# SHOULD SA PURSUE THE TWO-PILLAR SOLUTION IN TERMS OF MISSING DIGITAL REVENUES IN LIEU OF THE DIGITAL SERVICES TAX?

**by**

**Steven John May**

**(Student number MYXSTE004)**

SUBMITTED TO THE UNIVERSITY OF CAPE TOWN

In partial fulfilment of the degree Master of Commerce specialising in Taxation in the field of

International Tax

Faculty of Commerce

UNIVERSITY OF CAPE TOWN

Date of submission: 28 September 2022

Supervisor: Adjunct Professor Craig West

**PLAGIARISM DECLARATION**

I, Steven John May, endorse this dissertation as my own work (unless referenced or indicated otherwise) and that it is not intended, fully or in part, to be submitted to another University for another degree, nor has it been at this date.

I hereby authorize the University of Cape Town to replicate any or all parts of this dissertation for research purposes in any manner as required.

Signature: Signed by candidate Date: 28 September 2022

**ETHICAL DECLARATION**

I certify that I have read and understand the Commerce Faculty Ethics in Research Policy, http://www.commerce.uct.ac.za/Pages/ComFac-Downloads.

I certify that I have read the General Rules and Policies Handbook (Handbook 3) regarding Student Rules of Academic Conduct: RCS1.1 to RCS3.2 and Rules Relating to examinations G20.1 to G22.2.

I certify that I have read and understand the document, "Avoiding Plagiarism: A Guide for students".

This dissertation has been submitted to the Turnitin module (or equivalent similarity and originality checking software) and I confirm that my supervisor has seen my report and any concerns revealed by such have been resolved with my supervisor.

This work has not been previously submitted in whole, or in part, for the award of any degree in this or any other university. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works of other people has been attributed, and has been cited and referenced.

I authorize the University of Cape Town to reproduce for the purpose of research either the whole or any portion of contents in any manner whatsoever.

Student Number: MYXSTE004

Signature: Signed by candidate Date: 28 September 2022

**ABSTRACT**

The 1920s compromise to tax source revenues appears obsolete in the 21st century.[1] The digitalization of modern economies has resulted in outdated tax laws. Brick-and-mortar type principles are still applied to determine revenue sources, whereas, in the digital age, many businesses have no physical presence that would otherwise allow states to tax profits of large multinational enterprises (MNEs) deemed to operate within their borders.

While the world sought a consensus-based approach to deal with the issues, the Organisation for Economic Co-Operation and Development (OECD) introduced an interim solution – a Digital Services Tax (DST). The DST drew criticism from certain countries, as it is believed to target multinational companies unfairly.

The OECD finally achieved worldwide consensus with the signing of the Two-Pillar Solution in 2021, which is to become effective in 2023; however, the signatories of the Two-Pillar Solution also committed themselves to abolish DSTs and refrain from developing any similar types of taxes.

While most countries have agreed to the Two-Pillar Solution, some countries have not, including African Tax Administration Act (ATAF) member Kenya. Kenya indicated that its DST provides certainty and assures tax revenues whereas the Two-Pillar Solution's outcome remains uncertain, and the tax revenues are unclear. In addition, ATAF raised concern that the 15% global minimum tax rate proposed is too low for developing African countries and suggests such a threshold will continue to allow MNEs to avoid paying tax in African states.

This dissertation will evaluate whether or not DST is a better option for SA rather than the Two-Pillar Solution. If not, are there other ways SA could recover missing digital tax revenues? Like Kenya, SA also has to consider the global minimum tax rate.

[1] C. Elliffe, *The Brave (and Uncertain) New World of International Taxation under the 2020s Compromise*, 14 World Tax J. 2 (2022), Journal Articles & Opinion Pieces IBFD

**ACKNOWLEDGMENTS**

I would like to express my appreciation to

- Adjunct Professor Craig West for his support, patience and valued inputs as the dissertation progressed and took shape.

- My wife Geschca – for the assistance in the everyday matters that I couldn't manage while being occupied with this task and being a great soundboard to my thoughts.

- My parents Andre and Esna May, for always encouraging me to complete any task, no matter how hard it gets.

**ACRONYMS AND ABBREVIATIONS**

| Abbreviation | Meaning |
|---|---|
| AGOA | African Growth and Opportunity Act |
| ATAF | African Tax Administration Forum |
| B2B | Business to business |
| B2C | Business to consumer |
| BEPS | Base Erosion and Profit Shifting |
| CORTAX | A CORporate TAXation-focused computable general equilibrium model |
| DST | Digital Services Tax |
| ESS | Electronic supply of services |
| EU | European Union |
| GDP | Gross domestic profit |
| HMRC | His Majesty's Revenue and Customs |
| MLC | Multilateral Convention |
| MNE | Multinational Enterprise |
| OECD | Organisation for Economic Co-Operation and Development |
| OECD MC | Organisation for Economic Co-Operation and Development Model Tax Convention |
| PBO | Parliament Budget Office (of South Africa) |
| PE | Permanent Establishment |
| SA | Republic of South Africa |
| TFEU | Treaty on the Functioning of the European Union |
| Two-Pillar Solution | OECD Two-Pillar Solution |
| UK | United Kingdom |
| US/USA | United States of America |
| USTR | United States Trade Representative |
| VAT | Value Added Taxation |
| WTO | World Trade Organisation |

**Table of Contents**

## 1 INTRODUCTION

Much like many significant innovations born out of wartime necessity, the infamous Cold War served as the incubator for the Internet. In its early incarnation, the Advanced Research Projects Agency Network (ARPANET), the precursor to today's internet, underwent billions of dollars worth of engineering to create, among other things, a defence system for the USA to identify enemy aircraft and facilitate the coordination of military responses in the 1960s.[2]

ARPANET exponential growth since its inception, ushering people into the so-called digital age, or information age. It matured into the internet as we know it today. People's lives and world economies have undergone dramatic changes as businesses adapted to the vast opportunities offered by the internet. This transformation gave birth to tech giants like Amazon, Apple, Google, Facebook, and Microsoft, which now collectively constitute nearly of 20% of the USA's economy,[3] the world's largest.[4]

Governments have gradually come to realize that outdated tax principles require an essential reform to ensure future harmony across the international tax community. As noted by Tom Goodwin of Havas Media: [5]

> *"Uber, the world's largest taxi company, owns no vehicles. Facebook, the world's most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory. And Airbnb, the world's largest accommodation provider, owns no real estate."*

Reflecting on the so-called "1920s compromise,"[6] a time when it was widely accepted among states that business profits could only be taxed if a PE was present in that source state, creating a sufficient nexus for tax purposes, Tom Goodwin's report raises an intriguing question: How can an enterprise, like Uber, operate a taxi service in a state but not pay any tax on the profits earned by the taxi service in that state? Or how can

[2] Encyclopædia Britannica. (2016, May 11). *ARPANET*.
[3] Paul R. La Monica. (2020, February 11). *The S&P 500 is really the S&P 5. Big tech dominates the index.*
[4] Caleb Silver. (2020, March 18). *The Top 20 Economies in the World*.
[5] Tom Goodwin. (2015, March 4). *The Battle Is for The Customer Interface.*
[6] Chand, V., Turina, A., & Ballivet, L. (2020). Profit Allocation within MNEs in Light of the Ongoing Digital Debate on Pillar I – A "2020 Compromise"? From Using A Facts and Circumstances Analysis or Allocation Keys to Predetermined Allocation Approaches. *World Tax Journal (Volume 12), No. 3*.

Amazon[7] lack physical stores anywhere but sell goods worldwide and not pay tax on the profits it generates in the states where the goods are delivered?

Modern enterprises no longer require a physical 'brick and mortar' presence in a state to provide digital services. It is becoming increasingly evident that there is a disparity between where profits are taxed and where business is conducted, or rather, where profits are generated.

The Organisation for Economic Co-Operation and Development (OECD) has been addressing issues where multinational enterprises (MNEs) shift their profits to low-tax jurisdictions, where little or no economic activity occurs to generate these revenues. This led to the establishment of the Base Erosion and Profit Shifting (BEPS) project in 2013,[8] which progressed to a public consultation in its proposal outlined in the OECD Secretariat Unified Approach under Pillar One in 2019,[9] referred to as 'BEPS 2.'[10]
"Pillar One contains 'Amount A,' which would apply to MNEs with more than €20b in revenues and a profit margin above 10 percent. For these MNEs, a portion of their profits would be taxed in jurisdictions where they have sales; 25 percent of profits above a 10 percent margin may be taxed."[11] This will require a unified approach through a multilateral treaty among states which will involve significant debate and time.
Pillar One appears to result in a winner-and-loser scenario, which may negatively affect larger countries such as the USA. However, based on empirical research, Professor Eden points out that the USA may ultimately benefit from Amount A. This will be achieved by reducing tax losses, increasing tax gains and utilizing its bargaining power as a dominant player in international trade. Professor Eden concludes that there are better ways to tax MNEs than the Amount A proposed in Pillar One.[12]

By the end of January 2020, member countries of the BEPS framework had committed to resolving the issues surrounding Amount A by the end of 2020.[13] Meanwhile, certain

[7] Jon Swartz. (2020, February 4). *Amazon is officially worth $1 trillion, joining other tech titans*. 4
[8] OECD (2013), *Action Plan on Base Erosion and Profit Shifting,* OECD Publishing.
[9] OECD. (2019, October 9). *OECD invites public input on the Secretariat Proposal for a "Unified Approach" under Pillar One*.
[10] Price Waterhouse Coopers. (n.d.). *BEPS 2.0 - Pillar One and Pillar Two: A Middle East perspective*.
[11] OECD. (October 2021). *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.* OECD/G20 Base Erosion and Profit Shifting Project.
[12] Professor Lorraine Eden; Winners and Losers: Us Country and Industry Estimates of Pillar One Amount A. Tax Management International Journal.
[13] OECD. (2020, January). *Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy – January 2020.*

states such as Austria and Italy have already implemented a digital services tax (DST) since January 2020. In the early stages of the 2020 G20 meeting, French Finance Minister Le Maire and US President Trump agreed that France would halt the implementation of their version of a DST (due on April 1, 2020) and the USA would not impose retaliatory import tariffs. Both countries were relying on the OECD's resolution of the matter before a trade war began between these (and other) states.[14]

The OECD's work to provide a solution by the end of 2020 was complicated by the outbreak of the COVID-19 pandemic, which resulted in harsh lockdowns of economies by states aiming to curb the spread of the virus, devastating businesses, especially in the retail sector. However, online businesses saw exponential growth as customers turned to online shopping due to the fear of contracting COVID-19 or government restrictions on movement to curb the virus's spread. For example, before COVID-19, the UK's online food and grocery market was growing at around 8.5% in 2020; however, it jumped to 25.5% due to increased online shopping.[15]

The COVID-19 pandemic prompted a change in France's stance on the implementation of DST, with La Maire stating that 'Never has a digital tax been more legitimate or necessary.'[16]
The US responded with an additional 25% increase in levies on French goods. Furthermore, the US Trade Representative (USTR) found the tax 'unreasonable or discriminatory,' and stated that it burdens and restricts US commerce in its Section 301 investigation. [17]

In the meantime, South Africa's Parliament Budget Office (PBO) outlined to parliament in June 2020 that the growth in the tech industry accounted for a 78% increase in stock markets over the previous two months. It emphasized the detrimental effect that online shopping had on traditional retailers, such as the recent closure of the struggling retail giant EDCON.[18] The PBO indicated that corporate taxes were declining due to the digitalization of enterprises, and South Africa was losing its fair share of taxes.

[14] Amaro, S. (2020, January 23). *French finance minister says the battle over digital tax is not over yet.*
[15] C Collen. (2020, June 9). *Covid-19 accelerates e-commerce boom*.
[16] L Thomas. (2020, May 14). *France to impose digital tax this year regardless of any new international levy*.
[17] Representative Office of the United States. (2020, July 16). *Notice of Action in the Section 301 Investigation of France's Digital Services Tax.*
[18] Parliament of the Republic of South Africa. (2020). *Tax Brief: Digital Economy and Taxation Policy Considerations.* Cape Town: Parliamentary Budget Office.

Furthermore, the PBO stressed that other methods of raising taxes, such as VAT on e-commerce implemented since 2014, were successful and contributed about R2b in its first four years of implementation.[19]

As part of its tax brief, the PBO released a list of other states implementing or proposing DST:

| | Country | Taxation proposed or in place | | Country name | Taxation proposed or in place |
|---|---|---|---|---|---|
| 1 | Italy | 3% of revenue - Jan 2020 | 17 | Taiwan | Tax on revenue |
| 2 | Austria | 5% of revenue - Jan 2020 | 18 | Uruguay | Tax on revenue |
| 3 | Belgium | 1.5% of revenue - July 2019 | 19 | Hungary | 7,5% Revenue- Jan 2020 |
| 4 | Czech Republic | 7% of revenue – Dec 2019 | 20 | India | 1% -01 October 2020 |
| 5 | France | 3% of revenue - July 2019 | 21 | Vietnam | Tax on revenue |
| 6 | Turkey | 7.5% of revenue – March 2020 | 22 | Pakistan | 5% of revenues – 01 July 2018 |
| 7 | Indonesia | 25% revenue tax | 23 | Zimbabwe | 5% on revenue |
| 8 | Kenya | Tax on revenue- | 24 | Singapore | Revenue tax on online services |
| 9 | Malaysia | Tax on revenue | 25 | Israel | 3%-5% Revenue- May 2019 |
| 10 | Mexico | Tax on revenue | 26 | Norway | 2.5% June 2019, await OECD process |
| 11 | Poland | 1.5% revenue- April 2020 | 27 | Tunisia | 3% of Revenue- Jan 2020 |
| 12 | Canada | 3% of revenue -October 2019 | 28 | United Kingdom | 2% of revenue -April 2020 |
| 13 | Thailand | 5% on revenue- May 2019 | 29 | Spain | 3% of revenue- Jan 2019 |
| 14 | Chile | 10% of revenue- proposal | 30 | Latvia | 3% on revenue- Dec 2019 |
| 15 | Maryland-USA state | 2.5%-10% tax on revenue on specific sales- Jan 2020 | 31 | New York-USA State | 5% on revenue – Jan 2020 |
| 16 | Nebraska-USA State | 5.5% -on revenue- Jan 2020 | 32 | New Zealand | 2.5% June 2019, await OECD process |

Like other developed countries, the PBO proposed that South Africa commit to the OECD's work on taxing the digital economy, although some countries have applied DST in the interim.

### 1.1. Purpose of the study

South Africa's e-commerce exhibited consistent annual growth ranging from 20-35% since 2003. However, it is estimated that online sales in South Africa comprise only about 1% of the total retail market. When compared to the UK's online sales market, which represents approximately 18%, the differing growth rates between the UK and South Africa suggest opportunities for expansion in the South African e-commerce sector.[20]

[19] Supra note 18.
[20] M Ngalonkulu. (2019, December 30). *E-commerce sales in SA grow 20-30% annually.*

E-commerce in SA may lead to the closure of more retailers[21] and necessitate the recovery of tax revenues from companies engaged in online trading, especially given the growth of e-commerce.

As a signatory to the Two-Pillar Solution, SA must carefully consider the implications. Under Pillar One, SA stands to gain, to some extent, from tax revenues arising from amount A imposed on foreign MNEs, as there appear to be few domestic SA MNEs with turnovers exceeding $20b.[22]
However, there is no guarantee of the exact tax revenue that SA would receive. Which is analogous to the supposition that the US seemed to lose from Amount A, in contrast to Professor Lorraine Eden's research.

Pillar Two also necessitates consideration, proposing the establishment of a global minimum tax threshold of 15% for MNEs with annual turnovers above €750m. The African Tax Administration Forum (ATAF) has expressed concerns about the 15% minimum global tax threshold under Pillar Two. ATAF has proposed a global minimum threshold of 20%, as most African countries have statutory tax rates ranging between 25% and 35%.[23] SA, being a member of ATAF,[24] should share this concern, given its current corporate income tax rate of 27%.[25]
The 15% global minimum tax rate may incentivize MNEs to relocate to other jurisdictions with lower tax obligations.

