AN ANALYSIS OF THE DIGITAL SERVICES TAX SOLUTIONS PRESENTED IN AFRICA AND EARLY-ADOPTING DEVELOPED COUNTRIES TO INFORM SOUTH AFRICA ON THE DESIGN FEATURES FOR TAXING THE DIGITAL ECONOMY

By:

Sandy Deliah Cupido (Student No. CPDSAN004)

Submitted to the University of Cape Town
Faculty of Commerce
In partial fulfillment of the requirements for the degree of Master of Commerce in Taxation, specialising in South African Income Tax

Date of Submission:

February 2024

Supervisor:

Tracy Johnson, Department of Finance and Tax, University of Cape Town

PLAGIARISM DECLARATION

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.

2. I have used the Chicago reference style convention for citation and referencing. Each contribution to and quotation in, this dissertation from the work(s) of other people has been attributed and has been cited and referenced.

3. This dissertation is my own work.

4. I have not allowed and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.

5. I acknowledge that copying someone else's dissertation, or part of it, is wrong and declare that this is my own work.

Signature: Signed by candidate

ACKNOWLEDGEMENTS

I would like to extend my appreciation to my supervisor, Tracy Johnson, first and foremost for the sound advice and guidance you have provided over the years, since my Honours year at UCT. Thank you for the encouragement to pursue my Masters degree, even during the daunting COVID-19 period, which has proven to be the most challenging yet, rewarding and fulfilling experience of my academic career. Finally, thank you for your insights on the subject matter of this dissertation and your encouragement throughout the writing process.

To my mom, Zuconie Cupido, thank you for your unwavering support and patience. Your words of encouragement have helped me to persevere through many obstacles encountered on this journey.

ABSTRACT

South Africa has announced plans to adopt the Organisation for Economic Co-operation and Development's ("OECD") Two-Pillar Approach and is currently preparing for Pillar Two's implementation, as the design and consensus for the implementation of Pillar One is progressing at a slower pace. While both pillars originated from the need to address Base Erosion and Profit Shifting ("BEPS") issues, it is Pillar One that is primarily focused on taxing digital economy, whereas Pillar Two is focused on implementing a global minimum corporate tax rate. Thus, Pillar Two's implementation may not satisfy South Africa's need to tax the digital economy and generate revenue from the supply of digital services, in the manner that Pillar One is intended to. During this time, while the future of Pillar One unfolds, South Africa may find it useful to pause and consider alternative approaches to taxing the digital economy.

Digital services tax ("DST") has emerged as the most prevalent unilateral approach to taxing the digital economy, especially among African countries. In light of the issues regarding the global consensus required to implement Pillar One and the time it will take to get the United Nations ("UN") Framework Convention on International Tax Cooperation underway, an opportunity exists for South Africa to consider implementing a DST to tax the digital economy and benefit from the additional tax revenue to be generated in the interim. Given the existing complexities in the South African tax system, a DST presents a simpler and more manageable approach to introduce to the South African tax landscape for the purpose of taxing the digital economy. Since a DST would be introduced unilaterally by South Africa, its design features could be tailored to meet the country's specific needs for taxing digital services.

Accordingly, the primary research objective of this dissertation is to identify and analyse the DST design features that South Africa could consider if a DST was to be implemented as an alternative approach to taxing the digital economy. The primary research objective is addressed by sub-objectives that comprise of: discussing potential benefits and challenges of implementing DSTs, analysing the DSTs of early-adopting developed countries that were among the first to implement DSTs, by identifying key commonalities in the design features; analysing the DST legislation of the African countries that have implemented DSTs, by identifying and examining similarities and variations in the design features; and analysing the design features of the African Tax Administration Forum's ("ATAF") *Suggested Approach to Drafting Digital Services Tax Legislation* ("ATAF's Suggested Approach") with those of the African DSTs, to identify areas of alignment or deviation.

The dissertation provides a comprehensive list of potential benefits and challenges of DSTs to assist South Africa in weighing up the positives and negatives of implementing a DST to tax the digital economy. From the further analyses performed, it is concluded among other findings, that similarities exist between the design features of the DST solutions as it pertains to the tax base, scope of digital services and minimum DST thresholds, while variations are identified in the design features regarding source rules and determining user participation. These shared trends are further interpreted to provide insights into how the DST design features could be considered by South Africa.

TABLE OF CONTENTS

PLAGIARISM DECLARATION 1

ACKNOWLEDGEMENTS 2

ABSTRACT 3

TABLE OF CONTENTS 5

ACRONYMS 8

ABBREVIATIONS 8

CHAPTER 1: INTRODUCTION 9

1.1 Background 9

1.1.1 Progression of the digital economy 9

1.1.2 Various approaches to taxing the digital economy 11

1.1.3 South Africa’s approach to taxing the digital economy 18

1.2 Research objective 19

1.2.1 Rationale for the study 19

1.2.2 Research objective 25

1.3 Research methodology 26

1.4 Limitations of scope 27

1.5 Structure of dissertation 28

CHAPTER 2: THE POTENTIAL BENEFITS AND CHALLENGES OF IMPLEMENTING DSTS 29

2.1 Introduction 29

2.2 The potential benefits of implementing DSTs 29

2.2.1 Increased tax revenue 29

2.2.2 Improved economic development and attainment of a country’s primary objectives 30

2.2.3 Enhanced trust and confidence in the transparency and fairness of the tax system 30

2.3 The challenges associated with implementing DSTs 31

2.3.1 Administration challenges and related costs 31

2.3.2 The impact on stakeholders 32

2.3.3 The impact on a country’s digital economy, economic growth and welfare 33

2.3.4 The financial impact 35
2.3.5 Interaction with global agreements 35
2.4 Conclusion 36
CHAPTER 3: THE DSTS OF EARLY-ADOPTING DEVELOPED COUNTRIES 38
3.1 Introduction 38
3.2 An overview of the DSTs implemented by early-adopting developed countries 38
3.2.1 France 39
3.2.2 Italy 41
3.2.3 Austria 43
3.2.4 The UK 44
3.2.5 Spain 46
3.3 An analysis of the design features of DSTs implemented by France, Italy, Austria, the UK and Spain 47
3.3.1 Base of taxation 47
3.3.2 Calculation of digital services revenue 47
3.3.3 Scope of digital services 47
3.3.4 Threshold of transactions 48
3.4 Conclusion 48
CHAPTER 4: THE ENACTED DST LEGISLATION OF AFRICAN COUNTRIES 50
4.1 Introduction 50
4.2 An overview of the enacted DST legislation of African countries 50
4.2.1 Zimbabwe 51
4.2.2 Tunisia 53
4.2.3 Nigeria 54
4.2.4 Kenya 56
4.2.5 Sierra Leone 58
4.2.6 Tanzania 59
4.2.7 Uganda 61
4.3 An analysis of the design features comprised in African enacted DST legislation 62
4.3.1 Similarities in African DST design features 62

4.3.2 Variations in African DST design features....64
4.4 Conclusion....66
CHAPTER 5: ATAF'S PROPOSED SOLUTION FOR TAXING THE DIGITAL ECONOMY....69
5.1 Introduction....69
5.2 An overview of ATAF's Suggested Approach to drafting DST legislation....69
5.3 An analysis of the design features of ATAF's Suggested Approach and those of African DSTs....76
5.3.1 Alignment of DST design features....76
5.3.2 Deviation of DST design features....76
5.4 Conclusion....77
CHAPTER 6: CONCLUSION....79
6.1 Introduction....79
6.2 Key findings....79
6.3 Concluding remarks....81
BIBLIOGRAPHY....82

ACRONYMS

ATAF	African Tax Administration Forum
BEPS	Base Erosion and Profit Shifting
CIT	Corporate Income Tax
DST	Digital Services Tax
DTA	Double Tax Agreement
DTC	Davis Tax Committee
EU	European Union
GloBE	Global Anti-Base Erosion
GST	Goods and Services Tax
MLC	Multilateral Convention
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment
STTR	Subject to Tax Rule
SEP	Significant Economic Presence
UK	United Kingdom
UN	United Nations
US	United States
VAT	Value-Added Tax

ABBREVIATIONS

ATAF's Suggested Approach	ATAF's Suggested Approach to Drafting Digital Services Tax Legislation
Inclusive Framework	OECD/G20 Inclusive Framework on BEPS
July Outcome Statement	Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy
SEP Order	Companies Income Tax (Significant Economic Presence) Order 2020

CHAPTER 1: INTRODUCTION

1.1 Background

1.1.1 Progression of the digital economy

Global context

Digitalisation is transforming our economic and social environments, altering the manner in which business is conducted and how we interact. With new forms of value creation emerging and the evolution of innovative business models, it is evident that digital technologies provide many opportunities to impact and improve the way in which economies are organised and function. It also presents prospects for better tax administration, such as more efficient tax collection through accessing new data sources, as well as altering the nature of policymaking with new tools to support the development and implementation of policies.[1]

The rapid and expansive digital transformation in recent years has however, introduced challenges to the prevailing international income tax rules, developed in a "brick-and-mortar" economic environment more than a century ago.[2] These principles governing profit allocation and taxation rights emphasise the physical location and physical features of businesses. This proves to be problematic in a world where economic activities are conducted in countries through digital technologies and platforms, by businesses with no physical presence in those countries that leverage off local users, data and markets to realise business value.[3] Consequently, these businesses do not pay corporate income tax ("CIT") in the countries in which they digitally operate, despite the significant profits they generate.[4] This may result in substantial tax risks due to tax revenue leakages or non-taxation.

---

[1] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development/The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 9.

[2] "Action 1 Tax Challenges Arising from Digitalisation," 2021, OECD, accessed 15 February 2023, https://www.oecd.org/tax/beps/beps-actions/action1/, pg. 1.

[3] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development/The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 9.

[4] "Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," 2021, OECD, accessed 15 February 2023, https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf, pg. 3.

The COVID-19 pandemic intensified these challenges, as lockdown restrictions caused many more interactions and operations to take place online. This accelerated the digitalisation of processes and digital activities gained significant momentum over a short period of time. As a result, dominant multinational enterprises ("MNEs") such as Amazon, Apple, Facebook, Netflix and Google capitalised on the surge of online activity and accumulated substantial increases in revenue generated in countries across the world.[5] Due to mismatches in the interaction of tax systems between countries and the inability of international income tax rules to keep abreast with changes in the digital economy, MNEs have not paid their share of tax in the countries in which they digitally operate.[6]

African context

From an African perspective, the growth of the digital economy has brought into question the ability of African tax systems to adapt to its expansion. MNEs tend to expand their digital footprint and service offerings into African countries by strategically establishing hubs in certain regions, which increases their market share and consumption of products.[7] Their digital service offerings are developed from highly valuable and patented algorithms and are provided in Business-to-Business and Business-to-Customer markets in Africa.[8] This earns MNEs significant profits, increasing the valuation of their businesses, which affords them access to extensive technical and financial resources to structure the tax planning of their complex business models.[9] In addition to the international tax landscape that has not kept abreast with the digitalisation of the economy, tax administrations of African countries are not equipped to challenge global MNEs due to under-resourcing and slow adaptation to changes in the international taxing landscape.[10]

African governments and revenue authorities are therefore, continually faced with the difficult task of determining how to expand their revenue bases through taxing the digital economy without limiting its development or restricting the involvement of African consumers in the digital space.[11]

---

[5] "Multifaceted challenges of digital taxation in Africa," 2020, Research ICT Africa, accessed 5 February 2023, https://researchictafrica.net/wp/wp-content/uploads/2021/05/Revised-Final-Tax-PB-Nov-2020-SA-AG.pdf, pg. 1.
[6] Ibid.
[7] "Digital Sales Tax in Africa and the Covid-19 Pandemic," 2021, Afronomicslaw, accessed 11 February 2023, https://www.afronomicslaw.org/category/analysis/digital-sales-tax-africa-and-covid-19-pandemic, pg. 2.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] "Addressing the Challenges of Taxation of the Digital Economy: Lessons for African Countries," 2020, International Centre for Tax and Development, accessed 5 February 2023, https://www.ictd.ac/publication/addressing-challenges-taxation-digital-economy-lessons-african-countries/, pg. 3.

The challenges of African countries are to some extent unique hence, their approaches to taxing the digital economy may comprise of uniquely tailored African solutions.[12]

1.1.2 Various approaches to taxing the digital economy

The challenge of developing an approach for taxing the digital economy is longstanding but has become critical in recent times. In response, various taxing approaches have been designed to target businesses that provide digital services, using a special tax base or tax rate.[13] The implementation of these approaches appears to be grounded in reasonably sound policy and their objectives seemingly overlap with established tax practices and principles (e.g. the source taxation of income).[14]

Below is a summary outlining the objectives and scopes of the most common taxing approaches (including DSTs) employed by several countries that have sought to advance their domestic rules and bring certain digital services into the taxing net.

Digital permanent establishment ("PE")

A business is generally required to pay tax where their business profits are earned and the rule for determining when a business is liable to pay income tax in a country is usually dependent on whether the business has a PE in that country. A PE could be identified by sustained operations in a country through a fixed place of business, sales representatives, employees or related activities, among other factors.[15]

The PE definition could be redefined or extended to include businesses with continuous activities conducted through digital platforms, with no physical presence in the country, effectively termed a 'digital PE.' Once a digital PE is established in a country, a portion of the profits generated by the non-resident business will be attributable to that country.[16] However, the expansion of a country's

[12]Id. Pg. 3 and 6.

[13]"Digital Taxation Around The World," 2020, Tax Foundation, accessed 9 June 2023, https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf, pg.1.

[14]"Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 89.

[15]"Digital Taxation Around The World," 2020, Tax Foundation, accessed 9 June 2023, https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf, pg. 28.

[16]"Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 17.

tax base by redefining what a PE constitutes could result in double taxation or a redistribution of taxing rights.[17]

Source rules

Another approach to taxing the digital economy entails enacting new or amending existing source rules to tax digital services. The new or revised source rules would deem the supply of digital services or the payment in exchange, to be creating a local taxable source without a physical presence in the country.[18] The tax would be applied to gross payments, generally collected through a withholding tax mechanism.[19]

One example of an amendment to source rules was proposed in a South African context, where the source rules would be expanded to cover income derived from the supply of digital goods and services from a source within South Africa, based on a payer principle, similar to that of royalties.[20] In the case of non-residents supplying goods and services to South African consumers by means of e-commerce, the recommended new source rules would address the situation where physical goods are delivered or services rendered in South Africa and for which payment is electronically made to the non-resident supplier.[21] To date however, the new source rules have not been implemented and there is no indication that the new rules are still subject to consideration.[22]

Consumption taxes

Many OECD countries have implemented or are considering implementing rules for Value-Added Tax ("VAT") or Goods and Services Tax ("GST") on a broad scope of digital services.[23] VAT levied on

[17] "Digital Taxation Around The World," 2020, Tax Foundation, accessed 9 June 2023, https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf, pg. 28.
[18] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 27.
[19] Ibid.
[20] "Second Interim Report On Base Erosion And Profit Shifting (BEPS) In South Africa," 2016, The Davis Tax Committee, accessed 21 July 2023, https://www.taxcom.org.za/docs/New_Folder3/3%20BEPS%20Final%20Report%20-%20Action%201.pdf, pg. 4.
[21] Ibid.
[22] "Digital services tax in Africa – The journey so far, Implementation of digital taxes across Africa," 2020, Deloitte, accessed 20 January 2023, https://www.deloitte.com/za/en/services/tax/analysis/digital-services-tax-in-africa-the-journey-so-far.html.
[23] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 14.

supplies of digital goods or services made by foreign suppliers requires collection and remittance by either the suppliers, customers or intermediaries as follows:

- *Supplier collection* – This requires a foreign supplier of digital goods or services to register, levy and remit the VAT and fulfil its reporting obligations where their sales exceed a certain threshold.[24] For example in South Africa, a non-resident that supplies electronic services to a recipient located in South Africa is required to register and account for VAT if the value of its taxable supplies exceed the ZAR 1 million threshold in any twelve-month period.[25] Similarly, in 2019, Kenya deemed the provision of online digital platforms for use by third parties as a taxable supply, with a focus on payments made for the download of applications.[26]
- *Customer collection* – In this instance, a resident customer accounts for VAT due on the digital supply made by a foreign supplier, at the VAT rate applicable in their resident country.[27] Business-to-business transactions typically apply this 'reverse charge' mechanism but this proves ineffective for business-to-customer transactions.[28]
- *Intermediaries* – An intermediary involved in the supply of digital goods and services may assume the responsibility of collecting and remitting VAT on behalf of the foreign digital supplier.[29]

Withholding tax

A withholding tax serves as a tax collection mechanism for payments made to non-residents.[30] As it pertains to the digital economy, a withholding tax can be levied on payments made by residents of a country in exchange for goods and services supplied by non-resident suppliers.[31]

---

[24] "Addressing the Challenges of Taxation of the Digital Economy: Lessons for African Countries," 2020, International Centre for Tax and Development, accessed 5 February 2023, https://www.ictd.ac/publication/addressing-challenges-taxation-digital-economy-lessons-african-countries/, pg. 18.

[25] Ibid.

[26] Ibid.

[27] Id. Pg. 19.

[28] Ibid.

[29] Ibid.

[30] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 17.

[31] "Second Interim Report On Base Erosion And Profit Shifting (BEPS) In South Africa," 2016, The Davis Tax Committee, accessed 21 July 2023, https://www.taxcom.org.za/docs/New_Folder3/3%20BEPS%20Final%20Report%20-%20Action%201.pdf, pg. 59.

The rules for withholding tax on digital services create source taxation rights over certain digital services and may be supported by double tax agreements ("DTA") where source withholding tax on service income is allowed.[32] The practicalities of remitting withholding tax to the revenue authorities may however, present challenges especially for business-to-consumer transactions as it would rely on individual persons, with little incentive to comply, to withhold the tax.[33]

UN's Article 12B tax provision

Article 12B of the UN Model Tax Convention comprises of a gross-based withholding tax to address the taxation of the digital economy. The Article allows the source country to tax income derived from automated digital services at a percentage to be determined through bilateral DTA negotiations but also suggests a percentage of 3% or 4% to avoid double or excessive taxation.[34] Article 12B does not impose a revenue threshold on businesses subject to the tax.[35]

Where the income derived from digital services is attributable to a PE or the income falls within the ambit of Article 12A of the UN Model Tax Convention, the Article 12B provision will not apply and instead, taxation of the income is calculated by applying the arm's length principle.[36]

Article 12B provides the supplier of the automated digital services with an alternative basis of taxation at their election.[37] This alternative basis entails taxing a 30% share of the net profits derived

[32] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 17.

[33] "Addressing the Challenges of Taxation of the Digital Economy: Lessons for African Countries," 2020, International Centre for Tax and Development, accessed 5 February 2023, https://www.ictd.ac/publication/addressing-challenges-taxation-digital-economy-lessons-african-countries/, pg. 13.

[34] "Article 12B of the UN Model Tax Convention – Income From Automated Digital Services," 2020, United Nations, accessed 22 July 2023, https://financing.desa.un.org/sites/default/files/2023-03/Article%2012B%20and%20Commentary%20after%2022nd%20Session%20Meetings%2029%20April%202021.pdf, pg. 1.

[35] "Digital Services Tax Emerging in Africa," 2020, NovioTax, accessed 12 February 2023, https://novio.tax/en/news-221/article/digital-services-tax-emerging-in-africa#:~:text=Most%20recently%20(on%2030%20September,or%20multinational%20enterprise%20(MNE)%20in.

[36] "Article 12B of the UN Model Tax Convention – Income From Automated Digital Services," 2020, United Nations, accessed 22 July 2023, https://financing.desa.un.org/sites/default/files/2023-03/Article%2012B%20and%20Commentary%20after%2022nd%20Session%20Meetings%2029%20April%202021.pdf, pg. 25.

[37] "Technical Review Of The Draft Article 12B United Nations Model Tax Convention," 2020, African Tax Administration Forum, accessed 24 February 2023, https://events.ataftax.org/includes/preview.php?file_id=81&language=en_US#:~:text=The%20draft%20Article%2012B%20states,by%20the%20business's%20profitability%20ratio, pg. 1.

from digital services supplied, calculated by applying the profitability ratio of a MNE Group to the gross income derived.[38]

Article 12B sources income based on the location of a user. It is narrow in scope as it only allows the user's country to tax the payment for the services.[39] Accordingly, Article 12B does not allocate taxing rights to the country in which network effects and value are created by users.[40]

OECD's Two-Pillar Approach

In 2013, the OECD heeded and addressed growing government and public concerns regarding tax avoidance by MNEs and developed an *Action Plan*[41] identifying 15 actions to introduce coherence with the domestic rules affecting cross-border activity. Two years later, measures were consolidated into a suite of BEPS reports on the 15 actions, which represented the first comprehensive reconstruction of international tax rules.[42] In March 2018, the OECD issued an interim report on the taxation of the digital economy, noting the approaches adopted by different countries.[43] These approaches would, in later years, be developed by the OECD into the Two-Pillar Approach to address the tax challenges arising from the digital economy.[44] Each pillar aims to address a different gap in the traditional taxing rules which makes it possible for MNEs to avoid paying taxes in foreign countries.[45]

- Pillar One identifies the largest MNEs and reallocates their profits earned from cross-border transactions, together with the rights to tax the profits, to the countries in which the goods and

---

38 Ibid.

39 "Article 12B of the UN Model Tax Convention – Income From Automated Digital Services," 2020, United Nations, accessed 22 July 2023, https://financing.desa.un.org/sites/default/files/2023-03/Article%2012B%20and%20Commentary%20after%2022nd%20Session%20Meetings%2029%20April%202021.pdf, pg. 2.

40 "Technical Review Of The Draft Article 12B United Nations Model Tax Convention," 2020, African Tax Administration Forum, accessed 24 February 2023, https://events.ataftax.org/includes/preview.php?file_id=81&language=en_US#:~:text=The%20draft%20Article%2012B%20states,by%20the%20business's%20profitability%20ratio, pg. 2.

41 "Action Plan on Base Erosion and Profit Shifting," 2013, OECD, accessed 20 January 2023, https://read.oecd-ilibrary.org/taxation/action-plan-on-base-erosion-and-profit-shifting_9789264202719-en#page1, pg. 16.

42 "Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report," 2015, OECD, accessed 20 January 2023, https://read.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report_9789264241046-en#page1, pg. 3.

43 "Tax Challenges Arising from Digitalisation – Interim Report 2018, Inclusive Framework on BEPS," 2018, OECD, accessed 20 January 2023, https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-interim-report_9789264293083-en?itemId=/content/publication/9789264293083-en&_csp_=0d16492941d380c27775cc35b124ce6b&itemIGO=oecd&itemContentType=book.

44 "Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," 2021, OECD, accessed 15 February 2023, https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf, pg. 6.

45 Id. Pg. 18.

services are sold.[46] Pillar One comprises of 'Amount A' and 'Amount B' and aims to ensure tax certainty and reduce disputes between taxpayers and revenue authorities.[47] Amount A distributes profits and allocates taxing rights among countries with respect to some of the residual profits generated by the largest MNEs.[48] The reallocation of profits and taxing rights will however, require the removal of all existing DSTs and similar measures as well as the commitment by countries to not introduce such measures going forward.[49] Amount B simplifies and streamlines transfer pricing for baseline marketing and distribution transactions.[50] The overarching purpose of Pillar One is therefore, to address and improve the tax system for the digital economy.[51]

- Pillar Two encompasses the global minimum tax and the Subject to Tax Rule ("STTR"). The global minimum tax is based on the Global Anti-Base Erosion ("GloBE") Model Rules that allows a country to impose a top-up tax on a MNE, where their effective tax rate is below the stipulated 15% minimum tax rate.[52] The STTR is a treaty-based rule that allows source countries to tax certain types of cross-border income that are not fully taxed up to the minimum 9% rate.[53] The overall purpose of Pillar Two is therefore, to curb anti-avoidance by introducing a global minimum corporate tax rate that countries can use to protect their tax base.[54]

As it pertains to the timeline for implementation, Pillar One is progressing slower of the two pillars.[55] Pillar One was originally planned for implementation by 1 January 2023 however, this has been

[46]Id. Pg. 4.

