

# Taxing the Digital Economy through Consumption Taxes

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Owing to the Fourth Industrial revolution and digital transformation, the digital economy has grown substantially globally and in Africa. Despite the positive outcomes such as advancements in technology, improvements in business models and expansion in digital financial inclusion, negative implications include the erosion of tax bases due to the invisible nature of digital transactions. Although the digital economy is one of the biggest and quickest growing sectors in the African continent, its contribution to tax revenue is negligible. Developed and developing countries are grappling to find effective ways of mobilizing revenues from this hard to tax economy. African countries have turned to digital services taxes, value added taxes and withholding taxes in a bid to collect revenue from the digital economy to broaden their tax bases. There is intense debate among policymakers, governments, development bodies and tax bodies on the most effective way to tax the digital economy.

Keywords: VAT ; digital economy ; taxation ; consumption tax ; constraints

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## 1. Introduction

The digital economy has grown dramatically worldwide, leading to the emergence of new business transactions and the growth in e-commerce and online transactions. Digitalization of the economy is viewed as a propeller for growth, innovation as well as societal change and connectivity ([Organization for Economic Co-operation and Development \(OECD\) 2020](#); [Schiavone Panni 2019](#)). Despite the advantages linked to the expansion of the digital economy, several challenges have also originated. Key areas of the economy such as industries, entrepreneurial development, innovation and technology, fiscal policy and taxation have faced problems emanating from the substantial growth of the digital economy ([Ahmed and Gillwald 2020](#)). [Simbarashe \(2020, p. 178\)](#) asseverates, "Among these, tax implications of the digitalized economy are perhaps the most urgent issue for policymakers, governments, civil societies and international organizations". Taxation is a not only a revenue generation problem but also a development issue, a regulation matter, a financial inclusion concern and a topic that touches on the fulfilment of the United Nations (UN) Sustainable Development Goals (SDGs).

The change in business models and the widening of global digitalization has enabled MNEs and other ordinary companies to penetrate global tax jurisdictions where they only have markets but no physical presence ([Kelbesa 2020](#); [Munoz et al. 2022](#)). These companies have managed to generate profits in ways, which have challenged the existing international tax laws' adequacy in handling and tapping tax revenue from the digital economy ([OECD 2019, 2020](#)). The African continent is not immune to these challenges ([Kirsten 2019](#); [Latif 2019, 2020](#); [African Tax Administration Forum \(ATAF\) 2019a, 2019b](#)). The digital economy has led to a consequential digital presence and investments by digital MNEs such as Amazon, Google, Netflix, Facebook, and Uber. Most African revenue authorities and their governments have started to take a special interest in how to mobilize revenue from the seemingly intricate digital economy.

MNEs had been previously operating in these market jurisdictions such as Africa, but their activities have immensely increased in breadth, scope, and intensity. The widening of the activities is due to the expansion in digital transformation, together with the advancement in communication and information technology ([Akpen 2021](#); [Bunn et al. 2020](#); [Deloitte 2020a](#); [Simbarashe 2020](#)). Digitalization has brought significant modification to the way businesses conduct their activities and transactions as well as to tax administration. The changes in the business world and the fact that they now lean more on digitalization was fueled by the COVID-19 pandemic. This accordingly calls for changes to be incorporated in regulation, infrastructural development, tax policy construction and tax administration.

The invisibility and borderless feature of digital transactions makes levying and collecting taxes on them a formidable task for all economies (both developed and developing) and more so in African countries where tax administration capacities are weak, coupled with underdeveloped technologies as well as resources constraints. Identifying digital businesses,

determining the scope of their activities, tracing their revenues, gathering, and verifying information that leads to the determination of tax liability is difficult for countries in general ([Lowry 2019](#)) and more challenging for African countries ([Santoro et al. 2022](#); [Simbarashe 2020](#)).

