive Framework had agreed to be part of it[134]. Not all of the 139 countries joined in, in approving the statement, including Kenya and Nigeria. Despite the great reception, several aspects of the two-pillar solution will require significant work and further negotiations in order to determine the implementation needs. The OECD plans to have this framework finalised by October this year, and start its implementation from 2023. The statement also commits to ensuring that all DSTs or unilateral solutions are eliminated.

The progress at the Inclusive Framework has been criticized by African Civil Society Organizations calling for the rejection of the two-pillar solution in favor of a more democratic reform of the global tax system by a UN tax body[135]. Among the issues highlighted is that the proposed allocation of tax revenues is to the exclusive benefit of wealthy countries, leaving developing countries on their own.

Kenya

In Kenya[136], the Finance Act, 2020 introduced a minimum tax of 1% of gross turnover applicable to persons whose:

- Income is not specifically exempt under the Income Tax Act;
- Source of income does not include employment, rent from residential property, capital gains, taxpayers in the extractive sector and taxpayers whose income is subject to turnover tax; and
- Installment tax (based on the statutory corporate income tax rate of 30%) payable in any year of income is lower than the minimum tax.

The minimum tax is a final tax which could address any BEPS activities by ensuring that companies pay a certain minimum level of tax in Kenya. This proposed tax has since been challenged in court[137] and temporarily suspended by the High Court of Kenya as they consider the

[133] *Ibid*

[134] Members of the OECD/G20 Inclusive Framework on BEPS joining the Statement on a Two–Pillar Solution, 9 July 2021. Members of the OECD/G20 Inclusive Framework on BEPS joining the Statement on a Two–Pillar Solution to Address the Tax challenges-arising-from-digitalisation-july-2021.pdf

[135] Tax Justice Network Africa: African Civil Society Organizations Call for Rejection of G7 Global Tax Deal; https://taxjusticeafrica.net/african-civil-society-organizations-call-for-rejection-of-g7-global-tax-deal/

[136] EY Global, *Kenya enacts Finance Act, 2020*, EY, 6 July 2020. Accessed on 9 March 2021 at: https://www.ey.com/en_gl/tax-alerts/kenya-enacts-finance-act-2020; and EY Global, *Kenya enacts significant tax measures for 2021*, EY, 11 January 2021. Accessed on 9 March 2021 at: https://www.ey.com/en_gl/tax-alerts/kenya-enacts-significant-tax-measures-for-2021

[137] Constitutional Petition No. E005 of 2021,

full petition on the basis that the minimum tax would likely aggravate businesses and individuals already dealing with the impact of the pandemic.

5 Aligning a Digital Tax Strategy to Rwanda's Development Ambitions

A strategy for the taxation of the digital economy must take into consideration Rwanda's strategic ambitions to become the leading ICT Hub in Africa. The Ministry of ICT's "*ICT Hub Strategy 2018-2024"* outlines the key interventions required to achieve the vision of becoming an ICT Hub by 2024. The strategic areas include: build an educated and skilled IT literate workforce; foster an innovative culture to promote research and development; and develop advanced technological expertise through innovation hubs[138]. In addition, MINICOM envisions creating a national e-commerce council that will provide overall oversight, supervisory and coordination of e-commerce activities in the country with the aim of transforming Rwanda into a regional hub for e-commerce, this will be achieved through a number of policy instruments including a national strategy for the development of e-commerce and a related policy to promote the same over the years. The tax framework can be used to promote and support these core themes, while raising government revenues needed to fund this strategy.

As the digital sector gains increasing prominence in the wider Rwandan economy, it must be taxed fairly and subject to the same requirements as other businesses. The tax system can support Rwanda's competitive advantage: a business-friendly environment and a stable political economy. While levying taxes on the digital sector is important for equity and to raise government revenues, it must be weighed against the long-term benefits of becoming an ICT Hub as well as becoming a regional e-commerce hub by 2026[139]. Aligning the digital tax roadmap to the vision of becoming an ICT and E-commerce Hub will maximise Rwanda's future development and government tax revenues in the long run.

Rwanda's tax framework does much to support digitization in the wider economy. Through EBM for All and digitization of services, it encourages the development of ICT skills throughout the economy, in particular with smaller businesses. Some of the key challenges to become an ICT Hub identified in the strategy are directly related to the tax system. For example, innovation systems are not effectively incentivized to enable marketable innovations from both domestic and foreign entrepreneurs. Therefore, more can be done through the tax system to support the development of innovation hubs and to encourage start-ups to locate in the country. The Government of Rwanda is developing a Startup Act, highlighting the need to ensure that any digital tax framework will encourage technology entrepreneurs to locate in Rwanda. For example, by offering targeted benefits to start-ups and businesses bringing the desired IT skills and services.