[47]"Tax challenges in the digital economy – Amount B of Pillar One," 2023, Financier Worldwide, accessed 11 December 2023, https://www.financierworldwide.com/tax-challenges-in-the-digital-economy-amount-b-of-pillar-one.

[48]"Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," 2021, OECD, accessed 15 February 2023, https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf, pg. 4.

[49]"International tax reform: Multilateral Convention to Implement Amount A of Pillar One," 2023, OECD, accessed 12 December 2023, https://www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.htm, pg. 77.

[50]"Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," 2021, OECD, accessed 15 February 2023, https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf, pg. 7.

[51]"Tax challenges in the digital economy – Amount B of Pillar One," 2023, Financier Worldwide, accessed 11 December 2023, https://www.financierworldwide.com/tax-challenges-in-the-digital-economy-amount-b-of-pillar-one.

[52]"Minimum Tax Implementation Handbook (Pillar Two)," 2023, OECD, accessed 11 December 2023, https://www.oecd.org/tax/beps/minimum-tax-implementation-handbook-pillar-two.pdf, pg. 5.

[53]Ibid.

[54]"Action 1 Tax Challenges Arising from Digitalisation," 2021, OECD, accessed 15 February 2023, https://www.oecd.org/tax/beps/beps-actions/action1/, pg. 2.

[55]"An introduction to the OECD's Pillar One and Two," 2022, RSM, accessed 11 December 2023, https://www.rsm.global/insights/tax-news/introduction-oecds-pillar-one-and-two.

delayed on account of the difficulty in reaching a consensus.[56] Some countries are planning to bring Pillar Two rules into effect in 2024, with certain aspects to take effect in 2025.[57]

DSTs

Several countries have pursued a DST as a unilateral measure to tax the digital economy and mobilise tax revenues. A DST is generally defined as a tax, other than income tax, on selected revenue streams generated by digital companies from the provision of digital services to users.[58]

In response to the challenges of generating enough revenue to fuel economic growth and the issues surrounding international taxation caused by the rapid pace of digital transformation,[59] African governments in particular, have directed their attention towards the digital economy as a previously untapped source of tax revenue.[60] This has led to the growing adoption of DSTs as a unilateral taxing measure of digital services in Africa.[61]

ATAF led the DST-related efforts in Africa by developing a consensus-based proposal that would meet the unique needs of African countries. In September 2020, ATAF's Suggested Approach[62] was published to guide those African countries considering the implementation of a DST. African countries Zimbabwe, Tunisia, Nigeria, Kenya, Sierra Leone, Tanzania and Uganda implemented DSTs to tax the transactions conducted by digitalised businesses in their respective countries.

[56] "Pillar One Summary," 2023, OECDPillars, accessed 11 December 2023, https://oecdpillars.com/pillar_one/pillar-one-summary-2/.

[57] "In depth – OECD Pillar Two: Time to act on the global minimum tax," 2023, PWC, accessed 11 December 2023, https://www.pwc.com/us/en/services/tax/library/in-depth-oecd-pillar-2-time-to-act-on-the-global-minimum-tax.html#:~:text=Many%20aspects%20of%20Pillar%20Two,to%20be%20effective%20in%202025.

[58] "What European OECD Countries Are Doing About Digital Services Taxes," 2021, Tax Foundation, accessed 11 December 2023, https://taxfoundation.org/data/all/eu/digital-tax-europe-2020/.

[59] "The Taxation of the Digitalised Economy: An African Study," 2020, International Centre for Tax and Development, accessed 23 February 2023, https://www.ictd.ac/publication/taxation-digitalising-economy-africa-study/, pg. 8.

[60] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 4.

[61] "Addressing the Challenges of Taxation of the Digital Economy: Lessons for African Countries," 2020, International Centre for Tax and Development, accessed 5 February 2023, https://www.ictd.ac/publication/addressing-challenges-taxation-digital-economy-lessons-african-countries/, pg. 19.

[62] "Suggested approach to drafting digital services tax legislation," 2020, Africa Tax Administration Forum, accessed 22 January 2023, https://events.ataftax.org/index.php?page=documents&func=view&document_id=79.

1.1.3 South Africa's approach to taxing the digital economy

South Africa brought digital services into its tax net in 2014 when the supply of electronic services was included in its VAT framework.[63] However, no developments of an income tax measure have been implemented as yet.[64]

In publishing its final report in 2016, the Davis Tax Committee ("DTC") acknowledged the balance to be achieved between implementing a tax on digital services, considering the unique economic landscape of South Africa and the economic policies used to encourage foreign direct investment.[65] The DTC therefore, recommended that South Africa await the outcome of the OECD BEPS Project for the digital economy, to ensure competitiveness on an international front and the avoidance of potential double taxation and non-taxation of profits from the supply of digital goods and services.[66]

In the wake of the COVID-19 pandemic, the South African Parliamentary Office conducted research on the digitalisation of economic activities and its potential impact on tax revenue, and published its findings in the *Tax Brief: Digital Economy and Taxation Policy Considerations,*[67] in June 2020.[68] One of the discussion points noted that South Africa could consider a unilateral approach to taxing specific income derived from digital activities but that further technological and human capacity would be required to effectively develop and implement the unilateral measure.[69] During this time, the prospect arose for introducing a DST to tax the digital economy in South Africa, which was briefly considered but never implemented.[70]

Since then, South Africa has pursued international trends and represents one of the 25 African countries that have thus far, agreed to implement the Two-Pillar Approach.[71] The South African

---

[63] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 18.

[64] Ibid.

[65] Ibid.

[66] "Second Interim Report On Base Erosion And Profit Shifting (BEPS) In South Africa," 2016, The Davis Tax Committee, accessed 21 July 2023, https://www.taxcom.org.za/docs/New_Folder3/3%20BEPS%20Final%20Report%20-%20Action%201.pdf, pg. 4.

[67] "Tax Brief: Digital Economy and Taxation Policy Considerations – June 2020," 2020, Parliament of the Republic of South Africa, accessed 27 January 2024, https://static.pmg.org.za/200609June_PBO_Brief_-_Digital_Economy_and_Taxation_Consideration_-June_2020.pdf.

[68] Id. Pg. 3.

[69] Id. Pg. 4.

[70] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 18.

[71] "Africa's participation in international processes related to the digital economy," 2021, Diplo, accessed 13 June 2023, https://www.diplomacy.edu/resource/report-stronger-digital-voices-from-africa/africa-participation-international-processes-digital-economy/.

Government confirmed its support for the new taxing rules and agreed to affect legislative changes to implement the new rules once it is finalised.[72] In the 2023 Budget, the National Treasury also confirmed that a draft position on the Pillar Two implementation would be published for comment during the 2023 legislative cycle and draft legislation would be prepared for inclusion in the 2024 Taxation Laws Amendment Bill.[73] Pillar One implementation dates have not been finalised.

1.2 Research objective

1.2.1 Rationale for the study

As discussed in 1.1.3, South Africa has publicly announced its plan to implement the Two-Pillar Approach and is currently preparing for the implementation of Pillar Two, as progress with the design and consensus regarding the implementation of Pillar One is moving at a slower pace. While both Pillars emerged from the need to address BEPS issues, Pillar One is primarily aimed at addressing taxation of the digital economy, whereas Pillar Two is focused on implementing a global minimum corporate tax rate. Accordingly, the implementation of Pillar Two may not satisfy South Africa's need to tax the digital economy and mobilise tax revenue from the supply of digital services, in the manner that Pillar One is intended to. Therefore, it may be useful and good practice for South Africa to pause during this period, while the future of Pillar One unfolds, and consider alternative measures for taxing the digital economy.[74]

While various global approaches are available for taxing the digital economy, DSTs appear to be the most globally prevalent unilateral measure for taxing the digital economy. [75] It is submitted that DSTs are used to target digital services, respond to the unique characteristics of the digital marketplace and attempt to address the challenges that traditional tax systems fail to overcome. Therefore, countries have chosen to adopt DSTs, demonstrating its preference as an approach for taxing the digital economy.

---

[72]"Budget Review 2022," 2022, National Treasury, Republic of South Africa, accessed 13 June 2023, https://www.treasury.gov.za/documents/national%20budget/2022/review/FullBR.pdf, pg. 46.

[73]"South Africa Confirms Global Minimum Tax in 2024 Taxation Laws Amendment Bill," 2023, OECDPillars, accessed 11 December 2023, https://oecdpillars.com/south-africa-confirms-global-minimum-tax-in-2024-taxation-laws-amendment-bill/.

[74]"South Africa's response to the digital economy's direct tax challenges – Part 1," 2023, Tshidzumba-Sengwane, K, Faculty of Law, Nelson Mandela University, accessed 11 December 2023, https://www.scielo.org.za/scielo.php?pid=S1682-58532023000200006&script=sci_arttext#back_fn116, part 5.

[75]"The Taxation of the Digitalised Economy: An African Study," 2020, International Centre for Tax and Development, accessed 23 February 2023, https://www.ictd.ac/publication/taxation-digitalising-economy-africa-study/, pg. 12.

Further reasons for considering a DST as an alternative measure for taxing the digital economy are discussed below:

Global consensus required for Pillar One and the moratorium on DSTs

On 11 July 2023, the OECD published the *Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*[76] ("July Outcome Statement") that detailed the agreement reached by 138[77] of the 143 countries of the OECD/G20 Inclusive Framework on BEPS ("Inclusive Framework") and summarised the package of deliverables used to address the remaining aspects of the Two-Pillar Approach.[78]

The Inclusive Framework developed a text of the Multilateral Convention ("MLC") for Amount A of Pillar One, setting out the pertinent substantive features for it to be prepared for signature.[79] The MLC was to be made available for signature in the second half of 2023, with a signing ceremony to be held by year-end and the MLC ultimately enforced by 2025.[80]

The July Outcome Statement referenced the moratorium for DSTs in place until 31 December 2023 and reflected the agreement by Inclusive Framework countries to continue the moratorium of DSTs for the period 1 January 2024 to 31 December 2024 or the date the MLC is enforced, if earlier.[81] However, the extension of the moratorium required at least 30 countries, accounting for at least 60% of the Ultimate Parent Entities of in-scope MNEs, to sign the MLC by the end of 2023.[82] Provision was made to further extend the moratorium commitment to the earlier of 31 December 2025 or the entry into force of the MLC, provided sufficient progress is made by the date towards which the MLC is to be enforced.[83] On 11 October 2023, the OECD published the MLC to implement Amount A of Pillar one.[84]

---

[76] "Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," 2023, OECD, accessed 23 January 2024, https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf.

[77] This increased to 140 members of the Inclusive Framework by 15 November 2023.

[78] "Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," 2023, OECD, accessed 23 January 2024, https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf.

[79] Id. Pg. 2.

[80] Ibid.

[81] Ibid.

[82] Ibid.

[83] Ibid.

[84] "International tax reform: Multilateral Convention to Implement Amount A of Pillar One," 2023, OECD, accessed 12 December 2023, https://www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.htm.

It is worth noting that the digital companies of the United States ("US") account for approximately 46% of the MNEs covered in Pillar One and thus, without US approval of the MLC by the end of 2023, the extension of the DST moratorium would not be satisfied.[85] To ratify the MLC, the US would require sufficient support in the Senate, which may prove problematic considering the state of the US political landscape.[86] For this reason, several stakeholders are of the view that the MLC is unlikely to come into force in the foreseeable future, which may result in further delays of Pillar One.[87]

Until the MLC related issues are resolved, developing countries in particular, will continue to lose out on much-needed tax revenue from profits earned by MNEs in their respective countries.[88] For a country such as South Africa, that agreed to the July Outcome Statement,[89] it raises the question as to how many more extensions of the MLC the country is prepared to endure and how much more potential revenue from taxing digital transactions it is willing to forego while such extensions persist. Consideration of these reasons proved enough for Canada to opt out of the July Outcome Statement thereby, rejecting the extension of the DST moratorium and instead moving forward with its plans to implement a DST, effective 1 January 2024.[90]

Furthermore, with the 2023 year having passed with no indication whether the US approved the MLC by the year-end deadline[91] and in the absence of further communication published regarding the MLC and next steps,[92] it can be reasonably interpreted that the extension of the moratorium on DSTs has not been allowed. This makes the consideration of a DST as a potential taxing measure for

[85]"Canada rejects OECD's one-year extension of digital services tax moratorium," 2023, Chayka, O, Ludwin, I & Marley P, accessed 23 January 2024, https://www.osler.com/en/resources/regulations/2023/canada-rejects-oecd-s-one-year-extension-of-digital-services-tax-moratorium.

[86]"Taxing Multinationals: The BEPS proposals and alternatives," 2023, The BEPS Monitoring Group, accessed 30 January 2024, https://static1.squarespace.com/static/5a64c4f39f8dceb7a9159745/t/64a59dac21100f1f90f38c41/1688575404801/The+BEPS+Proposals+and+Alternatives.pdf, pg. 4

[87]Ibid.

[88]"OECD/G20 Inclusive Framework Releases Outcome Statement on the Two-Pillar Solution – What does this mean for Africa?" 2023, African Tax Administration Forum, accessed 24 January 2024, https://www.ataftax.org/oecd-g20-inclusive-framework-releases-outcome-statement-on-the-two-pillar-solution-what-does-this-mean-for-africa.

[89]"Members of the OECD/G20 Inclusive Framework on BEPS that have approved the July 2023 Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy as of 15 November 2023," 2023, OECD, accessed 24 January 2024, https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-members-outcome-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-july-2023.pdf.

[90]"Canada rejects OECD's one-year extension of digital services tax moratorium," 2023, Chayka, O, Ludwin, I & Marley P, accessed 23 January 2024, https://www.osler.com/en/resources/regulations/2023/canada-rejects-oecd-s-one-year-extension-of-digital-services-tax-moratorium.

[91]Apart from the US announcement requesting public comment on the MLC, to be submitted by 11 December 2023.

[92]This is at the date of submission of this dissertation (February 2024).

the digital economy, a worthwhile undertaking for South Africa, as an opportunity may exist to pursue the implementation of a DST and benefit from the additional tax revenue generated.

Concerns raised by African countries and the resulting UN's Framework Convention on International Tax Cooperation

In March 2023, Kenya[93] and Nigeria conveyed their concern regarding the impact of the Two-Pillar Approach on African countries.[94] The following matters were cited by their respective revenue authorities as cause for concern regarding the implementation of the Two-Pillar Approach:

- The Inclusive Framework declared that all implemented DSTs and related unilateral measures are expected to be revoked for all companies upon implementing Pillar One.[95] However, since Pillar One will only target digital businesses with a global turnover of at least EUR20 billion and at least 10% profit before tax, only 11 companies that fit these requirements conduct business in Kenya, whereas the country's DST targets approximately 89 digital businesses.[96] This is the case for Nigeria as well, with only six companies targeted by the OECD requirements.[97] Therefore, removing the DSTs to adopt Pillar One would entail African countries lowering the tax collected from digital businesses.
- As the agreement for the Two-Pillar Approach includes a binding and mandatory arbitration mechanism for dispute resolution, African countries joining the agreement may lose their sovereignty as tax matters would be resolved in the resident countries of the digital businesses.[98]

These concerns were put forward to the UN in a resolution on 30 December 2022, calling for discussion on international tax cooperation to commence.[99] The UN heeded these calls and on 15 November 2023, passed a resolution to develop a new Framework Convention on International Tax

[93]On 31 March 2023, Kenya however, agreed to remove their DST and adopt the OECD's Two-Pillar Approach.
[94]"Why Kenya and Nigeria haven't agreed to a historic global corporate tax deal," 2021, Quartz, accessed 13 June 2023, https://qz.com/africa/2082754/why-kenya-and-nigeria-havent-agreed-to-global-corporate-tax-deal.
[95]"Africa's uncertainty over OECD minimum tax plan," 2021, Deutsche Welle, accessed 13 June 2023, https://www.dw.com/en/why-african-nations-doubt-oecd-tax-plan/a-59653146#:~:text=Global%20minimum%20tax%20is%20supposed,it%20would%20benefit%20poor%20countries.
[96]"Why Kenya and Nigeria haven't agreed to a historic global corporate tax deal," 2021, Quartz, accessed 13 June 2023, https://qz.com/africa/2082754/why-kenya-and-nigeria-havent-agreed-to-global-corporate-tax-deal.
[97]Ibid.
[98]"Africa's participation in international processes related to the digital economy," 2021, Diplo, accessed 13 June 2023, https://www.diplomacy.edu/resource/report-stronger-digital-voices-from-africa/africa-participation-international-processes-digital-economy/.
[99]"Tax justice at last? Africa takes historic fight to the UN," 2022, African Business, accessed 13 June 2023, https://african.business/2022/11/finance-services/tax-justice-at-last-africa-takes-historic-fight-to-the-un#:~:text=A%20ground%2Dbreaking%20UN%20resolution,system%20that%20favours%20richer%20countries.&text=They%20parlayed%20in%20Paris%2C%20breakfasted,hands%20in%20London%20and%20Rome.

Cooperation[100] (championed by several African countries), which may present an alternative to the Two-Pillar Approach.[101] Such a UN convention will however, take time to develop and in the interim, South Africa may wish to consider implementing a DST as an appropriate alternative to protect its source tax base and ensure tax revenues related to digital services are collected during this time.[102] DSTs are seemingly the preferred taxing measure in Africa, considering several African countries have implemented it. [103]

Complexities of the South African tax system and the need for a simpler measure to tax the digital economy

According to global standards, South Africa's tax system is recognised as complex and there is a need for simplification and certainty in its tax legislation.[104] The international tax rules of South Africa are found to be more complex than the domestic tax rules, with studies showing that tax complexity has considerably escalated for MNEs in South Africa in the past few years.[105]

The complexities arise from a multitude of factors including changes to legislation, regulatory modifications, shifts in administrative practices, political transitions and evolving societal norms.[106] Complexities in the tax system could undermine taxpayer morale, leading to either unintentional or deliberate non-compliance.[107] This could potentially decrease tax revenue and cause efficiency losses in the tax system, both directly and indirectly.[108] With these inherent complexities in the

---

[100] "Promotion of inclusive and effective international tax cooperation at the United Nations," 2023, United Nations, accessed 15 December 2023, https://digitallibrary.un.org/record/4019360.

[101] "Second Committee Approves Nine Draft Resolutions, Including Texts on International Tax Cooperation, External Debt, Global Climate, Poverty Eradication," 2023, United Nations, accessed 15 December 2023, https://press.un.org/en/2023/gaef3597.doc.htm.

[102] "Taxing Multinationals: The BEPS proposals and alternatives," 2023, The BEPS Monitoring Group, accessed 30 January 2024, https://static1.squarespace.com/static/5a64c4f39f8dceb7a9159745/t/64a59dac21100f1f90f38c41/1688575404801/The+BEPS+Proposals+and+Alternatives.pdf, pg. 1.

[103] "Digital Services Taxes in the European Union: What Can We Expect?" 2023, Kluwer International Tax Blog, accessed 11 December 2023, https://kluwertaxblog.com/2023/02/14/digital-services-taxes-in-the-european-union-what-can-we-expect/#_ftn3.

[104] "Tax simplification – An African Perspective," 2019, Evans, C, Franzsen, R & Stack, E. Pretoria University Law Press, accessed 12 December 2023, https://www.pulp.up.ac.za/edited-collections/tax-simplification-an-african-perspective, pg. 2.

[105] "The International Tax Environment and Simplification of South African Tax legislation: A Double-Edged Sword," 2019, Jinyan, L & Pidduck, T, accessed 12 December 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3273094, pg. 12.

[106] "Tax simplification – An African Perspective," 2019, Evans, C, Franzsen, R & Stack, E. Pretoria University Law Press, accessed 12 December 2023, https://www.pulp.up.ac.za/edited-collections/tax-simplification-an-african-perspective, pg. 22.

[107] Id. Pg. 27.

[108] Ibid.

South African tax system, it is important for the country to consider a taxing measure for the digital economy, that does not heighten the existing complexities.

As it pertains to the Two-Pillar Approach, much of the delay in its finalisation is due to the complexity of the technical design and the difficulty in reaching a consensus for its enactment.[109] An example of such complexity is evident in the implementation step plans published by the OECD in their MLC documentation.[110]

Pillar One, which is focused on taxing the digital economy, should be appealing for countries to adopt and simple enough for tax regulators to administer and MNEs to apply.[111] However, as it currently stands, the Pillar One framework shows signs of potential bureaucracy and complexity rather than projected transparency and simplicity.[112] The rules for administering Amount A in particular, are highly complex due to the scope and design[113] and requires the removal of existing DSTs, which may occur at the cost of further complexity.[114] Partaking in Pillar One would also give rise to many obligations, administration and related costs therefore, developing countries should thoroughly consider whether it would be reasonable to employ their scarce administrative resources in this regard.[115]

Pillar Two, focused on ensuring a broader range of MNEs pay a minimum level of tax, represents one of the most complex global taxing measures designed and implemented.[116] Some of the complexity is due to the inherent complexity of a minimum tax system, specific design choices for Pillar Two and the application of Pillar Two rules to certain scenarios, which introduces complexity

[109] "Digital Services Tax (DST): Alive and well," 2022, CIAT, Inter-American Center of Tax Administrations, accessed 12 December 2023, https://www.ciat.org/digital-services-tax-dst-alive-and-well/?lang=en#_ftn2.

[110] "International tax reform: Multilateral Convention to Implement Amount A of Pillar One," 2023, OECD, accessed 12 December 2023, https://www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.htm.

[111] "Digital Services Tax (DST): Alive and well," 2022, CIAT, Inter-American Center of Tax Administrations, accessed 12 December 2023, https://www.ciat.org/digital-services-tax-dst-alive-and-well/?lang=en#_ftn2.

[112] Ibid.

[113] "Taxing Multinationals: The BEPS proposals and alternatives," 2023, The BEPS Monitoring Group, accessed 30 January 2024, https://static1.squarespace.com/static/5a64c4f39f8dceb7a9159745/t/64a59dac21100f1f90f38c41/1688575404801/The+BEPS+Proposals+and+Alternatives.pdf, pg. 4.

[114] "Digital Services Taxes: Is There an End in Sight?" 2022, Tax Foundation, accessed 11 December 2023, https://taxfoundation.org/blog/digital-services-taxes-pillar-one/.

[115] "Taxing Multinationals: The BEPS proposals and alternatives," 2023, The BEPS Monitoring Group, accessed 30 January 2024, https://static1.squarespace.com/static/5a64c4f39f8dceb7a9159745/t/64a59dac21100f1f90f38c41/1688575404801/The+BEPS+Proposals+and+Alternatives.pdf, pg. 5.

[116] "Pillar 2: Deceptively complex?" 2022, PWC, accessed 17 December 2023, https://www.pwc.co.uk/services/tax/insights/pillar2-deceptively-complex.html.

from a policy standpoint.[117] Projections indicate that several developing countries would see little to no increase in tax revenue derived from Pillar Two and given the complexity of its rules, implementing Pillar Two would not prove to be cost-effective for most of these countries.[118] Due to the complexities and constraints that its implementation will impose, some are of the view that Pillar Two may not be suitable for most developing countries.[119]

Ultimately, the breadth and depth of the pillars, the need for cooperation from countries and the technical expertise required for implementation, make the Two-Pillar Approach complex, which if adopted by South Africa, may further intensify the complexity of its tax system.

In contrast, while the implementation of a DST comes with its own set of challenges and complexities, the process may become more streamlined and manageable over time given the number of countries that adopt the tax thereby, potentially improving global standardisation of the design process. Furthermore, since a DST is introduced unilaterally by a country, its design features could be tailored to meet a country's specific needs for taxing the digital economy, without having to conform to globally agreed-upon specifications. For these reasons, it may be simpler to introduce a DST to the South African tax landscape for purposes of taxing the digital economy, possibly presenting fewer challenges and complexities for the country to overcome.