While revenue authorities continue to face the revenue collection predicaments emanating from the growing presence of the digital economy, digital transformation continues to heighten innovation and the emergence of complex business models. Tax administration in Africa remains unclear on the most effective and efficient way to tax the digital economy, yet the challenges arising from novel technologies and intricate business models continue to mount, increasing the likelihood of tax revenue leakages. Digital transformation has indeed raised questions on whether the current international tax legislation remain applicable and adequate for tax revenue mobilization in this globalized and digitally transformed business environment. The current legislation includes the OECD transfer pricing guidelines and UN guidelines on transfer pricing (TP) as well as various unilateral TP rules (arm's length principle). While considerable efforts have been made to regulate base erosion and profit shifting (BEPS) through BEPS projects ([Simbarashe 2020](#)), OECD TP guidelines ([Kabala and Ndulo 2018](#)) and ATAF guidelines on intangibles ([ATAF 2020](#)), the key challenges in taxing the digital economy have remained insufficiently addressed ([Ahmed and Gillwald 2020](#); [Kelbesa 2020](#); [Rukundo 2020](#)). The BEPS Inclusive Framework on BEPS and on Addressing the Challenges in the Taxation of the Digital Economy discussions have been ongoing, and the implementation of the negotiations have been delayed to the frustration of member countries, with some of these countries resorting to enacting their own individual tax rules on the digital economy. Divergent views have emerged among member nations. In relation to the OECD consensus-based rules, ATAF, on behalf of African countries, has posed questions on the effectiveness and inclusiveness of the proposed provisions and pillars guiding the envisaged implementation ([Becker 2021](#)). The thorny areas revolve around the applicability of OECD guidelines in the African contexts. Firstly, the issues of the effectiveness of international digital services tax rules in curbing tax avoidance and evasion by MNEs in Africa. Secondly, how the consensus-based rules take into consideration the shortcomings of African tax administration authorities and other resource constraints. These issues raise concern on whether the playing field is level when viewed in the context of developed and developing country perspectives.

From the extant literature, African countries have moved towards finding their own ways to tax digital income. Some have introduced new direct digital taxes that are akin to corporate tax rates (Tunisia, Zimbabwe, Kenya, and Nigeria) ([Becker 2021](#)), others have used withholding taxes while others have expanded their consumption taxes or VAT regimes (Zimbabwe, South Africa) ([Simbarashe 2020](#)). These methods are not without their fair share of challenges and shortcomings. Firstly, with direct taxes, the difficulty lies in the establishment of the taxable nexus in accordance with the existing international tax laws. For example, the physical permanent establishment or the adequate physical presence. Secondly, digital MNEs such as Amazon, Facebook, Netflix, YouTube, and Twitter can engage in aggressive BEPS due to the mobility and intangibility of their assets. With the shift of the economy from the brick-and-mortar nature of businesses to the novel digital commercialization, BEPS is likely to broaden. Africa must find a suitable and efficient way to tax the digital economy.

Taxation of the digital economy remains explored to a limited extent due to its infancy. While some studies have focused on the need to tax the digital economy ([de Lima Carvalho 2020](#); [Ismail 2020](#); [Schiavone Panni 2019](#)) and some on the challenges of taxing the economy ([Gulkova et al. 2019](#); [Ndajiwo 2020](#); [Saint-Amans 2017](#); [Turina 2020](#)), the methods of taxing the digital economy both direct and indirect remain comparatively unassessed. This entry focuses on the use of indirect or consumption taxes to tax the digital economy, the possibilities of effective revenue mobilization, constraints, and other associated ramifications. This entry makes two vital contributions. Firstly, to the academic body of knowledge and literature on the taxation of the digital economy in general and specifically to using VAT to mobilize revenue from this economy. As highlighted previously, there is a paucity of literature that evaluates taxation of the digital of the economy using VAT in Africa. This entry gives a comprehensive insight into the VAT legislation and administration that is still in its nascent stages of development and implementation in the digital economy in Africa. While [Simbarashe \(2020\)](#) gave an overview of the VAT legislation adopted by African countries in response to the growth of the digital economy, the authors did not conceptually analyze the practicability of administering the regulations, and the possible constraints and implications that can be encountered. Secondly, through a conceptual analysis of the VAT legislation and its applicability to the digital economy and by unpacking the likely pros and cons of VAT administration in this economy, the entry makes a practical contribution to policy formulation. Taxation is not only about collecting revenue but also about driving growth in the economy, encourage usage of goods and services as well stimulating international trade and investments. Therefore, by unpacking the key strengths of the VAT policy, the legislative shortcomings and possible areas of improvement, this entry helps inform future VAT policy amendments and new policy designs in African countries.

