

Africa: tax implications of digital transformation in the consumer goods and retail sector

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The pandemic-fuelled growth of the digital economy and unabated demand for online retail products across Africa have led to extensive disruption in the Consumer Goods and Retail Sector (CG&R) sector. Due to a growth in demand for online retail, CG&R companies in Africa have been rapidly adapting their digital operating models, and multinational e-commerce platforms operating in the region have attracted a record number of new customers. This digital transition, and resultant growth in the e-commerce sector, has tax implications for digital CG&R businesses operating in Africa.



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The OECD's Pillar One and Two

Multilateral international tax changes currently being implemented by the Organisation for Economic Co-operation and Development (OECD) in terms of Pillar One and Pillar Two, as well as unilateral developments with regard to the taxing of digital services in specific countries, have consequences, particularly for multinational CG&R businesses operating in Africa.

The OECD has been looking closely at the taxing of digital companies through their Base Erosion and Profit Shifting (BEPS) project. The OECD is currently finalising its Blueprint for Pillar One, which will enable market countries to collect income tax on a portion of the profits of certain digital enterprises and consumer-facing companies, and Pillar Two, which aims to establish a global minimum tax. This multilateral approach is expected to eventually replace the unilateral digital services tax (DST) currently being imposed in different levels in countries around the world.

The OECD's Pillar One changes, once finalised, will enable market countries to charge income tax on a portion of the profits of large multinational companies operating within their borders. Taxpayers are currently waiting for clarity on what activities will be included in the final blueprint, how the taxable profit will be determined, what allocation of the profit will be attributed to the market countries, how countries of production will surrender their taxation rights and what global and local

revenue thresholds will be applicable. Pillar two proposes a new network of rules that will reallocate taxing rights according to a new global minimum tax regime – aimed at ensuring a minimum effective net tax rate across all jurisdictions.

Implications for Africa

According to African policymakers, a multilateral approach to tax collection has benefits for the continent. Smaller economies like those in Africa are more reliant on business income tax than larger economies. The African Tax Administration Forum (ATAF) has noted that 16% of total tax revenue in African countries is from corporate tax, compared to 9% in OECD countries. African countries have increased their revenue collection methods and have implemented punitive measures to clamp down on tax avoidance measures because the revenue collected is of the utmost importance to the stability of their economies. Current tax rules mean that African economies cannot collect tax revenue from multinationals even if they are operating profitably in African countries. ATAF has made it clear that the development of global tax rules is essential for Africa's post-pandemic tax policy considerations.

While African economies have been severely challenged by the impact of Covid-19, and governments have had to assess all sources of potential revenue to aid post-pandemic recovery, the pandemic is not the only reason for possible changes to digital tax on the continent. Many African jurisdictions were seeking both direct and indirect taxing rights in respect of digital services and products ordered via multinational e-commerce platforms since before the pandemic struck.

VAT

The application of VAT to e-commerce transactions has proved challenging around the world, including in Africa. Digital services tax on an e-commerce platform does not replace customs duties on physical goods that arrive in a country after being ordered online from other jurisdictions. While currently the customer pays import duties on goods they order from other countries via digital e-commerce platforms, this is set to change. Due to the rapid expansion of online retailing, African countries are looking at ways to simplify the payment of customs duties on the increasing volume of cross-border, business-to-consumer transactions, in the form of low value consignments. They are doing so by seeking to impose VAT on the goods on the supplier side. Consequently, non-resident e-commerce companies that provide goods via online retailing platforms to African countries may have an obligation to be VAT registered in the countries to which they ship goods. In addition to the possible increase in tax due to the OECD's Pillar One changes, this indirect tax change has further cost implications for multinational e-commerce organisations operating in Africa.

Recent African Tax Developments

Examples of recent developments in digital tax in Africa include Kenya's amended Income Tax Act, which introduced DST on income accruing through a digital marketplace at the rate of 1.5% of the gross transaction value via the Finance Bill, 2020. Further, last year the Kenya Revenue Authority published the draft Value Added Tax (Digital Marketplace Supply) Regulations, 2020, providing a simplified VAT registration framework for non-resident entities who provide digital services in Kenya on a Business-to-Consumer (B2C) basis. Failure to collect and remit VAT could result in the denial of access to the digital marketplace.

In Nigeria, the Finance Act, 2020 was enacted into law, amending the Companies Income Tax (CIT) Act and Value Added Tax act by bringing digital services within the purview of the Nigerian CIT imposition, as well as for the applicability of VAT to digital transactions. Zambia introduced VAT on electronic services, which includes the supply of services via the internet, mobile telecommunication networks and any other electronic commerce infrastructure, effective 1 January 2020. While implementation of these provisions is still under consideration by the Zambian Revenue Authorities (ZRA), and regulations in this regard are yet to be published, the ZRA expects multinationals to comply with the current legislation.

In South Africa, there were early developments with regard to indirect tax on digital services when an amended regulation that expanded the VAT base for electronic services was first announced in 2018. In 2020, it was announced that the definition of telecommunication services per the regulations prescribing electronic services for the purposes of the South African VAT Act would be revised.

In South Africa's 2021 budget speech, the-then Finance Minister Tito Mboweni noted that the country would wait for the OECD to finalize Pillar One and Two, before any developments were announced regarding a direct tax on digital services in the country. He also said that should the OECD's efforts fail, South Africa would consider the appropriateness of a unilateral approach.

CG&R businesses with digital offerings in Africa should ensure they are compliant with the requirements laid out in the potential new global tax regime for digital services, while simultaneously keeping up to date with rapidly developing, country-specific direct tax and VAT regulations, as revenue authorities in post-pandemic Africa seek to clarify and broaden their tax bases.

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