1.2.2 Research objective

In light of the above, the primary research objective of this dissertation is to identify and analyse the DST design features that South Africa could consider if a DST was to be implemented as an alternative approach to taxing the digital economy.

To help address the primary research objective, the following sub-objectives are posed:

- Discuss the potential benefits and challenges of implementing DSTs. This theoretical discussion aims to assist South Africa in weighing up the positives and negatives of implementing a DST to tax the digital economy.
- Provide an overview of the DSTs implemented by early-adopting developed countries France, Italy, Austria, the United Kingdom ("UK") and Spain and analyse their design features by

[117]Ibid.

[118]"Taxing Multinationals: The BEPS proposals and alternatives," 2023, The BEPS Monitoring Group, accessed 30 January 2024, https://static1.squarespace.com/static/5a64c4f39f8dceb7a9159745/t/64a59dac21100f1f90f38c41/1688575404801/The+BEPS+Proposals+and+Alternatives.pdf, pg. 2.

[119]Id. Pg. 7.

identifying key commonalities. This analysis aims to advise on the DST design features that South Africa could consider from a practical perspective of DSTs among the first to be implemented.

- Provide an overview of the enacted DST legislation of Zimbabwe, Tunisia, Nigeria, Kenya, Sierra Leone, Tanzania and Uganda and analyse their design features by identifying and examining similarities and variations. This analysis aims to provide insights into the DST design features that South Africa could consider from a practical perspective of the DST legislation implemented by the total population of African countries with DSTs.
- Provide an overview of ATAF's Suggested Approach and analyse its design features with those of the African DSTs, to identify areas of alignment or deviation. This analysis aims to provide an understanding as to the extent South Africa can rely on the design features proposed in ATAF's Suggested Approach or whether there are learnings to be gained by identifying where the design features of African DSTs deviate from ATAF's Suggested Approach.

1.3 Research methodology

This dissertation adopts a theoretical approach to legal interpretative research. The research method used is categorised as doctrinal in nature, "providing a systematic exposition of the rules governing a particular legal category, analysing the relationship between rules, explaining areas of difficulty and perhaps, predicting future developments."[120] The dissertation further employs a qualitative approach, which is of a descriptive and analytical nature.

The array of literature reviewed and analysed in this dissertation is diverse, as it comprises of the views and interpretations of a variety of relevant stakeholders that are knowledgeable on DSTs therefore, contributing from academic, theoretical and practical perspectives. This is further supported by the digital taxation-related work drawn from international organisations. Consideration is also given to other forms of literature such as policy reviews, financial-related commentary and reports issued by unions, accounting firms and other industry-related bodies.

In this dissertation, the DSTs of France, Italy, Austria, the UK and Spain are analysed, as these developed countries are among the first to have implemented DSTs internationally.[121] These early-adopting countries have well-established DST principles that have been refined over time through

[120] Hutchinson, T & Duncan, N. 2012. "Defining and describing what we do: Doctrinal Legal Research," Deakin Law Review, 17 (1).

[121] Only the early-adopting developed countries were selected for analysis in this dissertation. Hence, the equalization levy implemented by India from 1 April 2016 and the DST implemented by Turkey from 1 March 2020 were not selected for review, given their nature as developing countries.

legislative amendments, offering South Africa the opportunity to learn from their experiences.[122] The DST legislation enacted by Zimbabwe, Tunisia, Nigeria, Kenya, Sierra Leone, Tanzania and Uganda are also analysed, as these countries comprise the total population of African countries that have implemented DSTs. The design features of ATAF's Suggested Approach are analysed with those of the DSTs implemented by African countries. South Africa may consider the guidance provided by ATAF due to its positioning as an organisation focused on tax and tax administration in Africa, with African interests specifically in mind.

1.4 Limitations of scope

The scope of DSTs analysed is limited to the legislation that has been enacted and does not extend to proposed or draft DST legislation considered for later enactment or implementation (e.g. the draft DST considered by Egypt). To adequately address the primary research objective of this dissertation, it is necessary to analyse the principles of the final enacted DST legislation and not draft DST legislation, which is subject to amendment or never being implemented thereby, remaining in theory.

Other than the comments included in the background and rationale of this dissertation, the OECD's Two-Pillar Approach will not be subject to further review or analysis. This dissertation focuses on DSTs as a taxing measure for the digital economy and consequently, any detailed discussions regarding the Two-Pillar Approach are not included, apart from cursory mentions to provide context where necessary.

It is noted that when proposing or designing new tax laws, the canons of taxation formulated by Adam Smith are usually considered. However, these principles are beyond the scope of this dissertation and could instead present an opportunity for future research.

Lastly, this dissertation does not provide a detailed discussion of whether DSTs are covered under Article 2 of DTAs that South Africa has concluded or whether the introduction of a DST may lead to double taxation under South Africa's treaty network. Brief references are however, made as needed to provide context.

[122] "Tax Brief: Digital Economy and Taxation Policy Considerations – June 2020," 2020, Parliament of the Republic of South Africa, accessed 27 January 2024, https://static.pmg.org.za/200609June_PBO_Brief_-_Digital_Economy_and_Taxation_Consideration_-June_2020.pdf, pg. 26.

1.5 Structure of dissertation

The remaining chapters of this dissertation are structured as follows:

Chapter 2 – discusses the potential benefits and challenges of implementing DSTs.

Chapter 3 – provides an overview of the DSTs implemented by France, Italy, Austria, the UK and Spain and analyses their design features by identifying key commonalities.

Chapter 4 – provides an overview of the DST legislation enacted by Zimbabwe, Tunisia, Nigeria, Kenya, Sierra Leone, Tanzania and Uganda and analyses their design features by identifying and examining similarities and variations.

Chapter 5 – provides an overview of ATAF's Suggested Approach and analyses its design features with those of the African DSTs, to identify areas of alignment or deviation.

Chapter 6 – concludes the dissertation with a summary of the main findings derived from each of the preceding chapters and provides final remarks on the primary research objective.

CHAPTER 2: THE POTENTIAL BENEFITS AND CHALLENGES OF IMPLEMENTING DSTS

2.1 Introduction

DSTs have emerged in recent years as an innovative measure for governments seeking to tax revenue generated by digital companies in their countries. Implementing DSTs can introduce several potential benefits including contributing to a level playing field between digital and traditional businesses and aiding in revenue generation. However, DSTs also pose significant challenges such as giving rise to potential trade conflicts and increasing consumer tax burden. Thus, while DSTs may offer a novel solution for taxing the digital economy, understanding its practical implications is essential in assessing whether to firstly, implement a DST and secondly, to establish the efficacy of its implementation.

In this chapter, the potential benefits and challenges of implementing DSTs are discussed. This theoretical discussion aims to assist South Africa in weighing up the positives and negatives of implementing a DST to tax the digital economy.

2.2 The potential benefits of implementing DSTs

2.2.1 Increased tax revenue

Researchers have demonstrated the possibility of increased revenue generation from the implementation of DSTs, especially in African countries where governments could widen their tax bases and increase revenue mobilisation.[123] DSTs present an opportunity to derive more tax revenue,[124] as the digital services industry is growing and outperforming other industries, particularly due to increased digital transformation and the uptake of tools such as artificial intelligence.[125] Therefore, if countries could generate revenue from this seemingly untapped industry, revenue mobilisation prospects could substantially increase.[126]

---

[123] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 13.

[124] "Taxing the Digital Economy – Why is Africa not getting its fair share?" 2019, BDO, accessed 4 January 2024, https://www.bdo.co.za/en-za/insights/2019/tax/taxing-the-digital-economy-why-is-africa-not-getting-its-fair-share.

[125] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 13.

[126] Moloi, T & Mpofu, F.Y. 2022. Direct Digital Services Taxes in Africa and the Canons of Taxation. Laws 11(4):57. Pg. 1.

The question then arises as to how countries should design their DSTs and the features it should include.[127] Taxes are typically costly to the taxpayer while acting as an economic tool for revenue mobilisation.[128] Countries should ensure a balance is struck between these two aspects. Countries are also encouraged to consider the canons of taxation when designing DST features, to help ensure that the revenue generation motive of the DST is not emphasised at the expense of other economic objectives.[129]

2.2.2 Improved economic development and attainment of a country's primary objectives

An increase in revenue mobilisation from taxing digital services could result in countries obtaining the necessary funds to meet their economic objectives, such as investing in better infrastructure and health systems.[130] The fulfilment of such objectives will however, be dependent on whether a country's DST design supports the principles of a good tax system and takes into consideration tax morale, perceptions of fairness and the capabilities of tax authorities.[131]

2.2.3 Enhanced trust and confidence in the transparency and fairness of the tax system

The non-taxation of revenue derived by MNEs for the supply of digital services, while domestic companies pay VAT, CIT and other related taxes, results in an unfair and tilted competition landscape.[132] A DST has the potential to level the playing fields between domestic and foreign companies however, the DST must be recognised as facilitating fair taxation to gain acceptance.[133] Introducing a DST to tax the revenue of MNEs could result in the benefit of building confidence in the equity of a country's tax system which may in turn improve voluntary tax compliance and tax

[127] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 13.
[128] Ibid.
[129] Briseid, M, Heggstad, K, Myhrvold-Hanssen, T. L & Ustvedt, T. 2011. Towards Fiscal Self-Reliance: Capacity building for domestic revenue enhancement in Mozambique, Tanzania and Zambia. Workshop Report. Bergen: Chr. Michelsen Institute, pg. 4.
[130] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 14.
[131] Ibid.
[132] "The impact of taxation on the digital economy," 2015, International Telecommunication Union, accessed 4 January 2024, https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/GSR2015/Discussion_papers_and_Presentations/GSR16_Discussion-Paper_Taxation_Latest_web.pdf, pg. 32.
[133] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 14.

morale of local digital companies, thereby further improving revenue mobilisation.[134] Improved transparency regarding the taxation of MNEs could also have the effect of boosting public funds.[135]

2.3 The challenges associated with implementing DSTs

2.3.1 Administration challenges and related costs

Implementing and enforcing DST legislation on foreign companies that lack physical presence in a country, can prove to be difficult.[136] It requires extensive cooperation or an agreement to ensure sufficient and accurate information sharing in a transparent manner, without which the application and enforcement of DST legislation could be obstructed.[137]

Political and economic disparities between developed and developing countries could impact the efficacy of DSTs.[138] The ability of developing countries to enforce DSTs on MNEs or the governments of their resident countries is a cause for concern due to the power imbalances. [139] MNEs may decide not to file tax returns in foreign countries in which their digital sales reach taxable thresholds, thus avoiding any tax obligations.[140] The resident country of a MNE may also lack the incentive to assist in enforcing the other country's DST legislation or ensure accurate sales information is provided.[141]

The revenue authorities of many countries often face administrative challenges pertaining to tax revenue collection as a result of weak legal, technical and institutional structures.[142] Moreover, taxing digital services requires extensive technical expertise, investment in technological

---

[134] "Suggested Approach To Drafting Digital Services Tax Legislation," 2020, African Tax Administration Forum, accessed 22 January 2023, https://events.ataftax.org/index.php?page=documents&func=view&document_id=79, pg. 1.

[135] "Digital tax: What is it and how it works,"2021, PaySpace Magazine, accessed 3 January 2024, https://payspacemagazine.com/all/digital-tax-explained/.

[136] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 3 January 2024, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 39.

[137] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 7.

[138] "Value-added tax in the digital economy: A fresh look at the South African dispensation," 2021, Kabwe, R & van Zyl, S, accessed 3 January 2024, https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532021000300004#top_fn107.

[139] Ibid.

[140] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 7.

[141] Ibid.

[142] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 16.

advancements and the acquisition of hardware and software, which some countries (particularly developing countries) may struggle to fund with limited financial resources.[143]

Potential difficulties in tax administration and enforcement could also obstruct the collection of DSTs.[144] The tax authorities of many African countries lack the necessary capacity, technical expertise and capabilities to administer tax effectively, even more so when managing vast volumes of digital transactions.[145]

The implementation of country-specific DST legislation could result in substantial start-up costs incurred in establishing the tax system, including costs associated with technical training, technological resources and human capital.[146] In certain scenarios, the benefits derived may not sufficiently outweigh the costs involved in setting up and administering DSTs, as the costs could be imbalanced compared to the revenues collected.[147] Furthermore, the complexity of DSTs will simultaneously escalate the administrative costs for governments and the compliance costs for MNEs.[148]

2.3.2 The impact on stakeholders

A DST could indirectly increase the price of digital services, essentially passing the tax burden onto consumers.[149] This may impact consumer purchasing behaviour and influence the flow of cross-border capital and investments.[150] An established digital company might have the capacity to directly pass DSTs on to consumers however, for companies that are unable to do so, there may be a consequent impact on prices and overall pricing policy due to an increase in sales and marketing

[143] Ibid.

[144] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 6.

[145] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 16.

[146] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 6.

[147] Ibid.

[148] "The Impact of Unilateral Digital Taxes in Africa," 2021, Taxnotes, accessed 4 January 2024, https://www.taxnotes.com/special-reports/digital-economy/impact-unilateral-digital-taxes-africa/2021/08/13/76y1r#sec-3-1, part III A.

[149] "Five Questions about the Digital Services Tax to Pierre Moscovici," 2018, European Centre for International Political Economy (ECIPE), accessed 9 January 2024, https://ecipe.org/wp-content/uploads/2018/06/Five-Questions-about-the-Digital-Services-Tax-to-Pierre-Moscovici.pdf, pg. 5.

[150] "The Impact of Unilateral Digital Taxes in Africa," 2021, Taxnotes, accessed 4 January 2024, https://www.taxnotes.com/special-reports/digital-economy/impact-unilateral-digital-taxes-africa/2021/08/13/76y1r#sec-3-1, part III A.

expenses.[151] Hence, the drive to generate additional revenue from DSTs could ironically lead to a decrease in economic activity and ultimately, a reduction in tax revenue.[152]

The implementation of DSTs is likely to give rise to considerable compliance costs for digital companies.[153] Adapting to various and frequently changing DST regulations in every country where these companies make digital supplies could significantly increase their compliance obligations.[154] The compliance-related costs could increase substantially, potentially hindering updates to information, communication and technological infrastructure and necessary updates to meet evolving legislative requirements.[155] DSTs would also add complexity to accounting and tax systems, incurring further costs to update.[156]

DSTs can significantly affect a MNE's cash flow by escalating the cost of operation, which is typically the case when a DST is entirely borne by a MNE, often occurring when there is no possibility of obtaining a double tax credit.[157] While some companies may be able to claim a deduction of the DST in their profit and loss accounts, the possibility of tax arbitrage and double taxation cannot be completely mitigated.[158] Another point of contention is that since DSTs are applied to global revenues, MNEs may need to pay DSTs even when the business isn't profitable in a country.[159]

2.3.3 The impact on a country's digital economy, economic growth and welfare

The implementation of DSTs could potentially reduce the use of digital services, due to its associated costs and challenges and this decreased usage could adversely impact the expansion of the digital sector and its contribution to the economic growth of countries.[160] If DSTs are not properly

[151] Ibid.

[152] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 19.

[153] Oguttu, A.W & Tladi, S. 2009. The challenges e-commerce poses to the determination of a taxable presence: The permanent establishment concept analyzed from a South African perspective. Journal of International Commercial Law and Technology, 4(3), pg. 221.

[154] Ibid.

[155] "Digital Taxation Around The World," 2020, Tax Foundation, accessed 9 June 2023, https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf, pg. 14.

[156] Shukla, N. 2020. Introduction of digital services tax by France targeting US digital companies – Policy response by the United States. Thesis. Johns Hopkins University. Pg. 2.

[157] "The Impact of Unilateral Digital Taxes in Africa," 2021, Taxnotes, accessed 4 January 2024, https://www.taxnotes.com/special-reports/digital-economy/impact-unilateral-digital-taxes-africa/2021/08/13/76y1r#sec-3-1, part III A.

[158] Ibid.

[159] Ibid.

[160] "Digital Taxation: Can it contribute to more just taxation?" 2022, Research ICT Africa, accessed 4 December 2023, https://researchictafrica.net/publication/digital-taxation-can-it-contribute-to-more-just-taxation/#:~:text=Findings%20from%20the%20paper%20indicate,online%20services%20as%20well%20as.

designed, they can also diminish domestic tax revenue[161] and obstruct digital transformation initiatives across different sectors of the economy.[162]

Taxes typically influence economic choices, which is evident in the case of some companies that base decisions solely on tax implications.[163] This could potentially lead to a shift in supply decisions, which could further result in a general loss of welfare in the economy and a loss of productivity and digitalisation.[164] DSTs may have implications beyond connectivity and affordability; they could also impact investment in technology and the digital value chain.[165]

DSTs can cause a potential rise in the cost of capital required for supplying digital services, which may suppress innovation and the incentive to invest and thereby negatively impact the economic growth of a country.[166]

DSTs may be perceived as primarily targeting MNEs which could be deemed discriminatory.[167] Such an interpretation could cause trade disputes that harm developing countries, particularly in Africa where the digital economies are still in the growth phase.[168] DSTs are viewed as a contentious issue in international trade because it could provoke countermeasures by developed countries thus, instigating potential trade wars.[169] These trade disputes and retaliations could consequently impact both international trade and national and global gross domestic product.[170]

---

[161] "Taxing the Digital Economy in Sub-Saharan Africa," 2021, ENSAfrica, accessed 4 December 2023, https://www.ibanet.org/Taxing-the-digital-economy-sub-Saharan-Africa.

[162] "Fiscal Regimes and Digital Transformation in Sub-Saharan Africa," 2021, Joseph, C, Ndulu, B & Tryphone, K, accessed 4 December 2023, https://www.bsg.ox.ac.uk/sites/default/files/2021-03/BSG-DP-WP_2021-01%20Fiscal%20regimes%20and%20digital%20transformation%20in%20Sub-Saharan%20Africa.pdf.

[163] Mpofu, F. 2021. Informal Sector Taxation and Enforcement in African Countries: How plausible and achievable are the motives behind? Open Economics 4, pg. 82.

[164] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 7.

[165] "Over The Top (OTT) Applications & the Internet Value Chain – Recommendations to Regulators, Policy Makers and Tax Authorities," 2020, Esselaar, S, Koyable, M, Nwana, S & Stork, C, accessed 4 December 2023, https://cto.int/wp-content/uploads/2020/05/CTO-OTT-REPORT-2020.pdf.

[166] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 19.

[167] "The Impact of Unilateral Digital Taxes in Africa," 2021, Taxnotes, accessed 4 January 2024, https://www.taxnotes.com/special-reports/digital-economy/impact-unilateral-digital-taxes-africa/2021/08/13/76y1r#sec-3-1, part III A.

[168] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 21.

[169] "Taxation in the Digital Economy: Digital Services Taxes, Pillar One, and the Path Forward," 2023, Fano, A & Stotzky, R, accessed 10 January 2023, https://bipartisanpolicy.org/blog/taxation-in-the-digital-economy-digital-services-taxes-pillar-one-and-the-path-forward/#:~:text=There%20is%20a%20real%20risk,double%20taxation%20for%20U.S.%20companies.

[170] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 21.

2.3.4 The financial impact

For the sake of fairness in digital taxation and adherence to international agreements, countries may be obligated to impose DSTs on both residents and non-residents.[171] This could potentially lead to double taxation if digital services are subject to both DST and CIT.[172] Moreover, the implementation of DSTs could heighten tax competition, further resulting in a diminished tax base and deterring investment.[173]

DSTs could potentially trigger a race to the bottom tax competition, especially among African countries, if tax authorities offer tax incentives and lower taxes in an effort to encourage digital companies to invest.[174] Countries attempt to establish themselves as favourable investment destinations by offering tax benefits, deductions and exemptions that might not be sustainable in the long run and could be damaging to revenue collection efforts.[175] The exploitation of these tax benefits by MNEs could erode the tax base of countries, with the cost of providing these benefits surpassing the gains in foreign investment.[176] Therefore, DSTs need to be implemented meticulously to finance sustainable development initiatives.[177]

2.3.5 Interaction with global agreements

The legal complexities of unilateral taxes can potentially infringe on multilateral tax agreements such as the OECD's Two-Pillar Approach and other consensus-based agreements.[178] This may give rise to double taxation, if the same income is subject to CIT and DST.[179] Furthermore, implementing DSTs may escalate the risk of profit-shifting between countries that allow DSTs as an expense deduction when calculating CIT or offset the DST against the CIT liability, and those countries that do not offer such benefits.[180]

[171] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 18.

[172] Ibid.

[173] "Addressing the Challenges of Taxation of the Digital Economy: Lessons for African Countries," 2020, International Centre for Tax and Development, accessed 5 February 2023, https://www.ictd.ac/publication/addressing-challenges-taxation-digital-economy-lessons-african-countries/, pg. 22.

[174] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 21.

[175] Ibid.

[176] Mpofu, F. Y. 2022. Tax incentives: A panacea or problem to enhancing economic growth in developing countries. Journal of Accounting, Finance and Auditing Studies 8, pg. 118.

[177] Ganter, S. 2021. Digital Taxes for Sustainable Development? Ökologisches Wirtschaften-Fachzeitschrift 36, pg. 49.

[178] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 21.

[179] Ibid.

[180] Kofler, G. 2021. The Future of Digital Services Taxes. EC Tax Review 30, pg. 52.

The relationship between DSTs and DTAs is the subject of much debate, with opposing views as to whether DSTs are covered by concluded DTAs. Some stakeholders are of the view that DSTs are not covered under DTAs,[181] due to various aspects such as taxable base, taxable object and the temporal and complementary nature of the tax.[182] From the tax levy perspective, it is argued that DSTs imposed on revenue fall outside the scope of DTAs, which only cover the taxation of cross-border income and business profits.[183] The opposing 'good faith' argument however, argues that DTAs must be interpreted and applied in 'good faith' by considering the intention of the DTA negotiators, implying that a tax determined as having the same effects as an income tax, should comply with applicable DTAs.[184] Furthermore, it is also argued that DSTs based on taxing revenue does not necessarily exclude it from being covered in DTAs, because there are other taxes levied on a gross basis that are included in DTAs (e.g. passive income taxation where withholding occurs on a gross basis).[185] A DST's interaction with concluded DTAs will have an impact on the efficacy of its operation as a taxing measure and therefore, the opposing views on whether DSTs are included in the scope of DTAs is important for South Africa to consider when designing a DST.

2.4 Conclusion

In this chapter, the potential benefits and challenges of implementing DSTs were discussed, to assist South Africa in weighing up the positives and negatives of implementing a DST to tax the digital economy.

From the discussion, it is recognised that DSTs offer potential benefits in the realm of:

- Increasing the tax revenue of countries by expanding their tax bases. Capitalising on the thriving digital services industry, fueled by increased digital transformation, could significantly enhance revenue mobilisation prospects;

[181] "Policy Brief: Domestic Resource Mobilisation – Digital Services Taxation in Africa," 2020, African Tax Administration Forum, accessed 11 February 2023, https://events.ataftax.org/includes/preview.php?file_id=61&language=en_US, pg. 2.

[182] "The Impact of Unilateral Digital Taxes in Africa," 2021, Taxnotes, accessed 4 January 2024, https://www.taxnotes.com/special-reports/digital-economy/impact-unilateral-digital-taxes-africa/2021/08/13/76y1r#sec-3-1, part III A.

[183] Ibid.

[184] "A Bite at the Apple: States' Struggle to Tax Digital Services," 2023, European Journal of International Law, accessed 26 January 2024, https://www.ejiltalk.org/a-bite-at-the-apple-states-struggle-to-tax-digital-services.

