

Taxation of the Digital Economy

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Agenda



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- 01** Introduction
 - 02** Digital Economy
 - 03** Taxation provisions
 - 04** Challenges
 - 05** Practical case studies
 - 06** Way forward



Introduction

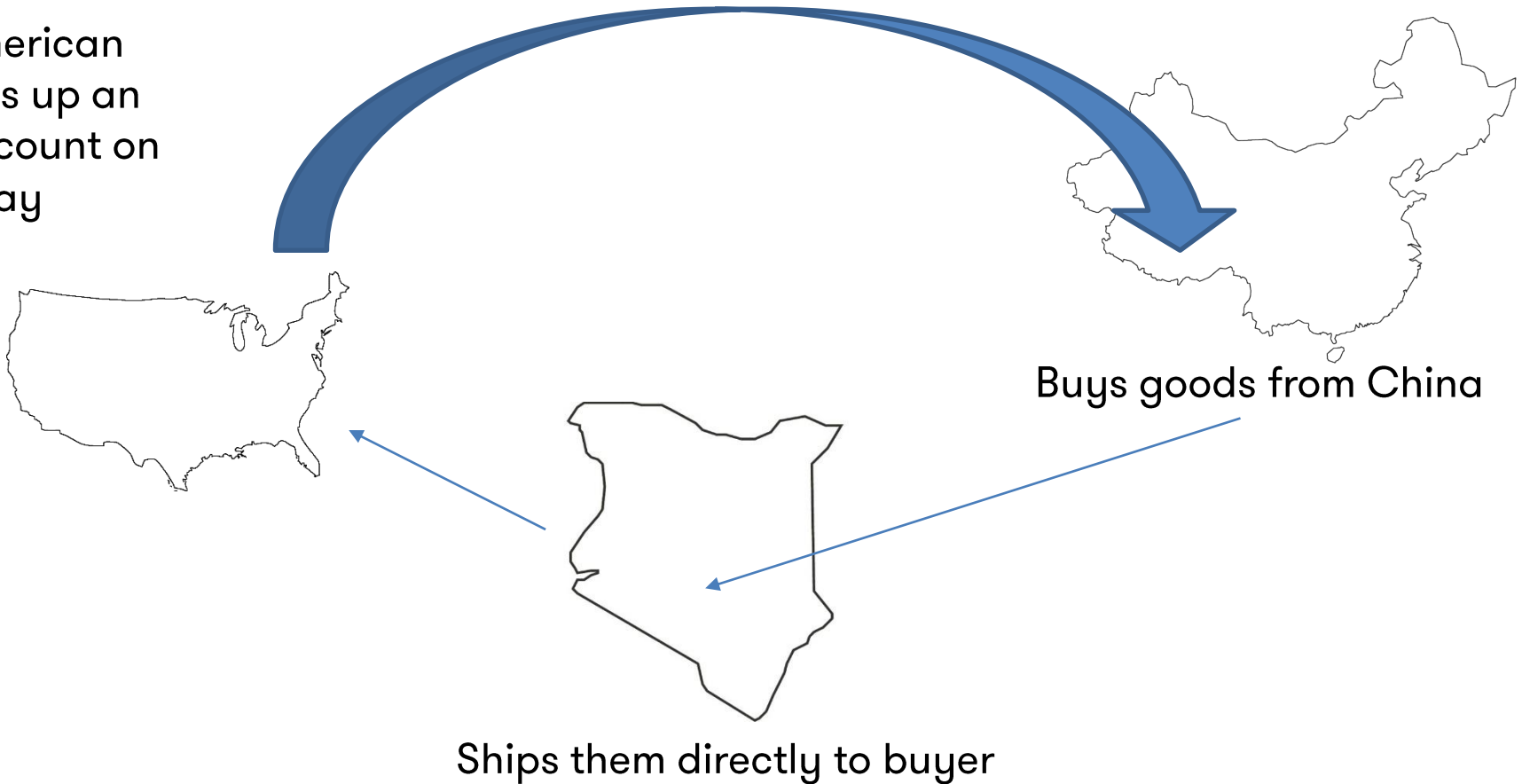


The factories of the future will only have two employees.
A man and a dog.
The man to feed the dog and the dog to keep the man from touching the machines.