## 2. VAT Administration on the Digital Economy in Africa

This section presents a conceptual analysis based on an evaluative review of the literature on VAT administration and taxing the digital economy in Africa, focusing on opportunities, constraints, and implications. The sections guiding the analysis focus on VAT legislation, possibilities of mobilizing revenue from the digital economy using VAT and the challenges to effective VAT administration in the digital economy as well as the implications of levying VAT on digital transactions.

### 2.1. Consumption Taxes and Digital Economy Taxation

The broadening of the VAT legislation, especially the term 'electronic services', included anything ranging from software to advertising. As an output from the Global Forum on VAT set by the OECD in 2012, in September 2016 the OECD released guidelines to help countries to curb tax avoidance in the digital sector ([Deloitte 2020b](#)). These guidelines incorporated the destination principle to make non-residents service providers in market jurisdictions (country where consumers or users of the digital services are) liable for VAT in the market jurisdictions. Foreign digital service providers were obliged to register for VAT or appoint to registered domestic representative to do so on their behalf; this makes tax compliance and enforcement problematic ([TaxWatch 2021](#)).

VAT is normally referred to as a destination-based or consumption tax chargeable on a consumer. VAT is a broad-based tax levied on the consumption of goods and services ([Beebeejaun 2020](#); [Kruger and Moss-Holdstock 2014](#); [Rooi 2015](#)). The seller is the one who normally collects the tax. VAT is often applied on the price. VAT is a major fountain of tax revenue for most governments globally. In Africa, VAT is argued to contribute approximately 30% of national revenues ([TaxWatch 2021](#)).

The characteristics of VAT include: (1) Applicable to transactions on or the supply of goods and services; (2) calculated as a proportion of the price charged for the sale of goods; (3) chargeable at each stage of production or distribution; and (4) input tax (VAT) can be claimed. The mechanics of VAT computation are such that businesses can claim input tax that they have incurred in making taxable supplies ([Lowry 2019](#); [Russo 2019](#)). For example, a company that sells clothing adds VAT/Goods and Services Tax (GST) to the prices of the clothes they manufacture and sell (output VAT). The company also buys a car for its sales and distribution. The purchase of the car would attract VAT (input VAT). Therefore, to arrive at the VAT payable or refundable the calculation is as follows: Output VAT-Input VAT = VAT payable or refundable.

Therefore, having explained the mechanics of VAT, the next sections look at the use of VAT in mobilizing revenue from the digital economy in international forum (briefly) and in Africa.