SA needs to carefully consider its position. While the implementation of a DST could potentially plug revenue leaks and provide certainty to collected revenues, SA has committed not to implement DST, as signatory to the Two-Pillar Solution. However, this commitment will only take form upon the signing of a multilateral convention (MLC) in 2022.[26] Initially, in its 2021 budget, SA proposed a unilateral approach if international

[21] Parliament of the Republic of South Africa. (2020). *Tax Brief: Digital Economy and Taxation Policy Considerations.* Cape Town: Parliamentary Budget Office.
[22] Staff Writer. (2021, July 31). *A new global tax is in the pipeline – how it will impact South Africa*.
[23] African Tax Administration Forum. (5 July 2021). *ATAF Issues Statement on Revised Two-Pillar Solution on Taxing Digital Economy.* IBFD.
[24] African Tax Administration Forum. (2022, March 2022). *ATAF Flagship Publication - AFRICAN TAX OUTLOOK (ATO).*
[25] South African Revenue Services. (2022, March 10). *Companies, Trusts and Small Business Corporations (SBC).*
[26] OECD. (October 2021). *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.* OECD/G20 Base Erosion and Profit Shifting Project.

consensus was not reached.[27] Nevertheless, in the 2022 budget, SA indicated its intention to propose legislative amendments to implement the Two-Pillar rules once the framework has been finalized and adapted to the local context.[28] This approach may be ambitious and there is no clear indication that these timelines will be met or that SA will not alter its position.

This leaves a discussion on the DST question for SA, specifically whether SA should implement a tax similar to DST or explore alternative avenues to tax in order to align corporate tax with the global reforms occurring, taking into account other economic options for foreign MNEs by African states.

### 1.2. Research questions

The following research questions are presented:

1.2.1. What are the fundamental elements of a good tax and how do these elements compare to various model DSTs?

1.2.2. Is DST a direct or indirect tax by nature?

1.2.3. What concerns should SA address before implementing a DST?

1.2.4. As a signatory to the Two-Pillar Solution, how does this affect the taxation of digital revenues as envisioned by DST for SA?

1.2.5. What other taxes could SA utilize to capture revenue from the digital economy? Is VAT a viable option?

These research questions will be addressed in section 1.4 “Research Structure.”

[27] National Treasury : Republic of South Africa. (2021). Budget Review 2021. Pretoria: National Treasury : Republic of South Africa. Available at www.treasury.gov.za.
[28] National Treasury : Republic of South Africa. (2022). Budget Review 2022. Pretoria: National Treasury : Republic of South Africa. Available at www.treasury.gov.za.

### 1.3. Methodology

This dissertation will address the research questions through a review of how DSTs have been implemented by various states using a systematic and qualitative approach. This will involve the examination of evaluations and assessments from organisations and experts in the international taxation field, gathering supporting evidence and presenting the findings, from the writer's perspective, in line with an expository research methodology.

The majority of the research will be based on various national legislations, publications, professional journals, and textbooks. The subject matter is observed to be highly dynamic within the international environment.

The approach described above will involve an investigation into documentary data including:

- OECD Model Tax Convention
- OECD DST proposal
- ATAF DST proposal
- Implementations of DST in developing countries, such as Kenya
- Implementations of DST in developed countries, such as Britain and France.

The OECD Model was selected because it is considered the most authoritative Model Tax Convention. Most of SA's treaties are based in some way on the OECD's Model Tax Convention and the OECD Model is widely used, not only by OECD member countries.[29] SA courts also refer to OECD commentaries for interpreting treaty provisions.[30]

The ATAF DST commentary follows the OECD DST proposal. The OECD DST proposal builds upon the work related to BEPS 2.0. Given SA's role as a signatory to the Two-Pillar Solution and its membership in ATAF, both the ATAF and OECD approaches to DST will be included in the research.

The research cut off-date is set at 30 September 2022.

[29] Du Plessis, I. (2012). Some Thoughts on the Interpretation of Tax Treaties in South Africa. *SA Mercantile Law Journal*, 31-52.
[30] Supra note 29.

### 1.4. Research Structure

The following chapters will provide the framework for addressing the research questions:

**Chapter 1: Introduction**

This chapter offers background information and sets the foundation for the research, emphasizing the need for the research. It also outlines the methodology and scope of the study.

**Chapter 2: DST and the elements of a good tax system**

This chapter establishes the elements of a good tax within the South African tax framework and examines how DST compares to these elements. It provides a foundation for considering whether South Africa should implement its own version of DST.

**Chapter 3: DST within tax treaty law**

In this chapter, DST is assessed against the OECD Model Tax Convention to determine whether DST qualifies as a covered tax in tax treaties, in terms of applicable articles of the OECD Model Convention. The assessment identifies which aspects of DST South Africa could or should include in its own version of DST.

**Chapter 4: Further consideration for DST as an SA tax**

This chapter offers additional considerations from a South African perspective, raising issues related to South Africa's commitment to the Two-Pillar Solution. It discusses excise taxes, corporate income tax, and VAT to determine the most suitable approach for taxing digital revenues in South Africa.

**Chapter 5: SA VAT consideration for taxing missing digital services revenues**

Chapter 5 compares VAT to the elements of a good tax and assesses how the revenue that DST intends to tax aligns with electronic services as defined in the South African VAT Act. The chapter further analyzes and compares VAT to the elements of DST to determine whether VAT could be an acceptable alternative.

**Chapter 6: Conclusion**

This chapter provides a conclusion regarding the research objectives

## 1.5. Conclusion

In this introductory chapter, the purpose, research questions and structure have been outlined. It is evident that e-commerce is experiencing significant global growth and SA needs to swiftly implement an effective tax policy to address the digital economy and to stay in sync with global reforms. Being signatory to the Two-Pillar Solution, SA needs to consider if the Two-Pillar is the best solution to address the loss of digital revenues.

## 2. DST AND THE ELEMENTS OF A GOOD TAX SYSTEM

### 2.1. Introduction

France, UK and Kenya are among the countries that have implemented their own versions of DST. However, France and the UK, having signed the Two-Pillar Solution,[31] are obligated to abolish DST. In contrast, Kenya remains resolute in not signing the Two-Pillar Solution.

Kenya argues that it knows the taxes it will collect from DST, whereas the Two-Pillar approach remains uncertain. Kenya provides examples like Uber and Booking.com, stating that these companies will be subject to taxation under their existing DST laws, while they might escape taxation under the Two-Pillar Solution, which Kenya deems unfair to local companies. [32]

The need arises to determine what constitutes a fair tax by examining fundamental elements of taxes and comparing them to DST. Establishing the concept of a good tax can be challenging because a standalone tax like DST may not be entirely neutral in all aspects. However, when considered within a country's overall tax framework, it may promote greater equality. [33]

### 2.2. Elements of a good tax system

Key questions revolve around *where to tax*, *what to tax* and *how much to tax*. The OECD Committee on Fiscal Affairs provided a framework for e-commerce in 1998, outlining generally accepted tax principles for electronic commerce, namely as follows:[34]

**1. Fairness:** Taxation should generate the right amount of tax at the right time, minimizing the potential for tax evasion and avoidance while maintaining proportionate countermeasures.

**2. Neutrality:** Taxation should aim for neutrality and equity between different forms of electronic and conventional commerce. Business decisions should be based on economic considerations rather than tax factors.

[31] OECD. (2021, August 31). *Members of the OECD/G20 Inclusive Framework on BEPS joining the Statement on a Two–Pillar Solution to Address the Tax.*
[32] Mureithi, C. (2021, November 2). *Why Kenya and Nigeria haven't agreed to a historic global corporate tax deal.*
[33] P. Pistone et al. eds. (2019, September 25). Fundamentals of Taxation: An Introduction to Tax Policy, Tax Law and Tax Administration.
[34] OECD. (1998). *Electronic Commerce: Taxation Framework Conditions.* Ottawa: Committee on Fiscal Affairs.

**3. Efficiency:** The compliance costs for taxpayers and administrative costs for tax authorities should be minimized.

**4. Certainty and simplicity:** Tax rules should be clear and straightforward, enabling taxpayers to anticipate tax implications in advance of a transaction.

**5. Flexibility:** Taxation systems should be adaptable and dynamic to keep up with technological and commercial developments.

In its Second Interim Report on Base Erosion and Profit Shifting (BEPS), South Africa's Davis Tax Committee notes that designing tax rules to prevent profit shifting should align with the principles of a good tax system, [35] including equity, efficiency, certainty, and simplicity. These principles closely align with the elements listed above and will be used to assess whether DST can be considered a good tax from South Africa's perspective. A brief overview of DST will be provided, and DST will be compared to these elements.

**2.3. DST: A brief overview:**

With the evolution of technology, the concept of value creation has shifted from physical presence to digital presence, particularly for businesses relying on user participation. [36] Companies can now generate profits in regions where they lack a physical presence, challenging traditional tax principles like Permanent Establishment (PE) rules. The OECD proposed DST as an interim solution, aiming to tax revenues derived from certain digital services by taxable entities.

The DST aims for a "common system of tax on revenues derived from the supply of certain digital services by taxable persons."[37]
DST's goal is to prevent erosion of national tax bases, ensure social fairness and level the playing field for all businesses. It intends to curb aggressive tax planning strategies used by digital companies to avoid taxation in countries where they operate.[38]

[35] The Davis Tax Committee. (2016). *Second Interim Report on Base Erosion and Profit Shifting (BEPS) in South Africa.* The Davis Tax Committee.
[36] European Commission. (2018, March 21). *Fair Taxation of the Digital Economy.*
[37] European Commission. (2018). *Proposal for a Council Directive on the common system of a digital service tax on revenues resulting from the provision of certain digital services {SWD(2018) 81}* - {SWD(2018) 82}. Brussels: European Commission. (Pg. 3)
[38] Supra note 37. (Pg.4)

The OECD's version of DST applies to taxable entities with global revenues exceeding €750m and €50m within the EU,[39] with the exemptions for smaller businesses and startups.[40] This threshold system is designed to minimize administrative burdens during the identification of taxpayers. In contrast, ATAF's recommended approach to DST[41] suggests that revenue thresholds, both at the global and country-specific levels, should be optional to be determined by member states according to their specific requirements. This approach seems to empower countries to define their own standards for efficient tax administration.

Revenue will comprise services such as placing an advertisement on "a digital interface targeted at users of such an interface, making available a multi-sided digital interface which allows users to find other users and interact with them (which may also facilitate the provision of the underlying supplies of goods or services directly between users), and the transmission of data collected about users and generated from users' activities on digital interfaces."[42]

While other proposals, such as the Corporate Taxation-focused Computable General Equilibrium Model (CORTAX), [43] have been considered by the European Union (EU), CORTAX falls short in capturing the activities of digital services and heavily relies on the concept of value creation through data analytics. Such proposals demand a significant amount of time to develop and reach a consensus. Thus, DST emerged as the swifter interim solution, possibly offering a more predictable outcome in terms of tax revenue compared to the current Two-Pillar Solution.

DST will be further assessed in light of the elements of a good tax, evaluating how it aligns with South Africa's perspective on taxation.

**2.4 DST: Fairness**

The outcry that digital companies do not pay their fair share of tax increased during the COVID pandemic since digital firms outperformed other markets. For instance, Apple shares nearly reached

[39] Supra note 37. (Art 4)
[40] Supra note 37.
[41] African Tax Administration Forum. (2020). *Suggested Approach to Drafting Digital Services Tax Legislation.* ATAF.
[42] Supra note 37. (Art 3)
[43] Álvarez-Martinez, M., Barrios, S., d'Andria, D., Gesualdo, M., Pontikakis, D., & Pycroft, J. (2016). *Working Paper : Modelling corporate tax reforms in the EU: New simulations with the CORTAX model.* Spain: Joint Research Centre (JRC), European Commission.

a trillion dollars in less than 2 years,[44] largely due to the pandemic. This resulted in the outcry that Apple needs to pay its fair share of tax.[45]

On the other hand, France's Digital Services Tax (DST) has been informally dubbed the "Apple Tax," which has been criticized for singling out companies seen as tax avoiders, particularly targeting Apple.

Apple has been accused of avoiding its tax liability in the EU through an agreement with Ireland that allows it to shift its operational profit to an offshore "head office" outside of Europe, effectively avoiding taxation in Ireland, where two of Apple's subsidiaries operate. [46]

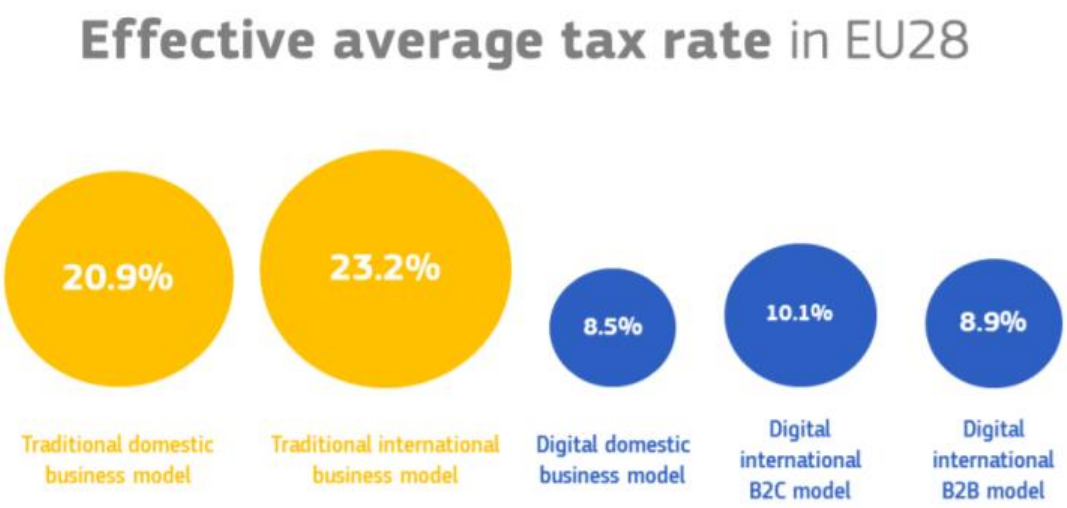
While Apple won the case, the EU Commission has filed an appeal,[47] arguing that Apple does not pay its fair share of tax, nor allocate taxes to the correct state.

The prevailing consensus among countries is that digital companies are not contributing their fair share of taxes, and they employ aggressive tax planning strategies to maintain this status quo. While these companies are growing rapidly and gaining dominance in their respective markets, concerns persist. For instance, South African giant NASPERS has also expressed dissatisfaction with Google's ability to avoid tax and the unfair advantages it gains as a result.[48]

Addressing the notion that Apple and other digital companies are not paying their fair share of taxes should be the first step, followed by an examination of how tax allocation rights to states are determined.

One way to begin this assessment is by studying information released by the EU regarding digital companies' tax payments and comparing them to the average tax rates paid by traditional companies. The below illustration shows the gap between traditional and digital businesses' tax rates: [49]

[44] Nicas, J. (2020, August 19). *Apple Reaches $2 Trillion, Punctuating Big Tech's Grip.*
[45] Supra note 22.
[46] CFE ECJ Task Force. (2021, November 7). *ECJ-TF 3/2020 on the General Court Decisions of 15 July 2020 in Ireland v. Commission and Apple v. Commission.* Journal Articles & Opinion Pieces IBFD. 1
[47] Joined Cases T-778/16 and T-892/16, Ireland and Others v Commission, C-465/20 P (ECJ Seventh Chamber September 25, 2020)
[48] Staff Writer. (2014, February 11). *Naspers hits out at Google over tax dodge*.
[49] European Commission. (2017, September 21). *A Fair and Efficient Tax System in the European Union for the Digital Single Market.* Brussels: European Commission.




According to this EU-provided illustration, domestic businesses pay 12.4% more in taxes than domestic digital businesses, while traditional international businesses pay at least 13.1% more than digital companies.