[185] "The Impact of Unilateral Digital Taxes in Africa," 2021, Taxnotes, accessed 4 January 2024, https://www.taxnotes.com/special-reports/digital-economy/impact-unilateral-digital-taxes-africa/2021/08/13/76y1r#sec-3-1, part III A.

- Equipping countries with the necessary funds to meet their economic goals and support sustainable development and growth; and
- Creating a level playing field between domestic and foreign companies. This could enhance confidence in the fairness of a country's tax system thereby, potentially improving voluntary tax compliance and tax morale, which may result in increased revenue generation.

Despite the potential benefits, implementing DSTs also presents several challenges including (1) lack of cooperation from MNEs in sharing DST-related data and complying with DST obligations, (2) challenges and costs associated with administering and setting up a DST, (3) significant operational and compliance costs for MNEs, (4) the possibility of transferring the burden of DSTs to consumers, (5) diminishing growth of the digital industry and potential loss of welfare, (6) conflict with developed countries and the potential for trade wars (7) race to the bottom competition, (8) an adverse impact on innovation, investment and economic growth (9) the potential risk of excessive taxation and (10) the violation of other tax agreements.

While DSTs may present a modernised approach to taxing the digital economy, offering the potential to create an additional revenue source for countries, implementing DSTs require careful consideration and comprehensive analysis of its potential implications as noted above.

South Africa should consider both the positive and negative implications of a DST in the context of its unique needs and economic landscape. Consideration of a DST's potential impacts will help to design a DST that effectively meets its intended purpose and assists in preventing potential economic repercussions.

CHAPTER 3: THE DSTS OF EARLY-ADOPTING DEVELOPED COUNTRIES

3.1 Introduction

Given the time it has taken to develop a multilateral approach to tax the digital economy, several countries at an early stage in the process, decided to implement a unilateral approach in the form of DSTs. France, Italy, Austria, the UK and Spain[186] were among the first developed countries to implement DSTs globally and with limited research available on the tax and few working examples to follow,[187] these countries seemingly conducted independent research on DSTs in the design process. Accordingly, the design features of the DSTs implemented by France, Italy, Austria, the UK and Spain may have influenced the foundational elements of DSTs later implemented by other countries. Analysing the design features of the earliest forms of DSTs implemented could therefore, prove useful for South Africa.

In this chapter, an overview of the DSTs implemented by early-adopting developed countries France, Italy, Austria, the UK and Spain is provided, and their design features are analysed by identifying key commonalities. This analysis aims to offer insights into the DST design features that South Africa could consider, from a practical perspective of some of the earliest DSTs implemented.

3.2 An overview of the DSTs implemented by early-adopting developed countries

Below is a brief overview of the DSTs implemented in France, Italy, Austria, the UK and Spain which were among the first developed countries to implement DSTs for taxing the digital economy.[188]

[186] "Taxing Digital Services – Compensating for the Loss of Competitiveness," 2021, European Centre For International Political Economy (ECIPE), accessed 27 December 2023, https://ecipe.org/wp-content/uploads/2021/07/ECI_21_PolicyBrief_11_2021_LY04.pdf, pg. 2.

[187] In March 2018, the European Union ("EU") Commission proposed a 3% tax on certain digital services, to be introduced as an interim tax while awaiting a multilateral approach. However, the proposed tax was not implemented due to a lack of support from all EU member states. European countries that implemented DSTs thereafter, used the EU proposed tax as guidance in the design of their respective DSTs.

[188] "Digital Service Taxes: Are they here to stay?" 2021, PWC, accessed 30 December 2023, https://www.pwc.com/us/en/services/tax/library/digital-service-taxes.html.

3.2.1 France

Table 1 – France's legislation particulars[189]

Implementation status	Implemented
Effective date	1 January 2019
Tax rate	3%

Design features of the "Digital service tax"[190]

France adopted a DST on 24 July 2019, applicable retroactively from 1 January 2019.[191]

The DST applies to two categories of services provided in France, including:

- *Interfacing services:* The supply of a digital interface that allows for interaction between users and the delivery of goods and services between users; and
- *Advertising services:* Services rendered to advertisers allowing them to purchase space on a digital interface to display advertisements targeted at users in France.[192]

Certain services are however, specifically excluded from the scope of the DST (e.g. payment and intercompany services and delivery of digital content and communication).[193]

Digital services are deemed to be supplied in France where a user concluding a supply of services is situated in France or where data was retrieved from the interaction with digital interfaces by users situated in France.[194] A user of a digital interface is deemed to be located in France if they access the interface through a terminal situated in France.[195]

Taxable persons are resident and non-resident companies whose annual turnover generated from the provision of digital services cumulatively exceeds the following thresholds:

- EUR750 million of worldwide revenue; and

---

[189] IBFD. 2024. France – Digital Taxation Monitor. Accessed 27 January 2024, pg. 2.
[190] Ibid.
[191] "FRANCE – Digital Services Tax introduced," 2019, BDO, accessed 27 December 2023, https://www.bdo.global/en-gb/microsites/tax-newsletters/corporate-tax-news/issue-52-september-2019/france-digital-services-tax-introduced.
[192] "French Digital Services Tax," 2019, TaylorWessing, accessed 27 December 2023, https://www.taylorwessing.com/en/interface/2019/taxing-tech/french-digital-services-tax.
[193] Ibid.
[194] "Section 301 Investigation: Report on France's Digital Services Tax," 2019, Office of the President of the United States, accessed 27 December 2023, https://ustr.gov/sites/default/files/Report_On_France%27s_Digital_Services_Tax.pdf, pg. 18.
[195] Id. Pg. 2 ("LAW" Section).

- EUR25 million derived in France.[196]

The tax base comprises of all worldwide revenue derived by a taxable person from the provision of digital services, multiplied by a percentage that represents the proportion of digital services supplied in France.[197] The DST payable is deductible for CIT purposes.[198]

The taxable person must make payment of the DST in two instalments in April and October of each year, with the balance payable in April of the following calendar year.[199] The taxable person is obligated to maintain certain information pertaining to the monthly revenue collected from the supply of digital services and the qualitative components used to determine the percentage share of digital services supplied in France.[200]

---

[196] "France issues comprehensive draft guidance on digital services tax," 2020, EY, accessed 27 December 2023, https://www.ey.com/en_gl/tax-alerts/france-issues-comprehensive-draft-guidance-on-digital-services-tax.

[197] "French Digital Services Tax," 2019, TaylorWessing, accessed 27 December 2023, https://www.taylorwessing.com/en/interface/2019/taxing-tech/french-digital-services-tax.

[198] "FRANCE – Digital Services Tax introduced," 2019, BDO, accessed 27 December 2023, https://www.bdo.global/en-gb/microsites/tax-newsletters/corporate-tax-news/issue-52-september-2019/france-digital-services-tax-introduced.

[199] "French Digital Services Tax," 2019, TaylorWessing, accessed 27 December 2023, https://www.taylorwessing.com/en/interface/2019/taxing-tech/french-digital-services-tax.

[200] "FRANCE – Digital Services Tax introduced," 2019, BDO, accessed 27 December 2023, https://www.bdo.global/en-gb/microsites/tax-newsletters/corporate-tax-news/issue-52-september-2019/france-digital-services-tax-introduced.

3.2.2 Italy

Table 2 – Italy's legislation particulars[201]

Implementation status	Implemented
Effective date	1 January 2020
Tax rate	3%

Design features of the "Digital services tax"[202]

In 2020, Italy introduced a new DST to be applied to revenue derived from qualifying digital services thereby, reshaping the previous DST version introduced in the 2019 Budget Law, which was never enforced due to a lack of implementing secondary legislation.[203] The new DST became effective without the need for further implementation rules.[204]

The DST applies to the provision of the following digital services:

- *Online advertising services:* Digital targeted advertising when a user's device is located in Italy;
- *Online intermediation services:* Services designed to promote interaction between users when the device used for the transaction is located in Italy, especially when intermediation facilitates the supply of goods or services between users; and
- *Online data transmission:* The sale or transfer of data generated through activities performed by users in digital interfaces.[205]

Certain digital services are exempt from the DST and include among others: financial and retail services, digital brokerage services and services relating to intercompany transactions or transactions between private individuals.[206]

---

[201]IBFD. 2023. Italy – Digital Taxation Monitor. Accessed 27 January 2024, pg. 2.
[202]Ibid.
[203]"Italian Digital Service Tax – Update for the Digital Economy," 2020, wts global, accessed 27 December 2023, https://wts.com/global/publishing-article/20200220-italian-digital-service-tax_copy~publishing-article?language=en.
[204]Ibid.
[205]"Section 301 Investigation: Report on Italy's Digital Services Tax," 2021, Office of the United States Trade Representative, accessed 27 December 2023, https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20Italy%E2%80%99s%20Digital%20Services%20Tax.pdf, pg. 5.
[206]Ibid.

Revenue is taxable if a user of a taxable digital service is located in Italy during a tax period.[207] A user is generally deemed to be located in Italy if the device used to access the digital services is located in Italy.[208]

Taxable persons are companies[209] which individually or at a group level meet the following revenue thresholds in the calendar year before the one in which the taxable revenues are derived:

- Worldwide revenue of at least EUR750 million; and
- Revenue from qualifying digital services supplied in Italy of at least EUR5.5 million.[210]

The DST imposes a tax on the gross revenue derived by the taxable person during the calendar year.[211] As it pertains to the rules for the determination of the tax base, companies should calculate the worldwide taxable revenue from the supply of digital services (to all users, worldwide) and thereafter determine the portion of qualified revenues attributable to Italy.[212] Further comprehensive rules are stipulated per category of digital services.[213]

A taxable person is responsible for maintaining a monthly ledger to account for revenues subject to DST.[214] The DST is payable by 16 February of the calendar year following the one in which the taxable revenues are derived and the DST return declaring the taxable revenue is due by 31 March of the same calendar year.[215]

A penalty of between 90% to 180% of the DST due will be applied in the case of an unfaithful DST return and a 30% penalty for omitted or late payment of the DST.[216]

---

[207] "Italian Digital Services Tax to be introduced from 1 January 2020," 2019, BDO, accessed 27 December 2023, https://www.bdo.global/en-gb/microsites/tax-newsletters/corporate-tax-news/issue-53-december-2019/italy-italian-digital-services-tax-to-be-introduced-from-1-january-2020.

[208] Ibid.

[209] These companies comprise of resident companies, non-resident companies with a local PE or identified in Italy for VAT purposes or non-resident companies without a local PE or identified in Italy for VAT purposes.

[210] "Italian Digital Services Tax," 2020, KPMG, accessed 27 December 2023, https://assets.kpmg.com/content/dam/kpmg/it/pdf/2020/02/WEB_Digital_Services_Tax_2020_v2.pdf, pg. 2.

[211] "Italian Digital Service Tax – Update for the Digital Economy," 2020, wts global, accessed 27 December 2023, https://wts.com/global/publishing-article/20200220-italian-digital-service-tax_copy~publishing-article?language=en.

[212] Ibid.

[213] Ibid.

[214] "Italian Digital Services Tax," 2020, KPMG, accessed 27 December 2023, https://assets.kpmg.com/content/dam/kpmg/it/pdf/2020/02/WEB_Digital_Services_Tax_2020_v2.pdf, pg. 3.

[215] Ibid.

[216] "Italian Digital Service Tax – Update for the Digital Economy," 2020, wts global, accessed 27 December 2023, https://wts.com/global/publishing-article/20200220-italian-digital-service-tax_copy~publishing-article?language=en.

3.2.3 Austria

Table 3 – Austria's legislation particulars[217]

Implementation status	Implemented
Effective date	1 January 2020
Tax rate	5%

Design features of the "Digital tax"[218]

In October 2019, Austria introduced a DST on revenue derived from digital advertising services targeting Austrian consumers.[219] The DST is applicable to online advertising services insofar as they are supplied by online advertisers in Austria.[220]

Online advertising services are advertisements placed on a digital interface, particularly in the form of search engine advertising, banner advertising and comparable advertising services.[221] Online advertising services are considered domestically provided if received on a user's device with a domestic IP address and the design and content are addressed to the domestic user.[222]

The DST applies to companies that derive yearly worldwide revenue of at least EUR750 million and yearly domestic revenue of EUR25 million from the supply of domestic online advertising services.[223]

The DST liability is determined monthly and paid by the 15th day of the second month after which a company supplies digital advertising services.[224] Three months from the end of the financial year, the company must prepare and submit an annual DST return for the previous year.[225]

[217] IBFD. 2023. Austria – Digital Taxation Monitor. Accessed 27 January 2024, pg. 2.

[218] Ibid.

[219] "Austrian Parliament approves digital advertising tax bill," 2019, EY, accessed 27 December 2023, https://taxnews.ey.com/news/2019-1856-austrian-parliament-approves-digital-advertising-tax-bill#:~:text=Under%20the%20digital%20tax%20bill,million%20or%20more%20in%20Austria.

[220] "Digital Tax Act 2020," 2023, Federal Ministry Republic of Austria, accessed 27 December 2023, https://www.bmf.gv.at/en/topics/taxation/digital-tax-act.html.

[221] "Austria: Digital Tax for Large Internet Companies Introduced," 2019, Library of Congress, accessed 27 December 2023, https://www.loc.gov/item/global-legal-monitor/2019-11-06/austria-digital-tax-for-large-internet-companies-introduced/.

[222] Ibid.

[223] "Section 301 Investigation: Report on Austria's Digital Services Tax," 2020, Office of the United States Trade Representative, accessed 27 December 2023, https://ustr.gov/sites/default/files/files/Press/Releases/AustriaDSTSection301Report.pdf, pg. 9.

[224] Id. Pg. 11.

[225] "Digital Tax Act 2020," 2023, Federal Ministry Republic of Austria, accessed 27 December 2023, https://www.bmf.gv.at/en/topics/taxation/digital-tax-act.html.

3.2.4 The UK

Table 4 – UK's legislation particulars[226]

Implementation status	Implemented
Effective date	1 April 2020
Tax rate	2%

Design features of the "Digital services tax"[227]

In March 2020, the UK introduced a DST[228] described as a tax on gross revenue derived by a group of companies from the supply of digital services activities to UK users.[229]

The DST applies to certain businesses that provide social media services, an internet search engine or an online marketplace, with an exemption available for online financial marketplaces.[230] A company that engages in any of these in-scope activities will be subject to DST on gross revenues.[231]

A company is liable for DST if the total amount of its group's worldwide digital services revenue exceeds GBP500 million and the total amount of the UK digital services revenue attributable to the group companies exceeds GBP25 million.[232]

When assessing digital services revenue attributable to the UK, a business should aim to determine the revenue derived from the supply of in-scope activities to UK users.[233] UK DST legislation defines a 'UK user' as any person reasonably assumed to be an individual normally located, or a business established, in the UK.[234]

[226]IBFD. 2023. United Kingdom – Digital Taxation Monitor. Accessed 27 January 2024, pg. 2.
[227]Ibid.
[228]"UK publishes legislation and guidance on digital services tax," 2020, PWC, accessed 27 December 2023, https://www.pwc.com/gx/en/tax/pdf/uk-publishes-legislation-guidance-digital-services-tax.pdf, pg. 1.
[229]"Section 301 Investigation: Report on the United Kingdom's Digital Services Tax," 2021, Office of the United States Trade Representative, accessed 27 December 2023, https://ustr.gov/sites/default/files/files/Press/Releases/UKDSTSection301Report.pdf, pg. 5.
[230]"Finance Act 2020 – PART 2 – Digital Services Tax," 2020, Government of the UK, accessed 27 December 2023, https://www.legislation.gov.uk/ukpga/2020/14/part/2/enacted#top, part 43.
[231]Id. Part 47.
[232]Id. Part 46.
[233]"UK publishes legislation and guidance on digital services tax," 2020, PWC, accessed 27 December 2023, https://www.pwc.com/gx/en/tax/pdf/uk-publishes-legislation-guidance-digital-services-tax.pdf, pg. 3.
[234]"Finance Act 2020 – PART 2 – Digital Services Tax," 2020, Government of the UK, accessed 27 December 2023, https://www.legislation.gov.uk/ukpga/2020/14/part/2/enacted#top, part 44.

A group can elect to apply a safe harbour or alternative basis for the DST, against any of the three in-scope activities.[235] Per the alternative basis of charge, the DST is calculated as 80% of deemed UK profit related to UK digital services revenue.[236]

The DST is not deductible against UK CIT but is deductible as a normal business expense when calculating UK CIT.[237] Also, revenue derived from certain cross-border transactions subject to the DST of another country may receive limited tax relief from the UK DST.[238]

The DST is calculated according to revenues generated in an accounting period in line with the group's financial year and payment of the DST is due on the day following the end of nine months from the end of the accounting period.[239] Every group company deriving in-scope revenues is liable and responsible for making DST payments for their share of the revenue however, the ultimate parent entity must comply with the administrative obligations.[240]

---

[235] Id. Pg. 48.

[236] Ibid.

[237] "Section 301 Investigation: Report on the United Kingdom's Digital Services Tax," 2021, Office of the United States Trade Representative, accessed 27 December 2023, https://ustr.gov/sites/default/files/files/Press/Releases/UKDSTSection301Report.pdf, pg. 10.

[238] "Finance Act 2020 – PART 2 – Digital Services Tax," 2020, Government of the UK, accessed 27 December 2023, https://www.legislation.gov.uk/ukpga/2020/14/part/2/enacted#top, part 50.

[239] Id. Part 51.

[240] Id. Part 52.

3.2.5 Spain

Table 5 – Spain's legislation particulars[241]

Implementation status	Implemented
Effective date	16 January 2021
Tax rate	3%

Design features of the "Digital services tax"[242]

Spain implemented a DST which is imposed on the following digital services if rendered to users located in Spain: targeted advertising services, digital interface services and data transmission services.[243] Certain activities pertaining to retail trade, financial services, intercompany transactions and transactions between private individuals are exempt from the DST.[244]

The supply of digital services is deemed to be rendered in Spain when the user is situated in Spain, irrespective of whether the user made a payment that contributes to the revenue derived from the service.[245] Further rules are stipulated to determine when a user is located in Spain for certain types of services supplied.[246]

The DST is imposed on companies which exceed both thresholds in the previous calendar year:

- Worldwide revenue of at least EUR750 million; and
- Spanish-sourced revenue derived from the supply of digital services exceeding EUR3 million.[247]

The DST liability is calculated on the gross revenue derived, net of VAT and other similar taxes.[248] The DST is self-assessed on a quarterly basis and taxpayers are required to satisfy certain administrative and compliance obligations.[249]

---

[241] IBFD. 2023. Spain – Digital Taxation Monitor. Accessed 27 January 2024, pg. 2.
[242] Ibid.
[243] "The Digital Services Tax In Spain," 2020, Clifford Chance, accessed 27 December 2023, https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/10/The-Digital-Services-Tax-in-Spain.pdf, pg. 1.
[244] Ibid.
[245] "Digital services tax enacted," 2020, Deloitte, accessed 27 December 2023, https://www.taxathand.com/article/15599/Spain/2020/Digital-services-tax-enacted.
[246] Ibid.
[247] "Section 301 Investigation: Report on Spain's Digital Services Tax," 2020, Office of the United States Trade Representative, accessed 27 December 2023, https://ustr.gov/sites/default/files/files/Press/Releases/SpainDSTSection301Report.pdf, pg. 6.
[248] Ibid.
[249] "The Digital Services Tax In Spain," 2020, Clifford Chance, accessed 27 December 2023, https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/10/The-Digital-Services-Tax-in-Spain.pdf, pg. 3.

3.3 An analysis of the design features of DSTs implemented by France, Italy, Austria, the UK and Spain

3.3.1 *Base of taxation*

The analysed countries apply the DST to a measure of gross revenue. This arguably represents a form of presumptive tax, given that the low tax rates ranging between 2% to 5% are applied to gross revenue as an alternative to the computation of taxable income.[250] This is similar to source taxation by withholding taxes which apply to the gross amount of particular payments derived in source countries.[251]

3.3.2 *Calculation of digital services revenue*

The analysed countries adopt one of the following approaches when determining revenue subject to their DST:

- Allocating a measure of global revenue derived by a digital company to the DST-charging country based on a specific formula.[252] This approach may be based on the volume of engagement or number of users hence, the location of users or user devices would need to be determined;[253] or
- Taxing fees paid to suppliers of digital services by customers located or resident in the DST-charging country.[254] The actual payment of fees by a person resident or located in the DST-charging country would be taxed in that same country.[255]

3.3.3 *Scope of digital services*

The analysed countries implemented DSTs to tax specific categories of digital services, including:

- Intermediary services, where online platforms link consumers with businesses;

---

[250] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 3 January 2024, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 32.
[251] Ibid.
[252] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 35.
[253] Ibid.
[254] Ibid.
[255] Ibid.

- The sale of information and data, which is one of the main sources of income for digital companies;
- The sale of advertisements, as advertising services are central to the business models of most digital companies;
- The sale of digital content by digital platforms (e.g. music or movies); and
- Services rendered by marketplaces that connect buyers and sellers of goods and services.

When a DST applies to a limited or specific scope of transactions rather than across all or most digital services, it could result in the tax yielding less revenue. The extent of a DST's revenue-generating capacity is intrinsically linked to the breadth and detail of its application hence, applying a DST across a broader spectrum of digital services may result in increased DST revenue.[256]

3.3.4 Threshold of transactions

A country may decide to implement a DST threshold for various reasons, including administrative efficiency, fairness towards smaller businesses to enable or protect their growth,[257] aligning with international standards or merely taxing the entities that generate the most revenue from their country.[258]

The analysed countries in this chapter have all chosen to implement a minimum threshold in their DST legislation that references both worldwide digital services revenue and digital services revenue derived from their respective countries. This dual threshold aims to exclude companies that have consolidated DST revenue below a certain amount, as well as those that derive a small portion of their revenue from foreign countries.

3.4 Conclusion

This chapter aimed to address the primary research objective by providing an overview of the DSTs implemented by early-adopting developed countries France, Italy, Austria, the UK and Spain and analysing their design features by identifying key commonalities.

---

[256] "Digital Services Taxes," 2023, Balladares, S, Barake, M, Baselgia, E & Borders, K, accessed 3 January 2024, https://shs.hal.science/halshs-04174657/file/EUTO_Digital-Service-Taxes_June2023.pdf, pg. 8.
[257] "Digital Trade in Services and Taxation," 2021, World Economic Forum, accessed 3 January 2024, https://www3.weforum.org/docs/WEF_Digital_Trade_in_Services_and_Taxation_2021.pdf, pg. 18.
[258] Id. Pg. 13.

From the analysis, it is concluded that the following DST design features could be considered by South Africa:

- The application of a low tax rate to a tax base of gross revenue, with such revenue determined by either a formula-driven allocation of global revenue to the DST-charging country or a calculation of the total fees paid to suppliers of digital services by resident persons of the DST-charging country.
- The ability of a DST to generate revenue is inherently connected to the scope of digital services it covers. Therefore, applying the tax more broadly across various types of digital services could potentially result in more substantial DST revenue generated.
- Incorporating a dual minimum threshold that considers both global digital services revenue and revenue originating from a DST-charging country would aim to exclude companies with a consolidated DST revenue below a certain level. It would also exclude those companies that source a smaller fraction of their revenue from international markets. This way, the DST targets only highly profitable and well-established companies supplying digital services.

In conclusion, the design features of DSTs implemented by early-adopting developed countries typically cover defined digital services, threshold limits to target MNEs and a low tax rate to balance revenue needs with potential impacts on innovation and investment. While these DST design features offer valuable groundwork for South Africa to consider, it must be refined according to the country's specific requirements and economic circumstances.

CHAPTER 4: THE ENACTED DST LEGISLATION OF AFRICAN COUNTRIES

4.1 Introduction

The tax landscape of African countries varies compared to international counterparts due to differences in technical and financial resources, economic and political power dynamics as well as other social and economic factors.[259] Additionally, African countries face challenges such as higher levels of financial exclusion, limited technical and tax administration capacities and a significant informal sector.[260] The DSTs of African countries are designed to tax the digital transactions of MNEs in their respective countries but are tailored to consider the unique factors and challenges of the African economies in which it is implemented.[261] As these unique factors and challenges may be similarly experienced across Africa to some extent, the design features of tailored African DST legislation are worthy of consideration in addressing the primary research objective of this dissertation.