#### 2.1.1. The Application of VAT Regulation in the Digital Economy and the International Tax Platform

The unprecedented growth in digital activities globally motivated countries and international development bodies and tax bodies to explore possible ways to tap tax revenues from this novel economy. One such possible approach was the application of VAT legislation to the digital economy. Debates surround the adequacy and effectiveness of VAT regulation in fostering tax compliance and productive revenue mobilization at minimal administration and compliance costs. In most countries, VAT was never levied on digital transactions due to the absence of physical presence, hence significant revenues were being lost. This placed domestic companies supplying electronic services in an unfavorable position, since in incorporating the legal obligation to charge VAT to their consumers, their prices increased ([Beebeejaun 2020](#); [Lowry 2019](#); [Munoz et al. 2022](#)). Furthermore, the disadvantaged position was compounded by the registration and administration burdens, the VAT assessment, collection, and remittance costs as well as filing procedures. The OECD taskforce made recommendations to guide countries to build a fair and level taxation playing field and to protect the individual countries' ability to levy VAT. Four ways of collecting VAT are recommended. Firstly, the traditional VAT collection approach, where the assessment for VAT is carried out at the border. Secondly, the vendor collection method, whereby non-resident foreign companies are responsible for the imposition, collection, and remittance of VAT to the market jurisdiction (destination principle). Thirdly, the intermediary collection method, that is, using intermediaries to collect VAT on behalf. Lastly, the reverse charge mechanism ([Beebeejaun 2020](#)). The destination principle which is adopted by most countries (South Africa, Mauritius, Indonesia, Kenya, Zimbabwe, and Cameroon) is argued to provide certainty and predictability in revenue mobilization through VAT.

### 2.2. Consumption or Indirect Taxes and Taxation of the Digital Economy in Africa

Resources mobilization from the digital economy is essential for post COVID-19 pandemic national reconstruction ([Onuoha and Gillwald 2022](#)), as economic activity was adversely affected. Revenue mobilization declined, and public expenditure immensely widened as countries committed substantial resources to fighting the pandemic. The situation is

more precarious in Africa where revenue mobilization is generally weak, and countries are often faced with budget deficits (Mpofu 2021a; Sebele-Mpofu 2020a). Intangible assets have gained a significant role in the digital economy, with MNEs gaining a greater share of their value creation from intangible assets. These assets include intellectual property, trademarks and copyrights that are easily and invisibly shifted across borders and that are difficult to value for TP due to lack of comparables. TP abuse becomes easy in this case, siphoning Africa of millions needed to fund health, security, education, infrastructural development, and economic growth (Sebele-Mpofu et al. 2021b; United Nations Conference on Trade and Development (UNCTAD) 2020). The debate in relation to VAT and the digital economy revolve around the opportunities, constraints, and implications. There is on-going discussion globally and in Africa specifically on whether or not to tax the digital economy and if so, using what method or tax head and at what rates. **Table 1** provides an insight into the VAT provisions, collection mechanisms and tax rates used by some selected African countries. **Table 1** foregrounds the overview of indirect taxes towards taxing the digital economy in Africa. The table gives a synopsis of selected countries' VAT provisions and the effective dates of legislation implementation.