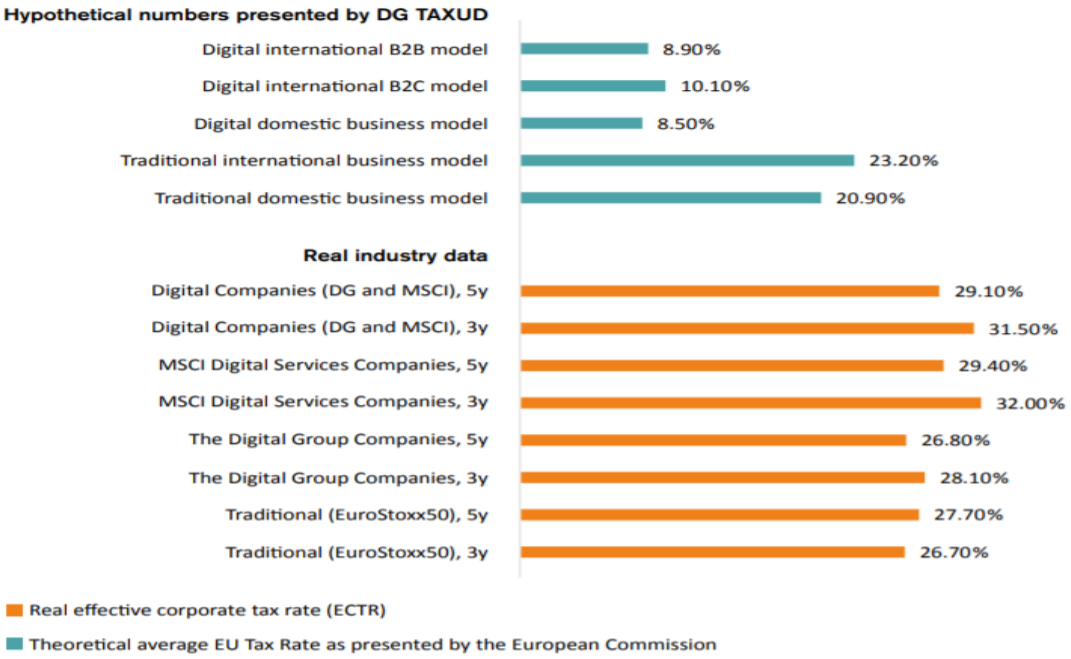
The findings cited by the EU Commission in several publications and articles as fact that digital businesses are not paying their fair share of tax; however, certain factors need to be considered. Firstly, the study considered the most favourable tax rates of 33 countries for a single investment in a specific asset- i.e., the research and development incentives offered by each country were included to determine the tax rate of the digital investment, which includes the write-off of the investment for research and development expenditure for tax purposes.
Secondly, these tax rates are implied as digital business in the study but hypothetically only consider attractiveness for the development of intangible assets in the 33 countries it studies.
Lastly, the study's lead author confirmed the study doesn't support findings that the digital economy is undertaxed.[50]

By contrast to the EU's findings in the above illustration, economist Dr Matthias Bauer performed a study to determine the real effective tax rates of digital companies and compared these to traditional businesses in his paper, *Digital Companies and Their Fair Share of Taxes: myths and Misconceptions.*[51] In his research, Dr Bauer investigates the opposite side of digital tax, whether it in fact will undermine the tax efficiency, neutrality and the Digital Single Market.

[50] Dr Matthias Bauer. (2018). *Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions.* Brussels: European Centre for International Political Economy (ECIPE).
[51] Supra note 50.

Dr Bauer's research included non-digital, or largely less digital, traditional businesses' leading players trading on the EUROSTOXX50, well-renowned digital businesses, as well as other, less renowned digital businesses over 5-year periods, providing less distortion to the variables in yearly taxes paid.

Dr Bauer's research painted a different picture to the EU's published findings, as illustrated below: [52]




The research contrasts the EU's claims by pointing out that traditional businesses, over 5 years, pay a minimum of at least 27.7% versus the EU Commission's 20.9% -23.2%, or at least 4.5% higher, over 5 years. A digital business paying the least over 5 years in the real industry data in the figure above comes in at 26.8%, which is considerably higher than the EU Commission's 8.9% - 10.1%, which indicates at least 16.7% more than published by the EU.
Dr Bauer therefore refutes the EU's claims by providing empirical data that suggest traditional business taxes are higher by 4.5% and digital business tax by 16.7%.

Another important point from Dr Bauer's study is that profit margins differ across different sectors of the economy. Certain businesses are more profitable. For example, Amazon and Netflix enjoy profit margins of 0.63% and 2.42%, whereas eBay rockets to 34.54%. Some companies, like Twitter and Salesforce, would have dragged down the overall profit margin but were excluded from the study as they were major loss leaders over the five years in which the study was conducted (2012 –

[52] Supra note 50.

2016). Spotify and Uber are other examples of loss-makers, but these are privately held and similarly, not included in the results in the figure.

To summarise Dr Bauer's findings -digital companies appear to be paying their fair share of taxes, which disagrees with the sentiment created by the EU that they aren't. On the other hand, Dr Bauer's findings don't consider if the allocation of the profits is fair across states, such as if the value created is correctly taxed in the state where the value is deemed to have been created. Fair taxing in states may therefore be argued; however, such taxation should not increase the overall effective tax rate of MNEs.

The ATAF DST proposal will suggest an additional tax of 1-3% on revenue where a nexus is created by the DST to states, whereas the OECD proposal calls for 3%. This could load much more tax burden to MNE's effective tax rate than originally anticipated, in light of Dr Bauer's findings, especially if no credit or exemption for DST is found under tax treaties. Taxation has a direct or indirect effect on almost every aspect of production and distribution in modern economies[53] and if more tax is added on digital business, it would potentially affect growth in these sectors.

**2.5 DST: Neutrality**

With the revenue thresholds suggested by ATAF and the OECD DST proposals, an unequal playing field emerges that creates a disadvantage for the electronic commerce of MNEs in comparison to other conventional commerce. For example, an advertisement placed in a newspaper will not attract the same taxes as an advertisement placed online, as will be discussed below.

DST levied on MNEs will quite likely be recovered by those MNEs passing the cost of the tax onto consumers, as is normally the assumption in public finance scenarios and noted in a study performed by the IMF. Should ad valorem taxes, such as VAT, increase in Europe, the cost therefore is passed on in its entirety to the customer[54] (DST is not necessarily an ad valorem tax, although the IMF study provides insight into the effects of the increase of tax on specific items, such as those of services taxable according to the DST proposals). Considering the price elasticity of demand for goods, this could result negatively in the sale of the goods, as customers would find other marketplaces to purchase similar goods. According to a recent paper *Can Taxes Shape an Industry* by Baugh et al, it

[53] Basu, S. (2007). *Global Perspectives on E-Commerce Taxation Law.* Belfast: Ashgate
[54] Benedek, D., De Mooij, R., & Wingender, P. (2015). *Estimating VAT Pass Through.* International Monetary Fund Working Papers.

was estimated that an increase of 1% in price would evoke a decrease in sales volumes of about 2.2%;[55] however, when Uber increased its commissions on Uber drivers from 20% to 25% in France, there wasn't much impact on its revenues.[56] Similarly, in Etsy, a marketplace in the USA, commissions were increased from 3.5% to 5% but didn't result in a loss in its merchants.[57]

These findings factor into the results of The French Digital Services Tax, An Economic Impact Assessment[58] on digital marketplaces, which assessed the French government's assertions that it stands to gain €400m in tax revenues should it implement DST based on 2019 figures; however, the actual figure France stands to gain from DST is calculated at €569m. The report further finds that only a small amount of this tax will be paid by MNEs, as it calculates consumers will carry €324m of taxes (57%), the merchants €223m (39%) and €22m(4%) by MNEs like eBay and Amazon. Most of the tax burden will therefore be passed downstream and consumers will carry the largest portion of the costs.

Despite the French assessment, the EU believes that companies won't act irresponsibly in this manner to their customers – that is to say, pass the DST on to consumers.[59]

*Targeted approach*

As pointed out, the large global income thresholds identify a narrow spectrum of digital companies. Most of these companies, such as Google, Apple, Facebook and Amazon, reside in the USA, which has prompted USA investigations into the matter. The USA launched Section 301 investigations into DST in the UK, Austria, Spain[60], India, Italy, and Turkey[61]. These investigations found that DST discriminates against USA companies, is inconsistent with prevailing international taxation, and burdens and restricts USA commerce.

Another consideration is that the global threshold's objective is to target only large companies, but in reality, it is unnecessary, because the country threshold could have achieved this objective on its own.[62] In this sense, it targets non-local companies only, contradicting the concept of neutrality.

---

[55] Baugh, B., Ben-David, I., & Park, H. (2018). Can Taxes Shape an Industry? Evidence from the Implementation of the "Amazon Tax". *The Journal of Finance*.

[56] Van de Casteele, M. (2016, December 1). *VTC : Uber entend les chauffeurs et monte ses prix.*

[57] Pellefigue, J. (2019). *The French Digital Service Tax An Economic Impact Assessment.* Deloitte

[58] Supra note 57.

[59] European Commission. (2018). *Questions and Answers on a Fair and Efficient Tax System in the EU for the Digital Single Market.* Brussels: European Commission.

[60] Choi, W. (2021, January 15). *United States Concludes that Digital Service Taxes of Austria, Spain and United Kingdom Are Discriminatory*.

[61] Choi, W. (2021, January 11). *United States Concludes That Digital Service Taxes of India, Italy and Turkey Are Discriminatory*.

[62] Forsgren, C., Song, S., & Horváth, D. (2020, May 29). *Digital Services Taxes: Do They Comply with International Tax, Trade, and EU Law?*

Section 301 Investigation into the UK DST states influential British politicians claim USA-based companies should pay more tax but doesn't address whether UK-based companies should pay a greater share of tax.[63]
Interestingly, although finding DST discriminatory, the USA did not increase tariffs to other countries for the time being, including the UK[64] and France.[65]

Regardless of sentiments from the EU as to who will pay the tax, or the USA Section 301 findings against the tax, the DST is in principle a tax on capturing missing digital revenues. Local business does pay tax under domestic tax rates, which is what digital business avoids under existing tax law; however, from price elasticity of demand, should MNEs raise the price on digital services rendered to avoid losing profit due to a DST, it could be seen as non-neutral. But by OECD intent, it is not intended for MNEs to raise prices to recover DST from consumers but to pay tax where local businesses are already paying tax. Therefore, DST can be considered neutral.

**2.6. DST: Efficiency**

Broad categories of tax compliance include registration by the taxpayer, "timely filing or lodgement of requisite taxation information, reporting of complete and accurate information (incorporating good record keeping) and payment of taxation obligations on time." [66]

Each jurisdiction will have its own rules concerning the registration of DST by MNEs, but the UK's will be outlined briefly. Since the UK estimated about £400m in revenues from DST in 2021/2022[67] and collected £380m for said period,[68] the writer deems the UK's DST fairly efficient.

UK requires a single entity called the responsible member, to deal with the DST administration on behalf of each entity of an MNE group.[69] The responsible member must notify His Majesty's Revenue and Customs (HMRC) within 90 days after the end of the DST accounting period if revenue threshold conditions have been met by the MNE. Registration occurs on the 'Register for Digital Services Tax'

[63] Office of the United States Trade Representative. (2021). *Section 301 Investigation Report on the United Kingdom's Digital Services Tax.* Office of the United States Trade Representative.
[64] Reuters Staff. (2020, December 31). *Britain says decision to suspend U.S. tariffs already paying off.*
[65] Shalal, A. (2021, January 7). *U.S. suspends French tariffs over digital services tax*.
[66] OECD. (2004). *Compliance Risk Management: Managing and Improving Tax Compliance.* Paris: Committee on Fiscal Affairs.
[67] Seely, A. (2022, February 15). Digital Services Tax.
[68] Ali, H. (2022, April 26). U.K. Collects 380 Million Pounds from Digital Tax (Correct).
[69] HMRC. (2020, March 19). *Digital Services Tax Manual*.

service available on GOV.UK.[70]

As a means to ensure compliance, the UK issues fines to the responsible member for failing to notify HRMC if the MNE meets the conditions for registration for DST.[71] The HMRC may also issue a Determination of Liability if the HMRC has a reasonable belief that the responsible member must submit a DST return, but has not.[72] In such cases, HMRC may determine the amount of tax payable and the responsible member has no right of appeal; however, the responsible member may file a DST return within 12 months of the Determination of Liability that supersede the Determination of Liability.[73] In addition, for (only) the first 3 years after the DST comes into effect, responsible members have the greater of 12 months or 3 years to file a return after the Determination of Liability has been filed.

Note the UK Finance Act gives the right to HMRC to issue an information notice to obtain information from one person on another person to verify the first person's tax position.[74] Failure to comply with information could result in payment of penalties. The South African Revenue Services (SARS) have similar powers under Ch5 of the Tax Administration Act.[75]

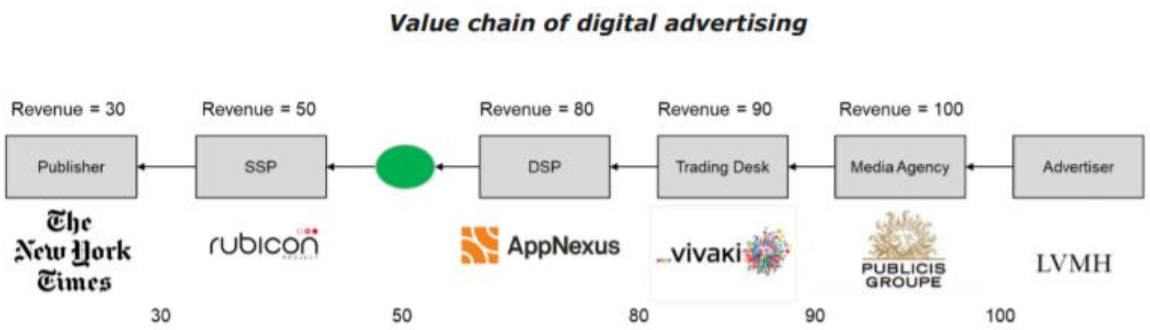
Due to the fairly efficient manner in which the UK forecasted revenue to be collected from the DST and the actual taxes received, it appears DST could be administered efficiently. The implementation of Determination of Liability allows HRMC to compel entities to submit DST returns in a system that is otherwise self-assessment based by the responsible member. The UK Finance Act similarly allows for further power to the HRMC to obtain information from third parties to identify taxpayers for DST payment.

**2.7. DST: Certainty and Simplicity**

Certainty and simplicity add to the efficiency of a tax. DST appears simple in its approach, such as a single rate of taxation on certain digital revenues; however, multiple layers of taxation are created that complicate when, where and how much tax to account for.

[70] Supra 69
[71] Supra 69
[72] Supra 69
[73] Supra 69
[74] Supra 69
[75] Republic of South Africa. (2011, July 4). Government Gazette. Tax Administration Act, Vol/ 565, No. 35491. Cape Town, South Africa.

If DST is a tax on revenues and not profits, an example of multiple taxation could be demonstrated in a scenario where an advertiser pays an agency, who in turn pays another, and so on, until it reaches the final point (IE, the publisher). The issue highlighted is the standard to determine revenue – is it the collection of the cash or turnover? Consider the figure below:[76]




Should LVMH spend 100 with PUBLICIS GROUPE qualify for DST, the DST payable by PUBLICIS GROUPE will be 3, or 3% of the 100 spent; however, the figure exhibits that PUBLICIS GROUPE spends 90 with VIVAKI, indicating 10 of the original 100 received is revenue in PUBLICIS GROUPE. It is underlined that the revenue recognition criteria a DST is levied on needs to be indicated – i.e., not on the cash basis of receipts, but rather on the commission. As such, PUBLICIS should be liable for 0.3, or 3% of the 10 earned from its dealings with VIVAKI.
The remainder of the graph suggests that should the recognition of receipt not be clarified, a total of 10.5, or 3% of 350, will be levied, rather than 3 (on the 100 'commission' earned).