[138] MINICT. 2018. "ICT Hub Strategy 2024: Rwanda's roadmap to becoming a leading ICT Hub in Africa".
[139] unpublished e-commerce strategy by MINICOM

6 Appropriate Policy Options for the Rwandan Economy

6.1 Overview of the Current Rwandan Tax Law Framework

Income Tax Act number 16 of 16/04/2018

The current Income Tax Act provides for income tax in each tax period on the total income of both resident and nonresident persons earning an income in Rwanda.

While the standard income tax is 30%, the law provides that nonresident persons pay a withholding tax of 15% on any income derived from Rwanda including employment income, royalties, service fees – both management and technical service fees except transport services, goods sold in Rwanda, and public tenders, if the recipient is not registered with the Tax Administration. The person making the payment to a nonresident is obliged to deduct the withholding tax and failure to withhold tax attracts penalties.

The law defines Permanent establishment as "a known fixed place of business through which the business which gives rise to income is wholly or partially carried on". With this requirement, most digital multinationals with no known physical place of residence in Rwanda may have no tax liability, as they do not meet the PE condition. Although there are features of the Income Tax Act implicating nonresident persons with income tax liability in Rwanda, several online multinationals earning their income in Rwanda have neither economic activities nor a PE in Rwanda. Under the current income tax law, cross-border digital services and online suppliers earning income in Rwanda are only liable to income tax when transactions are business to businesses (B2B), in which case a resident party will be liable to withhold and declare 15% of such income to the tax authority.

Transfer pricing rules (TP rules)

Backstopping the income tax law to prevent tax avoidance through transfer mis-pricing is the Ministerial Order No 003/20/10/TC of 11/12/2020. It establishes general rules on transfer pricing between related persons involved in controlled transactions (TP Rules) in Rwanda. It sets out transactions that are subject to transfer pricing adjustments. They include sale, purchase or transfer of goods free; lease of tangible assets, giving or receiving the right to use intangible assets; provision of services; lending or borrowing of money; and any other transaction which may affect the profit or loss of the concerned person.

Article 33 of the income law states that the transfer pricing between related persons, which are involved in controlled transactions, must have documents justifying that their prices are applied

according to arm's length principle. Failure to do so or if it is believed transactions were not at arm's length, the Tax Administration adjusts transaction prices in accordance with the general rules on transfer pricing issued by an Order of the Minister. Transfer-pricing rules will only foreseeably apply or extend to MNEs transactions relating to digital services (including the purchase of software, online subscriptions, hosting agreements etc.) with resident related parties.

The new regulation follows the OECD 2017 guidelines and empowers the RRA to adjust profits earned between related parties if the trading agreements between the parties do not adhere to the arm's length principle. The RRA is undergoing preparation to meet the criteria for the Convention on Mutual Administrative Assistance in Tax (MAAC) and hopes to sign by June 2021 for ratification and implementation by FY 23/24. This will be important in providing wide access to exchange of information with other jurisdictions, which will be extremely important in increasing transparency of taxpayer operations and better informing authorities on the gaps in tax law.

Double Tax Agreements (DTAs)

In relation to international transactions and the requirement, by the law, for a resident person to deduct withholding tax of 15% when making payments to parties liable to incomes specified by article 60, Rwanda has signed Double Tax Agreements with South Africa, Belgium, Mauritius, Qatar, Singapore, Barbados, Jersey, Morocco, Turkey and the UAE. The treaties aim to eliminate double taxation of income or gains arising from one territory and paid to residents of another territory. These DTAs in most cases provide for lower withholding rates on payments made in relation to the specified incomes between the two territories.

The current landscape did not foresee the need for 'digital PE' to bring digital MNEs into the tax net. Policymakers may consider instituting changes to the income tax law and all existing DTAs by expanding the conditions required to establish a PE in Rwanda to include nonresident entities with no physical presence but a customer, user or other base above a specified threshold. Secondly, Rwanda may consider introducing, both by way of renegotiation of DTAs and in domestic income tax laws, Article 12 B in line with the UN proposals which may capture the difficult to determine areas of income from digital services and place an onus on companies operating in Rwanda without a physical presence to declare any income earned with respect to customers or users based in Rwanda.

Withholding tax on income

Rwanda's withholding tax (WHT) regime targets incomes that would otherwise be hard to trace and is therefore an important consideration when devising the appropriate tax solutions concerning e-commerce. A WHT of 15%, which applies to income such as interest, dividend and service fees by non-registered persons, is retained. This system, which has been established and used to collect income tax, could be expanded to include technical service fees.

6.2 Digital tax measures in the upcoming revised income tax and VAT laws

The Government of Rwanda has started the process of reviewing and updating its tax laws to respond to the emerging digital economy. The VAT and Corporate Income Tax regimes are currently under review and will target digital supplies and services where income or sale has been made in Rwanda. These measures are set to widen the tax base and generate additional revenues from the digital economy and establish fair competition for both digital and non-digital businesses.