**Table 1.** Summary of VAT regulations in selected African Countries.

Country	Legal/Statutory Provisions	Effective Date	Reference(s)
Algeria	On 12 December 2019, the country broadened its VAT legislation to incorporate sales of digital services, which are liable to a downward revised rate of 9%. The law remains silent on the registration provisions for non-resident providers No VAT liability threshold.	1 January 2020	(Bunn et al. 2020; Kelbesa 2020; Simbarashe 2020)
Kenya	From September 2013, Kenya levied VAT on digital services provided by foreign suppliers to the country 'residents. Kenya broadened its indirect tax policy in 2019 to include sales generated through digital sales markets, making VAT chargeable on these sales. Furthermore, the country widened the provisions for self-assessment under VAT.	1 January 2020	(Kapkai et al. 2021; Sigadah 2018; Simbarashe 2020; TaxWatch 2021)
Cameroon	The country introduced VAT on digital services. The provisions are such that the sale of goods and services to both businesses and individuals shall be VAT chargeable. All operators of e-platforms must register o VAT in relation to each transaction.	17 January 2020	(Simbarashe 2020; TaxWatch 2021)
Ghana	In 2013, Ghana put in place VAT regulations that if non-resident vendors selling/providing services to customers in Ghana should register for VAT. Threshold: GH 200,000 (estimated 25,000).	1 January 2014	(Simbarashe 2020; TaxWatch 2021).
Zimbabwe	The company put in place legislative requirements for non-resident vendors of television, radio and other digital services to customers or users in Zimbabwe to register, collect and remit VAT.	January 2020	(Becker 2021; Deloitte 2020a; KPMG 2020; Simbarashe 2020)
Tanzania	The country's tax rules require non-resident provers of business to customers of telecoms services and e-commerce services to be registered for VAT.	1 July 2015	(Liganya 2020; PWC 2020; Simbarashe 2020)
Uganda	The country's revenue authority (Uganda Revenue Authority) released a public notice requirement for non-resident vendors or providers of digital services to customers in Uganda to register for VAT and collect the Tax.	1 July 2018	(Simbarashe 2020)
South Africa	South Africa had initially enacted VAT legislation in 2013 and the regulations became effective in 2014. These regulations were broadened in 2019 with broader definition for electronic services. The country's VAT legislation requirement is that foreign providers of digital services must register as VAT vendors, collect VAT at a rate of 15% and remit it. The registration threshold was stipulated to be ZAR 1 million.	January 2019	(Kabwe and van Zyl 2021; Van Zyl 2014; Van Zyl 2013; Stephanus P. Van Zyl and Schulze 2014)
Angola	VAT rules were drafted in October 2019, which became effective in January 2020, providing that digital service suppliers must register with the country's revenue authority (Angolan Tax Authority) or appoint a local agent to collect and remit VAT in Angola.	January 2020	(Simbarashe 2020)
Morocco	The country's tax code provides that any service rendered or used within the Moroccan territory is liable to the country's VAT at a rate of 20% that is applicable to digital services.	2019	(Simbarashe 2020)

Country	Legal/Statutory Provisions	Effective Date	Reference(s)
Nigeria	Section 10 of <a href="#">(Nigeria's VAT Act 1993)</a> , No 102 provides that non-resident firms conducting business in Nigeria must register for tax, using the address of the person of whom the company has a standing contract. Accordingly, the non-resident company shall include tax charge on its invoice and the recipient of the service shall remit the tax to the Federal Inland Revenue Services (FIRS) in the currency of the whole transaction.	2020	<a href="#">(Ahmad et al. 2021)</a>
Malawi	VAT on internet service was re-introduced in July 2013 at a threshold of MWK 10M (estimated at f 9.500).	2013	<a href="#">(TaxWatch 2021)</a>

Author's Compilation from Various Sources.

From **Table 1**, it is evident that many African countries must formulate legislation to tax the digital economy through VAT/GST. The VAT regulations presented in **Table 1** require non-resident digital firms to register for VAT or to appoint a domestic representative to do so on their behalf. Despite the enactment of the new VAT on digital taxation laws or the widening of existing regulations to encompass the digital services, non-compliance by digital MNEs operating in Africa such as Facebook, Amazon, Netflix, and Google among others is still high and problematic ([Simbarashe 2020](#); [TaxWatch 2021](#)).

African countries are losing a lot of revenue from the non-taxation of digital transactions. Initially, the South Africa VAT regulation on digital transactions was introduced in 2014 to cover a smaller section of electronic services; the definition was widened on 1 April 2019 to encompass electronic services provided by electronic communication or electronic agents or through the internet ([Beebejaun 2020](#); [Bowmans 2020](#)). Between 2014 and 2019, South African Revenue Authority Services (SARs) revenue authorities collected more than ZAR 600 million/year and an estimated ZAR 3 billion (USD 215 million) within the 5 years, ([TaxWatch 2021](#)). With the broadening of the VAT legislation in 2019 to include all electronic sectors, the SARs might improve revenue generation significantly. Discussions on the most effective way to mobilize tax from the digital economy have revolved around the superiority of VAT over Digital Services Taxes (DSTs) and the appropriateness of using VAT/GST to collect tax from the digital economy.