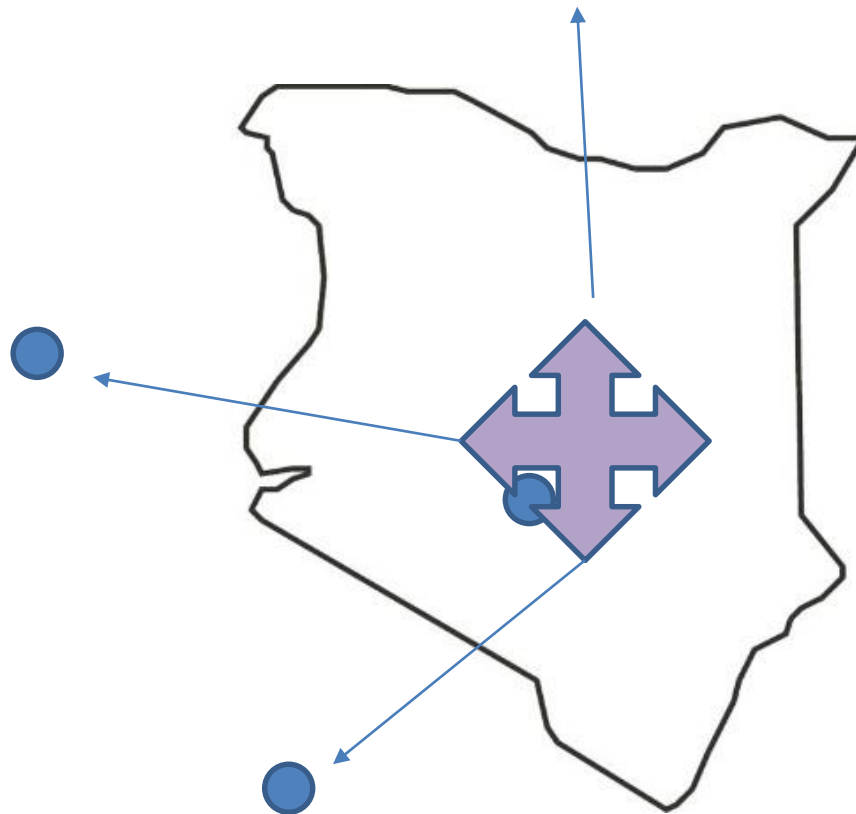
Digital Economy



American
sets up an
account on
ebay



Digital Economy



Music sales shop

Digital Economy



Examples of changes



Taxation



International Law



“

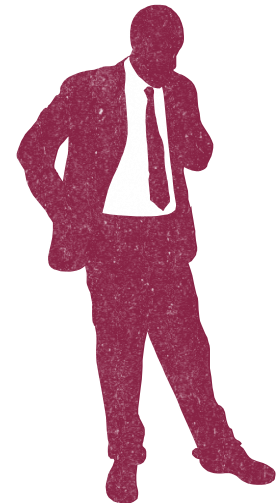
Every country has a
right to tax its
residents

”

Taxation



In the field of taxation,
policy makers are
struggling to find
solutions which would
ensure fair and
effective taxation



Taxation in Kenya



ITA

“a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya”

VAT ACT 2013

*“Taxable supply made by a registered person in Kenya
The importation of taxable goods
And supply of imported services”*

Employment services rendered in Kenya.

Challenges



Cross **border** sales



Value Added Tax

Hard to value **intangibles**

Lack of international **consensus**

Automation which favors trading without physical presence

Liaison Offices



Coca cola case

Digital media/TV



some businesses are present in some countries where they offer services to consumers and conclude contracts with them, taking full advantage of the infrastructure and rule of law institutions available while they are not considered present for tax purposes.

This free rider position tilts the playing field in their favour compared to established businesses.