Other considerations include the basis of revenue. If collection of user data AND digital advertising content are taxed, a scenario is created where the same revenue is taxed twice. For example, if a user fills in a form online and an advertisement is directed to the user, then revenue will be earned on this transaction by the platform hosting the advertisement; however, if user participation will also allow for a calculation of revenue, then the quantum of revenue from the participation will be linked to the revenue earned on the transaction – IE, the advertising revenue already taxed will lead to double taxation of the same revenue. [77]

The complications created by DST in taking a value chain bring about considerable costs to the digital item being taxed, which can be added to the discussion on the neutrality of the tax. Untangling the

[76] Supra note 57.
[77] Supra note 57.

complexity to avoid double taxation and restore neutrality somewhat, opens up the need for an exhaustive list of services, or clear definitions of services attracting DST, complicating the tax and removing the simplicity envisioned. HRMC has provided some examples and clear guidance that SA could also borrow from.[78]

**2.8. DST: Flexibility**

The temporary nature of DST points to the inflexible nature thereof. Countries who signed the Two-Pillar, including SA, are expected to abstain from implementing any further DST. Should SA decide to go ahead with the implementation of DST, if SA deems that the Two-Pillar won't sufficiently address its lost tax revenues, then it would need to consider the services that it intends to tax under the DST and that a list of these services is both extensive and regularly reviewed and updated when required.

The writer is also of the opinion that SA may also face further pressure not to implement a DST through potential retaliation from other countries, such as the USA, through non-extension of the African Growth and Opportunity Act (AGOA). AGOA allows certain Sub-Saharan African countries' goods to be exported to the USA duty-free.[79] Should SA be removed from the list of Sub-Saharan African countries included in the AGOA treaty could have devastating effects on certain sectors of the SA economy. SA would need to investigate the potential detrimental effect on the SA economy versus the amount of tax DST could gain for SA. The USA has threatened sanctions against countries that implemented DST, such as the UK and France, which it may implement with more ease against a developing country such as SA, as those mentioned in 2.5 above, in this writer's opinion.

**2.9. Conclusion**

The conclusions were addressed on each element as follows:

*Fairness*

It appears from Dr Bauer's research that adding more tax to an MNE will be unfair, as the sentiment that digital MNEs are paying less tax than their traditional counterparts is untrue. Therefore, where DSTs were implemented by states, there should be credit or exemption available to those MNEs, otherwise, the DST will add another layer of tax to MNEs.

[78] Supra 69.
[79] Office of the Unted States Trade Representative : Executive Office of the President. (n.d.). African Growth and Opportunity Act (AGOA).

*Neutral*

The DST is intended to tax foreign MNEs, who are escaping taxation in states due to having no nexus to those states. Local businesses are already paying taxes in those states. It remains the intent of the OECD that DST won't be passed on to consumers, but found that even if it is, it shouldn't result in loss to the MNEs in a business sense. What remains not neutral about the DST is the increase of the overall tax rate of MNEs with the additional layer of DST added in comparison to traditional businesses.

States that do implement DST should consider how to implement a credit or exemption for DST paid in other states, otherwise, this will be a non-neutral or inequitable effect between digital and non-digital businesses.

*Efficiency*

The collection versus forecasted tax revenue for HRMC appears evidence of an efficient DST that could be borrowed from the UK. It is noted SA has similar powers in identifying taxpayers through third-party co-operation as HRMC and the fines system the UK implements appears to assist in compliance from taxpayers.

*Certainty and Simplicity*

Examples of transactions show how complicated DST revenue could be to account for. Governments must legislate clearly what revenues are taxable and have working examples that are practical for taxpayers.

*Flexibility*

By signing the Two-Pillar Solution, SA must not implement DST, which makes the DST a de facto non-flexible tax for SA. If SA should find that the DST or similar tax could address recovery of missing digital tax revenues better than the Two-Pillar Solution, then flexibility must be questioned in terms of other commercial threats there are to SA, such as a possible revocation of AGOA treaty benefits for SA.

Further analysis into the tax treaty sphere in which the DST operates will provide considerations as to whether or not a DST will be suitable for SA, or if other avenues to tax missing digital service revenues exist.

## 3. DST WITHIN TAX TREATY LAW

### 3.1. Introduction

DST appears deliberately structured to avoid inclusion thereof in tax treaties by OECD member states.[80] The UK's DST states it won't interfere with tax treaties, as it will not be deductible for corporate tax purposes.[81] The European Commission also qualified the DST as an indirect tax.[82] In making the declaration that the DST is an indirect tax, the European Commission attempts to avoid the inclusion of the DST in tax treaty law.

In this chapter, we will consider whether DST could be included in tax treaty law by analyzing the relevant articles of the OECD MC with the elements of DST. This will include the classification of the DST as an indirect tax by OECD member states.

### 3.2. DST and the Articles of the OECD MC

Further consideration of the DST will be provided to establish how it operates in OECD tax treaty models.

#### 3.2.1. Art 2 – taxes covered

Article 2 of the OECD Model[83] states in Art. 2(1) that it applies to all taxes, irrespective of the manner levied. Taxes mentioned in Art. 2(2) are those on income, elements of income, capital, capital appreciation, gain on alienation of immovable property, salaries, and wages. Art. 2(3)'s purpose serves to list taxes covered individually between countries, which doesn't include a contemporary tax as DST; however, it is noted Art. 2(4) states that the Convention will "apply to any identical or substantially similar taxes that are imposed after the date of signature of the Convention."[84]
The greater the connection that DST has to income or elements of income, the more likely it would be that DST would be included in tax treaties as a tax covered.

[80] Hohenwarter, D., Kofler, G., & Sinnig, J. (2019). Qualification of the Digital Services Tax Under Tax Treaties. *Integritax Volume 47 : Issue 2*, pp. 140-147.
[81] HM Treasury. (n.d.). *Budget 2019 Digital Services Tax*.
[82] Supra note 36.
[83] OECD. (2017). *Model Tax Convention on Income and on Capital : Condensed Version 2017.* OECD Publishing.
[84] Brandstetter, P. (2011). *"Taxes Covered" - a Study of Aricle 2 of the OECD Model Tax Conventions.* Netherlands: IBFD.

Income therefore requires a definition, which can broadly equate to gross receipts,[85] as long as the aim is to cover income, measured within a period, in a monetary sense, of a person's *net accretion* of economic power, or the essential elements of the income.[86] Even lesser yardsticks would qualify as income as covered by Art 2(2) of both the OECD and United Nations multilateral conventions.[87] Reference can be made to the *Yates v. GCA International Ltd*[88] case, where it was established that to consider whether a tax qualifies as an income tax, an assessment of the tax must consider the nature of the tax as a whole.[89]

Brandstetter points out that the wording "substantially similar" that the substance of the tax is of the essence, not its denomination. If the denomination could qualify a tax as covered, states would be able to circumvent the test of substance by simply inserting a newly created tax into the corpus of a tax that is expressly listed in Art 2(3). [90]

The essential characteristics of DST, or its substance, are examined below, as well as its determination as an indirect tax, to establish how it stands about Art 2 of the OECD MC.

*Essential characteristics of DST*

Considering the essential characteristics, a tax can qualify as an income tax, even if it is only charged as a percentage of revenue, such as the 3% of DST on turnover. In the Yates case, the taxpayer argued that income derived from Venezuela, of which 90% of the income was included in Venezuela's tax assessment of GCA International's taxable income and taxed, should allow for tax relief from the UK. The 10% excluded by the Venezuelan tax authority, although perhaps a gross understatement of GCA International's expenses about the income it derived from Venezuela, is nonetheless expressive of the intent to tax the profit net of expenses.[91] The 10% is the deemed expenditure and profit is therefore determined as 90% of revenue on which tax is then levied.

Similar to the Yates case, DST as per the OECD proposal, has a worldwide income threshold for MNEs of €750m and income in a particular state threshold of €50m, which could be argued as evidence that there is an element of expenditure considered in determining the tax liability, but this is argued

[85] Ekkehart, R., Rust, A., & Vogel, K. (2015). *Klaus Vogel on double taxation conventions.* Netherlands: Alphen aan denRijn : Kluwer International.
[86] Supra note 85. (note 36).
[87] Supra note 85. (note 36).
[88] Yates v GCA International Ltd, STC157 (UK High Court February 13, 1991).
[89] Supra note 85.
[90] Brandstetter, P. (2011). *"Taxes Covered" - a Study of Aricle 2 of the OECD Model Tax Conventions.* Netherlands: IBFD.
[91] Supra note 88.

as ill-founded. [92]This is only a singular element in determining if DST is a covered tax. What must be kept in mind is in the Yates case, the 90% inclusion was calculated on all types of income earned in Venezuela, not only for certain activities. It is noted for a tax to be covered by tax treaties, the tax must be imposed on the supplier, not the supply.[93]
The fact that DST is more a tax on a type of supply than on the actual profit of a supplier raises the question of whether VAT could be an alternative for DST, but this will be addressed in 4.3.4.

An additional element to consider is whether the fact that DST "may be collected from the supplier and that there is a threshold that must be met before a person is required to register and account for the tax." [94] This is noted as not sufficient to generally bring the tax within the scope of the Convention.

A final consideration is presented by Vogel who raises a further question of whether synthetic tax that possesses the elements of income, such as turnover tax, is fully or partially regarded as income,[95] which could significantly widen the scope of income in double tax agreements.[96] That is to say, should income be broken down into each of its elemental blocks and each elemental block assessed whether it forms part of income; however, Vogel concludes that a tax should be imposed on income, where the income represents the main feature of the tax.[97] DST does not tax income after the deduction of taxes, nor is its overall profit taxed. It is only certain elements of income taxed or digital services revenues. This author deems this aspect of DST the most substantial feature of the tax in determining if it is considered an income tax.

*Denomination of DST – direct or indirect tax*
DST is branded an *indirect* tax by the EU.[98] Art 2(1) of OECD MC applies to *taxes on income.*
According to the OECD MC Commentary on Art2(1), the term 'direct taxes' is avoided, which is deemed to be too imprecise in the terms of the scope of meaning it implies. Art 2(1) therefore doesn't define direct or indirect taxes.

[92] Hohenwarter, D., Kofler, G., & Sinnig, J. (2019). Qualification of the Digital Services Tax Under Tax Treaties. *Integritax Volume 47 : Issue 2*, pp. 140-147.
[93] OECD. (2018). *Tax Challenges Arising from Digitalisation– Interim Report 2018 : Inclusive Framework on BEPS.* Paris: OECD Publishing.
[94] Supra note 93.
[95] Supra note 85. (Art 2, note 30).
[96] Supra note 85 (Art 2, note 32).
[97] Supra note 85. (Art 2, note 32).
[98] Supra note 36.

We find some meaning to the term *indirect* in TFEU Art 113 that denominates *indirect* in the same category as excise and turnover taxes. Even though Art 113 of TFEU classifies these taxes as indirect, should any tax fall outside the parameters of Art 113, it doesn't automatically qualify as a covered tax in terms of Art 2 of OECD MC. [99] Likewise, if a tax is considered an excise or a sales tax includes taxes categorized as 'indirect taxes' in Art 113 of TFEU.
Therefore, despite the EU classifying DST as an 'indirect tax', it is of little importance considering if the tax falls under taxes covered in Art 2 of OECD MC.
There is further deliberation on whether DST qualifies as a *direct* tax. In the *Proposed 3% Digital Services Tax,*[100] Fred van Horzen & Andy Van Esdonk find that DST is simply a direct tax, based on the opinion of Advocate General Mengozzi in the Lubrizol France SAS case.[101]

Mengozzi doesn't deem it relevant to attach a distinction between indirect and direct. The only relevance is whether the tax does affect the price of the product sold,[102] which has been proved in Chapter 2.[103] Van Horzen & Van Esdonk observe that the similarities between DST and the solidarity fund tax in the Lubrizol case and the opinion of Mengozzi indicate that DST might fall under taxes covered as per Art 2 of OECD MC.

Nevertheless, Mengozzi "points out that because there is no definition of direct taxation in European Union law, the use of a criterion reflecting the distinction between direct and indirect taxation should be based on the classification used at a national level. In that regard, as is well known, these classifications are not significant, because otherwise they would allow the Member States to avoid compliance with the provisions of European Union law."[104]

Likewise, each country outside the EU must evaluate how their DST will be treated within terms of taxes covered in tax treaties, which similarly applies to SA. Denomination of the tax, such as direct or indirect, doesn't imply the tax is covered in tax treaties, but countries' interpretation thereof, does.

[99] Supra note 92.
[100] van Horzen, F., & van Esdonk, A. (2018). European Union - Proposed 3% Digital Services Tax. International Transfer Pricing Journal (Volume 25), No4.
[101] Mengozzi, P. (2018, January 31). Opinion of Advocate General Mengozzi delivered on 31 January 2018 Case C-39/17 Lubrizol France SAS v Caisse nationale du Régime social des indépendants (RSI) participations extérieures..
[102] Supra note 101.
[103] Vincent, J. (2020, September 2). Apple, Google, and Amazon respond to European tech taxes by passing on costs. Developers, ad buyers, and third-party sellers are all affected.
[104] van Horzen, F., & van Esdonk, A. (2018). European Union - Proposed 3% Digital Services Tax. International Transfer Pricing Journal (Volume 25), No4.

### 3.2.2. Art 24 - non-discrimination

Art 24(1) OECD MC, based on non-discrimination, establishes that a taxable person shall not be subjected to taxation or any requirements of taxation that are more burdensome to nationals of that contracting state, regardless of whether the taxable person is a non-resident of one or both of the contracting states.
"Although tax treaties generally apply only to taxes on income (or on an element of income), some provisions also apply to other types of taxes, such as the non-discrimination article provisions that are equivalent to those found in Article 24 of the OECD Model Tax Convention."[105]

DST intends to tax large international MNEs, but the OECD proposal appears to exclude large local digital companies, by way of an international threshold. Similarly, the UK DST incorporates a worldwide threshold of £500m,[106] while France stands at €750m.[107]

The ATAF proposal, on the other hand, notes the worldwide threshold but stresses this is optional, and each country would have to decide on an international threshold for themselves.[108] Kenya, for example, excludes any threshold requirements, as well as allows for set off of DST against corporate tax in the case of an MNE operating with a PE in Kenya.[109]

Although the threshold appears to distinguish different treatment between non-residents and residents, it is normal and a common feature of income tax systems.[110] "A taxpayer who is not a resident of a Contracting State is not considered to be in the same circumstances as a person who is a resident of that State and therefore taxation outcomes may be different."[111]
However, because the large threshold imposed by the OECD would only capture a handful of international businesses, certain countries denote the DSTs as discriminatory. Specifically, the USA launched several Section 301 investigations into DSTs,[112] stating that taxes target US businesses through the worldwide threshold. Section 301 also noted that the tax isn't charged on similar non-digital businesses.

[105] Supra note 93. (Par. 426)
[106] HMRC. (2020, March 19). *Digital Services Tax Manual*.
[107] IBFD. (2019). *Government presents bill on digital services tax.* News IBFD
[108] Supra note 41.
[109] IBFD. (2021). *Kenya Publishes Digital Service Tax Regulations.* IBFD News.
[110] Supra note 93. (Par. 426)
[111] Supra note 93. (Par. 426)
[112] Supra note 63; Representative Office of the United States. (2020, July 16). *Notice of Action in the Section 301 Investigation of France's Digital Services Tax.*

Attention needs to be drawn to the fact that local businesses would be subject to states' corporate income tax, whereas DST is intended to tax MNE's digital businesses that are not being taxed by states currently.[113] Even if DST is not levied on similar, non-digital local services, these local service providers would be taxed under domestic tax laws that MNEs are avoiding currently.
In this sense, the DST is not discriminatory by treating foreign businesses differently but establishing a taxation nexus that local businesses already have.

A debate could be held to consider if non-resident taxpayers above the threshold are not discriminated against when compared to non-resident taxpayers below the threshold, but the writer thinks this is a matter of administration by each country.

On the other hand, if MNEs have their playing field levelled in local jurisdictions by DST, an MNE is not only paying corporate income tax in its resident country but also DST in overseas jurisdictions. It could be seen as another layer of taxes paid by MNEs, thereby ultimately discriminating against the MNE, especially in light of Dr Bauer's research that MNEs are paying their fair share of taxes in 2.4. But in light of Richter's argument (see 4.1), there is no minimum rate of jurisdictional tax corporates could charge, which may go as high as 95% and be discriminatory to MNEs.
Despite tax credits being available under the Two-Pillar Solution, MNE's ultimate effective tax rate will still rise under the Two-Pillar Solution. Given these facts, a discussion can be held around new nexus rules such as a significant economic presence test that captures tax under corporate tax rates, which won't be elaborated on further due to the word constraints of this dissertation.