## 2.3. Benefits for Taxing the Digital Economy in Africa Using VAT

[Ndajiwo \(2020\)](#), while focusing on Ghana, Kenya, Rwanda, Senegal, and Uganda, expostulates that these African countries have an opportunity to mobilize taxes through VAT due to its comparative administrative ease. The researcher adds that the fact that VAT legal frameworks are already in existence, in contrast to the recently enacted DSTs, is an opportunity to exploit VAT in taxing the digital economy. [Russo \(2019\)](#) describes VAT as a low hanging fruit and that VAT ensures neutrality in taxation of foreign and local companies. For example, in South Africa, the VAT threshold of ZAR 1 million is applicable to both domestic and foreign companies, thus ensuring equity and neutrality in the treatment of companies. [Ahmad et al. \(2021\)](#) asserts that those who advocate in favor of consumption taxes submit that they promote investment and savings, thus promoting efficiency in the economy. On the other hand, critics claim that consumption taxes negatively affect the poor as they commit the greater portion of their income to financing necessities, therefore regressively affecting them, as VAT does not consider the ability to pay. VAT is also criticized for shifting the incidence of the tax burden to consumers ([Ahmad et al. 2021](#); [Kim 2020](#); [Russo 2019](#)). This section explores the possibilities and advantages of employing VAT in taxing the digital economy.

### 2.3.1. Superiority of VAT to Turnovers

[Russo \(2019\)](#) argues that VAT is more appropriate for taxing digital services than DSTs and posits that VAT is superior to corporate taxes on efficiency grounds. ([Russo 2019](#)) points to three important positive effects of VAT: (1) VAT does not lead to a distortion in business decision for example production, supply, and usage; (2) uniformity—VAT does not differ based on the total companies in the supply chain, not cascading; (3) effectiveness. [Turina \(2018\)](#) argues that modifying the VAT legislation to cover digital services is a more appropriate option and economically superior option to mobilize tax revenue from the digital economy compared to DSTs and withholding taxes. It is easy for businesses (digital services consumers) to account for VAT from the supplier through the reverse charge mechanism for Business-to-Business (B2B) interactions. It is quite challenging and not viable for Business to Customer (B2C) interactions. Difficulties in enforcing compliance are alluded to in some African countries (Nigeria, Kenya and Rwanda) ([TaxWatch 2021](#)). Despite acknowledging the possible superiority of consumption taxes, efficiency advantages and the fact that they circumvent tax cascading, it is important to note that there is ongoing argumentation regarding the conception of value creation in the

digital taxes discussion ([Kennedy 2019](#); [Kim 2020](#); [Lowry 2019](#)). Stakeholders disagree on what constitutes value creation and how the value is created or added and by who (corporates or users).

### **2.3.2. Efficiency**

[Adhikari \(2016\)](#) alludes to significant support for VAT-driven efficiency gains. While consumption taxes such as VAT are efficient and administrable, income taxes promote equity. Consumption taxes have the ability to avoid the dead weight loss of taxation, and to enable significant savings by individuals as well as investment and capital formation, and consequently higher economic productivity enhances efficiency ([Kim 2020](#)). In terms of administrability, those in favor of consumption taxes point to reduced complexity as a strength of these taxes. Researchers point out that despite the ease of administration, VAT passes the tax burden to consumers, thus making them regressive and violating the fairness and equity canons of taxation ([Kim 2020](#); [Lowry 2019](#)). Researchers disagree on the regressive effects of VAT, with the [OECD \(2014\)](#) concluding from a study of 38 countries, that in 20 of these OECD countries, consumption taxes that encompassed excise and VAT, were nearly proportional or moderately progressive when evaluated for expenditure as opposed to income.