Hybrid Mismatch



“arrangements exploiting differences in the tax treatment of instruments, entities or transfers between two or more countries”

1

Foreign ride sharing companies pay little to no taxes in Kenya



2

Compare with Kenatco who has to charge VAT and also pays Corp taxes

Digital Payments



debt swaps

Digital transactions



A company XYZ sets up a mobile platform that extends loans from various banks to its customers.



XYZ then negotiates credit terms with various supermarkets such that the customers using the platform can shop with money from the background banks and slowly pay monthly instalments through the same app.



XYZ earns commission income on the interest repayments and commission from the supermarket



Blurring lines



Digitalisation changes the nature of exchange by blurring the lines between goods and services, transforming products to their digital representation, such as e-books, or using the least material possible, for example 3D printing. Software, music credit cards, set top boxes.



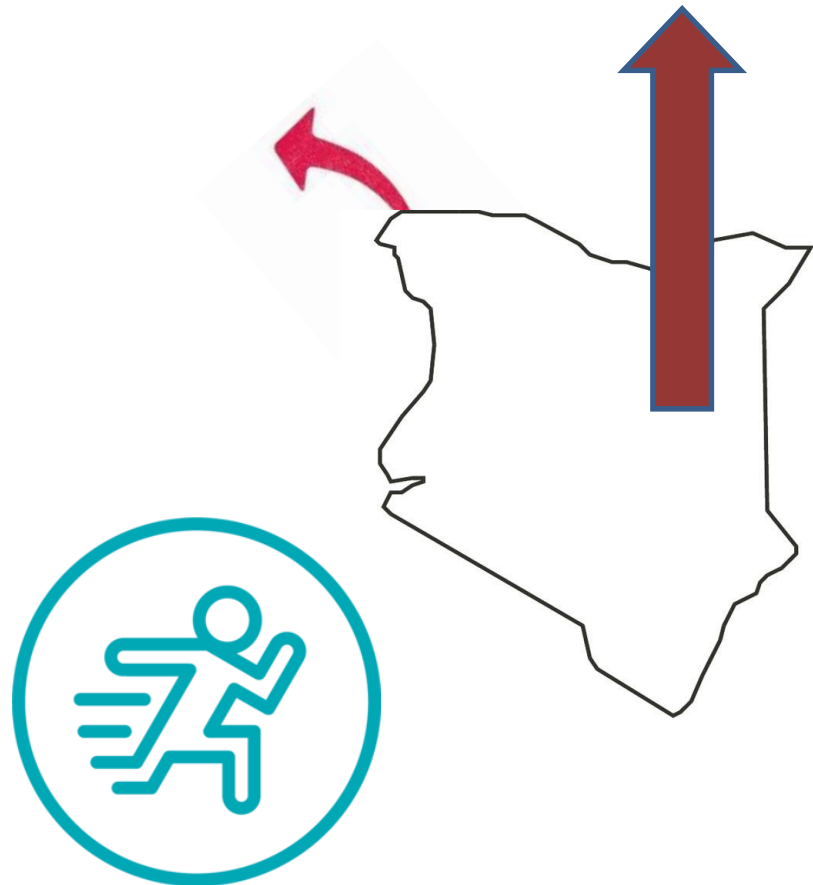
Withholding tax where there was none on goods? Royalties?

Competition with our neighbours



Ethiopia offers tax subsidies for the first five years

Rwanda also offers tax holidays for regional headquarters



Policies that favour business



Companies are shipping out on the account of unfavourable tax policies. What options are there?



Consider negotiated tax holidays based on none revenue input.



IP as security



Options



Taxes that favour digital corporations



Protection of start-ups



Single customs territory – common corp tax base



Review of permanent establishment rules



Taxes that favour digital corporations.