The worldwide threshold may to some extent protect local businesses and therefore could be seen as a discriminatory element of DST. Note that Kenya, which excludes the worldwide threshold, did not receive a Section 301 Investigation from the USA.

[113] European Commission. (2018). *Proposal for a Council Directive on the common system of a digital service tax on revenues resulting from the provision of certain digital services {SWD(2018) 81} - {SWD(2018) 82}.* Brussels: European Commission.

### 3.2.3. Art 5 -permanent establishments

Digital services attracting DST won't create a nexus to any state in terms of Art 5, as there is no physical connection to a state as defined in current treaty law. User participation, or those who consume the digital service offered, create a nexus for DST purposes, but won't comply with the requirements of Art 5(1), as users don't create a fixed, tangible place of business under current treaty law. DST doesn't fall into the scope of tax treaties under Art 5.

### 3.2.4. Art 23 - methods for elimination of double taxation

Art 23 will make exemption and credit methods to eliminate double taxation available only if the DST is considered a covered tax in Art 2. As per 3.2.1, the nature of the tax as direct or indirect, will be dependent on the state's classification of the tax.

It is noted that Kenya does allow for a credit of DST for resident or non-resident persons with a PE in Kenya against their income tax payable.[114]
If countries do not include DST as a covered tax in tax treaties, there is no protection for MNEs against double taxation. The signing of the Two-Pillar Solution by a large group of countries further reduces the possibility that DST will be a covered tax in tax treaties since the Two-Pillar Solution will effectively abolish DST in any form.

## 3.3. Conclusion

Art 23 will make exemption and credit methods to eliminate double taxation available only if the DST is considered a covered tax in Art 2.
An essential characteristic of DST is that DST is a tax on the type of supply and not the supplier, which excludes DST from recognition as a tax on income, in terms of Art 2 of OECD MLC. Taxes shouldn't be broken down into each elemental part of income and then assessed if that element is defined as income for covered tax purposes. The income as a whole must be considered if it falls into the scope of covered taxes. Whether a tax is designated as indirect, or direct, is not indicative if the tax is included or not in terms of treaty law. Each country has to assess the tax to determine for themselves and as such if the tax applies as a covered tax in tax treaties.

[114] IBFD. (2021, November 30). *Kenya - Digital Taxation Monitor.*

Concern around non-taxation by local businesses of similar non-digital services was addressed to a certain extent and DST was not found to be discriminatory. DST intends to tax currently untaxed revenues due to the lack of a nexus to a state from which revenue is deemed derived.
In terms of a worldwide threshold, it is noted that Kenya did not include a worldwide threshold in its DST design, and similarly, allows for offset in case of a PE's taxable income. It was assumed by the author in light of this facet of Kenya's DST, the USA did not implement a Section 301 into Kenya's DST.

There also appears no relief in terms of Art 23 for the elimination of double taxation, but that would depend on states' structuring of the DST, such as Kenya. Since most other countries have agreed to abolish or not implement a DST by the signing of the Two-Pillar Solution, it appears unlikely, if other countries do not recognize the DST as a direct tax covered by tax treaties, that relief will be available.

To conclude, it will be difficult for SA to reverse its position of support for Two-Pillar and implement a DST, but would the Two-Pillar offer enough in terms of missing digital revenues, considering other ATAF member countries' position on DST? This is analysed further in the next chapter.

## 4. FURTHER CONSIDERATIONS FOR DST TO RECOVER MISSING DIGITAL REVENUES IN SA

### 4.1 Introduction

With the signing of most countries, including SA, of the Two-Pillar Solution, DST appears to ultimately be mooted, since Two-Pillar disallows DST or similar type taxes.
The world has been waiting a long time for the Two-Pillar Solution, which has enabled digital revenues to remain untaxed in many countries, including SA. In addition, the high worldwide threshold of £20b before Amount A's distribution to states as proposed by Pillar One will leave a large portion of digital revenues to go untaxed.

SA needs to consider the effect of further delays in the implementation of the Two-Pillar Solution resulting in digital revenues going untaxed, as well as if SA will tax enough digital revenue under the high worldwide threshold for Pillar One.
In this chapter, ATAF countries' approach to the Two-Pillar will be discussed, as well as further consideration provided for SA on where SA could capture missing digital revenues in other forms of taxes as an alternative to Two-Pillar and DST. Trade implications of following a DST approach will also be discussed in brief.

### 4.2. ATAF and ATAF member countries approach to DST

In the 2021 Budget Review, SA published its support for the program to deliver a consensus-based approach to the question of taxing the digitalized economy, admitting to the COVID-19 factors that delayed the process.[115] SA was to investigate a unilateral approach by the middle of 2021 should consensus not be made on an international level, but per the 2022 Budget Review, SA will propose legislative amendments to implement the Two-Pillar Solution to take effect in 2023.[116] This appears based on the OECD timeline; [117] however, it should be considered an ambitious timeframe given the amount of delays up until consensus was reached in terms of a Two-Pillar Solution, despite COVID. There is no evidence that this schedule can be met, and DST could still be an option for SA should the Two-Pillar Solution fail to be implemented. SA, being a member of ATAF, should also consider ATAF's recommendations around DST.

[115] Supra note 27.
[116] National Treasury : *Republic of South Africa. (2022). Budget Review 2022*. Pretoria: National Treasury : Republic of South Africa. Available at www.treasury.gov.za.
[117] OECD. (2021, August 31). *Members of the OECD/G20 Inclusive Framework on BEPS joining the Statement on a Two–Pillar Solution to Address the Tax.*

ATAF has proposed DST between 1%-3%[118] for member states, which has so far been implemented by Kenya, which has a current rate of 3%.[119] Nigeria, another ATAF member, has not signed the Two-Pillar Solution, pointing out that if only 100 MNEs fall within the revenue threshold as proposed by Pillar 1 of the OECD proposal, Nigeria will lose potential revenue it could collect on those MNEs that do not meet the threshold criteria.[120] Nigeria has proposed a DST of 6% but has implemented a significant presence test.[121] Kenya claimed it preferred the certainty of revenue collection from a DST, versus the uncertainty of what it will gain from the Two-Pillar Solution.[122]

As mentioned, SA has agreed not to implement a DST by the signing of the Two-Pillar Solution but still needs to address missing digital revenues that are going untaxed while the consensus is being finalized and made ready for implementation. This is in addition to possible revenues remaining untaxed due to the high Pillar-One threshold.

Introducing a DST will be a faster solution for SA, but the Davis Tax Committee's recommendation in the past for SA was that SA should not pioneer a whole new tax regime to cope with e-commerce but internationalise its laws,[123] or put otherwise, SA should follow suit with the OECD's attempt to find a workable solution.

### 4.3. SA considerations for DST with regard to trade agreements

Trade agreements that could be threatened if a DST is implemented by SA would likely lead to a large base of trade agreements to be analysed; however, this author will only consider the AGOA, in light of the opprobrium USA report against countries who implemented a DST.

The USA's condemnation of European countries' DST implementations with Section 301 investigations (UK, Austria, Spain, India, Italy and Turkey)[124] could have severe consequences for SA, should SA pursue implementation of DST. France faced an increase in tariffs by the USA on the export of French goods unrelated to e-commerce goods or services to the USA, but even though tariff increases were suspended, it didn't signal a broader policy shift by the USA on the DST. Instead,

[118] African Tax Administration Forum. (2020). ATAF Proposes a Digital Services Tax Rate Between 1% and 3% for Member Countries. IBFD.
[119] IBFD. (2022). *Kenya - Government Proposes Increase of Digital Service Tax from 1.5% to 3%.* IBFD.
[120] IBFD. (2022, January 19). *Nigeria - Digital Taxation Monitor.*
[121] Aguolu, O. (2021, September 10). *Nigeria - Corporate Taxation, Country Tax Guides*.
[122] Supra note 32.
[123] Supra note 35.
[124] Supra note 60 & 61.

after the signing of the Two-Pillar Solution by those countries who had implemented a DST, the USA has suspended all future additional tariffs as DST is to be abolished by these countries.[125]

It is noted that no Section 301 investigation into Kenya's DST implementation was found by this author, possibly pertinent to the fact that Kenya legislated no worldwide income threshold.[126]
If SA elects a DST like other ATAF countries and includes a worldwide income threshold, a Section 301 investigation could not only introduce tariffs by the USA but also lead to the non-renewal of AGOA, which is currently extended to 2025.[127] AGOA allows certain SA goods to be exported to the USA customs duty-free and for SA to drop off the list of Sub-Saharan African countries included in the AGOA treaty could have devastating effects on certain sectors of the SA economy, such as the loss of more than 62,000 jobs created by AGOA, especially in the agricultural sector, where AGOA provides for 57% of exports to the USA.[128]

Implementing a DST with the inclusion of a worldwide income threshold by SA could have detrimental consequences for SA, which may overshadow digital revenue recoveries. To exclude a worldwide threshold in a DST for SA may overcome these negative trade repercussions, but this would require a withdrawal from the Two-Pillar Solution and also be against the recommendations of the Davis Tax Committee.

### 4.4. Consideration for recovery of missing digital revenue in terms of SA corporate, excise and VAT taxes

#### 4.4.1. SA income tax consideration

SA's signing of the Two-Pillar introduces new issues, as stressed by ATAF. ATAF suggested that the minimum limit of 15% corporate tax as per Pillar Two is too low to accommodate African countries and proposed a minimum threshold of 20% to curb profit shifting from African countries.[129] ATAF's concerns are shared by SA who stand at a current corporate tax rate of 27%. In addition, if the GDP to tax ratio could be used as a measurement of economic output vs tax paid in comparison to the rest of the world, SA appears to be one of the highest taxed countries in the world for corporate

[125] Office of the United States Trade Representative. (2021, November 22). *USTR Welcomes Agreement with Turkey on Digital Services Taxes.*
[126] IBFD. (2021, November 30). *Kenya - Digital Taxation Monitor.*
[127] Supra note 79.
[128] Department: International Relations and Cooperation Republic of South Africa. (Accessed 11 March 2022). *Overview of SA – USA Trade & Investment Relations.*
[129] Supra note 23.

tax[130] and also the highest amongst African countries in 2019, standing at 26.2%, which is significantly higher than the next highest African country of Namibia at 20.2%.[131] The minimum worldwide tax threshold imposed by Pillar Two of 15% doesn't appear to address Africa's concerns about MNEs not establishing themselves within their tax jurisdictions, or not incentivizing economic growth.

This raises a bigger question than DST only for SA – does the signing of the Two-Pillar by SA signal that SA should commit to reducing its corporate tax rates, to increase economic growth and foreign investment? Although a compelling question, the purpose of this dissertation is to address how SA could introduce a tax, such as DST, to recover missing digital revenues.
But the question becomes relevant when Richter's article *Will Pillar 1 Trigger a Race to the Top on Corporate Tax*[132] is considered. Richter points out that Pillar One could easily result in countries charging a tax rate of up to 95% of jurisdictional profits allocated to that country by Amount A should those countries introduce a split tax rate. For example, a country could retain its current corporate tax rate, but for profit allocated from Amount A, it could raise tax by up to 95%, since no ceiling or restriction is placed on doing so.
Therefore, if an MNE was able to supply digital services to a limited number of countries from its existing cost basis and these countries applied a split tax rate of up to 95% on Amount A, the MNE would most likely consider moving its digital revenue to other countries with a lesser tax rate. Richter points out that the USA's possible move from a 21% corporate tax rate to 28%, could increase the effective tax rate of MNEs residing within the USA from 39.5% to 44.75%, should other countries tax the jurisdictional profit of that MNE at up to 95%.

As discussed previously, DST might add another layer of taxation to MNEs, but Amount A would also increase MNE's effective tax rate if there is no maximum introduced in terms of taxation of Amount A. SA is already a highly taxed country in terms of corporate income taxes, and Amount A and DST has the potential to increase foreign MNE's effective tax rate.
In addition, any further delays in the implementation of the Two-Pillar could result in further delays of not taxing digital revenues, as well as have digital revenues go untaxed due to the high €20b threshold imposed by Pillar One.

[130] Staff writer. (2018, March 22). *The highest income tax rates in the world – including South Africa.*
[131] OECD/AUG/ATAF. (December 2021). *Revenue Statistics in Africa 2021.* Paris: OECD Publishing.
[132] Richter, W. (2022, April 15). *Will Pillar 1 Trigger a Race to the Top on Corporate Tax Rates?*

To avoid delays in taxing digital revenues, as well as taxing enough digital revenues in light of the high global threshold, DST could be implemented sooner, with possibly more surety as to the amount SA will recover due to the complexities of the calculation of Amount A.
Therefore, other avenues for SA to tax missing digital revenues will be discussed if it is possible to avoid withdrawal from the Two-Pillar Solution and not disregard the findings of the Davis Tax Committee.

### 4.4.2. SA excise tax consideration

An excise tax is levied on a certain type of goods or services, normally to make up for the market failure where an individual's actions have negative spillover effects for society.[133] Examples would be sin taxes on cigarettes, where the tax replenishes the fiscus in terms of health expenditures relating directly to smoking. In opposition to a sin tax, there are no known spillover effects of the digital economy, which creates doubt whether DST is an excise tax for reasons of Pigouvian nature, such as a fuel levy, to recompensate the state for environmental damage, or progressive, which taxes certain type of goods, such as a luxury tax.[134] DST doesn't appear to fall into these broad definitions.

Furthermore, the World Trade Organisation (WTO)[135] has issued a moratorium via the Declaration of Global Electronic Commerce, wherein members agreed to not levy customs duties on electronic transmissions. "The term 'electronic transmissions' is not defined,"[136] although it is deemed to encompass anything from software, emails, text messages, digital music, movies, video, etc.; however, DST Is not likely to fall under the provisions of the moratorium, as the moratorium is limited to formal 'customs duties', whereas DST is an internal tax.
The USA has also warned developing countries, including SA, who seek to remove the moratorium, that the removal thereof will have serious consequences for the growth of the digital sector. Even if the moratorium was lifted, it would still not solve the difficulty around administrating the collection of an excise tax.[137]

[133] Lowry, S. (2019). *Digital Services Taxes (DSTs): Policy and Economic Analysis.* Congressional Research Service.
[134] Analyst in Public Finance. (2013, August 26). *Federal Excise Taxes: An Introduction and General Analysis.* Congressional Research Service.
[135] *The WTO Moratorium on Customs Duties on Electronic Transmissions.* (2019).
[136] Supra note 136.
[137] Third World Network. (2021, March 5). *US warns over moves to discontinue moratorium on e-commerce duties.*

Therefore, SA cannot attempt to recover from excise tax what it requires in terms of missing tax on digital revenue streams as intended by DST until at least the moratorium is removed by the WTO.

### 4.4.3. Considerations for VAT

It was noted that since DST's construct is based on the taxation of supply, rather than supplier, VAT may be an alternative for SA to recover missing digital tax revenues rather than DST.[138]
The additional revenue stream that digital services will create for SA will require an assessment of the SA VAT Act, such as what digital revenues are included in the current VAT legislation in SA and what the DST intends to tax. SA could then incorporate these digital services into its VAT Act services and potentially address the VAT rates on these services, since SA charges a standard 15%[139] on all VAT services, whereas other countries have varying rates.

SA's VAT rate of 15% is lower than the EU average VAT rate of 21%. [140]From the SA 2021 budget,[141] VAT collections at 15% produce about R370.2b in taxes, or 27.11% of tax collections, which is the second highest tax revenue stream in the SA. Hypothetically, should the VAT rate be increased to the average EU rate of 21%, it will allow additional collection of revenues of R148.08b.

There appears enough room for further increasing the VAT rate in general in SA, or perhaps only on certain services, which appear on par with the rest of the world. For example, consumption of services such as telecommunications, broadcasting services and E-Services attract French VAT rates of between 2.1% and 20%, Poland between 5%-23% and the UK renders 20% on most services.[142]
However, increasing the VAT rate would have political consequences, whereas increasing VAT rates on certain services may be political as well as complicate VAT administration on collection. Also, if VAT rates apply to all businesses, local and foreign, it would be considered perhaps unfair to local businesses, who also pay income tax at a domestic level.