### **2.3.3. Creation of a Competitive E-Commerce Environment**

Where African countries apply uniform registration thresholds for VAT registration for both domestic and foreign companies, equity, fairness, and neutrality are ensured, as discriminatory policies are avoided. The principles of an ideal tax policy emphasize the need for equity in tax policy and accordingly as outlined in tax morale literature ([Luttmer and Singhal 2014](#); [Sebele-Mpofu 2021](#)), tax morale increases if taxpayers perceive that they are treated fairly, thus increasing voluntary tax compliance. Owing to the infant nature of the VAT legislation on the digital economy and the difficulties in enforcement due to lack of power by the revenue authorities and their commissioner generals to do so across territorial borders ([Kabwe and van Zyl 2021](#)), voluntary tax compliance is key. The fair digital taxation environment can indirectly encourage investment in the digital services sector, novel technological advancements, economic growth, digital financial inclusion, and fruition of the SDGs, such as gender equality (SDG5), decent work and economic growth (SDG8) and responsible consumption and production, (SDG12) among others.

## **2.4. Constraints to Effectively Taxing the Digital Economy in Africa Using Consumption Taxes**

Non-tax compliance by digital or tech giants as they fail to collect VAT leading to large sums of revenue going uncollected negatively affects economic growth in African countries. Digital MNEs are failing to collect the VAT from their African customers and remit it to African companies ([TaxWatch 2021](#)). Therefore, they are contravening the African countries' VAT or GST in some jurisdictions. Different challenges are affecting the applicability and effectiveness of VAT legislation in taxing the digital economy globally and these might apply to the African countries, but they also vary considerably due the developed and developing country context differences. These variations could lie on administration and enforcement capacities, the state of development of VAT legislation, political power differences and clarity in legislation. Convergences on these challenges could be on the intangibility or borderless nature of digital services, as well as the ambiguities in key definitions. [Janse van Vuuren \(2019\)](#) and [Rukundo \(2020\)](#) allude to administrative challenges and increases in compliance and administrative burdens including costs. While assessing VAT legislation on the digital economy in Nigeria, [Etim et al. \(2020\)](#) point to the following challenges: outdated VAT legislation, poor legislation implementation, infrastructural gaps, technology, intricacies of digital transactions and the possibility of double taxation. [Hadzhieva \(2019\)](#) and [Simbarashe \(2020\)](#) posit that foreign companies raise concerns about the inconsistency in VAT legislation, the absence of double taxation agreements which compounds uncertainty and administrative responsibility, as well as advancing the probability of double taxation. This section discusses the challenges faced by African countries in the administration of VAT regulations on digital services despite the existence of legislation as set out in **Table 1**.

### **2.4.1. Invisible or Borderless Nature of Digital Transactions**

VAT is exigent to apply to digital transactions. Contrary to the situation with the importation of tangible goods, where it is easy to levy tax, the intangibility and invisibility of digital services makes it challenging for tax authorities to enforce VAT on their importation, as they cannot be subjected to border checks ([Kennedy 2019](#); [Lowry 2019](#); [Ngeno 2020](#); [Kapkai et al. 2021](#)). It might be challenging to collect VAT from companies with insignificant or minimal presence in market jurisdictions ([Kennedy 2019](#)).

### **2.4.2. Ambiguities in VAT Legislation Provisions**

The [TaxWatch \(2021\)](#) points out that some digital MNEs such as Google, Microsoft and Facebook stated that they were complying with VAT legislation in some African countries where the legislation was clear and, in some countries, they

failed to comply because the legislation was unclear. According to [Kabwe and van Zyl \(2021\)](#) ambiguities crystallize themselves around key definitions of important terms such as digital services, electronic services, 'supply' of digital services as well as the 'place' of supply. To levy VAT on a transaction, it must be initially demonstrated that the goods or services supplied fall within the purview of the VAT Act or legislation. The articulation of fundamental definitions becomes crucial in this regard.