Business fees vs taxes



Equalisation tax on turnover of digitalised companies

Common Consolidated Corporate Tax Base



- 01** An idea growing in the EU to have single set of rules to calculate companies' taxable profits in the EU
- 02** Each Co will prepare consolidated tax return with all activities in the region, having to comply with only one set of rules rather than many national rule books.
- 03** The consolidated taxable profits will be shared between the Member States in which the group is active, using an apportionment formula. Each Member State will then tax its share of the profits at its own national tax rate



Corp taxes

Tax Representatives



Section 15(1)(i) of the TPA

in the case of a non-resident person, if that person is controlling the non-resident person's affairs in Kenya, including a manager of a business of that non-resident person



Taxing rights



how to establish and protect taxing rights in a country where businesses can provide services digitally with little or no physical presence despite having a commercial presence

Taxing google for revenues created in Kenya

Similar to mining rights



Knowledge economy



an economy in which growth is dependent on the quantity, quality, and accessibility of the information available, rather than the means of production

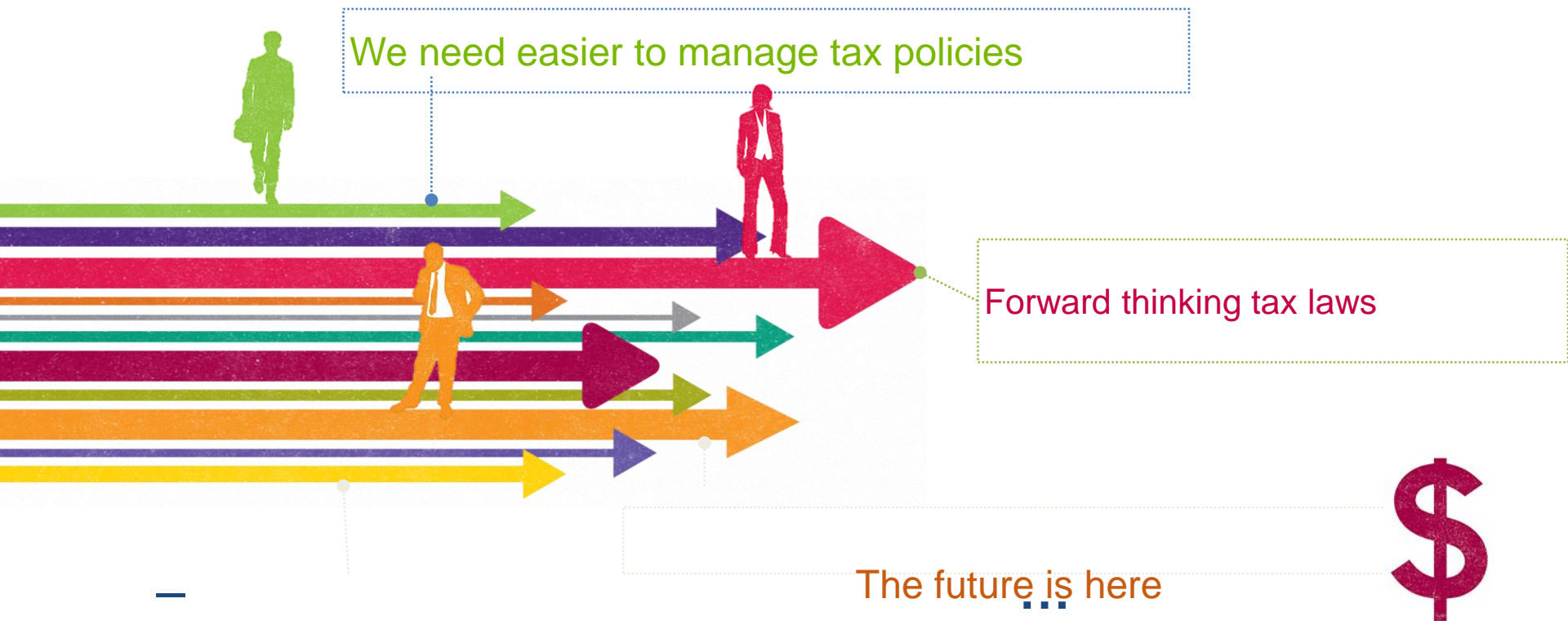
More automation of traditional processes

Service industry

Industries



Proactiveness



Q&A



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An instinct for growth²⁴