But the introduction of VAT, or an increased VAT rate, on digital services, may be a faster solution than waiting for final worldwide consensus since there is no guarantee that Two-Pillar Solutions' consensus implementation into domestic law will be ready by 2023.[143] Raising a VAT rate, or

[138] Supra note 93.
[139] South African Revenue Services. (2021, August 30). *Taxation in South Africa.*
[140] Asen, E. (2020, December 9). *Corporate Tax Rates around the World, 2020*.
[141] Supra note 30.
[142] European Commission. (n.d.). *European Commission*.
[143] National Treasury : Republic of South Africa. (2022). *Budget Review 2022*. Pretoria: National Treasury : Republic of South Africa.

increasing an existing VAT rate on digital services, may provide a solution for SA to remain a signatory to the Two-Pillar Solution and avoid potential negative trade backlash, especially by the USA. It may also resolve the potential non-taxation issue of digital revenues currently below the £20b Pillar One threshold.
SA could then still apply a jurisdictional tax rate in terms of Amount A, choose not to or perhaps even elect a rate lower than its current corporate tax rate of 27%, as VAT already captures the missing digital tax revenue that Amount A intends to tax.

It should be considered that implementing a VAT rate or increasing an existing VAT rate on electronic services may be deemed similar to raising a turnover tax on digital services, should this option be exercised by SA.

**4.5. Conclusion**

Taxing of missing digital revenues is necessary to be implemented soonest by SA, should it reduce the leaking of missing digital tax revenues while awaiting to implement final global consensus. There is no guarantee the consensus will be achieved and implemented by 2023.
Being a signatory to the Two-Pillar Solution, it would be appropriate for SA to remain committed to implementing a global solution and thereby avoid any possible negative trade repercussions from implementing any form of DST.

VAT needs to be assessed further to determine if this will effectively resolve the issues of taxing missing digital tax revenues at a later point in time, as well as provide more certainty on the amount SA will receive in terms of the complications around determining tax under Amount A. The implementation of a VAT rate on digital revenues or increasing the VAT rate where these services are in the scope of SA's VAT, should not be seen as similar to raising a DST in terms of SA's signing of the Two-Pillar. These will be discussed in the next chapter.

## 5. SA VAT CONSIDERATION FOR TAXING MISSING DIGITAL SERVICES REVENUES

### 5.1. Introduction

VAT is identified as the alternative for SA to raise tax on missing digital revenues, rather than pioneering new taxes such as DST and also, as a means to keep abreast of international tax laws.

DST has been argued by some as being a VAT in disguise.[144] As DST is levied on certain revenue, VAT is levied on the sale of goods/ services, which arguably is the same. Indirect taxes, such as VAT, on E-services, has proved to be much easier to levy.[145] A transaction tax, rather than a profit tax, in an e-commerce environment, would make sense.[146] Where DST is applied only to certain supplies of digital services (not the supplier), VAT on the other hand, is charged on services/ sales of goods at each production phase.

Similar to DST, VAT would be difficult to collect in countries from foreign MNEs, but the BEPS project has established guidelines for VAT collection on business-to-consumer cross-border transactions.[147] "The guidelines affirm that the country wherein the consumer has their normal place of residence has the right to collect VAT on remote supplies of services and intangibles."[148] "The OECD concluded that in countries implementing these measures, a significant number of suppliers comply by either registering in the VAT jurisdiction, collecting and paying tax on their remotely delivered services, or by setting up a PE in the country."[149] So far, over 50 countries have adopted rules in terms of these guidelines.[150]

In this chapter VAT will be assessed against the elements of a good tax to establish why VAT should be the proposed alternative, as well as what part of SA's VAT system could be improved by borrowing from other OECD countries' DST legislation, including the European VAT system, to successfully raise VAT on missing digital revenues. Electronic services that currently attract VAT in SA will also be compared to those revenues DST intends to tax, to determine if SA isn't already taxing

[144] Kennedy, J. (2019). Digital Services Taxes: A Bad Idea Whose Time Should Never Come. *Information Technology & Innovation Foundation*.
[145] Sheppard, L., & Arora, J. (2013). Adjusting Jurisdictional Concepts to Tax E-Commerce. *Tax analysts*, 7628-7630.
[146] Supra note 30.
[147] OECD. (2015). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report.* Paris: OECD Publishing.
[148] Supra note 148.
[149] Supra note 148.
[150] Supra note 93.

these digital revenues. A change in VAT rates on E-services from the 15% SA VAT, will also be considered.

First, a brief overview will be provided on SA's VAT Act to establish the groundwork for the above.

### 5.2. SA VAT overview

SA VAT was introduced by way of the Value-Added Tax Act, 89 of 1991 (VAT Act), replacing the sales tax system[151]. SA VAT is a broad-based multi-layered stage indirect tax on consumption and is destination-based, but provides relief for exports of goods and services, while levied on the importation of goods and services.[152]

Taxable supply that triggers VAT is made by a "vendor", or a person registered for VAT or required to do so under section 23 of the VAT Act.[153] "Person" refers to a natural person, public authority, municipality, company, body of persons (partnership), estate of deceased or insolvent person or a trust. Taxable supplies made by the person need to exceed R1m in the course of carrying out on all enterprises, including exempt supplies (certain services and goods that are exempt from VAT) and zero-rated (exports). Carrying on of an enterprise refers to any enterprise or activity which is carried on continuously or regularly by any person wholly or partly established in SA, whether or not for profit.[154] Voluntary registration is also allowed if taxable supplies of R50 000 were incurred in the previous 12 months or if there is reasonable proof that R50 000 of taxable supplies will be incurred within reason in the next 12 months as per section 23.[155]

The taxable amount for levying of the SA VAT is consideration of the supply of the goods or service and includes a payment, act of forbearance made by the recipient of the supply or by any other person ("consideration"- Section 1, SA VAT Act).

Note that carrying out an enterprise includes the supply of electronic services by a person from a place in an export country, as included in the VAT Act with effect from 1 April 2015 where at least two of the following two conditions are met as per Section 1(b)vi):[156]

[151] Go, D., Kearney, M., Robinson, S., & Thierfelder, K. (2004). *An Analysis of South Africa's Value Added Taxation.* Indiana: Global Trade and Analysis Project.
[152] South African Revenue Services. (2021, November 10). *INTERPRETATION NOTE 70 (Issue 2).*
[153] Value-Added Tax Act No. 89 of 1991 (as amended). (n.d.). Republic of South Africa.
[154] Supra note 154.
[155] Supra note 154.
[156] Supra note 154.

"1. The recipient of electronic services is a resident of SA.
2. any payment to that person in respect of such electronic service originates from a bank registered or authorized in terms of the Banks Act, 1990 (Act No. 94 of 1990); and/or
3. the recipient of those electronic services has a business address, residential address or postal address in the Republic."

Electronic services comprise a list of services that should be compared to services DST legislations implemented taxation on to date to understand if SA has been taxing these services with its VAT legislation and if there are services left untaxed that could recover some of the missing digital tax in SA.
From the above, the R1m threshold for registration of foreign (export) countries is considerably lower than Pillar One. In addition, SA has already taxing electronic services since April 2015. These electronic services require comparison to those digital revenues DST intends to tax, to establish grounding if an increase in VAT rate of those services could provide a solution for SA in terms of taxing missing digital revenues.

**5.3. SA VAT on electronic services vs DST: Fairness**

A first consideration for a VAT is that VAT has the same threshold of registration for both local and foreign suppliers of electronic services. Since VAT is charged at a flat 15% on all services and goods in SA, a change in the VAT rate for foreign MNEs may require further consideration.

*Difference in VAT rates*
In the EU, VAT is charged at varying rates depending on whether the service is telecommunications, broadcasting or E-services. UK charges 20% on all of these services, significantly higher than SA, save e-publications, which are charged at 0%. France charges 20% on all of these services, but on television streaming services raises 10%, 5.5% on e-books and 2.1% on e-newspapers.[157]

Abramovsky, Phillips and Warwick indicate that variable tax rates, including 0% on select services and goods, increase administration and compliance burdens.[158] There may be equity and efficiency reasons to depart from neutrality, such as when consumers move to informal traders who do not

[157] Supra note 143.
[158] Abramovsky, L., Phllips, D., & Warwick, R. (2017). *Redistribution, efficiency and the design of VAT: a review of the theory and literature.* The Institute for Fiscal Studies.

comply with their tax obligations, then states may want to reduce rates on these types of goods or services.
It is also considered that multiple VAT rates for different products and services create scope for misclassification fraud.[159]

In addition to the above, the increase of the VAT rate to MNEs could be seen as a disguise of a similar tax as DST, which the Two-Pillar Solution prohibits. To argue this in terms of the increase in taxes to MNEs, it should be considered that even if the VAT rate on these electronic services is increased by SA by say between 1% to 3% (as per ATAF proposal), the Two-Pillar will inevitably increase MNE's effective tax rate, as pointed out by Richter.[160]
Likewise, should it be argued that the increase of the VAT rate on electronic only to foreign MNEs is discriminatory, SA could argue again that the MNE's effective tax rates would increase regardless under the Two-Pillar Solution. Since foreign MNEs won't have a tax nexus to the state in which the services are rendered, whereas local businesses would, the raising of VAT rates on electronic services would not be seen as discriminatory, as discussed in 3.2.2.

### 5.4. SA VAT on electronic services vs DST: Neutrality

VAT is arguably the superior alternative economically to a DST-type tax. VAT doesn't distort business production decisions[161] (that is, printed advertising vs digital advertising will be taxed the same), and VAT doesn't cascade, or add cost to the supply value chain in terms of taxes. It can be applied efficiently in a neutral way to the digital economy. The above is stated having kept in mind that a singular VAT rate needs to be applied to all services – i.e., SA's VAT rate at 15% is applied to all goods and services. If different goods and services are charged different VAT rates, the concept of neutrality comes into question. That is to say, if digital advertising attracted a rate of 10% versus the current standard rate for all goods and services in SA of 15%, then it would be considered unequal. But it needs to be considered again that the DST intends to recover missing taxes, which could be achieved by increasing the VAT rate on these services.

Following international trends in Europe by categorizing E-Services for VAT purposes brings the treatment of business-to-business (B2B) and business-to-consumer (B2C) transactions (if the reverse

[159] Keen, M., & Smith, S. (2007, February). *VAT Fraud and Evasion: What Do We Know, and What Can be Done?* Washington DC: International Monetary Fund.
[160] Richter, W. (2022, April 15). *Will Pillar 1 Trigger a Race to the Top on Corporate Tax Rates?*
[161] Carter, A. (2013). *Key issues and debates in VAT, SME taxation and the tax treatment of the financial sector.* International Tax Dialogue.

charge is considered) into discussion. Although B2B and B2C are recommended by the OECD to avoid unnecessary compliance issue by suppliers,[162] in principle, it violates the OECD principle of neutrality based on cashflow benefit, which can be illustrated as follows:[163]
"A local SA VAT registered business acquires a service from a foreign supplier. The foreign supplier is not required to register for VAT as a B2B and B2C distinction has been made" (if the reverse charge mechanism was applied in SA). Also, the acquisition falls outside the definition of "imported services" as the recipient is acquiring the service in the course of his enterprise to make taxable supplies." The recipient of the service would therefore not pay 15% VAT as the reverse charge mechanism would apply.

"By comparison, an SA VAT-registered business acquires a service from a local SA supplier. The local supplier is required to be registered for VAT and therefore, to levy VAT at 15% on the supply.
The recipient acquires the service including VAT at 15%. The recipient will then claim an input tax deduction in respect of the acquisition on its next VAT return. Depending on the submission requirement for vendors, if the recipient's VAT submission period is June / July and the service was acquired in June, the recipient will have to wait until the submission of its June/July VAT return in August to claim the input tax deduction." [164]

"As such, the SA customer will have a cash flow motivation to transact with a foreign supplier as it will not have to wait" to obtain the input tax deduction benefit, should a reverse charge mechanism apply.[165]
This contravenes the principle of neutrality as it will be to the advantage of the recipient of the service to acquire the service from a foreign supplier to avoid waiting to claim the input VAT back on the recipient's tax return. The B2B and B2C systems may be prevalent in the EU on cross-border transactions, but this would reflect the age of the VAT system in Europe and not necessarily a modern VAT system.[166] An argument for a B2B system in SA is that the B2B transactions would be tax neutral and deem VAT registration in SA unnecessary; however, local business transactions in SA may also be tax neutral if considered inputs on supply claimed back. But if B2B transactions from foreign suppliers are therefore not required to register for VAT in SA, then local suppliers may argue

[162] The Davis Tax Committee. (2015). *First Interim Report on Value- Added Taxation For the Minister of Finance.* The Davis Tax Committee.
[163] Supra note 163.
[164] South African Revenue Services. (Accessed 11 March 2022). *Tax periods for VAT vendors.*
[165] Supra note 163.
[166] Supra note 163.

they should also be allowed not to register for VAT purposes. This would result in a great impact on local VAT revenue collections.[167]

### 5.5. SA VAT on electronic services vs DST: Efficiency

SA has collected an additional R2b in additional tax revenues in its first four years of collection.[168] In terms of the cost of the collection of the VAT, SA has shifted a lot of focus on the collection of revenues from electronic services and set up a division to review the sector and ensure compliance.[169] This division pursues the SA Reserve Bank and local businesses to identify suppliers.[170] Not implementing a reverse charge therefore increases the cost around administration as per the recommendations by the Davis Tax Committee; however, the implementation of a reverse charge on VAT collection would not be in the interest of SA's VAT collection in terms of neutrality even though it may be considered more efficient.

"Before 1 April 2019, the onus was on the South African recipient of electronic services provided from abroad, to declare and pay VAT to South African Revenue Services. The onus of compliance has therefore been shifted from the customer receiving the services to the foreign supplier providing the services," [171] which appears no different than DST.

Should SA see VAT as an avenue to recover missing digital services, it should first consider which of the revenues that DST intend to tax are currently included in its VAT tax base. Therefore, a summary of electronic services included in the SA VAT Act and a comparison to DST implemented by France and the UK will outline whether more could be done by SA to include these services in its definition of electronic services:

[167] Supra note 163.
[168] Supra note 14.
[169] Staff Writer. (2021, September 19). *SARS has set up a specific division to go after this type of tax*.
[170] Supra note 170.
[171] Bramwell, R., & Sommer, D. (2019, November 8). VAT in South Africa: legislation changes for electronic services.

| | SA | UK | FRANCE |
|---|---|---|---|
| | VAT | DST | DST |
| Educational services. | 15%[172] | 2%* | 3% |
| Games, such as games of chance, interactive games, electronic betting, etc. | 15% | X | 3% |
| Auction services. | 15% | X | 3%[173] |
| Online advertising or provision of advertising space. | 15% | 2%[174] | 3%[175] |
| Online shopping portals. | 15% | X | 3%[176] |
| Web-based broadcasting. | 15% | X | X |
| Access to download e-books, audiovisual content, still images, music or films. | 15% | 2%* | 3%/X*** |
| Access to blogs, journals, magazines, newspapers, games, publications, social & professional networking, webcasts, websites, webinars, web applications and web series. | 15% | 2%* | X |
| Website hosting, data warehousing and application hosting. | 15% | X | X |
| Downloads of or access to software | 15% | X | 3%/X*** |
| Software applications ("apps") downloaded by users on mobile devices. | 15% | 2%[177] | 3%[178] |
| Software applications allowing users to provide sharing services Such as ridesharing and accommodation. | 15% | 2%[179] | 3%[180] |
| Supplies of electronic services where the non-resident company supplies procured services to the resident company and the non-resident and resident company form part of the same "group of companies". | 15% | X | X |
| Online booking services. | 15% | 2% | 3%/X*** |
| On-line automated maintenance of programmes. | 15% | 2%[181] | X |

[172] Except for educational services provided by a person regulated by an educational authority.
[173] Tax@hand. (2020, October 4). *Draft DST guidelines published.*
[174] Supra note 69.
[175] Supra note 174.
[176] Supra note 174.
[177] Supra note 69. Should be determined if the service directly or indirectly generates revenue.
[178] Supra note 174.
[179] Supra note 69. Should be determined if the service directly or indirectly generates revenue.
[180] Supra note 174.
[181] Supra note 69. Should be determined if the service directly or indirectly generates revenue.

| | | | |
|---|---|---|---|
| Distance maintenance of programmes and equipment. | 15% | 2%182 | X |
| Internet search engine. | 15% | 2%183** | 3%/X*** |
| Telecommunications | X | X | X |
| Online marketplaces. | 15% | 2%184 | 3%185 |

**When activity falls in the scope of digital service activities as provided for social media, internet search engines or online marketplace.*[186]

***Internal company search engines are excluded.*[187]

****When the supplier of the content is owned by the operator through a digital interface, digital intermediation must be ancillary to the supply of these services.*

From the list, it appears that the electronic services as outlined in the SA VAT Act include the majority of services DST is levied on in terms of current DST legislation enacted in the UK and France and includes services such as web-based broadcasting website hosting, data warehousing and application hosting. Telecommunication services are excluded from both DSTs and SA VAT.