VAT Measures

The Government of Rwanda is in the process of considering a VAT on transactions performed via an online marketplace. A two-year transition period provides the time needed to perform detailed analysis and stakeholder engagements of the policy proposal for implementation in 2023/24. The proposed law will tax the online sale of goods and services made through a digital marketplace when the supplier's customers are Rwandan or when the goods are sold from Rwanda. The law will extend VAT to include downloadable digital content such as books and movies; subscription based services including news, video, music and search engine services; electronic data management services; and online marketplaces that link services to suppliers including transport, accommodation and tourism. Moreover, all digital businesses regardless of the turnover size are required to register for VAT.

Banks who facilitate payments will be responsible for withholding the VAT for imported online services. The location of users will be determined through a payment proxy when credit card and bank account information are in Rwanda, and through a residence proxy when the billing address or internet address or mobile code of SIM card are in Rwanda.

The penalty for not complying with this law will be restricted access to Rwanda's digital marketplace. The feasibility of enforcing this will depend on the capacity of RRA to understand what entities operate in the digital marketplace. Determining which companies are liable for tax will require a proactive revenue administration, which necessitates a cooperative relationship with banks. In order to facilitate compliance with the law, simplifying and digitizing registration and administration for VAT will be crucial for voluntary compliance of foreign entities.

The Government of Rwanda hopes to move towards a simplified vendor registration model to reduce the cost of compliance and limit the impact of the tax on domestic businesses. As a number of countries have already moved to this model, Rwanda can utilise best practice and the experience of others to implement a system that keeps costs low.

Opportunities

Implementation of the VAT on digital services is likely to improve understanding of the digital economy so that more effective, targeted tax policies can be implemented in the future. Establishing a successful VAT system will ensure that RRA collects a wealth of useful information

on the digital economy, while minimizing the cost of compliance and collection. Utilizing best practices from around the world will ensure that Rwanda's VAT on digital services is easily operationalized by RRA and straight-forward for suppliers to register, declare, and pay their tax obligations.

The new law will require Rwandan authorities to tax according to the destination principle - taxing in the jurisdiction where final consumption occurs. The OECD[140] states that as such consumption is not directly observable, proxies are needed to predict where final consumption is likely to occur. This is particularly relevant for the supply of services and intangibles which, by their very nature, are not subject to border controls. Therefore, other mechanisms must be used to estimate consumption patterns and collect VAT. The following discussion outlines the main areas of consideration for effective implementation of a VAT registration model.

The most effective means of collecting VAT from digital services puts the burden on the supplier to remit the funds. A simplified registration-based regime has been widely used across by many jurisdictions and offers Rwanda the opportunity to learn from successful practices. However, any vendor model should address the extra burden it puts on foreign suppliers, both large and small. The OECD *Mechanisms for the Effective Collection of VAT/GST* outlines a number of issues that increase the cost of operation for foreign businesses surrounding VAT legislation, tax authority guidance, case law and country-specific resources. The following discussion outlines the main principles behind designing an effective simplified vendor registration model.

Simplified registration model's work best when they minimise required information from a foreign supplier, limiting the costs of compliance and ensuring the cost is proportional to the revenue collected. According to the OECD[141], best practices include:

- Simplified procedure for registration with required information a minimum and option to register online via the tax administration's website
- No input tax recovery (unless registered under the normal collection regime)
- Simplified returns which can be filed electronically
- Electronic payment methods
- Simplified and electronic record keeping requirements
- Elimination of invoicing requirements
- All information required to comply available online
- Third-party service providers to assist in tax compliance
- Compliance burdens proportional to revenues with neutrality between domestic and foreign suppliers

[140] OECD. 2017. *Mechanisms for the effective collection of VAT-GST.*
[141] OECD. 2017. *Mechanisms for the effective collection of VAT-GST.* p.20

Establishing the appropriate threshold for tax in the simplified registration model must be aligned such that there is fair competition between domestic and foreign suppliers. Thresholds are generally used in VAT regimes to minimize the burden on small businesses and tax administrations so one applied in the simplified model must take into account the costs of operation for small foreign suppliers. Determining whether the threshold should be based on income in Rwanda or worldwide is likely to depend on the ability of the tax authorities to estimate domestic turnover. In cases where proxies provide sufficient information, domestic income can be used but when income is difficult to determine worldwide income are the best approach, particularly when the government wants to establish anti-abuse measures against tax avoidance and evasion.

Tax authorities should also provide clear guidance on the role of intermediaries in the vendor registration model. Intermediaries can play important roles to support compliance for the collection and accounting of VAT, particularly concerning online sales. The OECD outline two approaches to dealing with intermediaries. In the first approach, a business agreement may establish the intermediary as fulfilling the supplier's tax obligations. This will occur if the intermediary has the information needed to make the appropriate taxing decision to meet obligations. However, in long supply chains, this may be more complicated when the intermediary is unable to fill obligations. The second approach involves the tax authorities making a presumption about an intermediary and deems them to be the supplier for VAT compliance purposes. The VAT due is then collected by fewer parties and can be monitored more easily.

