



TAX PRINCIPLES AND EMERGING ISSUES SEMINAR

Presentation by: Nickson Omondi
Taxation of the Digital Economy
Wednesday, 17th Feb 2020

THE DIGITAL ECONOMY



DATA NEVER SLEEPS 8.0

How much data is generated every minute?

In 2020, the world changed fundamentally—and so did the data that makes the world go round. As COVID-19 swept the globe, nearly every aspect of life—from work to working out, and people depended more and more on apps and the Internet to socialize, educate and entertain ourselves. Before quarantine, just 15% of Americans worked from home. Now over half do. And that's not the only big shift. In our 8th edition of Data Never Sleeps, we bring you the latest stats on how much data is being created in every digital minute—a trend that shows no sign of stopping.



The world's Internet population is growing significantly year over year. As of April 2020, the Internet reaches 59% of the world's population and now represents 4.57 billion people — a 6% increase from January 2019.



GLOBAL INTERNET POPULATION GROWTH 2014-2020 (IN BILLIONS)

As the world changes, businesses need to change with the times—and that requires data. Every click, swipe, share or like tells you something about your customers and what they want, and Domo is here to help your business make sense of all of it. Domo gives you the power to make data-driven decisions at any moment, on any device, so you can make smart choices in a rapidly changing world.

Learn more at domo.com

SOURCES: STATISTA, VISUAL CAPITALIST, BUSINESS INSIDER, GAMESPOT, TECHCRUNCH, OMNICORE AGENCY, DOORDASH, BUSINESS OF APPS, NEW YORK TIMES, MUSIC BUSINESS WORLDWIDE, ENCL, THE VERGE, ENCL, HOOKSITE, CLUSTIN, STOUT, REEDS, UBER, AMAZON, VEX



Transfer Pricing and Digital Economy

TP Cycle

Arm's Length Principle

Transfer Pricing Adjustment

Comparability Analysis

Transfer Pricing Methods



Digital Economy and Challenges In taxation



Basis of Taxation

- Physical presence
- Supply side functional analysis

Digital Economy

- Mis-alignment between the place where profits are taxed and the place where value is created.

Digitalisation Issues

- Scale without mass
- Data utilization
- User interaction

Challenges in taxing digital Economy

- Restrictive nature of physical presence provisions.
- Destination principle and low value goods trade
- Tracking transactions.
- characterization of income earned.
- Lack of consensus international consensus.

Measures to Tax the Digital Economy



1. Diverted profits tax (DPT) – address shifting profit offshore to avoid tax, e.g., IP transfers; use of marketing hub models as used by UK and Australia.
2. Country by country reporting (C-b-C) – e.g., location of the economic activity undertaken by the MNE group.
3. **Digital Services Taxes (DST)** – levied on gross revenue of digital companies with a common theme of value created by users
4. OECD on; Nexus and profit allocation Rules (BEPS Action 1 and the Unified Approach); Pillar I and Pillar II
5. OECD's *Mechanisms for the Effective Collection of VAT/GST – Where the Supplier is Not Located in the Jurisdiction of Taxation (OECD)*

Pillar I- OECD proposed Approach



- ✓ Emanated from the wider 15 BEPS Action Plans
- ✓ The Pillar one focuses on the “nexus” and “profit allocation”
- ✓ Pillar II is focused on global minimum tax
- ✓ Its is based on the premise of businesses able to generate profits through participation in a significant/Active and sustained way in the economic life of a jurisdiction- Nexus
- ✓ Allocate a portion of in-scope businesses to market/user jurisdiction also known as (Amount A)
- ✓ Make the allocation simple to minimize compliance.
- ✓ Use of consolidated accounts welcome and ensure double taxation is minimized.
- ✓ Grant amount B to baseline activities such as marketing and distribution activities using a fixed rate of return closer to arm’s length..

Pillar I Contd'