To date,[262] seven African countries have introduced DSTs namely Zimbabwe, Tunisia, Nigeria, Kenya, Sierra Leone, Tanzania and Uganda. In this chapter, an overview of their DST legislation is provided and the design features are analysed by identifying and examining similarities and variations. Accordingly, this analysis aims to offer insights into the DST design features South Africa could consider, by determining shared trends across the design features of African DST legislation already implemented.[263]

4.2 An overview of the enacted DST legislation of African countries

Below is a brief overview of the enacted DST legislation of the seven African countries:

[259] Mpofu, F. Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219. Pg. 6.

[260] Id. Pg. 7.

[261] "Addressing the Challenges of Taxation of the Digital Economy: Lessons for African Countries," 2020, International Centre for Tax and Development, accessed 5 February 2023, https://www.ictd.ac/publication/addressing-challenges-taxation-digital-economy-lessons-african-countries/, pg. 19.

[262] "Digital services taxes and other taxes on the digital economy," 2023, EY, accessed 17 December 2023, https://taxnews.ey.com/news/2023-1939-digital-services-taxes-and-other-taxes-on-the-digital-economy-november-2023?uAlertID=Sd%2FG8rua1oj6%2FI58EZ2AiA%3D%3D.

[263] The DST legislation of Tunisia and Sierra Leone have been approved and enacted but has yet to be fully implemented.

4.2.1 Zimbabwe

Table 6 – Zimbabwe's legislation particulars[264]

Implementation status	Implemented
Effective date	1 January 2019
Tax rate	5%

Design features of the "Income Tax (Foreign Domiciled Satellite Broadcasting Service or Electronic Commerce Platform)"[265]

Zimbabwe imposed a DST on income derived from foreign-domiciled satellite broadcasting services[266] and electronic commerce operators that provide or deliver goods or services to persons resident in Zimbabwe.[267] An electronic commerce operator is defined as an operator selling, supplying or delivering services from a foreign country using a telecommunications network or electronic means to users in Zimbabwe.[268]

Every person that renders satellite broadcasting services or supplies or delivers goods or services on an electronic commerce platform to resident persons of Zimbabwe will be subject to the DST however, it does not apply to foreign companies with a PE presence.[269] The DST is charged on the gross revenue derived in excess of USD500 000 annually sourced from Zimbabwe.[270]

The DST is applicable to the supply of the following services:

- Radio and television services;
- Electronic services by electronic commerce operators; and
- Satellite broadcasting services.[271]

[264]IBFD. 2023. Zimbabwe – Digital Taxation Monitor. Accessed 23 September 2023, pg. 2.
[265]Ibid.
[266]"Satellite broadcasting service" is a service that delivers radio or television programmes by means of a satellite, to persons who have the equipment to receive that service.
[267]"Digital services taxes and other taxes on the digital economy," 2023, EY, accessed 17 December 2023, https://taxnews.ey.com/news/2023-1939-digital-services-taxes-and-other-taxes-on-the-digital-economy-november-2023?uAlertID=Sd%2FG8rua1oj6%2FI58EZ2AiA%3D%3D, pg. 51.
[268]Ibid.
[269]"Finance Act, 2021 (No. 7 of 2021) & Tax Highlights – Zimbabwe," 2022, KPMG, accessed 23 September 2023, https://assets.kpmg.com/content/dam/kpmg/us/pdf/2022/02/tnf-zimbabwe-feb22-2022.pdf, pg. 34.
[270]Ibid.
[271]"Digital services taxes and other taxes on the digital economy," 2023, EY, accessed 17 December 2023, https://taxnews.ey.com/news/2023-1939-digital-services-taxes-and-other-taxes-on-the-digital-economy-november-2023?uAlertID=Sd%2FG8rua1oj6%2FI58EZ2AiA%3D%3D, pg. 51.

A supplier of satellite broadcasting services or an electronic commerce platform is obligated to appoint a public officer or agent in Zimbabwe to register on its behalf and fulfil its CIT compliance obligations.[272] The appointed public officer will be liable for the principal's tax obligations which includes settling the CIT liability on a quarterly basis in advance of the year-end.[273] In addition, a tax return must be submitted by the 30th of April following the December year-end.[274]

Regarding the method of collection, the Zimbabwean government partnered with Daedalus World Limited based in Tortola, British Virgin Islands, to assist with revenue collection by taxing companies that offer digital advertising, gambling, cloud computing, e-commerce, gaming and cryptocurrency services to individuals and companies within Zimbabwe. [275]

---

[272]Ibid.
[273]IBFD. 2023. Zimbabwe – Digital Taxation Monitor. Accessed 23 September 2023, pg. 3.
[274]Ibid.
[275]Ibid.

4.2.2 Tunisia

Table 7 – Tunisia's legislation particulars[276]

Implementation status	Approved – Not fully implemented (Pending regulations)
Effective date	1 January 2020
Tax rate	3%

Design features of the "Digital/Royalty Tax"[277]

Tunisia introduced a digital tax on all computer software, digital applications and internet-based services provided by non-resident or non-established suppliers or marketplaces to resident individuals and corporate entities of Tunisia.[278] The tax base comprises of turnover derived by non-resident suppliers from resident persons of Tunisia,[279] with no applicable threshold.[280]

With regards to administrative and compliance obligations, non-resident companies subject to the digital tax are required to declare their turnover every quarter.[281] Further details regarding the reporting and method of collection of the digital tax have yet to be established.[282]

[276]IBFD. 2023. Tunisia – Digital Taxation Monitor. Accessed 23 September 2023, pg. 2.
[277]Ibid.
[278]"Tunisia VAT on foreign digital services," 2021, VATCalc, accessed 23 September 2023, https://www.vatcalc.com/tunisia/tunisia-vat-on-foreign-digital-services/.
[279]IBFD. 2023. Tunisia – Digital Taxation Monitor. Accessed 23 September 2023, pg. 2.
[280]"Digital services taxes and other taxes on the digital economy," 2023, EY, accessed 17 December 2023, https://taxnews.ey.com/news/2023-1939-digital-services-taxes-and-other-taxes-on-the-digital-economy-november-2023?uAlertID=Sd%2FG8rua1oj6%2FI58EZ2AiA%3D%3D, pg. 34.
[281]IBFD. 2023. Tunisia – Digital Taxation Monitor. Accessed 23 September 2023, pg. 2.
[282]"Tunisia – Corporate Significant Developments - Royalty on sales of computer applications and services rendered via the Internet (the equivalent of a digital services tax [DST]," 2023, PWC, accessed 23 September 2023, https://taxsummaries.pwc.com/tunisia/corporate/significant-developments.

4.2.3 Nigeria

Table 8 – Nigeria's legislation particulars[283]

Implementation status	Implemented
Effective date	1 February 2020
Tax rate(s)	Different rates applicable to certain thresholds

Design features of the "Companies Income Tax (Significant Economic Presence)"[284]

Nigeria introduced a provision in its Finance Act 2019, that taxes the income derived by non-resident digital service providers in respect of their activities, to the extent that they have a significant economic presence ("SEP") in Nigeria and the income derived can be linked to such activities.[285]

In May 2020, the Companies Income Tax (Significant Economic Presence) Order 2020 ("SEP Order")[286] was published, providing the definition of SEP and the criteria deeming a foreign company to have a SEP in Nigeria.[287] The SEP Order also exempts international businesses from having a SEP in Nigeria if their operations fall under a multilateral agreement or consensus arrangement that addresses the tax issues arising from the digital economy.[288]

In each year of assessment, non-resident service providers are subject to a two-tiered test to determine whether they have a SEP in Nigeria.[289] The first test determines whether a non-resident company conducted digital-related activities in Nigeria and the second determines whether its turnover exceeds 25 million Naira.[290] Both tests must be met for the DST to apply.

Foreign companies that undertake the following activities are deemed to have a SEP in Nigeria:

Category 1 – A non-resident company earning over 25 million Naira in a year of assessment from certain activities in Nigeria, including streaming or downloading digital content, data transmission based on Nigerian customer information, direct or indirect provision of goods or services to Nigerian

---

[283]IBFD. 2023. Nigeria – Digital Taxation Monitor. Accessed 23 September 2023, pg. 2.
[284]Ibid.
[285]"Digital services taxes and other taxes on the digital economy," 2023, EY, accessed 17 December 2023, https://taxnews.ey.com/news/2023-1939-digital-services-taxes-and-other-taxes-on-the-digital-economy-november-2023?uAlertID=Sd%2FG8rua1oj6%2FI58EZ2AiA%3D%3D, pg. 28.
[286]Nigeria's DST is implemented as an amendment to its Income Tax Act and not as a standalone tax.
[287]"Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 15.
[288]Companies Income Tax (Significant Economic Presence) Order, 2020. 2020. Nigeria: Government Printer. Pg. B114.
[289]Echendu, C. 2020. Nigeria's Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities. Bulletin For International Taxation (Volume 74) No. 9. Pg. 530.
[290]Ibid.

customers through digital platforms or intermediary services linking Nigerian customers and suppliers.[291]

Category 2 – A non-resident company that uses a Nigerian domain name (.ng) or registers a website address in Nigeria.[292]

Category 3 – A non-resident company that has a sustained and purposeful interaction with Nigerian customers by customising its digital platform to target Nigerians or reflects the prices of its goods, services or payment options in the local currency of Naira. [293]

The applicable DST tax rate is determined according to a certain threshold. Companies with a turnover of less than 25 million Naira are exempt, provided the compliance and regulation requirements are met.[294] Where turnover exceeds 25 million Naira but is less than 100 million Naira, a 20% tax rate is applied to taxable profits[295] and turnover above 100 million Naira attracts a 30% tax rate applicable to taxable profits.[296] Furthermore, a withholding tax of 10% applies to payments made to non-resident service providers that render technical or consultancy services to Nigerian customers, to the extent that the non-resident company has a SEP in Nigeria.[297]

As it pertains to compliance obligations, a non-resident company with a SEP in Nigeria is required to submit a tax return for each year of assessment.[298] The DST should be paid on or before the due date in accordance with the declaration made in the tax returns submitted to the Nigerian Revenue Authorities.[299] Where a non-resident company only earns income subject to withholding tax in a year of assessment, the obligation to submit a tax return will not apply to that company in that year of assessment however, a 10% withholding tax is withheld by the payer at source.[300]

[291]Companies Income Tax (Significant Economic Presence) Order, 2020. 2020. Nigeria: Government Printer. Pg. B113.
[292]Ibid.
[293]Ibid.
[294]Echendu, C. 2020. Nigeria's Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities. Bulletin For International Taxation (Volume 74) No. 9. Pg. 526.
[295]Turnover is used to determine the threshold test but the tax rate is applied to taxable profits (i.e. income less expenses).
[296]Id. Pg. 527.
[297]IBFD. 2023. Nigeria – Digital Taxation Monitor. Accessed 23 September 2023, pg. 3.
[298]Id. Pg. 4.
[299]Ibid.
[300]Ibid.

4.2.4 Kenya

Table 9 – Kenya's legislation particulars[301]

Implementation status	Implemented
Effective date	1 January 2021
Tax rate	1.5%

Design features of the "Digital Services Tax"[302]

Kenya introduced a DST applicable to resident and non-resident persons that derive income from the country for the provision of services through a digital marketplace.[303]

The DST applies to residents or non-residents that fall into either category:[304]

- *Digital service providers* – A person that offers digital services via a platform (i.e. automated delivery or subscription over the internet or electronic networks).[305]
- *Digital marketplace providers* – A person that offers a platform to enable direct interaction between buyers and sellers through a website or other online application.[306]

The DST does not however, apply to non-resident persons with a PE in Kenya.[307]

Digital service providers and digital marketplace providers are subject to the DST when they supply or facilitate the provision of services to a user located in Kenya.[308] A user is considered located in Kenya if: the user has a residential, business or billing address in Kenya, payment is made with a debit or credit card from any Kenyan financial institution, the digital interface is accessed from a device physically located in Kenya (e.g. computer or cell phone) or a digital service is purchased using an internet protocol address registered in Kenya or an international country code assigned to Kenya.[309]

[301]IBFD. 2023. Kenya – Digital Taxation Monitor. Accessed 23 September 2023, pg. 2.
[302]Ibid.
[303]"Digital services taxes and other taxes on the digital economy," 2023, EY, accessed 17 December 2023, https://taxnews.ey.com/news/2023-1939-digital-services-taxes-and-other-taxes-on-the-digital-economy-november-2023?uAlertID=Sd%2FG8rua1oj6%2Fl58EZ2AiA%3D%3D, pg. 22.
[304]"Draft digital services tax regulations issued," 2020, Deloitte, accessed 23 September 2023, https://www.taxathand.com/article/15317/Kenya/2020/Draft-digital-services-tax-regulations-issued.
[305]Ibid.
[306]Ibid.
[307]IBFD. 2023. Kenya – Digital Taxation Monitor. Accessed 23 September 2023, pg. 3.
[308]The Income Tax (Digital Service Tax) Regulations, 2020. 2020. Kenya: Government Printer, pg. 4.
[309]Ibid.

The DST in Kenya applies to the following digital services: digital marketplace provision, subscription-based media, downloadable digital content, over-the-top services (i.e. streaming TV, movies, podcasts, music), search engine and automated help desk services, online distance learning, electronic booking services, electronic data management (i.e. file-sharing, cloud storage) and any other services offered via a digital marketplace.[310] The Regulations outline the exemptions from DST for specific services including, income subject to withholding tax, non-resident income derived from message transmission through various mediums, online services offered by approved financial institutions and online services provided by government institutions.[311]

The DST is calculated on the gross transactional value of digital services.[312] For digital service providers, DST is calculated on the payment received as consideration for the services rendered and for digital marketplace providers, on the fee paid to the provider for use of the platform.[313]

The DST becomes payable upon payment transfer to the service provider or marketplace for the digital services supplied and the liability for payment lies with the service provider or marketplace, except in the case of non-residents without a PE in Kenya, where a tax representative handles the remittance to the Kenyan Revenue Authority.[314] The DST is considered a final tax unless paid by a non-resident person with a PE in Kenya, in which case the DST may be offset against the CIT liability for that period.[315]

From a compliance perspective, a monthly tax return declaring the value of the transactions undertaken and the corresponding tax amounts should be submitted on or before the twentieth day of the month following the end of the month in which the digital services were provided.[316]

---

[310] Id. Pg. 2.
[311] "The Digital Service Tax Overview – Kenya," 2021, RSM, accessed 23 September 2023, https://www.rsm.global/kenya/insights/tax-insights/tax-alerts/digital-service-tax-overview.
[312] The Income Tax (Digital Service Tax) Regulations, 2020. 2020. Kenya: Government Printer, pg. 4.
[313] Ibid.
[314] Id. Pg. 5.
[315] Id. Pg. 3.
[316] Id. Pg. 6.

4.2.5 Sierra Leone

Table 10 – Sierra Leone's legislation particulars[317]

Implementation status	Approved – (Pending regulations)
Effective date	1 January 2021
Tax rate	1.5%

Design features of the "Minimum Digital Tax"[318]

Sierra Leone enacted the Finance Act 2021, effective from 1 January 2021, which covers key measures about the taxation of digital services. This includes the introduction of a DST that applies a minimum tax to the income derived by a resident from all digital and electronic transactions[319] with no applicable threshold.[320] The minimum digital tax is calculated at the rate of 1.5% of income or the income tax determined using standard domestic rules, whichever is higher.[321]

As it pertains to the administrative and compliance-related obligations, the resident involved with the digital and electronic transactions must submit the necessary income tax return and settle the minimum digital tax on or before the income tax return filing date (i.e. four months after the tax year) by means of an online self-declaration.[322]

[317] IBFD. 2023. Sierra Leone – Digital Taxation Monitor. Accessed 19 July 2023, pg. 2.
[318] Ibid.
[319] Finance Act, No. 48 of 2021. 2021. Sierra Leone: Government Printing Department, pg. 9.
[320] "Finance Act 2021 introduces various tax changes," 2020, United Nations Conference On Trade And Development, accessed 19 July 2023, https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3688/finance-act-2021-introduces-various-tax-changes.
[321] IBFD. 2023. Sierra Leone – Digital Taxation Monitor. Accessed 19 July 2023, pg. 2.
[322] Ibid.

4.2.6 Tanzania

Table 11 – Tanzania's legislation particulars[323]

Implementation status	Implemented
Effective date	1 July 2022
Tax rate	2%

Design features of the "Digital Service Tax/Income Tax"[324]

Tanzania issued the Income Tax Regulations 2022 which introduced a DST on digital services supplied through a digital marketplace by non-resident entities with no establishments in Tanzania, to resident individuals who are not conducting business.[325]

When a payment is made from a Tanzanian bank account in exchange for a digital service, DST must be paid to the Tanzania Revenue Authority.[326] Digital services that are provided without payment, for example the use of the WhatsApp digital platform, will not be impacted by the DST.[327] A non-resident business that provides digital services to resident individuals of Tanzania is required to pay DST on the gross payments received from the Tanzanian individual customers, by way of a single instalment each calendar month.[328]

According to Tanzanian law, tax is charged on payments that have a source in Tanzania.[329] A payment for digital services is deemed to have a source in Tanzania where the recipient of the service is in the country.[330] The recipient of a service is deemed to be in Tanzania if:

- The payment proxy (e.g. recipient bank account details) is in Tanzania;[331] or

[323]IBFD. 2022. Tanzania – Digital Taxation Monitor. Accessed 23 September 2023, pg. 2.
[324]Ibid.
[325]"Tanzania issues regulations on taxation of electronic services," 2022, EY, accessed 23 September 2023, https://www.ey.com/en_gl/tax-alerts/tanzania-issues-regulations-on-taxation-of-electronic-services#:~:text=The%20Regulations%20are%20effective%201,tax%20and%20value%2Dadded%20tax.
[326]"Making Digital Tax Work for Tanzania," 2023, Deloitte, accessed 23 September 2023, https://www.deloitte.com/tz/en/services/consulting/about/making-digital-tax-work-for-tanzania-dion-kapfumvuti.html.
[327]Ibid.
[328]"Registration Deadline for Digital Services Tax and VAT Imminent," 2022, ALN, accessed 23 September 2023, https://aln.africa/insight/registration-deadline-for-digital-services-tax-and-vat-imminent/#:~:text=Registration%20Timelines,and%20interest%20will%20be%20applicable.
[329]The Income Tax Act, No. 25 of 2022. 2022. The United Republic of Tanzania: Government Printer, pg. 5.
[330]Ibid.
[331]Ibid.

- The resident proxy (e.g. residential or billing address) or access proxy (e.g. internet address or SIM mobile country code of the recipient) is in Tanzania.[332]

The DST applies to a broad list of digital services delivered via the internet or any other electronic means. These digital services include:

- Software and updates;
- Images, texts and information;
- Websites, web-hosting or remote programs and equipment;
- Access to database;
- Music and movies;
- Games and games of chance;
- Self-education packages; and
- Political, artistic, sporting, scientific, cultural and other broadcasts and events.[333]

A non-resident service provider is required to pay DST to a bank account specified by the Tanzanian Revenue Authorities, in Tanzanian Shillings or an equivalent convertible currency.[334] The Regulations specifically exempt a non-resident service provider from purchasing and using an electronic fiscal device to issue a fiscal receipt upon payment received.[335]

A non-resident service provider is required to file a return declaring the amount of DST payable in a tax period and pay the DST by the seventh day of the following tax period.[336]

---

[332] Ibid.
[333] Id. Pg. 2.
[334] Id. Pg. 5.
[335] Ibid.
[336] "Tanzania issues regulations on taxation of electronic services," 2022, EY, accessed 23 September 2023, https://www.ey.com/en_gl/tax-alerts/tanzania-issues-regulations-on-taxation-of-electronic-services#:~:text=The%20Regulations%20are%20effective%201,tax%20and%20value%2Dadded%20tax.

4.2.7 Uganda

Table 12 – Uganda's legislation particulars[337]

Implementation status	Implemented
Effective date	1 July 2023
Tax rate	5%

Design features of the "Tax on Non-residents providing Digital Services"[338]

Uganda enacted the Finance Act 2023 which introduced a DST on the revenue derived by non-residents from the supply of digital services to persons in Uganda, delivered via the internet, an online platform or an electronic network.[339] The DST is a final tax and the non-resident will not be subject to any income tax charged on the supply of digital services.[340]

The scope of digital services covered by legislation is a 'catch-all' and includes the following:

- Data, data warehousing and cloud computing services;
- Online gaming and advertising services;
- Digital content services;
- Services delivered through an online marketplace (e.g. accommodation, vehicle hire, transport);
- Other services delivered through social media platforms or internet search engines; and
- Any other digital services deemed as included by the Minister of Finance.[341]

Non-resident suppliers of digital services must file self-assessed tax returns to declare the tax within 15 days of the end of the tax period.[342] Per existing law, taxes levied on international payments to non-residents must be withheld by Ugandan residents that make the payments, as provided in section 120 of the Act.[343] However, section 120 has not been amended to address the collection of DST by withholding tax agents.[344]

---

[337] IBFD. 2023. Uganda – Digital Taxation Monitor. Accessed 23 September 2023, pg. 2.
[338] Ibid.
[339] Income Tax Act (Amendment) Bill, No. 22 of 2023. 2023. Uganda: Printed by UPPC, Entebbe, pg. 7.
[340] "Uganda – 5% DST passed and cap imposed on loss carry forwards," 2023, BDO, accessed 3 September 2023, https://global-old.bdo.global/en-gb/insights/tax/world-wide-tax/uganda-5-dst-passed-and-cap-imposed-on-loss-carry-forwards.
[341] Income Tax Act (Amendment) Bill, No. 22 of 2023. 2023. Uganda: Printed by UPPC, Entebbe, pg. 7.
[342] IBFD. 2023. Uganda – Digital Taxation Monitor. Accessed 23 September 2023, pg. 3.
[343] "Tax Alert! Proposed Changes To Digital Service Tax And Capital Gains In Uganda," 2023, Kampala Associated Advocates, accessed 3 September 2023, https://www.kaa.co.ug/tax-alert-proposed-changes-to-digital-service-tax-and-capital-gains-in-uganda/#:~:text=The%20Bill%20seeks%20to%20insert,treated%20as%20a%20final%20tax.
[344] Ibid.

4.3 An analysis of the design features comprised in African enacted DST legislation

An analysis is performed below to identify the similarities and variations in the design features of the African DST legislation, to inform South Africa on which design features it could consider.

4.3.1 Similarities in African DST design features

Tax base

The design features of the African DSTs (except for Nigeria) have in common a tax base of gross revenue or turnover, on which the DST liability is calculated.

It is worth noting that DSTs charged on a revenue tax base are criticised by some for not taking into account expenses incurred by digital companies in the supply of digital services, as opposed to CIT for example, which is based on taxable income or profits that allow for deductions of certain costs incurred.[345] It is further noted that the absence of research and development allowances, interest deductions and capital allowances when determining a DST liability, may discourage investment in African countries.[346] Therefore, the view exists that a DST based on taxable income or profits, may make for a more equitable tax system that in turn encourages investment in the country.[347]

In contrast, an opposing view suggests that applying a DST to revenue may be a simpler approach than applying it to profit,[348] as the attribution of profit to a 'nexus' or PE may prove to be a challenging task, resulting in uncertainty of approach and large compliance and administrative costs.[349]

In light of these opposing views, it is important to weigh up both arguments when establishing a DST tax base, to consider which approach is better suited for a country's needs and circumstances.