Determining whether a customer is a business or a non-business is important to establish taxing obligations. Tax authorities may have to provide clear guidelines on how suppliers should establish the status of a customer. In Rwanda, this could include the TIN, the nature of the purchase and digital identity certificates. Place of performance rule establishes that taxation should be based on where the customer resides. This can often be challenging in e-commerce, where activities are high-volume and there is minimal communication between supplier and customer. RRA should provide clear guidance on how to determine the place of residence of their customers. These guidelines should recommend that suppliers can rely on information that can be reasonably obtained when the tax treatment must be determined. As much as possible, this should be from information that suppliers routinely collect from customers, provided that the information gives reliable evidence about residence of their customers. Any guidance must protect personal privacy and flexibility of businesses. This could include the country of bank account and credit card information, it could also be supported by other indications of residence, such as phone number, IP address, or trading history. These will improve with accuracy over time. Best practices for determining whether a customer is a business or non-business:

- Requiring suppliers to obtain two non-contradictory pieces of information about customers which provides high level of proof
- Allowing a tailored approach for the business sector to establish residence when limited reliable information is available from routine business practices

- When determination of usual residence is inaccurate, tax authorities can adopt a safe harbour rule: when suppliers have attempted to establish residence in good-faith they will be protected from challenges by the RRA
- In time RRA should move to a systems-based validation system that uses business analytics tools to validate the suppliers' business information and assess compliance

Europe provides a One Stop Shop which provides the platform for businesses to register, declare and pay VAT in English and all EU languages. The EU also published "Explanatory Notes on the new VAT e-commerce rules" which gives detailed explanations and examples of applying the rules in practice. These are particularly useful for SMEs to understand their VAT obligations.

Potential challenges

- Establishing that the supplies are subject to VAT, enforcing collection of VAT, enforcement actions, and auditing for outstanding taxes[142]
- As the law applies to B2C transactions and not B2B, a number of issues may arise. Domestic businesses may not have enough evidence for input tax claims. In this case, a reverse charge mechanism or self-assessment for B2B suppliers may be preferred. Here, the customer is required to declare VAT due on supply received as an output tax. The customer is then entitled to an input tax deduction.[143]
- The prospective VAT law will require online/digital businesses to register for VAT regardless of their turnover (Article 19). No threshold for digital businesses - this may create equity issues, violating one of the core principles of taxation.
- The concept of online sale (Article17) of taxable supplies will be challenging for RRA, as the concepts are limited in scope for digital supplies and services.
- The definitions of taxable goods and services and taxable income try to capture intangibles in form of digital supplies (detailed in Article 18) including automated digital services, however they do not seem to be very explicit on how VAT will be applicable to digital transmission of user data collected from users in Rwanda.
- Exported online services are taxable under the new VAT provisions unlike the non-digital exports that are zero-rated.
- VAT on foreign based digital suppliers and services will be charged by financial institutions, facilitating payments from the consumer (Article 22) – it is not clear how banks will assume the role of charging taxes on behalf of government and this would require huge capacity on the side of RRA to monitor, assess and make enforcement of the withholding obligation.
- Nonresident digital businesses will have to make their payment systems compatible with the system acceptable by the state regulator of telecommunication services, and to the banking system or with any payment systems so that VAT withholding is possible (Article

[142] Ibid
[143] Ibid

22). Since more digitalization of the economy is expected, withholding on online purchases will increasingly become more complex. This implies that monitoring of transactions for VAT will impose a huge burden on financial institutions that will withhold VAT and remit it to RRA.

Income Tax Measures

Changes to taxing income will target corporate income from digital business operations. The new measures define digital services to include some of the hard to tax cases of value creation from the supply of user data and its commercialization.

The PE will be modified so that foreign entities with some form of representation that could result in concluding contracts or business deals will be deemed to have a PE in Rwanda for tax purposes.

Potential challenges

- Taxation of corporate income for digital MNEs may continue to pose challenges due to RRA's limited capacity to assess and collect revenues from these corporations. Different reasons may come into play, including the following:
    - Lack of access to credible business information on which the tax could be determined,
    - No income threshold for foreign entities earning income in Rwanda.
    - Difficulty in determining the correct amount of income earned in Rwanda and associated issues such as profit allocation for MNEs.
    - The income tax measures on digital services are not explicit on how this tax will be accounted for or paid, (for example, how tax on income derived from search engines and user data).