SA could therefore recover missing digital revenues by increasing the VAT rates on services that the DST intends to tax. This could be done by raising the VAT rate on these electronic services by between 1% to 3% (as per ATAF DST proposal) on the supply of electronic services by a person from a place in an export country, under the definition of an enterprise, to exclude domestic suppliers of the service from having a similar VAT increase (as discussed in 5.3.).

**5.6. SA VAT on electronic services vs DST: Certainty and Simplicity**

DST's value of the services will be determined from the payment of the services, so there is no deemed supply in cases where underlying user participation creates value that cannot be calculated in a monetary value. This agrees with UK[188] and France DST,[189] where there is no deemed revenue on

[182] Supra note 69. Should be determined if the service directly or indirectly generates revenue.
[183] Supra note 69.
[184] Supra note 69.
[185] Supra note 174.
[186] Supra note 69.
[187] Supra note 69.
[188] Supra note 69.
[189] Ernst & Young. (2020, April 13). France issues comprehensive draft guidance on digital services tax.

value creation in events that do not reflect monetary value. This simplifies the rules of determining the value to an extent for DST, matching the simplicity of VAT, which will be considered below.

*Value creation through user participation*

Having a brief look at EU VAT laws if there is deemed monetary value in the underlying transaction, it is noted that the EU VAT Directive was updated with the term 'electronic supply of services' (ESS) effective from 2015,[190] and a list of services was included that falls under the category of ESS,[191] which subjected transactions to VAT at their destination. In EU case law it is provided that there must be a direct link between service provided and consideration received,[192] as well as a legal relationship between the supplier and the recipient.[193] User data doesn't qualify as consideration, based on the *Pavlína Baštová*[194] case, wherein the "benefits derived from participation of a horse in a race, such as publicity or an increase in the value of the horse, were not regarded as consideration for the supply of a horse by the owner to the race organizer because those benefits are not easy to be ascertained and depend on the result of the race."[195]

The opinions of the EU VAT Committee are not binding; however, no EU states are applying VAT on these digitalized services currently.[196] Therefore, there is no double taxation on the 'barter transaction' for VAT or DST purposes.

Similarly, according to DST Directive par. 25,[197] DST should not apply to transactions where digital content or digital services are not supplied in exchange for a price.

*EU complications on the territorial scope of VAT*

A look at the EU VAT legislation will give further insight into SA VAT's simplicity in this regard.

For EU "VAT purposes, B2B supplies are taxed according to the destination principle (where the customer is established), while in terms of B2C, transactions are levied at origin (where the supplier is located); however, EU VAT legislation recognizes the use of the service as a factor to determine the place of taxation."[198] Even though it is an exception to the rule the "effective use and

[190] The Council of the European Union. (2006, November 28). *COUNCIL IMPLEMENTING REGULATION (EU) No 282/2011 of 15 March 2011 laying fown implementing measures for the Directive 2006/112/EC on the common system of value added tax (recast).*

[191] Supra note 191.

[192] Zegarra, B. (2020). *The Interaction between VAT and the Digital Services Tax Regime in Market Jurisdictions: Is the DST Filling the Gap Regarding the Taxation of the Digital Economy?* IBFD.

[193] Supra note 193.

[194] Odvolací finanční ředitelství v. Pavlína Baštová, C-431/15 (ECJ, Fourth Chamber November 10, 2016).

[195] Supra note 193.

[196] Supra note 193.

[197] European Union. (2019, May 20). *DIRECTIVE (EU) 2019/770 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of May 2019 on the certain aspects concerning contracts for the supply of digital content and digital services (Text with EEA relevance).*

[198] Supra note 193.

enjoyment" provision for, if in terms of B2C ESS, if the "place of supply is in the EU, but the "effective use and enjoyment" is outside the EU, then the place of supply shall be situated outside the EU."[199]

Moreover, DST is charged on services used, whereas B2C ESS VAT is the place where the customer is located, which may not always be the same, but with the effective use and enjoyment provision, it may result in VAT and DST levied at the same place. [200]

From the above, the non-distinction in SA rules of B2B and B2C simplifies the VAT collection in terms of determining the place of supply and in terms of SA's definition of electronic services, two of three conditions need to apply, the recipient is an SA resident, payment is made from an SA bank or the recipient has an SA business, residential or postal address, the supply is (in principle) subject to SA VAT (if the supplier must be registered as an SA VAT vendor).[201]

*The difference in the calculation of DST*

DST provides relief to loss-making companies.[202] Businesses will also be able to choose a different calculation if the business has a lower operating margin or a loss so as not to have a disproportionate effect on business. A business can elect to apply this alternative basis of charge against each digital service activity it creates revenues from, or neither, but not in aggregate, which overcomplicates the calculation of the DST. SA VAT, on the other hand, does not provide alternative calculations for loss-making entities, as the VAT is based on consumption only.

### 5.7. SA VAT on electronic services vs DST: Flexibility

By way of implementing a VAT on electronic services, SA has the means to add definitions to its list of services on which an SA VAT can be levied, and in terms of the SA's signing of the Two Pillar commitment, there is no reason why changes couldn't be implemented quite easily in the ever-changing developments in technology and commerce.

Should SA decide on a higher VAT rate on electronic services for foreign MNEs by updating its VAT Act accordingly, SA could earn revenue from these digital services sooner than the implementation Two-Pillar Solution, which timelines of implementation seem uncertain. If Two-Pillar is introduced,

[199] Supra note 193.
[200] Supra note 193.
[201] Botes, M. (2021). South Africa - Value Added Tax. IBFD.
[202] IBFD. (2021, November 1). *United Kingdom - Digital Taxation Monitor*.

SA could decide to implement the split corporate tax rate at the same rate as SA's corporate tax rate, or possibly at 0%, should SA deem that the higher VAT rate with a much lower threshold captures enough in terms of previously missed digital revenues.

**5.8. Conclusion**

SA has implemented a successful VAT on electronic services, which can be measured by the amount of VAT raised of R2b since implementation. If SA were to increase the VAT rate to export countries on electronic services, which we have shown matches closely the services DST intends to tax, SA could update the section of its VAT Act to only extend the increased VAT rate to export, or foreign, countries. SA would be able to calculate this amount with more certainty, which was a concern Kenya raised as to why it chose to have a DST on missing digital services.

Should SA remain committed to the Two-Pillar Solution's global consensus as indicated in SA's 2022 Budget Proposal, it will not lose missing digital revenues if the VAT rate increase is implemented, and the global consensus is not reached within timelines of implementation in 2023. SA would also remain within the recommended Davis Tax Committee findings not to pioneer a new tax.

Although the increase of the VAT rate of certain services may complicate revenue collections, it doesn't appear unusual in light of varying VAT rates overseas. The simplicity of VAT in comparison to Amount A incentivizes SA to perhaps lean towards a VAT in terms of Two-Pillar. SA could forego taxation rights on jurisdictional profits, as the small threshold of VAT registration of R1m opens up a larger pool to be taxed. The foregoing of taxation of jurisdictional profits would then entrench SA's defence that increased VAT rates should not be perceived as similar to DST.

## 6. CONCLUSION

It was found that the DST is required to tax missing digital revenues that are not captured in the correct state due to outdated taxation laws, which the DST attempts to address. Taxing these revenues could result in MNEs passing the tax on to customers, but local businesses would avoid DST as a result of DST's worldwide threshold. DST aims to tax revenue that escapes taxation due to outdated tax laws. As such, it aims to level the playing field, where local businesses would already be paying tax under domestic laws. DST doesn't appear unfair to MNEs who don't pay tax, whereas local businesses already are in the form of domestic corporate taxation.

The USA's discriminatory findings against DST, the signing of the Two-Pillar Solution and the recommendations of the Davis Tax Committee make the implementation of a DST for SA imprudent. But while SA is not implementing a global solution, SA is losing taxable digital revenues. Implementation of the Two-Pillar Solution may only be effective much later than 2023, given previous delays in global consensus. Even so, Pillar One's high £20b worldwide threshold could result in a large pool of digital revenue going untaxed.

DST is likely to add another layer of taxation on MNEs since DST is not a covered tax in tax treaties. Should SA still decide on a DST, there will not be relief available from double taxation, since the Two-Pillar Solution has been widely accepted by countries, which disallow DST or similar taxes. But Amount A will also increase the effective tax rate of MNEs as shown because Pillar One does not provide for a ceiling on taxation, which could increase to 95% of jurisdictional profits by states.

SA's best policy in terms of signing the Two-Pillar Solution and taxing the digital economy the fastest way should be by updating its VAT Act.

SA's VAT Act currently has an R1m threshold for both local and foreign suppliers. Therefore, to capture missing digital revenue, SA could increase the rate to foreign MNEs by between 1% to 3% (in line with ATAF's DST proposal). This would significantly reduce the digital revenues that escape taxation in Pillar One's £20b revenue threshold.

The increase of VAT rates on specific services could complicate VAT administration, but it does appear less complex than the calculation of Amount A. However an increase of VAT to foreign MNEs only could be seen as discriminatory and similar to a DST, which the Two-Pillar Solution disallows.

SA should argue that Amount A's taxation by foreign jurisdictions could easily lead to a split corporate tax rate of up to 95%, which would also be deemed discriminatory to MNEs. Another consideration is that due to the larger revenue pool available to tax by SA due to a lower VAT registration threshold of R1m, SA could forego taxation of Amount A, as it stands to gain more from an increased VAT rate on these foreign MNEs digital profits.

To conclude, an increase in the VAT rate on electronic services to foreign MNEs appears simpler, faster and more effective than DST and perhaps even the Two-Pillar Solution's Amount A.

## 7. BIBLIOGRAPHY

### PRIMARY SOURCES

#### Statutes and statutory instruments

*Art 107 Treaty on the Functioning of the European Union.* (1957). Rome: EU Member States.

#### European Union

European Commission. (2017, September 21). *A Fair and Efficient Tax System in the European Union for the Digital Single Market.* Brussels: European Commission. Retrieved from European Union: https://ec.europa.eu/taxation_customs/system/files/2017-09/communication_taxation_digital_single_market_en.pdf

*European Commission. (2018, March 21). Fair Taxation of the Digital Economy. Retrieved from European Commission: https://ec.europa.eu/taxation_customs/fair-taxation-digital-economy_en*

European Union. (2019, May 20). *DIRECTIVE (EU) 2019/770 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of May 2019 on the certain aspects concerning contracts for the supply of digital content and digital services (Text with EEA relevance).* Retrieved from EUR-Lex: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0770&from=EN

The Council of the European Union. (2006, November 28). *COUNCIL IMPLEMENTING REGULATION (EU) No 282/2011 of 15 March 2011 laying fown implementing measures for the Directive 2006/112/EC on the common system of value added tax (recast).* Retrieved from EUR-Lex: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0282&from=EN

**Law and case law**

Odvolací finanční ředitelství v. Pavlína Baštová, C-431/15 (ECJ, Fourth Chamber November 10, 2016).

Yates v GCA International Ltd, STC157 (UK High Court February 13, 1991).

Joined Cases T-778/16 and T-892/16, Ireland and Others v Commission, C-465/20 P (ECJ Seventh Chamber September 25, 2020)

**OECD**

OECD (2013), *Action Plan on Base Erosion and Profit Shifting,* OECD Publishing. Retrieved from OECD iLibrary: http://dx.doi.org/10.1787/9789264202719-en

OECD. (2015). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report.* Paris: OECD Publishing.

OECD. (2017). *Model Tax Convention on Income and on Capital: Condensed Version 2017.* OECD Publishing.

OECD. (October 2021). *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.* OECD/G20 Base Erosion and Profit Shifting Project.

**Other**

Álvarez-Martinez, M., Barrios, S., d'Andria, D., Gesualdo, M., Pontikakis, D., & Pycroft, J. (2016). *Working Paper: Modelling corporate tax reforms in the EU: New simulations with the CORTAX model.* Spain: Joint Research Centre (JRC), European Commission.

Basu, S. (2007). *Global Perspectives on E-Commerce Taxation Law.* Belfast: Ashgate
Dr Matthias Bauer. (2018). *Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions.* Brussels: European Centre for International Political Economy (ECIPE).

Ekkehart, R., Rust, A., & Vogel, K. (2015). *Klaus Vogel on double taxation conventions.* Netherlands: Alphen aan denRijn : Kluwer International.

IBFD. (2019). *The government presents bill on digital services tax.* News IBFD

Mengozzi, P. (2018, January 31). Opinion of Advocate General Mengozzi delivered on 31 January 2018 Case C-39/17 Lubrizol France SAS v Caisse nationale du Régime social des indépendants (RSI) participations extérieures. Retrieved from EUR-Lex: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62017CC0039.

P. Pistone et al. eds. (2019, September 25). Fundamentals of Taxation: An Introduction to Tax Policy, Tax Law and Tax Administration. Retrieved from IBFD: https://research-ibfd-org.ezproxy.uct.ac.za/#/doc?url=/document/pt_c02

**UK Government**

HMRC Treasury. (n.d.). *Budget 2019 Digital Services Tax*. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752172/DST_web.pdf

HMRC. (2020, March 19). *Digital Services Tax Manual*. Retrieved from Gov.uk: https://www.gov.uk/hmrc-internal-manuals/digital-services-tax**.**

Seely, A. (2022, February 15). *Digital Services Tax.* Retrieved from House of Commons Library: https://researchbriefings.files.parliament.uk/documents/CBP-8719/CBP-8719.pdf

**South African Government**

Department: International Relations and Cooperation Republic of South Africa. (Accessed 11 March 2022). *Overview of SA – USA Trade & Investment Relations.* Retrieved from https://pmg.org.za/files/160224AGOA.pptx

National Treasury: Republic of South Africa. (2022). Budget Review 2022. Pretoria: National Treasury: Republic of South Africa. Available at www.treasury.gov.za.

National Treasury: Republic of South Africa. (2021). Budget Review 2021. Pretoria: National Treasury: Republic of South Africa. Available at www.treasury.gov.za.

Parliament of the Republic of South Africa. (2020). *Tax Brief: Digital Economy and Taxation Policy Considerations.* Cape Town: Parliamentary Budget Office.

Republic of South Africa. (2020, January 15). Government Gazette. *Vol. 655 No. 42951*. Cape Town, South Africa.

Republic of South Africa. (2011, July 4). Government Gazette. Tax Administration Act, Vol/ 565, No. 35491. Cape Town, South Africa.

South African Revenue Services. (2021, August 30). *Taxation in South Africa.* Retrieved from SARS: https://www.sars.gov.za/wp-content/uploads/Ops/Guides/LAPD-Gen-G01-Taxation-in-South-Africa.pdf

South African Revenue Services. (2021, November 10). *INTERPRETATION NOTE 70 (Issue 2).* Retrieved from South African Revenue Services: https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2013-03-IN70-Supplies-made-for-no-consideration.pdf

South African Revenue Services. (2022, March 10). *Companies, Trusts and Small Business Corporations (SBC)*. Retrieved from South African Revenue Services: https://www.sars.gov.za/tax-rates/income-tax/companies-trusts-and-small-business-corporations-sbc/

South African Revenue Services. (Accessed 11 March 2022). *Tax periods for VAT vendors.* Retrieved from SARS: https://www.sars.gov.za/types-of-tax/value-added-tax/tax-periods-for-vat-vendors/#:~:text=2%20Calendar%20Months-,Under%20this%20category%2C%20a%20vendor%20is%20required%20to%20submit%20one,vendor%20falls%20within%20this%20category.