[345] "Digital Services Taxes (DSTs): Policy and Economic Analysis," 2019, Congressional Research Service, accessed 21 July 2023, https://crsreports.congress.gov/product/pdf/R/R45532/2, (Introduction page).

[346] Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9): 219. Pg. 10.

[347] Moloi, T & Mpofu, F.Y. 2022. Direct Digital Services Taxes in Africa and the Canons of Taxation. Laws 11(4):57. Pg. 9 & 15.

[348] "IMF Working Paper – Tec(h)tonic Shifts: Taxing the Digital Economy," 2020, International Monetary Fund, accessed 3 January 2024, https://www.imf.org/en/Publications/WP/Issues/2020/05/29/Tec-h-tonic-Shifts-Taxing-the-Digital-Economy-49363, pg. 38.

[349] "Digital services tax: country practice and technical challenges," 2021, International Bank for Reconstruction and Development / The World Bank, accessed 5 February 2023, https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf, pg. 32.

Tax rate

The design features of the African DSTs include flat tax rates, ranging from 1.5% to 5%. Most of the countries have a tax rate of 3% or less, considered to be on the lower end of the spectrum while, the 5% tax rate of Zimbabwe and Uganda are the highest in Africa.[350]

The DSTs of African countries provide the initial impression of a modest tax given their low tax rates but the tax base to which the tax rate is applied comprises of revenue, resulting in a tax burden much larger than implied by the low tax rate.[351] The true tax burden is therefore, veiled by a seemingly low tax rate.[352]

Nigeria's DST is the exception to the above, as it's based on the concept of SEP and has a 20% and 30% tax rate for different revenue thresholds. These tax rates are fairly high and could considerably reduce the after-tax return for targeted businesses, likely implying that the burden of tax could be passed onto Nigerian consumers.[353]

Compliance obligations & administrative responsibilities

The success of a DST is largely attributable to a country's ability to administer and enforce the tax.[354] Where structural weaknesses and deficiencies exist within a DST, this has implications for tax compliance and administration effectiveness.[355]

Each African country has stipulated its administration and compliance obligations, mostly pertaining to the filing of DST returns and due dates for payment of the tax. However, the lack of details surrounding the method of payment collection is prevalent across the design features of the African countries. This could hinder a taxpayer's understanding of how to make DST payments and in turn could result in difficulties experienced by revenue collectors when assessing the accuracy of payments made in settlement of a taxpayer's obligations.[356]

---

[350] "Uganda – 5% DST passed and cap imposed on loss carry forwards," 2023, BDO, accessed 23 September 2023, https://global-old.bdo.global/en-gb/insights/tax/world-wide-tax/uganda-5-dst-passed-and-cap-imposed-on-loss-carry-forwards.

[351] Moloi, T & Mpofu, F.Y. 2022. Direct Digital Services Taxes in Africa and the Canons of Taxation. Laws 11(4):57. Pg. 11.

[352] "Digital Taxation Around The World," 2020, Tax Foundation, accessed 9 June 2023, https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf, pg. 20.

[353] Echendu, C. 2020. Nigeria's Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities. Bulletin For International Taxation (Volume 74) No. 9. Pg. 530.

[354] Id. Pg. 528.

[355] Moloi, T & Mpofu, F.Y. 2022. Direct Digital Services Taxes in Africa and the Canons of Taxation. Laws 11(4):57. Pg. 13.

[356] Id. Pg. 11.

Countries should detail the DST registration process, compliance obligations and method of payment collection in their design features and ensure they are enforced and administered.[357]

DST interactions with other taxes

The DST design features of a few African countries appear to consider other existing taxes or future global taxing approaches, by giving preference to the application of those taxing principles on digital services that also fall within the DST net. Some of these preferences present in the following manners:

- Income of a particular nature that becomes subject to both withholding tax and DST is accordingly exempt from DST;
- Income derived by a non-resident with a PE in an African country is either exempt from DST or the applicable DST may be offset against the CIT determined for the PE in that country; and
- Exempting non-resident businesses from DST if covered under a multilateral agreement or consensus arrangement that addresses the tax issues arising from the digital economy.

Accommodating other taxes in the design features of African DSTs could help to prevent double taxing digital services that are subject to more than one tax in a country. The consideration of non-resident companies that are party to global agreements represents a forward-looking approach that may help with a smooth transition once the OECD's Two-Pillar Approach is adopted.[358]

4.3.2 Variations in African DST design features

Minimum DST threshold

Of the seven African countries that have enacted DST legislation, only Zimbabwe and Nigeria have included a minimum DST threshold in their design features. Arguments exist both in favour of and against the implementation of minimum DST thresholds.

Some are of the view that minimum DST thresholds are discriminatory against large multinationals[359] in that setting a threshold targets only large American business corporations such

[357] "Digital Taxation Around The World," 2020, Tax Foundation, accessed 9 June 2023, https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf, pg. 20.

[358] "Digital Service Taxes and Their Application," 2020, Institute of Development Studies, accessed 9 June 2023, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y, pg. 15.

[359] "Digital Taxation Around The World," 2020, Tax Foundation, accessed 9 June 2023, https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf, pg. 20.

as Facebook, Google, Netflix and Amazon.[360] A minimum DST threshold that targets large global companies may create inequitable treatment between businesses,[361] as local digital companies have the relative advantage of deriving income locally and abroad without being subject to their country's DST.[362] This could result in retaliation in the form of trade wars,[363] where the countries in which the multinationals are established could invoke tariffs or the digital companies themselves could resort to subscription models that cover their tax costs.[364]

From a different angle, an argument exists that a minimum DST threshold is necessary as every income derived from a country cannot be taxed in its entirety.[365] Taxing all of income would not be aligned with multilateral approaches, such as the OECD's Two-Pillar Approach, which proposes taxing non-resident digital companies on income derived from a country above a certain amount.[366] Support for a DST with a minimum threshold stems from the realisation that multinationals derive significant revenue from African countries and such larger revenues should, for the sake of fairness, be adequately taxed.[367]

It is worth noting that a minimum DST threshold has objectives other than only targeting large multinationals to mobilise DST revenue. It serves to protect and promote local companies, digital start-ups and small and medium enterprises from multinationals that are more dominant and resilient in the market, which is vital in an African setting to promote the growth of the industry.[368]

Scope of digital services

Each of the African countries have included in their design features, a scope of digital services subject to the DST however, the extent of its coverage is what differs.

---

[360] Moloi, T & Mpofu, F.Y. 2022. Direct Digital Services Taxes in Africa and the Canons of Taxation. Laws 11(4):57. Pg. 9.

[361] "Digital Services Taxes (DSTs): Policy and Economic Analysis," 2019, Congressional Research Service, accessed 21 July 2023, https://crsreports.congress.gov/product/pdf/R/R45532/2, (Introduction page).

[362] "Digital Taxation Around The World," 2020, Tax Foundation, accessed 9 June 2023, https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf, pg. 20.

[363] Faulhaber, L.V. 2019. Taxing Tech: The Future of Digital Taxation. 39.2 Va. Tax Rev. Georgetown University Law Center. Pg. 145.

[364] Moloi, T & Mpofu, F.Y. 2022. Direct Digital Services Taxes in Africa and the Canons of Taxation. Laws 11(4):57. Pg. 9.

[365] "Tax Alert! Proposed Changes To Digital Service Tax And Capital Gains In Uganda," 2023, Kampala Associated Advocates, accessed 23 September 2023, https://www.kaa.co.ug/tax-alert-proposed-changes-to-digital-service-tax-and-capital-gains-in-uganda/#:~:text=The%20Bill%20seeks%20to%20insert,treated%20as%20a%20final%20tax, pg. 4.

[366] "The Pillar Two Rules in a Nutshell," 2023, OECD, accessed 3 December 2023, https://www.oecd.org/tax/beps/pillar-two-model-rules-in-a-nutshell.pdf, pg. 1.

[367] Faulhaber, L.V. 2019. Taxing Tech: The Future of Digital Taxation. 39.2 Va. Tax Rev. Georgetown University Law Center. Pg. 183.

[368] Id. Pg. 14.

The scope of digital services that is broadly defined, covering an extensive range of services, makes for a DST that can bring many digital businesses into its taxing net.[369]

For those African countries that have a narrowly defined scope of digital services, the potential to capture significant amounts of income in the DST net, is limited.[370] The narrow categories of digital services may cause uncertainty or a lack of clarity among digital service providers as to whether their services supplied are subject to DST, which may translate into complexities and challenges for the enforcement and administration of the tax.[371]

Source rules

The DST legislation of African countries focuses on the revenue generated by digital services supplied to a customer located within the country but very few include a design feature for determining the source of such revenue.

Clear sourcing rules could contribute to fair and effective taxation of the digital economy, as profits are attributed and taxed where the activities occur and value is created. Without clearly defined sourcing rules, there may be potential for profit shifting and tax avoidance.

Therefore, while the DSTs of African countries may address the revenue stream from the supply of digital services to a customer in-country, if they lack specific rules for determining the source of DST revenue, they may not adequately tax the digital economy or secure the intended tax revenue.

4.4 Conclusion

This chapter set out to address the primary research objective of this dissertation by providing insights into the African DST design features that South Africa could consider. This was achieved by providing an overview of the enacted DST legislation of Zimbabwe, Tunisia, Nigeria, Kenya, Sierra Leone, Tanzania and Uganda and analysing their design features by identifying and examining similarities and variations.

From the analysis performed in this chapter, it is concluded that South Africa could consider the following DST design features, in the suggested manners:

[369] "The Taxation of the Digitalised Economy: An African Study," 2020, International Centre for Tax and Development, accessed 23 February 2023, https://www.ictd.ac/publication/taxation-digitalising-economy-africa-study/, pg. 17.

[370] Faulhaber, L.V. 2019. Taxing Tech: The Future of Digital Taxation. 39.2 Va. Tax Rev. Georgetown University Law Center. Pg. 178.

[371] Moloi, T & Mpofu, F.Y. 2022. Direct Digital Services Taxes in Africa and the Canons of Taxation. Laws 11(4):57. Pg. 10.

- The consensus among African DSTs appears to be the adoption of a low tax rate paired with a revenue tax base. However, in light of the arguments for and against a revenue tax base, it is recommended that South Africa weigh up the competing arguments when establishing a DST tax base, while also considering the specific needs and circumstances of the country. In addition, as the tax rate operates with the tax base to determine DST liability, the nature of the tax base should be considered in conjunction with the determined tax rate.
- Rules for determining the source of revenue derived from the supply of digital services to customers in a country should be considered for inclusion as a design feature in DST legislation, to help ensure the fair allocation of profits among countries.
- As it pertains to the implementation of a minimum DST threshold, the subject is one of much debate, with valid arguments on both ends. When deciding whether to implement a minimum threshold, all arguments should be considered along with the intended objectives and purposes of the minimum threshold, as it will have an impact on which digital businesses are ultimately targeted and to what extent, which in turn will impact the amount of revenue the DST generates.
- The scope of digital services should be broadly defined in DST legislation to create a DST taxing net as wide as possible. Consulting the scope of digital services included in the DST legislation of African countries can help in this regard.
- To aid in preventing possible complications with administering or enforcing a DST, compliance obligations and administrative responsibilities should be clearly stipulated, even if in a supplementary regulation to the DST legislation. The administration and compliance-related DST design features of some African countries provide good examples of the relevant aspects to be considered and the level of detail to include. However, it is recommended to expand on details regarding DST payment collection methods.
- The design features of some African DSTs demonstrate how the tax could practically interact with other existing taxes as well as accommodate anticipated multilateral agreements. This may be useful to consider, to avoid double taxation of digital services but whether it is adopted as a DST design feature may be dependent on the nature of South Africa's other taxes.

The shared trends observed in the analysis of the African DST design features could signify a collective perspective among African countries on the manner in which the digital economy could be taxed. The African DST design features offer a sound starting point for what South Africa could consider however, the country's economic conditions, infrastructure capabilities and the status of its digital industry should be taken into account before aligning with the broader African DST approaches. By leveraging and tailoring these shared DST design features to its specific needs, South Africa could help to ensure that the potential benefits of its DST and the fairness of its application are optimised.

CHAPTER 5: ATAF'S PROPOSED SOLUTION FOR TAXING THE DIGITAL ECONOMY

5.1 Introduction

ATAF, Africa's premier organisation on tax-related matters, recognised the potential opportunities for international efforts to transform global taxing rules and engaged the OECD in discussions on taxation of the digital economy.[372] ATAF commented on globally proposed solutions to ensure the views of African countries were considered and possibly influenced the direction of the final global solution for taxing the digital economy.[373]

In contemplating whether a DST would be an appropriate measure for taxing the digital economy, ATAF considered both the benefits and potential drawbacks that implementing a DST could present for African countries.[374] ATAF developed a DST legislative framework that draws from DST legislation implemented in other international countries but adapted its design features to accommodate the unique challenges faced by African countries.[375]

Therefore, given ATAF's wide consultations on international DSTs and its understanding of African economies and their related challenges, it may prove useful to consider the design features of its proposed solution as a tailored African approach to taxing the digital economy.

In this chapter, an overview of ATAF's Suggested Approach is provided and its design features are analysed with those of the African DSTs, to identify areas of alignment or deviation. This analysis aims to provide an understanding as to the extent that South Africa could consider the DST design features proposed by ATAF or whether there are learnings to be gained by identifying where the design features of African DSTs deviate from ATAF's Suggested Approach.

5.2 An overview of ATAF's Suggested Approach to drafting DST legislation

372 "ATAF Technical Note 1: The Tax Challenges Arising In Africa From The Digitalisation Of The Economy," 2019, ATAF, accessed 23 February 2023, https://events.ataftax.org/includes/preview.php?file_id=25&language=en_US, pg. 4 (3.10) & pg. 5 (4.4).

373 "Policy Brief: Domestic Resource Mobilisation – Digital Services Taxation in Africa," 2020, ATAF, accessed 11 February 2023, https://events.ataftax.org/includes/preview.php?file_id=61&language=en_US, pg. 1.

374 Id. Pg. 3.

375 "Suggested Approach To Drafting Digital Services Tax Legislation," 2020, ATAF, accessed 22 January 2023, https://events.ataftax.org/index.php?page=documents&func=view&document_id=79, pg. 1.

ATAF's Suggested Approach sets out to assist African countries with what to consider when introducing a DST for taxing digital services, by presenting a proposed legislative DST structure comprising of recommended design features that African countries can decide whether to include in their own DST legislation and related regulations.[376]

Below is an overview of the design features ATAF's Suggested Approach recommends for inclusion in the DST legislation of African countries.

Table 13 – The design features of ATAF's Suggested Approach to Drafting DST Legislation[377]

Section	Provision	Overview of design features
Part I – DST liability		
1	*DST charging section*	Section 1 provides that 'digital services revenue' derived by a MNE or MNE Group from the supply of digital services in a country will be subject to DST.[378] A DST rate in the range of 1% to 3% is suggested, which is in line with the rates levied by other international countries that already have DSTs implemented (e.g. the UK).[379] A low rate is proposed as the DST is levied on the gross 'digital services revenue' derived by a MNE or MNE Group instead of the net profit calculated on the revenue, which is the case for CIT.[380]
2	*DST revenue quantum*	Section 2 outlines the quantum of 'digital services revenue' as the total amount of revenue, directly or indirectly derived by a MNE or MNE Group from the provision of digital services in a country.[381] Two revenue streams are identified namely, revenue paid directly or indirectly from a country (e.g. payment for digital content streaming) and revenue attributable to a country due to user participation (e.g. online advertisement views).[382] This demonstrates that 'digital services revenue' does not only comprise of revenue derived directly or indirectly from one country but also includes revenue arising in other countries.[383]

[376]Ibid.
[377]Id. Pg. 10 - 16.
[378]Id. Pg. 3.
[379]Id. Pg. 10.
[380]Ibid.
[381]Id. Pg. 3.
[382]Id. Pg. 10.
[383]Ibid.

3	*Definition of 'digital service'*	Section 3(1) broadly defines a 'digital service' as comprising of any service delivered using the internet or an electronic network including online platforms.[384] Section 3(2) provides a list of specific inclusions as 'digital services.' However, where a service is not explicitly listed, it is not necessarily excluded as a 'digital service.'[385] The list of digital services includes: • Online advertising and gaming services; • Data and cloud computing services; • Services delivered by online marketplaces or intermediation platforms (e.g. accommodation or vehicle hire); • Digital content services; and • Services delivered through social media platforms and search engines.[386]
4	*Digital services revenue*	Section 4 details the services from which revenue generated directly or indirectly by a MNE or MNE Group and attributable to a country, is included in 'digital services revenue.'[387] The list of services includes: • Online advertising and data services; • Intermediation platform or online marketplace services derived from users in a country; • Facilitation of use or rental of real property located in a country, irrespective of the user's location; • Facilitation of vehicle hire services commencing in a country, irrespective of the user's location; • Online gaming, digital content and cloud computing services derived from users in a country; and • Any other digital services.[388]
5	*Definition of 'user'*	Section 5 broadly defines the term 'user' as any person that views, utilises or engages with an online platform.[389] This broadens the DST scope ensuring that businesses which derive revenue from providing digital services to a large base of customers or users across many countries, using little to no local infrastructure, are included in the DST scope.[390] These businesses derive substantial value

[384]Id. Pg. 3.
[385]Id. Pg. 10.
[386]Id. Pg. 3.
[387]Ibid.
[388]Ibid.
[389]Ibid.
[390]Id. Pg. 10.

		from user participation and interaction as well as benefit from content and data contributions by users.[391]
6	*Digital services revenue attributable to a country*	Section 6 outlines how a MNE or MNE Group's revenue derived from online advertising services should be attributed to the country charging the DST.[392] The section attributes revenue relating to the following services, as derived by a MNE from a resident of a country or non-resident operating in that country through a PE: • Payments made for online advertising services - section 6(a)(i) • Provision of data services - section 6(b)(i) • Provision of other digital services - section 6(c)(i).[393] Guidance on the method of attribution helps to ensure that user contributions in the country are taken into account. In the case of digital services revenue derived from data services, the sale or licensing component of a transaction may not result in a direct payment from the country where the users are situated but such payments may arise from other countries.[394] The attribution method therefore, ensures that where there are no direct payments from the countries of users, some revenue derived from the sale or licensing component of transactions is allocated to the country of users.[395]
7	*User location*	Section 7 provides a hierarchy for determining the location of a user.[396] For data and cloud computing services, online advertising and gaming services and digital content and online marketplace services where users purchase or sell goods or services using an online platform, a user's location is determined by one of the following accessible particulars: a user's online profile, geolocation, IP address, registered address, billing address or address of a user's bank account used to make payment.[397] This information is accessible by MNEs therefore, it presents a reliable source for determining a user's location.[398]

[391] Ibid.
[392] Id. Pg. 4.
[393] Ibid.
[394] Id. Pg. 12.
[395] Ibid.
[396] Id. Pg. 5.
[397] Ibid.
[398] Id. Pg. 13.

8	*De minimis rule*	Section 8 excludes MNEs and MNE Groups from DST, if they do not meet a certain revenue threshold in a period.[399] A de minimis rule is implemented to ensure that the DST only targets profitable and well-established digital businesses, to not hinder the growth of a country's digital sector by taxing start-ups and small and medium enterprises.[400] This objective is achieved using two revenue thresholds that companies must meet before they can be excluded. The first threshold is in relation to the worldwide revenue of a MNE or MNE Group however, this threshold is optional and should countries choose to apply it, an appropriate limit should be set to target only highly digitalised businesses.[401] The second threshold relates to the digital services revenue that a MNE or MNE Group derives from a country, to target those companies with significant transactions.[402] Countries should set the threshold taking into consideration the number of digital transactions in the country and the size of the economy.[403]
9	*Related party transactions*	Section 9 is applicable where a country exercises the option to implement the de minimis threshold as stipulated in section 8.[404] For purposes of determining worldwide turnover in section 8(1)(a), section 9 provides that the digital services revenue of a MNE Group should exclude revenue derived from providing digital services between MNEs of the same Group.[405] It is intended for reliance to be placed on the group's consolidated financial statements to obtain a reliable and consistent measure for determining the size of a MNE Group.[406] Consolidated financial statements isolate intra-group transactions thereby, identifying the arm's length transactions of the MNE Group with the market.[407]
10	*DST offsetting (optional)*	Section 10 allows a country to offset DST payable for a period against CIT payable by a resident person or non-resident person with a PE in that country.[408]

[399]Id. Pg. 6.
[400]Id. Pg. 13.
[401]Ibid.
[402]Ibid.
[403]Ibid.
[404]Id. Pg. 6.
[405]Id. Pg. 14.
[406]Ibid.
[407]Ibid.
[408]Id. Pg. 6.

		For a country to follow this policy direction however, its CIT legislation must be updated to allow the offset of DST payable and require the person claiming the offset to have declared and paid the DST-related revenue as part of their CIT filing obligation.[409]
Part II – DST administration		
11	*DST payment particulars*	Section 11 outlines the DST obligations as it pertains to the payment of the tax. The section proposes that DST be an annual tax, due and payable a few months after the end of a period, where the period is deemed equivalent to the twelve-month financial year of a MNE or ultimate parent of a MNE Group.[410] The section links the obligation to pay DST to the filing obligation by requiring settlement of the tax by the MNE or MNE Group required to file the DST return per section 12.[411]
12	*DST compliance obligations*	Section 12 details the DST filing obligations of a MNE or MNE Group that generates revenue from the supply of digital services in a country.[412] This section specifies which persons are required to file DST returns and make payment of the tax. For a MNE Group, this is the nominated responsible member and for a MNE, this is the appointed local representative.[413] As it pertains to the submission due date for a DST return, countries are advised to set an appropriate deadline based on their respective tax procedural policies and the administrative challenges they expect to face with highly digitalised businesses.[414]
13	*Responsible member appointment*	Section 13 obligates the ultimate parent company of a MNE Group to nominate a MNE to act as a responsible member to submit the DST return and make payment of the tax.[415] It is expected that the MNE Groups in the DST scope are highly digitalised businesses with the necessary capacity and advanced systems to promptly identify their per-country transactions, establish

[409] Id. Pg. 14.
[410] Id. Pg. 6.
[411] Ibid.
[412] Ibid.
[413] Ibid.
[414] Id. Pg. 15.
[415] Id. Pg. 6.

		whether a tax obligation exists and leave sufficient time to appoint a responsible member.[416] The recommended approach for appointing a responsible member should follow this order of persons: • A MNE Group member that is tax resident or operates through a PE in the country; • A MNE Group member that is registered for VAT in the country; • A local representative appointed by the MNE; • A MNE Group member that is tax resident in a country that has a DTA concluded with the country; or • The ultimate parent of the MNE Group.[417]
14	*Local representative appointment*	Section 14 provides that a non-resident MNE without a PE in a country should appoint a local representative to submit DST returns and settle the tax.[418] If a MNE Group fails to appoint a responsible member or a non-resident MNE fails to appoint a local representative, the section makes provision for the Commissioner to make a local representative appointment, ensuring compliance with DST legislation.[419] The obligations of a local representative include the settling of any DST payable by the taxable person from funds held on behalf of the MNE Group, as well as to collect and pay the DST by the due dates.[420] Countries should, at their discretion, issue further guidance on the qualifications and responsibilities of appointed local representatives, ensuring they display sufficient expertise and appropriate access to information about digital services transactions.[421]
15	*Administrative regulations*	Section 15 gives a country the option to publish its own regulations regarding the administration of the DST and compliance-related responsibilities of MNEs and MNE Groups.[422] Items to be addressed include but are not limited to taxpayer registration, the frequency of DST return filings, non-compliance penalties, assessments, objections and appeals and record-keeping requirements.[423]

[416] Id. Pg. 15.
[417] Id. Pg. 7.
[418] Ibid.
[419] Ibid.
[420] Ibid.
[421] Id. Pg. 16.
[422] Id. Pg. 7.
[423] Ibid.