Considerations and solutions towards implementing these policies:

- Rwanda needs to fast track joining relevant international tax networks, which will enable it to obtain critical information required to conduct tax investigations on residents' income or financial activities in other jurisdictions.
- Regulation, orders or rulings implementing these changes should be formulated to carefully mitigate potential challenges,
- Deal with uncertainties associated with the concept of "value creation" when it comes to MNEs,
- The new digital taxes may face challenges arising from the existing and future international tax negotiations considering the desire expressed by the G7 to eliminate DSTs in particular. In addition, there may be unintended consequences for bilateral or multilateral trade and investment treaties.
- Digital services should be expanded enough to avoid misinterpretation of the law,

- Access to exchange of information and country-by-country reports – regular reviews of public CBC to understand the companies that earn income from Rwanda. This is particularly important for corporate taxation.
- RRA should develop a simplified vendor registration model to facilitate registration for VAT by foreign entities and should prepare administratively to develop both the required technology and human skills needed to implement these changes. This would relieve the collection burden on the payment institutions and the complexity of coordinating this by RRA.
- Expand the list and be specific when describing taxable digital services to avoid unintended difficulties to its implementation and provide clarity for taxpayers.
- Due to potential challenges of monitoring digital transmission of user-data collected from users in Rwanda, there is a need for regular review of the tax laws in Rwanda and continuously improving the tax system.
- The application of VAT on exports of the digital nature should be re-examined.

6.3 Rwanda's participation in International efforts

In principle, International Corporation on tax matters such as the OECD/G20 Inclusive Framework (IF) are created with the goal of providing a platform for all countries to participate in addressing global tax issues (especially tax avoidance by MNEs through base erosion and profit shifting) on an equal footing. As such, most countries would have good reasons to take part in reaching and shaping global policy in the international tax system, not least low-income countries. However, the IF is criticized for being influenced by powerful countries and for not paying adequate attention to challenges faced by poor countries or small economies[144].

Special taxes, which are in most cases unilateral measures adopted by countries to address taxation of the digital economy, will require better access to key business financial information. This underlines the critical importance of full cooperation on tax matters by countries in form of bilateral tax treaties and global fora to ensure automatic exchange of financial information under the AEOI standard or on request through the EOIR as well as the country-by-country reporting (CBC). Therefore, the stakes are high for not joining these efforts, as it makes it extremely hard for tax auditors and compliance officers to properly conduct reasonable investigations. It is clear that joining international efforts is in countries' own interest as they broaden their networks for the EOI, by signing up more agreements.

While Rwanda is now attempting to design domestic laws to deal with tax challenges from the digitalization of the economy, it is important to keep close eye on new developments regarding global consensus-based solutions. To this end, Rwanda has signed a number of DTAs with some of its major trade partners - although they may need adjustment to achieve the intended goal. Of

[144] Rasmus Corlin Christensen, Martin Hearson and Tovony Randriamanalina, 2020. At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations.

particular interest is the upcoming DTA to be signed with the USA. Given the USA's commitment to digital taxation[145], it will be a determining factor in any future tax policy proposal in Rwanda.
Rwanda is now a member of some of the key international efforts including: Africa Initiative, the African group at the WTO and is preparing to now work on joining the Global Forum on Transparency and Exchange of Information for Tax Purposes. The review of exchange of information on request standard (EOIR) scheduled for 2022 and it is also in the process of signing of the Multilateral Convention - the most powerful instrument for cooperation among tax administrations with already 136 participating jurisdictions by February 2020[146].

6.4 Identifying future policy and administrative options

Rwanda has an opportunity to design a forward-thinking, future-ready tax policy framework for the digital economy. As previously mentioned, a VAT on digital services is currently being considered as a first-step attempt to capture some of the digital economy into the tax net. However, a more comprehensive strategy is needed for the future that adequately captures the digital economy in order to meet the needs of Rwanda's ambitious development goals.
Such deep analysis of the digital market in Rwanda is necessary before policies can be implemented. Below, this paper considers possible policy options in a broad sense – proposing policies requires a more detailed understanding of businesses operating in the digital space and their current compliance levels. For this reason, the proposals below are considerations for the medium- to long-term, but in the short-term, the immediate proposal is to establish a Digital Tax Team that can quickly identify these trends.

Minimum Effective Tax:

A minimum effective tax could be a feasible option for Rwanda. The tax would be a small percentage of gross turnover to ensure all companies operating in Rwanda contribute to tax revenues. Implementing a flat rate of 1 or 2 percent is relatively easy to apply and avoids the difficulty of attempting to measure the proportion of turnover attributable to activities in Rwanda. However, such a blanket approach to taxation is likely to meet a lot of resistance from businesses. The policy would require an expanded definition of nexus to include non-physical presence for commercial activities in Rwanda. Companies without a physical presence might be liable to tax in Rwanda and depending on where their headquarters are based, this policy could give rise to double taxation issues and disputes. Furthermore, the Revenue Authority must be able to adequately assess the turnover of the company. This policy can therefore only be implemented after the MAAC has been implemented in 2024 and Rwanda is able to access information on companies' turnover they declare in other jurisdictions. The feasibility of enforcing this policy depends on the cooperation of other countries and the ability for Rwanda to hold these companies accountable.