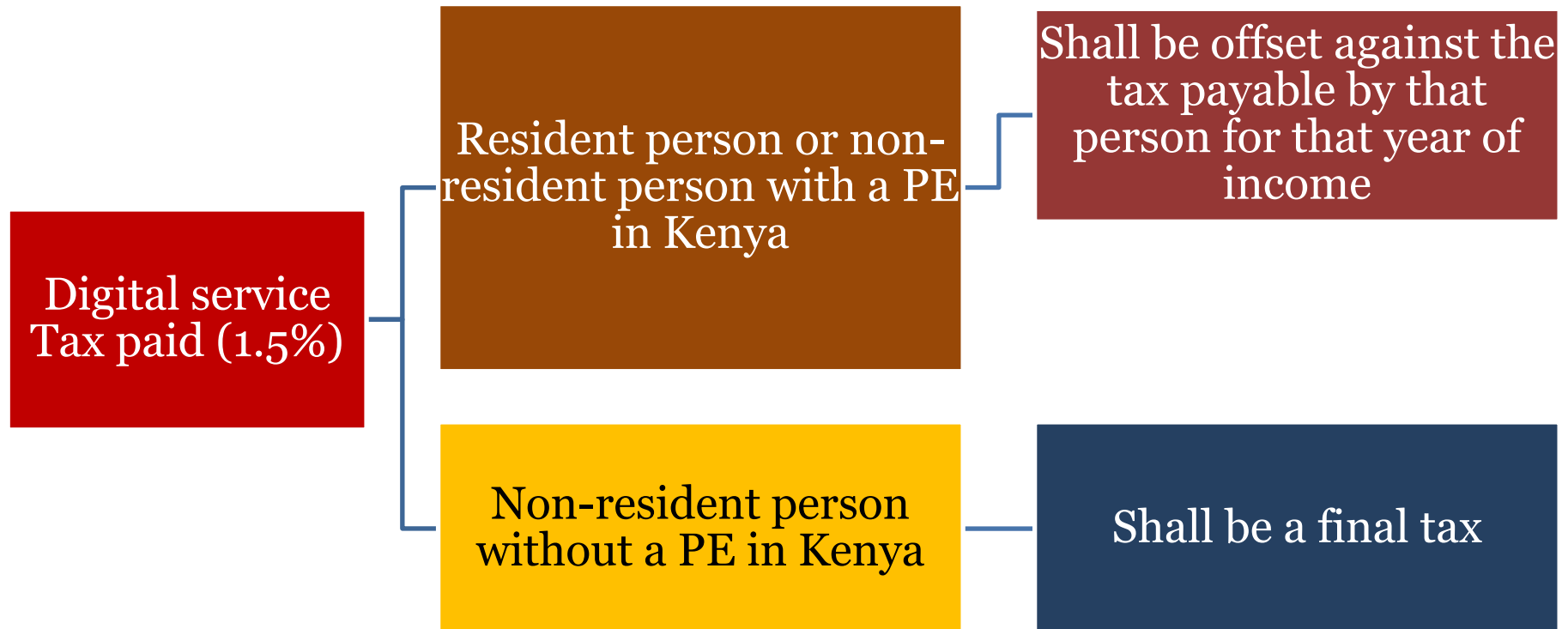


✓ The whole process is expected to be concluded by mid-2021 where model drafts legislation, guidelines and international tax rules and processes will be done to enable implementation on a consensus based manner.

Digital Service Tax



DST shall apply to the income of a resident or non-resident person derived or accrued in Kenya from the provision of services through a digital marketplace.



Services Subject to DST



Downloadable digital content

- downloadable mobile applications, e-books, films, movies, music and online games

Over-the-top services

- streaming television shows, films, music, podcasts and any form of digital content

Sale of, license of or any other form of monetizing data collected about Kenyan users

- has been generated from such users' activities on a digital marketplace

Provision of a digital marketplace, website or other online applications

- e-commerce platforms and sharing economy e.g Airbnb, taxi hailing services

Subscription-based media

- news, magazines and journals

Services subject to DST



Electronic data management

- website hosting, online data warehousing, file-sharing, cloud computing and cloud storage services

Provision of search-engine and automated helpdesk services

- includes supply of customized search engine services – google etc

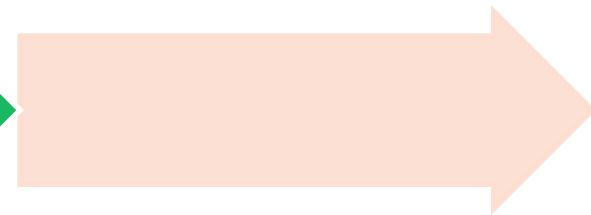
e-booking and e-ticketing services

- online sale of tickets for attendance at live events, theatre, performance art and similar entertainment activities

Online distance teaching

- via pre-recorded medium or e-learning, including online courses

any other service provided or delivered through an online digital or electronic platform



Payment and Filing DST



1. The payment of Digital Service Tax & VAT on digital supplies shall be the liability of:
 - ☐ The digital service provider or digital marketplace provider.
 - ☐ The supplier or intermediary (where an intermediary makes a supply on a digital marketplace on behalf of another person).
 - ☐ The tax representative appointed by a non-resident person without a permanent establishment.
2. A person liable to pay DST shall submit a return in the prescribed form and remit the tax due by the 20th day of the following month that the digital service or taxable supply was offered.
3. The filing of tax returns and payment of taxes due shall be in the prescribed form, i.e. via the KRA revenue collection system – *iTax*.

DST Exemptions



1. DST shall not apply to income taxed under the provisions of section 9(2) and section 35 of the Income Tax Act.
2. Online services which facilitate payments, lending or trading of financial instruments, commodities or foreign exchange, carried out by:
 - A financial institution specified under the Fourth Schedule to the Act; or
 - A financial service provider authorized or approved by the Central Bank of Kenya,
3. Online services provided by Government institutions.

DST Emerging Issues



- DST and Withholding Tax, which one Takes Preference
- Issues around DST and Double Tax Treaties
- How does DST interact with Minimum Tax
- DST and Turnover Tax.
- What happens to DST when the OECD unified approach is adopted.

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*Thank
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