5.3 An analysis of the design features of ATAF's Suggested Approach and those of African DSTs

While ATAF's Suggested Approach is not law and African countries are at liberty to draft their own DST legislation, it does however, provide an excellent legislative base for an African country to leverage off when establishing their DST design features.[424] Therefore, analysing the design features of ATAF's Suggested Approach with those of African DSTs to determine areas of alignment or deviation, may prove to be an informative exercise that helps South Africa with what DST design features it could consider.

5.3.1 Alignment of DST design features

The tax base and tax rate design features which form the basis for calculating a DST liability, align between the DSTs of most African countries and ATAF's Suggested Approach, given that both comprise of a gross revenue tax base accompanied by a low tax rate.

ATAF's Suggested Approach includes an optional design feature that allows for the offsetting of DST payable against CIT payable by a resident or non-resident person with a PE in the country. The inclusion of this design feature demonstrates consideration of the DST's interaction with other existing taxes, which aligns with the DSTs of the African countries.

ATAF defines a broad scope of digital services to include any service delivered via the internet or electronic networks, including online platforms. This design feature partially aligns with the DSTs of a few African countries but may be considered an area of improvement for African countries with narrowly defined digital services.

5.3.2 Deviation of DST design features

ATAF's Suggested Approach comprises of a dedicated section for administration responsibilities and compliance obligations, covering particulars such as filing of DST returns, payment collection and appointment of relevant parties. Provision is also made for additional regulations to be published at a country's discretion. Due to this level of detail, the administration and compliance design features of African DSTs deviate from that of ATAF's and may require updates on this basis to help ensure adequate enforcement of the tax.

[424] "Pillar Two – The African Dimension Potential Practical Impact of Pillar Two on Business in Africa," 2022, IBFD, accessed 11 December 2023, https://www.ibfd.org/sites/default/files/2022-06/ATS-Session-2-Pillar-Two%E2%80%93The-African-Dimension-ATS-%2826%20May%202022%29.pdf, pg. 25.

ATAF supports the implementation of a minimum DST threshold to help ensure that DSTs do not have an undesirable effect on the African digital economy. ATAF's design feature suggests a dual minimum threshold with respect to worldwide digital revenue and digital revenue derived from a particular country, which deviates from the route most African countries have taken in not implementing any thresholds.

Most significantly, the DST design features of ATAF's Suggested Approach deviate from those of the African countries as it pertains to the rules for determining source and user participation, which ATAF recognises with regard to two potential revenue streams:

- Revenue directly or indirectly paid from a customer in a country. In this regard, rules are stipulated for determining the source of revenue supplied from digital services; and
- Revenue attributable to a country as a result of user participation. In this regard, ATAF recommends formulas for allocating income derived from digital services to a certain country, with DST levied on the portion relating to user participation in a country and applied to gross revenues.[425] The means to determine the users of digital services are also detailed, as the number of users is the driver behind how a MNE's global revenues derived from digital services is apportioned to a country.[426] ATAF also sets out a hierarchy of rules for determining the location of a user, which varies according to the digital services provided.

5.4 Conclusion

This chapter aimed to address the primary research objective of this dissertation, by providing an overview of ATAF's Suggested Approach and analysing its design features with those of the African DSTs, to determine areas of alignment or deviation.

From the analysis, it is evident that the design features of ATAF's Suggested Approach and the African DSTs align as it pertains to implementing a gross revenue tax base with a low DST tax rate and giving preference to other existing taxing principles on digital services that fall in the DST net as well. The design features partially align on the broad scope of digital services defined. South Africa may consider these DST design features knowing that from a theoretical perspective of ATAF's Suggested Approach and a practical perspective of implemented African DST legislation, they align.

[425] Nakibuule Wakabi, Y. 2020. ATAF Proposes A Digital Services Tax Rate Between 1% And 3% For Member Countries. IBFD, pg. 1.
[426] Ibid.

The DST design features identified as deviating between ATAF's Suggested Approach and the African DSTs are recommended for consideration in the following manners, subject to South Africa's needs:

- An administration and compliance-related design feature should be included in the DST legislation and ATAF's Suggested Approach can be consulted for a comprehensive example of the elements this design feature should comprise of and the amount of detail to be included.
- Views on the inclusion of a minimum DST threshold vary and strong cases are presented on both ends. Therefore, it is important to consider both the advantages and disadvantages of its implementation, while also taking into account South Africa's specific economic requirements. Establishing a clear rationale for the inclusion of a minimum threshold will contribute to the success of its application. Should South Africa decide to implement a minimum DST threshold, the ATAF's Suggested Approach provides a good example for reference but South Africa should determine whether a dual minimum threshold is suitable for its country.
- For a more comprehensive approach to DST legislation, it may be worth considering whether to expand the DST scope to include revenue derived from user participation in other countries and incorporate as a design feature, the methods for determining a user's location.

Based on the analysis in this chapter, it appears that ATAF's Suggested Approach offers a comprehensive set of DST design features that South Africa could consider, as the approach accounts for shared African considerations in the taxation of the digital economy.

The decision to align with ATAF's Suggested Approach or deviate where necessary, is South Africa's to make. While ATAF's Suggested Approach provides a feasible framework on DST legislative features for South Africa to leverage off, the country's economic environment, development of its digital market, tax administration efficacy and other domestic-related priorities should also be considered, to establish an optimal balance between global alignment and localised customisation.

CHAPTER 6: CONCLUSION

6.1 Introduction

This dissertation set out to identify and analyse the DST design features that South Africa could consider if a DST was to be implemented as an alternative approach to taxing the digital economy. This primary research objective was achieved by addressing the following sub-objectives:

- Discussing the potential benefits and challenges of implementing DSTs.
- Providing an overview of the DSTs implemented by early-adopting developed countries France, Italy, Austria, the UK and Spain and analysing their design features by identifying key commonalities.
- Providing an overview of the enacted DST legislation of Zimbabwe, Tunisia, Nigeria, Kenya, Sierra Leone, Tanzania and Uganda and analysing their design features by identifying and examining similarities and variations.
- Providing an overview of ATAF's Suggested Approach and analysing its design features with those of the African DSTs, to identify areas of alignment or deviation.

A summary of the key findings drawn from the sub-objectives is outlined below.

6.2 Key findings

The dissertation commenced with a discussion of the positive and negative implications of implementing DSTs. This highlighted that DSTs could aid in increasing tax revenue for countries by expanding their tax bases, providing necessary resources to support sustainable development and growth and attempt to create a fair competitive environment between domestic and foreign companies, which may improve tax compliance and morale. It was concluded that implementing a DST could present challenges such as the resistance by MNEs to share DST-related data and comply with DST obligations, heightened administrative costs and difficulties in setting up DSTs, substantial operational and compliance costs for MNEs, potential consumer tax burden, potential adverse impacts on digital industry growth and welfare, negative effects on innovation, investment and economic growth, excessive taxation risks, competition risks, potential retaliation from developed countries and the potential violation of other tax laws. It is concluded that when designing DST legislative features, South Africa should assess the DST's potential impact on its country's economic landscape to potentially avoid the negative effects of DSTs, while still meeting the intended purpose of the tax.

An analysis of the DSTs implemented by France, Italy, Austria, the UK and Spain concluded that South Africa could consider and utilise the following DST design features as a fundamental foundation, based on the learnings and experiences of the early-adopting developed countries: applying a low tax rate to a tax base of gross revenue, expanding the scope of DSTs to cover a broad range of digital services and incorporating a minimum threshold to target the revenue derived by profitable and well-established suppliers of digital services.

The aforementioned DST design features were identified as key points of consideration for South Africa throughout the analyses performed in this dissertation and hence, the details of their recommendation are summarised below:

- *Tax base* – The DSTs of early-adopting developed countries, African countries and ATAF's Suggested Approach appear to align on the adoption of a low tax rate paired with a tax base of gross revenue. Despite these guiding examples, it is recommended that South Africa still consider the arguments for and against establishing a tax base of gross revenue as opposed to taxable income or profits, before setting a DST tax base. Furthermore, since the tax rate works with the tax base to establish DST liability, the nature of the tax base should be taken into account when setting the tax rate.
- *Scope of digital services* – Applying a DST broadly across various types of digital services could potentially result in more substantial DST revenue generated. Therefore, it is suggested that the scope of digital services be broadly defined in DST legislation to create a taxing net as wide as possible.
- *Minimum DST threshold* – Views on whether to implement a minimum DST threshold vary, with compelling arguments presented on both ends. In deciding whether to implement a minimum threshold, it may prove beneficial for South Africa to weigh up the advantages and disadvantages of its implementation and thoroughly consider its intended objectives and purposes, as this will determine which digital suppliers are targeted and the extent of such targeting. This, in turn, will directly impact the revenue generated from the DST. Establishing a clear reason for the inclusion of a minimum DST threshold, in light of South Africa's economic circumstances, will contribute to the success of its application. Once established, South Africa can consider whether a dual minimum threshold would be suitable for its country.

The analysis of the DSTs implemented by Zimbabwe, Tunisia, Nigeria, Kenya, Sierra Leone, Tanzania and Uganda provided additional DST design features for South Africa to consider, should the country decide to align itself with the collective perspective of how African countries tax the digital economy. These additional DST design features include clearly stating administrative responsibilities and compliance obligations, considering how DSTs interact with existing taxes and international agreements and considering the source of revenue from digital services for fair profit allocation among countries.

Furthermore, the analysis of the design features of ATAF’s Suggested Approach with those of the African DSTs highlighted pertinent deviations pertaining to the inclusion of revenue from user participation in other countries and methods for determining a user’s location to establish a more inclusive DST approach. The analysis demonstrated that while ATAF’s Suggested Approach offers a comprehensive framework of DST design features, that accounts for shared African digital taxation considerations, it is however, South Africa’s choice whether to fully align with ATAF's Suggested Approach or deviate where necessary, based on the country’s needs.

6.3. Concluding remarks

In light of the delays with the implementation of Pillar One and given the concerns raised regarding the Two-Pillar Approach, DSTs may remain relevant as a measure to tax the digital economy for some time. Despite its shortcomings, DSTs have the potential to generate revenue, support economic development and establish equity within the growing digital landscape.

Overall, DSTs are promising but their successful implementation requires strategic planning, execution and regulation to ensure a fair, competitive environment for the digital industry. Therefore, the design of DSTs and the drafting of DST legislation is an important task to achieve its objectives of adequately taxing the digital economy.

Should South Africa decide to implement a DST to tax the digital economy, when designing its features, the country would need to employ a multifaceted approach that requires nuanced understanding and strategic thinking. While the DST design features identified in this dissertation provide a comprehensive base for South Africa to leverage off, it must be refined to meet the country’s specific needs in terms of economic conditions, infrastructure and digital market status. Factoring South Africa’s specific needs into the DST design process could optimise the DST’s benefits and fair application.

BIBLIOGRAPHY

African Business. 2022. *Tax justice at last? Africa takes historic fight to the UN.* [Online]. Available: https://african.business/2022/11/finance-services/tax-justice-at-last-africa-takes-historic-fight-to-the-un#:~:text=A%20ground%2Dbreaking%20UN%20resolution,system%20that%20favours%20richer%20countries.&text=They%20parlayed%20in%20Paris%2C%20breakfasted,hands%20in%20London%20and%20Rome. [2023, June 13].

African Tax Administration Forum. 2019. *ATAF Technical Note 1: The Tax Challenges Arising In Africa From The Digitalisation Of The Economy.* [Online]. Available: https://events.ataftax.org/includes/preview.php?file_id=25&language=en_US [2023, February 23].

African Tax Administration Forum. 2019. *ATAF Technical Note 2: Inclusive Framework Proposals To Address The Tax Challenges Arising In Africa From The Digitalisation Of The Economy.* [Online]. Available: https://events.ataftax.org/includes/preview.php?file_id=31&language=en_US [2023, February 23].

African Tax Administration Forum. 2019. *ATAF Technical Note 3: Inclusive Framework Proposals To Address The Tax Challenges From The Digitalisation Of The Economy*. [Online]. Available: https://events.ataftax.org/includes/preview.php?file_id=40&language=en_US [2023, February 23].

African Tax Administration Forum. 2019. *ATAF Technical Note 4: The Changes Needed To The Global Tax Rules If Africa Is To Address The Tax Challenges Arising From The Digitalisation Of The Economy.* [Online]. Available: https://events.ataftax.org/includes/preview.php?file_id=47&language=en_US [2023, February 23].

African Tax Administration Forum. 2020. *ATAF Publishes An Approach To Taxing The Digital Economy*. [Online]. Available: https://www.ataftax.org/ataf-publishes-an-approach-to-taxing-the-digital-economy#:~:text=The%20Suggested%20Approach%2C%20which%20has,transactions%20of%20highly%20digitalised%20businesses [2023, February 11].

African Tax Administration Forum. 2020. *Policy Brief: Domestic Resource Mobilisation – Digital Services Taxation in Africa*. [Online]. Available: https://events.ataftax.org/includes/preview.php?file_id=61&language=en_US [2023, February 11].

African Tax Administration Forum. 2020*. Suggested Approach To Drafting Digital Services Tax Legislation.* [Online]. Available: https://events.ataftax.org/index.php?page=documents&func=view&document_id=79 [2023, January 22].

African Tax Administration Forum. 2020. *Taxing The Digital Economy: COVID-19 Heightens Need To Expand Resource Mobilisation Base.* [Online]. Available: https://www.ataftax.org/taxing-the-digital-economy-covid-19-heightens-need-to-expand-resource-mobilisation-base [2023, January 21].

African Tax Administration Forum. 2020. *Technical Review Of The Draft Article 12B United Nations Model Tax Convention.* [Online]. Available: https://events.ataftax.org/includes/preview.php?file_id=81&language=en_US#:~:text=The%20draft%20Article%2012B%20states,by%20the%20business's%20profitability%20ratio. [2023, February 24].

African Tax Administration Forum. 2021. *A New Era Of International Taxation Rules – what does this mean for Africa?* [Online]. Available: https://www.ataftax.org/a-new-era-of-international-taxation-rules-what-does-this-mean-for-africa [2023, February 5].

African Tax Administration Forum. 2023. *OECD/G20 Inclusive Framework Releases Outcome Statement on the Two-Pillar Solution – What does this mean for Africa?* [Online]. Available: https://www.ataftax.org/oecd-g20-inclusive-framework-releases-outcome-statement-on-the-two-pillar-solution-what-does-this-mean-for-africa [2024, January 24].

African Union. 2020. *Briefing for the Ministers on taxing the Digital Economy and the Global Tax Debate.* [Online]. Available:

https://au.int/sites/default/files/newsevents/workingdocuments/39572-wd-briefing_paper_on_global_tax_debate_for_1st_extraordinary_stc.pdf [2023, January 21].

Afronomicslaw. 2021. *Digital Sales Tax in Africa and the Covid-19 Pandemic.* [Online]. Available: https://www.afronomicslaw.org/category/analysis/digital-sales-tax-africa-and-covid-19-pandemic [2023, February 11].

ALN. 2022. *Registration Deadline for Digital Services Tax and VAT Imminent.* [Online]. Available: https://aln.africa/insight/registration-deadline-for-digital-services-tax-and-vat-imminent/#:~:text=Registration%20Timelines,and%20interest%20will%20be%20applicable. [2023, September 23].

Association of International Certified Professional Accountants. 2017. *Guiding principles of good tax policy: A framework for evaluating tax proposals.* [Online]. Available: https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/tax-policy-concept-statement-no-1-global.pdf [2023, June 24].

Balazs Rigo, C & Toth, A. 2020. *The symbolic significance of digital services tax and its practical consequences.* [Online]. Available: https://www.researchgate.net/publication/347827671_The_Symbolic_Significance_of_Digital_Services_Tax_and_its_Practical_Consequences [2023, June 24].

Balladares, S, Barake, M, Baselgia, E & Borders, K. 2023. *Digital Services Taxes.* [Online]. Available: https://shs.hal.science/halshs-04174657/file/EUTO_Digital-Service-Taxes_June2023.pdf [2024, January 3].

BDO. 2019. *FRANCE – Digital Services Tax Introduced*. [Online]. Available: https://www.bdo.global/en-gb/microsites/tax-newsletters/corporate-tax-news/issue-52-september-2019/france-digital-services-tax-introduced [2023, December 27].

BDO. 2019. *Italian Digital Services Tax to be introduced from 1 January 2020.* [Online]. Available: https://www.bdo.global/en-gb/microsites/tax-newsletters/corporate-tax-news/issue-53-december-2019/italy-italian-digital-services-tax-to-be-introduced-from-1-january-2020 [2023, December 27].

BDO. 2019. *Taxing the Digital Economy – Why is Africa not getting its fair share?* [Online]. Available: https://www.bdo.co.za/en-za/insights/2019/tax/taxing-the-digital-economy-why-is-africa-not-getting-its-fair-share [2024, January 4].

BDO. 2023. *Uganda – 5% DST passed and cap imposed on loss carry forwards.* [Online]. Available: https://global-old.bdo.global/en-gb/insights/tax/world-wide-tax/uganda-5-dst-passed-and-cap-imposed-on-loss-carry-forwards [2023, September 23].

Bloomberg Industry Group. 2023. *Understanding digital services taxes & the OECD.* [Online]. Available: https://pro.bloombergtax.com/brief/understanding-digital-services-taxes-the-oecd/#:~:text=They%20are%20a%20mix%20of,Countries%20can%20levy%20DSTs%20differently. [2023, February 11].

Briseid, M, Heggstad, K, Myhrvold-Hanssen, T. L & Ustvedt, T. 2011. Towards Fiscal Self-Reliance: Capacity building for domestic revenue enhancement in Mozambique, Tanzania and Zambia. Workshop Report. Bergen: Chr. Michelsen Institute.

Chayka, O, Ludwin, I & Marley P. 2023. *Canada rejects OECD's one-year extension of digital services tax moratorium.* [Online]. Available: https://www.osler.com/en/resources/regulations/2023/canada-rejects-oecd-s-one-year-extension-of-digital-services-tax-moratorium [2024, January 24].

CIAT, Inter-American Center of Tax Administrations. 2022*. Digital Services Tax (DST): Alive and well.* [Online]. Available: https://www.ciat.org/digital-services-tax-dst-alive-and-well/?lang=en#_ftn2 [2023, December 12].

Clifford Chance. 2020. *The Digital Services Tax In Spain.* [Online]. Available: https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/10/The-Digital-Services-Tax-in-Spain.pdf [2023, December 27].

Companies Income Tax (Significant Economic Presence) Order, 2020. 2020. Nigeria: Government Printer.

Congressional Research Service. 2019. *Digital Services Taxes (DSTs): Policy and Economic Analysis*. [Online]. Available: https://crsreports.congress.gov/product/pdf/R/R45532/2 [2023, July 21].

Deloitte. 2020. *Digital services tax enacted.* [Online]. Available: https://www.taxathand.com/article/15599/Spain/2020/Digital-services-tax-enacted [2023, December 27].

Deloitte. 2020*. Digital services tax in Africa – The journey so far, Implementation of digital taxes across Africa.* [Online]. Available: https://www.deloitte.com/za/en/services/tax/analysis/digital-services-tax-in-africa-the-journey-so-far.html [2023, January 20].

Deloitte. 2020. *Draft digital services tax regulations issued*. [Online]. Available: https://www.taxathand.com/article/15317/Kenya/2020/Draft-digital-services-tax-regulations-issued [2023, September 23].

Deloitte. 2020. *In conversation with Deloitte Africa Tax & Legal – Digital services tax in Africa.* [Online]. Available: https://www2.deloitte.com/content/dam/Deloitte/za/Documents/tax/za-Deloitte-Africa-executive-summary-Digital-services-tax-in-Africa.pdf [2023, February 11].

Deloitte. 2023. *Making Digital Tax Work for Tanzania.* [Online]. Available: https://www.deloitte.com/tz/en/services/consulting/about/making-digital-tax-work-for-tanzania-dion-kapfumvuti.html [2023, September 23].

Deutsche Welle. 2021. *Africa's uncertainty over OECD minimum tax plan*. [Online]. Available: https://www.dw.com/en/why-african-nations-doubt-oecd-tax-plan/a-59653146#:~:text=Global%20minimum%20tax%20is%20supposed,it%20would%20benefit%20poor%20countries. [2023, June 13].

Digital Watch Observatory. 2022. *Taxation: The OECD two-pillar global corporate tax rules.* [Online]. Available: https://dig.watch/topics/taxation#the-oecd-twopillar-global-corporate-tax-rules [2023, June 13].

Diplo. 2021. *Africa's participation in international processes related to the digital economy.* [Online]. Available: https://www.diplomacy.edu/resource/report-stronger-digital-voices-from-africa/africa-participation-international-processes-digital-economy/ [2023, June 13].

Echendu, C. 2020. Nigeria's Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities. Bulletin For International Taxation (Volume 74) No. 9.

ENSAfrica. 2021. *Taxing the Digital Economy in Sub-Saharan Africa.* [Online]. Available: https://www.ibanet.org/Taxing-the-digital-economy-sub-Saharan-Africa [2023, December 4].

Esselaar, S, Koyable, M, Nwana, S & Stork, C. 2020. *Over The Top (OTT) Applications & the Internet Value Chain – Recommendations to Regulators, Policy Makers and Tax Authorities.* [Online]. Available: https://cto.int/wp-content/uploads/2020/05/CTO-OTT-REPORT-2020.pdf [2024, January 10].

European Centre for International Political Economy (ECIPE). 2018. *Five Questions about the Digital Services Tax to Pierre Moscovici*. [Online]. Available: https://ecipe.org/wp-content/uploads/2018/06/Five-Questions-about-the-Digital-Services-Tax-to-Pierre-Moscovici.pdf [2024, January 9].

European Centre for International Political Economy (ECIPE). 2021. *Taxing Digital Services – Compensating for the Loss of Competitiveness.* [Online]. Available: https://ecipe.org/wp-content/uploads/2021/07/ECI_21_PolicyBrief_11_2021_LY04.pdf [2023, December 27].

European Journal of International Law. 2023. *A Bite at the Apple: States' Struggle to Tax Digital Services.* [Online]. Available: https://www.ejiltalk.org/a-bite-at-the-apple-states-struggle-to-tax-digital-services/ [2024, January 26].

Evans, C, Franzsen, R & Stack, E. Pretoria University Law Press. 2019. *Tax simplification – An African Perspective.* [Online]. Available: https://www.pulp.up.ac.za/edited-collections/tax-simplification-an-african-perspective [2023, December 12].

EY. 2019. *Austrian Parliament approves digital advertising tax bill.* [Online]. Available: https://taxnews.ey.com/news/2019-1856-austrian-parliament-approves-digital-advertising-tax-bill#:~:text=Under%20the%20digital%20tax%20bill,million%20or%20more%20in%20Austria [2023, December 27].

EY. 2020*. France issues comprehensive draft guidance on digital services tax.* [Online]. Available: https://www.ey.com/en_gl/tax-alerts/france-issues-comprehensive-draft-guidance-on-digital-services-tax [2023, December 27].

EY. 2022. *Tanzania issues regulations on taxation of electronic services.* [Online]. Available: https://www.ey.com/en_gl/tax-alerts/tanzania-issues-regulations-on-taxation-of-electronic-services#:~:text=The%20Regulations%20are%20effective%201,tax%20and%20value%2Dadded%20tax. [2023, September 23].

EY. 2023*. Digital services taxes and other taxes on the digital economy*. [Online]. Available: https://taxnews.ey.com/news/2023-1939-digital-services-taxes-and-other-taxes-on-the-digital-economy-november-2023?uAlertID=Sd%2FG8rua1oj6%2FI58EZ2AiA%3D%3D [2023, December 17].

EY. 2023. *Uganda issues Tax Amendment Bills for 2023*. [Online]. Available: https://www.ey.com/en_gl/tax-alerts/uganda-issues-tax-amendment-bills-for-2023#:~:text=On%2030%20March%202023%2C%20Uganda's,effect%20from%201%20July%202023. [2023, September 23].