Digital Service Tax (DST)

[145] Politi, J., Williams, A. and Giles, C. 2021. "US offers new plan in global corporate tax talk". *Financial Times.* https://www.ft.com/content/847c5f77-f0af-4787-8c8e-070ac6a7c74f
[146] Tax Transparency In Africa 2020 |, pg 33

A DST seeks to expand the tax net to include digital businesses by creating a nexus for such businesses. The targeted businesses have no physical presence in the country of consumption. A DST is thus, charged on business income that accrues through the digital marketplace or from supply of digital products and services. Adopting a DST could also help increase compliance of the digital businesses in general, as the tax could also help collect more business information on the digital businesses. It is however important for the concepts related to digital businesses and digital services to be well defined, across all relevant tax codes, to minimize or remove all potential confusion that might hinder the effectiveness of the policy.

The DST operates a fixed rate on gross transaction value or gross turnover and is applicable to specific services, but it should not lead to issues of double taxation. Specifically, in case of digital businesses with a permanent establishment in Rwanda, a DST could be offset against the income payable for that particular financial year.

The payment of the DST could be the liability of the digital service provider or any person that collects the payments for digital services. Like in the case of Kenya, it is payable through a withholding tax system at the time of the transfer of payment by the customer and a tax return is necessary at the end of every tax quarter. Given the growing electronic payment capabilities in the country, the DST could potentially be relatively easy to implement for Rwanda.

However, a DST should be designed with the potential conflicts from the existing tax and trade treaties in mind. Depending on how it is designed, there are likely conflicts with international tax laws and treaties such as bilateral income tax treaties or non-discrimination clause in these treaties, trade treaties related to the WTO moratorium on customs duties on electronic transmissions, the WTO General Agreement on Trade in Services and Individual bilateral or plurilateral free trade agreements[147]. Therefore, strong mitigation strategies have to be carefully thought about to avoid severe challenges that might hamstring the success of this policy.

Moreover, as suggested by ATAF, the DST design features such as being applicable to select services, and on turnover, would not qualify it as an income tax and that sets it apart from the tax treaties framework.

A Digital Tax Team

The Government of Rwanda aims to achieve upper-middle income country status by 2035 and high-income country status by 2050. To achieve these ambitious goals, large-scale investments in human capital are needed including in health, education and sanitation. Rwanda must also attract foreign and domestic investment - to do so it needs a competitive business environment. The tax system is central to the development of Rwanda's economy, it plays an important role in investment decisions and it is responsible for collecting taxes that fund public investments. As the

[147] Tax Foundation, Digital Services Taxes: Do They Comply with International Tax, Trade, and EU Law?, 2021, accessed at https://taxfoundation.org/france-digital-tax-international-tax-law-trade-law-eu-law/

role of the digital economy increases in importance, so too will taxation of this sphere. Developing a tax policy framework and tax administration that is able to continually adapt to the changing nature of the digital economy with adequate tax treatment of entities operating in the field requires a comprehensive understanding of the digital marketplace.

Detailed knowledge of the digital economy, such as the key players, the size of the market, and growth trajectories, can be difficult to analyse given the privacy that shrouds the digital economy. For example, one way to estimate who are the largest players in the digital marketplace, is to access aggregated bank information which would indicate what e-platforms Rwandan citizens are using to buy products. This requires a collaborative partnership between the government and financial institutions to access such information. It would build on the current discussions around banks facilitating withholding income in the VAT law revision. Developing an understanding of this sector will therefore require a concerted effort from the tax authorities to prioritise research of the digital economy.

Such information will be crucial to design and implement successful tax policies that effectively tax the digital economy and can be efficiently collected. If Rwanda is to achieve ambitious investments in human capital and transition to a digitised economy, the tax system must be forward-looking and encourage state of the art digital investments while ensuring the digital economy contributes to tax revenue collection.

This research therefore recommends a dedicated team to monitor developments and perform analysis on the digital economy. This taskforce will provide assessments on the characteristics of the market, the success and challenges of current tax policies, and assess current tax compliance levels in order to recommend policies for the future. Engagement with stakeholders, including key private-sector players operating in the sector and relevant government ministries, will ensure that the development of digital tax policies are inclusive and in line with Rwanda's development vision. Such prioritisation of the digital economy will send a clear message of the government's desire to support and understand the sector, and it will ensure that the tax system will be continually redesigned to meet the changing needs of the emerging sector.

Business Registration Process

Rwanda is the second easiest place to do business in Africa, after Mauritius, and is ranked 38th in the world.[148] It only takes four days on average to set up a business, Rwanda is ranked 35th in the world in this category. Prospective businesses are required to register with RDB, and this forms the basis of tax registration data. Currently, there is no way for the Government of Rwanda to know which businesses make money online. Requiring businesses to answer an additional question on the RDB registration form ensures the process remains simple, while increasing an awareness of what Rwandan businesses are operating in the digital space.