The Davis Tax Committee. (2015). *First Interim Report on Value-Added Taxation For the Minister of Finance.* The Davis Tax Committee.

The Davis Tax Committee. (2016). *Second Interim Report on Base Erosion and Profit Shifting (BEPS) in South Africa.* The Davis Tax Committee.

Value-Added Tax Act No. 89 of 1991 (as amended). (n.d.). Republic of South Africa.

**USA Government**

Office of the United States Trade Representative. (2021). *Section 301 Investigation Report on the United Kingdom's Digital Services Tax.* Office of the United States Trade Representative

Office of the United States Trade Representative. (2021, November 22). *USTR Welcomes Agreement with Turkey on Digital Services Taxes.* Retrieved from United States Trade Representative - Office of the President: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/november/ustr-welcomes-agreement-turkey-digital-services-taxes

African Growth and Opportunity Act (AGOA). Retrieved from Office of the United States Trade Representative: Executive Office of the President: https://ustr.gov/issue-areas/trade-development/preference-programs/african-growth-and-opportunity-act-agoa

Representative Office of the United States. (2020, July 16). *Notice of Action in the Section 301 Investigation of France's Digital Services Tax.* Retrieved from Federal Register: https://www.federalregister.gov/documents/2020/07/16/2020-15312/notice-of-action-in-the-section-301-investigation-of-frances-digital-services-tax

**SECONDARY SOURCES**

**Journals**

Abramovsky, L., Phillips, D., & Warwick, R. (2017). *Redistribution, efficiency and the design of VAT: a review of the theory and literature.* The Institute for Fiscal Studies.

Asen, E. (2020, December 9). Corporate Tax Rates around the World, 2020. Retrieved from Tax Foundation: https://taxfoundation.org/publications/corporate-tax-rates-around-the-world/

Asen, E. (2020, December 9). *Corporate Tax Rates around the World, 2020*. Retrieved from Tax Foundation: https://taxfoundation.org/publications/corporate-tax-rates-around-the-world/

Baugh, B., Ben-David, I., & Park, H. (2018). Can Taxes Shape an Industry? Evidence from the Implementation of the "Amazon Tax". *The Journal of Finance*.

Benedek, D., De Mooij, R., & Wingender, P. (2015). *Estimating VAT Pass Through.* International Monetary Fund Working Papers.

Brandstetter, P. (2011). *"Taxes Covered" - a Study of Article 2 of the OECD Model Tax Conventions.* Netherlands: IBFD.

Carter, A. (2013). *Key issues and debates in VAT, SME taxation and the tax treatment of the financial sector.* International Tax Dialogue.

Chand, V., Turina, A., & Ballivet, L. (2020). Profit Allocation within MNEs in Light of the Ongoing Digital Debate on Pillar I – A "2020 Compromise"? From Using A Facts and Circumstances Analysis or Allocation Keys to Predetermined Allocation Approaches. *World Tax Journal (Volume 12), No. 3.*

Du Plessis, I. (2012). Some Thoughts on the Interpretation of Tax Treaties in South Africa. *SA Mercantile Law Journal*, 31-52.

C. Elliffe, *The Brave (and Uncertain) New World of International Taxation under the 2020s Compromise*, 14 World Tax J. 2 (2022), Journal Articles & Opinion Pieces IBFD

Ernst & Young. (2020, April 13). France issues comprehensive draft guidance on digital services tax. Retrieved from EY: https://www.ey.com/en_gl/tax-alerts/france-issues-comprehensive-draft-guidance-on-digital-services-tax

Forsgren, C., Song, S., & Horváth, D. (2020, May 29). *Digital Services Taxes: Do They Comply with International Tax, Trade, and EU Law?* Retrieved from Tax Foundation: https://taxfoundation.org/france-digital-tax-international-tax-law-trade-law-eu-law/#_ftn6

Go, D., Kearney, M., Robinson, S., & Thierfelder, K. (2004). *An Analysis of South Africa's Value Added Taxation.* Indiana: Global Trade and Analysis Project.

Hohenwarter, D., Kofler, G., & Sinnig, J. (2019). Qualification of the Digital Services Tax Under Tax Treaties. *Integritax Volume 47: Issue 2*, pp. 140-147.

Keen, M., & Smith, S. (2007, February). *VAT Fraud and Evasion: What Do We Know, and What Can Be Done?* Washington DC: International Monetary Fund.

Lowry, S. (2019). *Digital Services Taxes (DSTs): Policy and Economic Analysis.* Congressional Research Service.

Pellefigue, J. (2019). *The French Digital Service Tax An Economic Impact Assessment.* Deloitte

Price Waterhouse Coopers. (2021, December 8). *South Africa - Corporate - Taxes on corporate income*. Retrieved from PWC - Worldwide Tax Summaries: https://taxsummaries.pwc.com/south-africa/corporate/taxes-on-corporate-income#:~:text=In%20South%20Africa%2C%20the%20CIT,or%20after%201%20April%20202 2.

Price Waterhouse Coopers. (n.d.). *BEPS 2.0 - Pillar One and Pillar Two: A Middle East perspective*. Retrieved from Price Waterhouse Coopers: https://www.pwc.com/m1/en/services/tax/transfer-pricing/beps-pillar-one-and-pillar-two-middle-east-perspective.html

Sheppard, L., & Arora, J. (2013). Adjusting Jurisdictional Concepts to Tax E-Commerce. *Tax analysts*, 7628-7630.

Tax@hand. (2020, October 4). *Draft DST guidelines published.* Retrieved from https://www.taxathand.com/article/13348/France/2020/Draft-DST-guidelines-published

van Horzen, F., & van Esdonk, A. (2018). European Union - Proposed 3% Digital Services Tax. International Transfer Pricing Journal (Volume 25), No4.

Warneke, David. (2019). *Comments on the Draft Taxation Laws Amendment Bill and Tax Administration Laws Amendment Bill 2019.* Cape Town: SAICA.

Zegarra, B. (2020). *The Interaction between VAT and the Digital Services Tax Regime in Market Jurisdictions: Is the DST Filling the Gap Regarding the Taxation of the Digital Economy?* IBFD.

**Websites and newspaper**

Ali, H. (2022, April 26). *U.K. Collects 380 Million Pounds from Digital Tax (Correct)*. Retrieved from Bloomberg Tax: https://news.bloombergtax.com/daily-tax-report-international/u-k-digital-service-tax-raises-10-million-pounds-above-forecast

Amaro, S. (2020, January 23). *French finance minister says the battle over digital tax is not over yet. Retrieved from CNBC:* https://www.cnbc.com/2020/01/22/davos-2020-france-and-us-have-some-work-still-to-do-on-digital-tax.html

C Collen. (2020, June 9). *Covid-19 accelerates e-commerce boom*. Retrieved from Fruitnet: http://www.fruitnet.com/eurofruit/article/182019/covid-19-accelerates-e-commerce-boom

Goodwin, T. (2015, March 4). *The Battle Is For The Customer Interface*. Retrieved from TechCrunch+: https://techcrunch.com/2015/03/03/in-the-age-of-disintermediation-the-battle-is-all-for-the-customer-interface/

Jon Swartz. (2020, February 4). *Amazon is officially worth $1 trillion, joining other tech titans*. Retrieved from: Marketwatch: https://www.marketwatch.com/story/amazon-is-officially-worth-1-trillion-joining-other-tech-titans-2020-02-04

Kennedy, J. (2019). Digital Services Taxes: A Bad Idea Whose Time Should Never Come. *Information Technology & Innovation Foundation*.

L Thomas. (2020, May 14). *France to impose digital tax this year regardless of any new international levy*. Retrieved from Reuters: https://www.reuters.com/article/us-france-digital-tax/france-to-impose-digital-tax-this-year-regardless-of-any-new-international-levy-idUSKBN22Q25B

La Monica, P. R. (2020, February 11). *The S&P 500 is really the S&P 5. Big tech dominates the index.* Retrieved from CNN Business: https://edition.cnn.com/2020/02/10/investing/sp-500-tech-stocks/index.html

M Ngalonkulu. (2019, December 30). *E-commerce sales in SA grow 20-30% annually.* Retrieved from Moneyweb.co.za: https://www.moneyweb.co.za/news/south-africa/e-commerce-sales-in-sa-grow-20-35-annually/

Mureithi, C. (2021, November 2). *Why Kenya and Nigeria haven't agreed to a historic global corporate tax deal.* Retrieved from Quartz Africa: https://qz.com/africa/2082754/why-kenya-and-nigeria-havent-agreed-to-global-corporate-tax-deal/

Nicas, J. (2020, August 19). *Apple Reaches $2 Trillion, Punctuating Big Tech's Grip.* Retrieved from New York Times: https://www.nytimes.com/2020/08/19/technology/apple-2-trillion.html#:~:text=On%20Wednesday%2C%20Apple%20became%20the,and%20ended%20the%20day%20flat

Ohuocha, Chijioke. (2022). *Nigeria plans to tax digital non-resident firms at 6% of turnover.* Abuja: Reuters.

On Audience. (n.d.). *What is Real time bidding (RTB) - definition*. Retrieved from onaudience: https://www.onaudience.com/resources/what-is-real-time-bidding-rtb-definition/

Reuters Staff. (2020, December 31). *Britain says decision to suspend U.S. tariffs already paying off*. Retrieved from Reuters: https://www.reuters.com/article/us-usa-eu-trade-britain/britain-says-decision-to-suspend-u-s-tariffs-already-paying-off-idUSKBN2950V0

Shalal, A. (2021, January 7). *U.S. suspends French tariffs over digital services tax*. Retrieved from Reuters: https://www.reuters.com/article/us-usa-trade-france-idUSKBN29C2KQ

Silver, C. (202, December 24). *The Top 25 Economies in the World*. Retrieved from Investopedia: https://www.investopedia.com/insights/worlds-top-economies/

Staff Writer. (2014, February 11). *Naspers hits out at Google over tax dodge*. Retrieved from Businesstech: https://businesstech.co.za/news/internet/52972/naspers-hits-out-at-google-over-tax-dodge/

Staff writer. (2018, March 22). *The highest income tax rates in the world – including South Africa.* Retrieved from Business Tech: https://businesstech.co.za/news/finance/233199/the-highest-income-tax-rates-in-the-world-including-south-africa/

Staff Writer. (2021, July 31). *A new global tax is in the pipeline – how it will impact South Africa*. Retrieved from BusinessTech: https://businesstech.co.za/news/finance/509874/a-new-global-tax-is-in-the-pipeline-how-it-will-impact-south-africa/

Third World Network. (2021, March 5). *US warns over moves to discontinue moratorium on e-commerce duties.* Retrieved from TWN: https://www.twn.my/title2/wto.info/2021/ti210307.htm

Van de Casteele, M. (2016, December 1). *VTC : Uber entend les chauffeurs et monte ses prix !* Retrieved from LaTribune: https://www.latribune.fr/entreprises-finance/services/transport-logistique/vtc-uber-entend-les-chauffeurs-et-monte-ses-prix-621305.html

Vincent, J. (2020, September 2). Apple, Google, and Amazon respond to European tech taxes by passing on costs. Developers, ad buyers, and third-party sellers are all affected. Retrieved from The Verge: https://www.theverge.com/2020/9/2/21418114/european-uk-digital-tax-services-apple-google-amazon-raise-prices.

**EU Commission**

European Commission. (2018). *Proposal for a Council Directive on the common system of a digital service tax on revenues resulting from the provision of certain digital services* {SWD(2018) 81} - {SWD(2018) 82}. Brussels: European Commission.

European Commission. (2018). *Questions and Answers on a Fair and Efficient Tax System in the EU for the Digital Single Market.* Brussels: European Commission.

European Commission. (n.d.). *European Commission*. Retrieved from Current national VAT rates: https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/vat-rates_en

**African Tax Administration Forum**

African Tax Administration Forum. (2020). *ATAF Proposes a Digital Services Tax Rate Between 1% and 3% for Member Countries*. IBFD.

African Tax Administration Forum. (2020). *Suggested Approach to Drafting Digital Services Tax Legislation.* ATAF.

African Tax Administration Forum. (2022, March 2022). *ATAF Flagship Publication - AFRICAN TAX OUTLOOK (ATO).* Retrieved from https://www.ataftax.org/african-tax-outlook

African Tax Administration Forum. (5 July 2021). *ATAF Issues Statement on Revised Two-Pillar Solution on Taxing Digital Economy.* IBFD

**OECD**

OECD. (1998). *Electronic Commerce: Taxation Framework Conditions.* Ottawa: Committee on Fiscal Affairs.

OECD. (2018). *Tax Challenges Arising from Digitalisation– Interim Report 2018: Inclusive Framework on BEPS.* Paris: OECD Publishing

OECD. (2019, October 9). *OECD invites public input on the Secretariat Proposal for a "Unified Approach" under Pillar One*. Retrieved from OECD: http://www.oecd.org/tax/beps/oecd-invites-public-input-on-the-secretariat-proposal-for-a-unified-approach-under-pillar-one.htm

OECD. (2004). *Compliance Risk Management: Managing and Improving Tax Compliance.* Paris: Committee on Fiscal Affairs.

OECD. (2020, January). *Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy – January 2020*. Retrieved from: www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf

OECD. (2021, August 31). *Members of the OECD/G20 Inclusive Framework on BEPS joining the Statement on a Two–Pillar Solution to Address the Tax.* Retrieved from OECD: https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-members-joining-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-july-2021.pdf

OECD/AUG/ATAF. (December 2021). *Revenue Statistics in Africa 2021.* Paris: OECD Publishing

**World Trade Organisation**

Communication from India and South Africa. (2020, March 10). *Work Programme On Electronic Commerce*. Retrieved from World Trade Organisation:

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?Language=E&CatalogueIdList=264789,264692,263985,262610,262031,261632,261432,261434,259951,259601&CurrentCatalogueIdIndex=4&FullTextHash=371857150

*The WTO Moratorium on Customs Duties on Electronic Transmissions.* (2019). Retrieved from International Chamber of Commerce: https://iccwbo.org/content/uploads/sites/3/2019/11/2019-icc-wto-moratorium-custom-duties.pdf

**Other**

Britannica Academic. (2021, November 6). *"ARPANET."* Retrieved from Encyclopædia Britannica: academic-eb-com.ezproxy.uct.ac.za/levels/collegiate/article/ARPANET/608749

CFE ECJ Task Force. (2021, November 7). *ECJ-TF 3/2020 on the General Court Decisions of 15 July 2020 in Ireland v. Commission and Apple v. Commission.* Journal Articles & Opinion Pieces IBFD. Retrieved from IBFD: https://research-ibfd-org.ezproxy.uct.ac.za/#/doc?url=/document/et_2021_02_cfe_1

Choi, W. (2021, January 11). *United States Concludes That Digital Service Taxes of India, Italy and Turkey Are Discriminatory*. Retrieved from IBFD: https://research-ibfd-org.ezproxy.uct.ac.za/#/doc?url=/data/tns/docs/html/tns_2021-01-11_us_2.html

Choi, W. (2021, January 15). *United States Concludes that Digital Service Taxes of Austria, Spain and United Kingdom Are Discriminatory*. Retrieved from IBFD: https://research-ibfd-org.ezproxy.uct.ac.za/#/doc?url=/data/tns/docs/html/tns_2021-01-15_us_8.html

IBFD. (2021). *Kenya Publishes Digital Service Tax Regulations.* IBFD News.

IBFD. (2021, November 1). *United Kingdom - Digital Taxation Monitor*. Retrieved from IBFD: https://research-ibfd-org.ezproxy.uct.ac.za/#/doc?url=/document/dtm_uk

IBFD. (2021, November 30). *Kenya - Digital Taxation Monitor.* Retrieved from IBFD: https://research-ibfd-org.ezproxy.uct.ac.za/#/doc?url=/collections/dtm/html/dtm_ke.html

IBFD. (2022, January 19). *Nigeria - Digital Taxation Monitor.* Retrieved from IBFD: https://research-ibfd-org.ezproxy.uct.ac.za/#/doc?url=/collections/dtm/html/dtm_ng.html

IBFD. (2022). Kenya - Government Proposes Increase of Digital Service Tax from 1.5% to 3%. IBFD