- Definitions of Digital Services and Electronic Services

In some African countries, the definition of what constitutes digital services or electronic services is lean and fraught with vagueness. [Kabwe and van Zyl \(2021\)](#) assert that most of the VAT legislation and even that targeting the digital economy has not been regularly amended or updated in line with technological advancements, digital transformation, and the continuously evolving and emerging novel as well as complex business models. Most of the regulation has remained static and lagging technological developments in the digital economy. For example, in South Africa, the regulation remained static from promulgation in 2014 until 18 March 2019 when they were revised, and the revision became effective on 1 April 2019 (5 years after initial formulation and implementation). The revision was aimed to make the definition of electronic services expansive to give leeway for amendment in response to changes in business digital environment and advances in technological activities ([Kabwe and van Zyl 2021](#)). In **Table 1**, it is evident that countries such as Ghana and Malawi have not updated their VAT regulations despite the dynamism of the digital economy.

- Supply of Digital Services

For example, while focusing on South Africa, [Kabwe and van Zyl \(2021\)](#) allude to the fact that the VAT Act does not spell out distinct place of supply guidelines or what constitutes a supply. The place of supply must be derived from interpreting Section 7(1) of the South African VAT Act (the charging section) and Section 14 of the same Act (the section provides for the reverse charge framework). In the South African VAT Act, the definition of digital services is broad, and the Act defines these services as those outlined by the Minister of Finance in the legislation. Different international jurisdictions as well as African jurisdictions adopt different definitions for digital services and there are variations on the list of those that levied VAT. According to [Kabwe and van Zyl \(2021, p. 505\)](#) "the lack of international coordination and cooperation regarding a uniform definition of digital goods has resulted in a lot of confusion and uncertainty for foreign businesses". The complex and cumbersome rules will discourage digital MNEs from supplying customers in some tax jurisdictions. The variations in VAT regulations also make it difficult for foreign digital companies to comply, as they must familiarize themselves with VAT legislation in all countries they supply with digital services. The uncertainty in VAT regulations can have potentially pervasive effects on international trade, economic development, digital transformation, digital financial inclusion, and the accomplishment of the UN Sustainable Development Goals (SDGs) in developing countries and Africa is no oddity.

- Place of Supply

In some African countries, the VAT legislation on how to ascertain the place of supply is not clearly articulated. For example, [Kabwe and van Zyl \(2021\)](#) posit that South Africa's new expanded rules have increased the interpretation conundrum of the use and consumption principle in establishing the place of supply. The place of supply definition remains unclear and not definitive. Furthermore, the researchers state that the all-inclusive definition given by the VAT Act does not differentiate between B2B and B2C, yet the OECD calls for a clear distinction between the two in both explication and treatment. Most African countries employ and lean on the destination principle as the rationale to impose VAT, implying the taxation of an economic activity is dependent on where the service is consumed and used. Despite the destination principle seeming to be clear, it is generally complicated for revenue authorities to determine that a supply of services happened within their country. Therefore, ascertaining the place of supply is pivotal to the administration and enforcement of VAT legislation on digital services. There are times where it is easy to employ the use and consumption principle to identify the place of supply and instances where the place of supply cannot be easily identified, meaning proxies must be applied. The problem is that the VAT legislation does not articulate possible proxies or alternative rules for identifying the place of supply if the use and consumption principle is inadequate in addressing the situation. Citing [Rooi \(2015\)](#), [Kabwe and van Zyl \(2021, p. 508\)](#) portend that "if the place of supply is unidentifiable, then it becomes impractical, ineffective and inefficient to implement the relevant legislation". In South Africa, the link between enterprise and place of supply also poses challenges. Though broad and encompassing even foreign companies that supply services to South Africa on a regular basis (deemed to be carrying on an enterprise), the problem arises where the provider of digital services cannot be linked to any physical presence in the world but conducts his business activities in the cloud ([Kabwe and van Zyl 2021](#)). Therefore, with the absence of transparent and decisive 'place of supply' provisions, it is challenging to assign the transaction to a particular sovereignty, and to require them to account for VAT.

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