[148] World Bank. 2020. *Ease of Doing Business 2020.* The World Bank Group

This recommendation would be a short-term solution, as a first step towards shifting the RRA's oversight of the digital economy. It would only target domestic online businesses, but would assist in developing an understanding of local digital companies' tax compliance levels. As RRA moves towards a simplified vendor registration model, the tax net can be broadened to include non-resident suppliers of digital services.

7 Recommendations

The recommendations below outline a roadmap to taxing the digital economy. By ensuring that entities dealing in digital supplies of services and intangibles pay their fair share of the tax, Rwanda's digital economy will foster a fair competition between domestic and foreign suppliers. However, these measures should be designed in a way that they don't in any way contradict the country's strategy to attract investments and as well becoming a regional ICT Hub. This means that any decisions taken must be informed by a strong evaluation of the data available. This will require both an expansion of the ability of the RRA to engage in information exchange (including with other jurisdictions) and the capacity of the team to evaluate this data. In addition, the use of new technologies such as data analytics, artificial intelligence or block chain to store, analyze and better visualize this data will be highly important in easing expected capacity constraints. The roadmap for the digital tax should be aligned with the current need to adapt the tax system to the rapidly changing economic landscape where the digital economy is empowering both new and existing businesses to increasingly conduct businesses online.

7.1 Set up a Digital Tax Team

Rationale: a dedicated team will monitor developments, perform analysis on the digital economy, and provide advice on the design of the appropriate digital tax policies. The team should particularly closely follow activities of and seek cooperation of the National E-commerce Council, envisaged by the ministry in charge of e-commerce (Ministry of trade and industry (MINICOM)) in its e-commerce policy that will oversee, supervise and coordinate e-commerce in Rwanda[149]. With this, the team is expected to remain abreast of any new developments and thus be able to advise on a comprehensive future digital tax strategy that is adequately aligned to various national priorities.

Current status: there is no dedicated technical expertise on the digital economy for tax-related issues. This recommendation will establish a technical team from RRA and MINECOFIN.

Target: team with MINECOFIN and RRA representatives set up by early 2021/22. The main government institutions concerned with the digital economy will delegate a representative that can be called upon for consultations.

[149] Unpublished report by MINICOM envision

As a first step, the technical team will map out information that is currently available. RRA, along with other government institutions such as BNR, generate, collect and hold significant amounts of data that may provide some insight into the transactions arising from digital platforms. Tax systems that have been adopted including E-tax and EBMs, enable the real time generation of data that can be analyzed and used to develop an understanding of consumer trends to better inform tax policy. As a first step, RRA can utilise the information available to map out what areas of the digital economy might propose weaknesses to the tax system.

This will include analysis on:

- Assess current compliance levels with those online companies already known to RRA
- Map the current state of digital transactions using data from BNR and other government institutions. Identifying what aspects of the digital economy are disruptive to the tax system involves identifying where digital content, digital automation and digital services, are used in the economy and the most common elements operating in Rwanda.[150]
- An evaluation of the tax system's readiness to respond to these disruptions, noting knowledge gaps and recommendations for enabling regulation or entering into inter-agency cooperative information exchange and analysis task forces that could combine the skills, tools and capacity of a number of institutions and agencies.
- Assess how developments in the global economy, including OECD BEPS, will affect Rwanda's digital tax strategy and current tax laws
- Regular review of the digital tax laws in Rwanda and continuously improving the tax system. Due to potential challenges of monitoring digital transmission of user-data collected from users in Rwanda, there is a need for continuous review of the tax laws to respond to the changing digital economy.

Executing such data-driven analysis requires the RRA to place greater emphasis on capacity-building and capacity easing to free the right technical resources for this type of an evaluation. In addition, cooperation with a number of unusual and usual actors will be necessary including with financial intelligence, financial institutions and other digital payment service providers, Internet service providers and the wider ICT community, amongst others.

7.2 Require businesses to indicate whether they will earn income online on the RDB registration form

Rationale: Currently, there is no clear way for the Government of Rwanda to know which businesses make money online. To ensure business information collected by the Government of Rwanda is accurate and the process of business registration remains simple, this paper recommends that the RDB business registration form has a mandatory requirement to record whether businesses create value online. This can be a very simple tick-box that is added to the form, ensuring that the registration process remains simple, while increasing the government's

[150] Lucas-Mas & Junquera-Varela (2021), n.142, p.19

awareness of what Rwandan businesses are operating in the digital space. For those firms that are already registered, RRA will explore options to update the current list of registered businesses operating online.

Current status: Business registration does not capture whether a business operates online.

Target: RRA to engage MINECOFIN and RDB with recommendation for implementation by end FY 2021/22. RRA to explore options to update the list of registered businesses to include information on whether they operate online.