Fano, A & Stotzky, R. 2023. *Taxation in the Digital Economy: Digital Services Taxes, Pillar One, and the Path Forward.* [Online]. Available: https://bipartisanpolicy.org/blog/taxation-in-the-digital-economy-digital-services-taxes-pillar-one-and-the-path-forward/#:~:text=There%20is%20a%20real%20risk,double%20taxation%20for%20U.S.%20companies [2024, January 10].

Faulhaber, L.V. 2019. Taxing Tech: The Future of Digital Taxation. 39.2 Va. Tax Rev. Georgetown University Law Center.

Federal Ministry Republic of Austria. 2023. *Digital Tax Act 2020*. [Online]. Available: https://www.bmf.gv.at/en/topics/taxation/digital-tax-act.html [2023, December 27].

Finance Act, No. 48 of 2021. 2021. Sierra Leone: Government Printing Department.

Financier Worldwide. 2023. *Tax challenges in the digital economy – Amount B of Pillar One.* [Online]. Available: https://www.financierworldwide.com/tax-challenges-in-the-digital-economy-amount-b-of-pillar-one [2023, December 11].

Ganter, S. 2021. Digital Taxes for Sustainable Development? Ökologisches Wirtschaften-Fachzeitschrift 36.

Government of the UK. 2020. *Finance Act 2020 – PART 2 – Digital Services Tax.* [Online]. Available: https://www.legislation.gov.uk/ukpga/2020/14/part/2/enacted#top [2023, December 27].

Hutchinson, T & Duncan, N. 2012. Defining and describing what we do: Doctrinal Legal Research. Deakin Law Review. 17 (1).

IBFD. 2020. Kenya Introduces Digital Service Tax. Accessed 23 September 2023.

IBFD. 2021. Kenya Publishes Digital Service Tax Regulations. Accessed 23 September 2023.

IBFD. 2021. Sierra Leone Introduces Digital Services Tax. Accessed 19 July 2023.

IBFD. 2022. *Pillar Two – The African Dimension Potential Practical Impact of Pillar Two on Business in Africa*. [Online]. Available: https://www.ibfd.org/sites/default/files/2022-06/ATS-Session-2-Pillar-Two%E2%80%93The-African-Dimension-ATS-%2826%20May%202022%29.pdf [2023, December 11].

IBFD. 2022. Tanzania – Digital Taxation Monitor. Accessed 23 September 2023.

IBFD. 2022. Tanzania Issues Regulations on Registration of Non-Resident Suppliers of Electronic Services for Income Tax. Accessed 23 September 2023.

IBFD. 2023. Austria – Digital Taxation Monitor. Accessed 27 January 2024.

IBFD. 2023. Italy – Digital Taxation Monitor. Accessed 27 January 2024.

IBFD. 2023. Kenya – Digital Taxation Monitor. Accessed 23 September 2023.

IBFD. 2023. Nigeria – Digital Taxation Monitor. Accessed 23 September 2023.

IBFD. 2023. Sierra Leone – Digital Taxation Monitor. Accessed 19 July 2023.

IBFD. 2023. Spain – Digital Taxation Monitor. Accessed 27 January 2024.

IBFD. 2023. Tunisia – Digital Taxation Monitor. Accessed 23 September 2023.

IBFD. 2023. Uganda – Digital Taxation Monitor. Accessed 23 September 2023.

IBFD. 2023. United Kingdom – Digital Taxation Monitor. Accessed 27 January 2024.

IBFD. 2023. Zimbabwe – Digital Taxation Monitor. Accessed 23 September 2023.

IBFD. 2024. France – Digital Taxation Monitor. Accessed 27 January 2024.

Income Tax Act (Amendment) Bill, No. 22 of 2023. 2023. Uganda: Printed by UPPC, Entebbe.

Institute of Development Studies. 2020*. Digital Service Taxes and Their Application*. [Online]. Available: https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1&isAllowed=y [2023, June 9].

International Bank for Reconstruction and Development / The World Bank. 2021. *Digital services tax: country practice and technical challenges*. [Online]. Available: https://documents1.worldbank.org/curated/en/099725001112228984/pdf/P169976002e89a07209ae40d48d6ebb7154.pdf [2023, February 5].

International Bar Association. 2021. *Taxing the digital economy in sub-Saharan Africa.* [Online]. Available: https://www.ibanet.org/Taxing-the-digital-economy-sub-Saharan-Africa#:~:text=It%20highlights%20the%20risk%20for,for%20already%20under%2Dfunded%20African [2023, December 11].

International Centre for Tax and Development. 2020. *Addressing the Challenges of Taxation of the Digital Economy: Lessons for African Countries*. [Online]. Available: https://www.ictd.ac/publication/addressing-challenges-taxation-digital-economy-lessons-african-countries/ [2023, February 5].

International Centre for Tax and Development. 2020. *The Taxation of the Digitalised Economy: An African Study.* [Online]. Available: https://www.ictd.ac/publication/taxation-digitalising-economy-africa-study/ [2023, February 23].

International Centre for Tax and Development. 2022. *African Governments Hope Digital Taxes Will Fill A Budget Hole.* [Online]. Available: https://www.ictd.ac/blog/african-governments-digital-taxes-fill-budget-hole/ [2023, February 23].

International Monetary Fund. 2020. *IMF Working Paper – Tec(h)tonic Shifts: Taxing the "Digital Economy".* [Online]. Available: https://www.imf.org/en/Publications/WP/Issues/2020/05/29/Tec-h-tonic-Shifts-Taxing-the-Digital-Economy-49363 [2024, January 3].

International Telecommunications Union. 2015. *The impact of taxation on the digital economy.* [Online]. Available: https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/GSR2015/Discussion_papers_and_Presentations/GSR16_Discussion-Paper_Taxation_Latest_web.pdf [2024, January 4].

Jinyan, L & Pidduck, T. 2019. *The international Tax Environment and Simplification of South African Tax Legislation: A Double- Edged Sword.* [Online]. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3273094 [2023, December 12].

Joseph, C, Ndulu, B & Tryphone, K. 2021. *Fiscal Regimes and Digital Transformation in Sub-Saharan Africa.* [Online]. Available: https://www.bsg.ox.ac.uk/sites/default/files/2021-03/BSG-DP-WP_2021-01%20Fiscal%20regimes%20and%20digital%20transformation%20in%20Sub-Saharan%20Africa.pdf [2023, December 4].

Kabwe, R & Van Zyl, S. 2021. *Value-added tax in the digital economy: A fresh look at the South African dispensation*. [Online]. Available: https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532021000300004#top_fn107 [2024, January 3].

Kampala Associated Advocates. 2023. *Tax Alert! Proposed Changes To Digital Service Tax And Capital Gains In Uganda.* [Online]. Available: https://www.kaa.co.ug/tax-alert-proposed-changes-to-digital-service-tax-and-capital-gains-in-uganda/#:~:text=The%20Bill%20seeks%20to%20insert,treated%20as%20a%20final%20tax. [2023, September 23].

Kluwer International Tax Blog. 2020. *Spain Has Approved the Digital Service Tax: The Controversy Is Served*. [Online]. Available: https://kluwertaxblog.com/2020/02/24/spain-has-approved-the-digital-service-tax-the-controversy-is-served/ [2023, December 27].

Kluwer International Tax Blog. 2023. *Digital Services Taxes in the European Union: What Can We Expect?* [Online]. Available: https://kluwertaxblog.com/2023/02/14/digital-services-taxes-in-the-european-union-what-can-we-expect/#_ftn3 [2023, December 11].

Kofler, G. 2021. The Future of Digital Services Taxes. EC Tax Review 30.

KPMG. 2020. *Italian Digital Services Tax.* [Online]. Available: https://assets.kpmg.com/content/dam/kpmg/it/pdf/2020/02/WEB_Digital_Services_Tax_2020_v2.pdf [2023, December 27].

KPMG. 2022. *Finance Act, 2021 (No. 7 of 2021) & Tax Highlights – Zimbabwe*. [Online]. Available: https://assets.kpmg.com/content/dam/kpmg/us/pdf/2022/02/tnf-zimbabwe-feb22-2022.pdf [2023, September 23].

Latif, L. 2019.The Challenges In Imposing The Digital Tax In Developing African Countries. Thesis. University of Nairobi.

Library of Congress. 2019. *Austria: Digital Tax for Large Internet Companies Introduced.* [Online]. Available: https://www.loc.gov/item/global-legal-monitor/2019-11-06/austria-digital-tax-for-large-internet-companies-introduced/ [2023, December 27].

MNE Tax. 2019. *More highlights on Zimbabwe's proposed 5 percent digital tax.* [Online]. Available: https://mnetax.com/more-highlights-on-zimbabwes-proposed-5-percent-digital-tax-36974 [2023, September 23].

Moloi, T & Mpofu, F.Y. 2022. Direct Digital Services Taxes in Africa and the Canons of Taxation. Laws 11(4):57.

Mpofu, F.Y. 2020. Governance Quality and Tax Morale and Compliance in Zimbabwe's Informal Sector. Cogent Business & Management, 7:1.

Mpofu, F.Y. 2021. Informal Sector Taxation and Enforcement in African Countries: How plausible and achievable are the motives behind? Open Economics.

Mpofu, F.Y. 2022. Tax incentives: A panacea or problem to enhancing economic growth in developing countries. Journal of Accounting, Finance and Auditing Studies.

Mpofu, F.Y. 2022. Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries. Economies 10(9):219.

Nakibuule Wakabi, Y. 2020. ATAF Proposes A Digital Services Tax Rate Between 1% And 3% For Member Countries. IBFD.

National Treasury, Republic of South Africa. 2022. *Budget Review 2022.* [Online]. Available: https://www.treasury.gov.za/documents/national%20budget/2022/review/FullBR.pdf [2023, June 13].

National Treasury, Republic of South Africa. 2023. *Budget Review 2023*. [Online]. Available: https://www.treasury.gov.za/documents/national%20budget/2023/review/FullBR.pdf [2023, July 31].

Noonan, C & Plekhanova, V. British Tax Review, Issue 5. 2022. *Compliance Challenges of the BEPS Two-Pillar Solution.* [Online]. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4323926 [2023, December 12].

NovioTax. 2020. *Digital Services Tax Emerging in Africa.* [Online]. Available: https://novio.tax/en/news-221/article/digital-services-tax-emerging-in-africa#:~:text=Most%20recently%20(on%2030%20September,or%20multinational%20enterprise%20(MNE)%20in [2023, February 12].

OECD. 2013. *Action Plan on Base Erosion and Profit Shifting*. [Online]. Available: https://read.oecd-ilibrary.org/taxation/action-plan-on-base-erosion-and-profit-shifting_9789264202719-en#page1 [2023, January 20].

OECD. 2014. *Addressing the Tax Challenges of the Digital Economy.* [Online]. Available: https://www.oecd-ilibrary.org/docserver/9789264218789-en.pdf?expires=1679305587&id=id&accname=guest&checksum=7B8A03C396583B5415C0B661F574D8AC [2023, February 5].

OECD. 2015. *Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report.* [Online]. Available: https://read.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report_9789264241046-en#page1 [2023, January 20].

OECD. 2017. *International VAT/GST Guidelines.* [Online]. Available: https://www.oecd-ilibrary.org/docserver/9789264271401-en.pdf?expires=1694462393&id=id&accname=guest&checksum=16ACBA57E0DA3B1349FB2938555477A3 [2023, July 21].

OECD. 2018. *Tax and digitalisation, OECD Going Digital Policy Note*. [Online]. Available: https://www.oecd.org/tax/beps/tax-and-digitalisation-policy-note.pdf [2023, January 20].

OECD. 2018. *Tax Challenges Arising from Digitalisation – Interim Report 2018, Inclusive Framework on BEPS.* [Online]. Available: https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-interim-report_9789264293083-en?itemId=/content/publication/9789264293083-en&_csp_=0d16492941d380c27775cc35b124ce6b&itemIGO=oecd&itemContentType=book [2023, January 20].

OECD. 2021. *Action 1 Tax Challenges Arising from Digitalisation.* [Online]. Available: https://www.oecd.org/tax/beps/beps-actions/action1/ [2023, February 15].

OECD. 2021. *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*. [Online]. Available: https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf [2023, February 15].

OECD. 2023. *International tax reform: Multilateral Convention to Implement Amount A of Pillar One.* [Online]. Available: https://www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.htm [2023, December 12].

OECD. 2023. *Members of the OECD/G20 Inclusive Framework on BEPS that have approved the July 2023 Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy as of 15 November 2023.* [Online]. Available: https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-members-outcome-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-july-2023.pdf [2024, January 24].

OECD. 2023. *Minimum Tax Implementation Handbook (Pillar Two).* [Online]. Available: https://www.oecd.org/tax/beps/minimum-tax-implementation-handbook-pillar-two.pdf [2023, December 11].

OECD. 2023. *Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*. [Online]. Available: https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf [2024, January 23].

OECD. 2023. *The Pillar Two Rules in a Nutshell*. [Online]. Available: https://www.oecd.org/tax/beps/pillar-two-model-rules-in-a-nutshell.pdf [2023, December 3].

OECDPillars. 2023. *Pillar One Summary*. [Online]. Available: https://oecdpillars.com/pillar_one/pillar-one-summary-2/ [2023, December 11].

OECDPillars. 2023. *South Africa Confirms Global Minimum Tax in 2024 Taxation Laws Amendment Bill.* [Online]. Available: https://oecdpillars.com/south-africa-confirms-global-minimum-tax-in-2024-taxation-laws-amendment-bill/ [2023, December 11].

Office of the United States Trade Representative. 2019. *Section 301 Investigation: Report on France's Digital Services Tax.* [Online]. Available: https://ustr.gov/sites/default/files/Report_On_France%27s_Digital_Services_Tax.pdf [2023, December 27].

Office of the United States Trade Representative. 2020. *Section 301 Investigation: Report on Austria's Digital Services Tax.* [Online]. Available: https://ustr.gov/sites/default/files/files/Press/Releases/AustriaDSTSection301Report.pdf [2023, December 27].

Office of the United States Trade Representative. 2020*. Section 301 Investigation: Report on Spain's Digital Services Tax.* [Online]. Available: https://ustr.gov/sites/default/files/files/Press/Releases/SpainDSTSection301Report.pdf [2023, December 27].

Office of the United States Trade Representative. 2021*. Section 301 Investigation: Report on Italy's Digital Services Tax.* [Online]. Available: https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20Italy%E2%80%99s%20Digital%20Services%20Tax.pdf [2023, December 27].

Office of the United States Trade Representative. 2021. *Section 301 Investigation: Report on the United Kingdom's Digital Services Tax.* [Online]. Available: https://ustr.gov/sites/default/files/files/Press/Releases/UKDSTSection301Report.pdf [2023, December 27].

Oguttu, A.W & Tladi, S. 2009. The challenges e-commerce poses to the determination of a taxable presence: The permanent establishment concept analysed from a South African perspective. Journal of International Commercial Law and Technology, 4(3).

Orbitax. 2020. *ATAF Releases Paper on Suggested Approach to Drafting Digital Services Tax Legislation.* [Online]. Available: https://www.orbitax.com/news/archive.php/ATAF-Releases-Paper-on-Suggest-43732 [2023, February 11].

Orbitax. 2020. *Tunisia Finance Law for 2020 Approved and Published – Orbitax Tax News & Alerts.* [Online]. Available: https://orbitax.com/news/archive.php/Tunisia-Finance-Law-for-2020-A-40494 [2023, September 23].

Orbitax. 2021. *Sierra Leone Finance Act 2021 Approved Including Provisions for the Taxation of Digital Services Tax – Orbitax Tax News & Alerts*. [Online]. Available: https://orbitax.com/news/archive.php/Sierra-Leone-Finance-Act-2021--45111 [2023, July 19].

Parliament of the Republic of South Africa. 2020. *Tax Brief: Digital Economy and Taxation Policy Considerations – June 2020.* [Online]. Available: https://static.pmg.org.za/200609June_PBO_Brief_-_Digital_Economy_and_Taxation_Consideration_-June_2020.pdf [2024, January 27].

PaySpace Magazine. 2021. *Digital tax: What is it and how it works.* [Online]. Available: https://payspacemagazine.com/all/digital-tax-explained/ [2024, January 4].

PWC. 2020. *UK publishes legislation and guidance on digital services tax.* [Online]. Available: https://www.pwc.com/gx/en/tax/pdf/uk-publishes-legislation-guidance-digital-services-tax.pdf [2023, December 27].

PWC. 2021. *Digital Service Taxes: Are they here to stay?* [Online]. Available: https://www.pwc.com/us/en/services/tax/library/digital-service-taxes.html [2023, December 30].

PWC. 2022. *Pillar 2: Deceptively complex?* [Online]. Available: https://www.pwc.co.uk/services/tax/insights/pillar2-deceptively-complex.html [2023, December 17].

PWC. 2023. *In depth – OECD Pillar Two: Time to act on the global minimum tax.* [Online]. Available: https://www.pwc.com/us/en/services/tax/library/in-depth-oecd-pillar-2-time-to-act-on-the-global-minimum-tax.html#:~:text=Many%20aspects%20of%20Pillar%20Two,to%20be%20effective%20in%202025. [2023, December 11].

PWC. 2023. *Tunisia – Corporate Significant Developments - Royalty on sales of computer applications and services rendered via the Internet (the equivalent of a digital services tax [DST].* [Online]. Available: https://taxsummaries.pwc.com/tunisia/corporate/significant-developments [2023, September 23].

Quartz. 2021. *Why Kenya and Nigeria haven't agreed to a historic global corporate tax deal.* [Online]. Available: https://qz.com/africa/2082754/why-kenya-and-nigeria-havent-agreed-to-global-corporate-tax-deal [2023, June 13].

Research ICT Africa. 2020. *Multifaceted challenges of digital taxation in Africa.* [Online]. Available: https://researchictafrica.net/wp/wp-content/uploads/2021/05/Revised-Final-Tax-PB-Nov-2020-SA-AG.pdf [2023, February 5].

Research ICT Africa. 2022. *Digital Taxation: Can it contribute to more just taxation?* [Online]. Available: https://researchictafrica.net/publication/digital-taxation-can-it-contribute-to-more-just-taxation/#:~:text=Findings%20from%20the%20paper%20indicate,online%20services%20as%20well%20as [2023, December 4].

Roche, J. 2021. An Evaluation Of The Adequacy Of The Existing Framework For Source-Based Taxation In South Africa As Applied To The New Business Models Proliferated By The Digitalisation Of The Economy. Thesis. University of Cape Town.

RSM. 2021. *The Digital Service Tax Overview – Kenya.* [Online]. Available: https://www.rsm.global/kenya/insights/tax-insights/tax-alerts/digital-service-tax-overview [2023, September 23].

RSM. 2022. *An introduction to the OECD's Pillar One and Two*. [Online]. Available: https://www.rsm.global/insights/tax-news/introduction-oecds-pillar-one-and-two [2023, December 11].

RSM. 2022. *Tanzania – Taxation of Digital Services*. [Online]. Available: https://www.rsm.global/tanzania/sites/default/files/media/rsmea_newsletter_-_taxation_of_digital_services.pdf [2023, September 23].

SAICA. 2023. *Budget 2023 – Is transfer pricing going to be the next SARS focus area? (Part 2).* [Online]. Available: https://www.saica.org.za/news/budget-2023-is-transfer-pricing-going-to-be-the-next-sars-focus-area-part-2 [2023, June 16].

Sarfo, N. 2021. *Digital Services Taxes May Be Difficult To Remove.* [Online]. Available: https://www.forbes.com/sites/taxnotes/2021/03/22/digital-services-taxes-may-be-difficult-to-remove/?sh=1a2b8806e12e [2023, February 5].

Shukla, N. 2020. Introduction of digital services tax by France targeting US digital companies – Policy response by the United States. Thesis. Johns Hopkins University.

Tax Foundation. 2020. *Digital Taxation Around The World.* [Online]. Available: https://files.taxfoundation.org/20200527192056/Digital-Taxation-Around-the-World.pdf [2023, June 9].

Tax Foundation. 2021. *What European OECD Countries Are Doing About Digital Services Taxes.* [Online]. Available: https://taxfoundation.org/data/all/eu/digital-tax-europe-2020/ [2023, December 11].

Tax Foundation. 2022. *Digital Services Taxes: Is There an End in Sight?* [Online]. Available: https://taxfoundation.org/blog/digital-services-taxes-pillar-one/ [2023, December 11].

Taxnotes. 2021. *The Impact of Unilateral Digital Taxes in Africa.* [Online]. Available: https://www.taxnotes.com/special-reports/digital-economy/impact-unilateral-digital-taxes-africa/2021/08/13/76y1r#sec-3-1 [2024, January 4].

TaylorWessing. 2019. *French Digital Services Tax.* [Online]. Available: https://www.taylorwessing.com/en/interface/2019/taxing-tech/french-digital-services-tax [2023, December 27].

The BEPS Monitoring Group. 2023. *Taxing Multinationals: The BEPS proposals and alternatives.* [Online]. Available: https://static1.squarespace.com/static/5a64c4f39f8dceb7a9159745/t/64a59dac21100f1f90f38c41/1688575404801/The+BEPS+Proposals+and+Alternatives.pdf [2024, 30 January].

The Chronicle. 2020. *Africa Closes Gap On Taxing Digital Economy, ATAF Leads Suggested Approach.* [Online]. Available: https://www.chronicle.co.zw/africa-closes-gap-on-taxing-digital-economy-ataf-leads-suggested-approach/ [2023, February 11].

The Davis Tax Committee. 2016*. Second Interim Report On Base Erosion And Profit Shifting (BEPS) In South Africa.* [Online]. Available: https://www.taxcom.org.za/docs/New_Folder3/3%20BEPS%20Final%20Report%20-%20Action%201.pdf [2023, July 21].

The Income Tax Act, No. 25 of 2022. 2022. The United Republic of Tanzania: Government Printer.

The Income Tax (Digital Service Tax) Regulations, 2020. 2020. Kenya: Government Printer.

Tshidzumba-Sengwane, K. Faculty of Law, Nelson Mandela University. 2023. *South Africa's response to the digital economy's direct tax challenges – Part 1.* [Online]. Available: https://www.scielo.org.za/scielo.php?pid=S1682-58532023000200006&script=sci_arttext#back_fn116 [2023, December 11].

United Nations. 2020. *Article 12B of the UN Model Tax Convention – Income From Automated Digital Services.* [Online]. Available: https://financing.desa.un.org/sites/default/files/2023-03/Article%2012B%20and%20Commentary%20after%2022nd%20Session%20Meetings%2029%20April%202021.pdf [2023, July 22].

United Nations. 2020. *Finance Act 2021 introduces various tax changes.* [Online]. Available: https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3688/finance-act-2021-introduces-various-tax-changes [2023, July 19].

United Nations. 2023. *Promotion of inclusive and effective international tax cooperation at the United Nations.* [Online]. Available: https://digitallibrary.un.org/record/4019360 [2023, December 15].

United Nations. 2023. *Second Committee Approves Nine Draft Resolutions, Including Texts on International Tax Cooperation, External Debt, Global Climate, Poverty Eradication.* [Online]. Available: https://press.un.org/en/2023/gaef3597.doc.htm [2023, December 15].

VATCalc. 2021. *Tunisia VAT on foreign digital services.* [Online]. Available: https://www.vatcalc.com/tunisia/tunisia-vat-on-foreign-digital-services/ [2023, September 23].

World Economic Forum. 2021. *Digital Trade in Services and Taxation.* [Online]. Available: https://www3.weforum.org/docs/WEF_Digital_Trade_in_Services_and_Taxation_2021.pdf [2024, January 3].

Wts global. 2020*. Italian Digital Service Tax – Update for the digital economy.* [Online]. Available: https://wts.com/global/publishing-article/20200220-italian-digital-service-tax_copy~publishing-article?language=en [2023, December 27].