7.3 Rwanda to join international frameworks on the exchange of tax information

Rationale: The digital tax strategy will depend on Rwanda's access to international frameworks for the exchange of information, such as the ones provided under the MAAC. This underlines the critical importance of full cooperation on tax matters by countries in the form of bilateral tax treaties and global fora to ensure automatic exchange of financial information.

Current status: RRA is preparing to sign the Convention on Mutual Administrative Assistance in Tax (MAAC) in 2021 while its ratification and implementation is planned for FY 2023/24.

Target: Implementation in FY 2023/24, so that digital tax laws can be legislated.

7.4 Benchmark with other countries in the region

Rationale: the digital tax team should be able to benchmark with other countries in the region so that Rwanda can learn lessons from their experiences and consider mitigating any common challenges before proposing similar digital tax laws.

Current status: Due to COVID19, the team working on this paper was not able to go beyond the publicly available information and there was no opportunity to physically meet with any of the institutions that have been cited for having pioneered some of the digital tax initiatives on the continent.

Target: Consider benchmarking to understand better what other countries have gone through before similar initiatives or policy proposals are designed.

7.5 Develop a simplified online registration (simplified vendor registration model) for VAT

Rationale: Ahead of implementing the VAT on digital services, a simplified vendor registration model should be trialed by RRA and work effectively to ensure a smooth transition. Best practice from other jurisdictions will help to limit the cost to digital businesses.

Current status: VAT registration is done at RRA offices and is available for resident businesses.

Target: start trialing the simplified model ahead of implementing the VAT law.

7.6 Further analysis on what a digital VAT law should look like

Rationale: Deeper analysis on how best to implement a digital VAT law, and the role financial institutions would play will help design a robust policy. This would involve reassessing the requirement for all Rwandan businesses operating online to register for VAT regardless of the turnover, as well as the application of VAT on exports of the digital nature. RRA should engage in further benchmarking to be prepared for the digital laws for the future.

Current status: the proposed revisions in VAT law requires all online businesses to register for VAT with no threshold determined and also requires VAT for the exported online services.

Target: Throughout 2021/22 ahead of policy implementation in 2023/24.

7.7 Establish Data-Driven Analysis of the digital economy

Rationale: The RRA now has the opportunity to inform policy decisions about the taxation of the digital economy based on the emerging data and the experiences of other jurisdictions (particularly the neighboring countries within East Africa). By implementing a number of the actions above, the administration will have more information about the nature and number of transactions in the digital economy, particularly how sellers of goods and services connect to customers. By establishing a data driven analysis of digital economic activity, the RRA would be better placed to evaluate the most efficient method of collecting taxes from this area of the wider economy.
Current status: No evaluation taking place.
Target: The Digital Tax Team will lead this research to establish the data sources currently available (including by way of cooperation and information exchange with other law enforcement authorities or institutions) and gradually expand these data sources based on the actions adopted (considering recommendations made above).

8 Conclusion

Rwanda's rapid digital growth is expected to rapidly increase over the coming years. While the digital economy presents immense opportunity for Rwanda's development, it is also associated with a number of risks, particularly to the tax system. The ability to tax the digital economy in Rwanda is weak and the current tax code does not adequately address taxation of e-commerce.
Given the rapidly growing nature of the digital economy in Rwanda the government is, as a first step, reviewing VAT and income tax laws to address taxation challenges of the digital economy. Further analysis of how the laws will be monitored and implemented will be conducted over the coming years. This paper briefly assessed different digital tax options including a Minimum Effective Tax, VAT and a Digital Services Tax, but Rwanda is missing an in-depth study to map

out and understand the current trends in its digital economy that is a prerequisite for designing suitable policy options.

This paper recommends establishing a technical team to provide expertise and analysis of Rwanda's digital economy. This technical team will perform analysis on the digital economy and engage with different stakeholders to better understand the current level of digitalisation of the Rwandan economy and provide advice on the design of the appropriate digital tax policies.

Annex

Annex 1 Stakeholder Collaboration

To have a better understanding of the digital economy in Rwanda in terms of both the current developments in the sector and the government position as reflected in various national strategies and policies, the team consulted a number of key stakeholders as indicated in the table below.

	Stakeholder	Position	Feedback
1	RRA- International Tax Unit	Head of the ITU Regional International Tax &Transfer Pricing Expert (LTO)	
2	RRA - Legal Department	Head of Legal Affairs Division Legal Officer	
3	RRA -DCG	DCG	
4	Ministry of ICT & Innovation (MINICT)	Director General, Innovation & Emerging Technologies	Emphasized the need to align digital taxes to the long term ambitions to become an ICT Hub.
5	Central Bank (BNR)	Director of Payment System	Explained that limited information on payment systems was collected.
6	MINECOFIN	Tax Policy Unit	Feedback on law revisions and recommendations.
7	MINICOM	E-commerce specialist	Shared E-commerce strategy
8	RDB	Investment registration officer	Explained that no information was collected on whether businesses operated in the digital space
9	NISR	Director SMRP Survey Program Manager	