



In conversation with Deloitte Africa Tax & Legal Digital services tax in Africa

Executive summary

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The basic principles of taxation dates back thousands of years, with some of these taxes still being in force today in some form or another. Taxation has to evolve significantly to adapt to the changes, advancements and progression of structures in societies. The place we find ourselves in today, is no different. The COVID-19 environment has introduced new challenges for revenue authorities worldwide and tax authorities globally are repositioning traditional tax laws. Africa is no exception and with the release of the [Africa Tax Administration Forum's \(ATAF\) Suggested Approach to Drafting Digital Services Tax Legislation](#), ATAF members have been provided with a framework to enable them to draft their own legislation.

At our recent Deloitte Africa Transformative Tax Leaders Academy's virtual event, on digital services tax (DST) in Africa, participants were asked to describe DST in one or two words. The responses included; "fast moving and challenging", "the future", "grey area subject to double tax" and "uncertain"; which emphasises the ongoing flux and the discussions taking place globally to find an inclusive and fair approach.

A "fit for Africa" approach was at the forefront of the discussion during the webinar, highlighting Kenya, Nigeria and Zimbabwe's approaches to DST - African countries who have announced and/or implemented DST legislation in one form or another.

Key discussion points unpacked during the DST webinar:

1. The lack of nexus

The traditional international tax rules allocate taxing rights to a country where a non-resident enterprise creates sufficient physical presence in that country, i.e. the “physical nexus”. Where an entity has no, or very little, physical presence in a country there is no physical nexus and as a result no taxing rights arise. The Organisation for Economic Co-operation and Development (OECD) has for some time been discussing these tax challenges in the digital economy in order to find a global consensus-based solution.

With the rapid growth in the digital economy, propelled by the COVID-19 pandemic as well as the continuous growth and development of new online services, the projected amounts of sales being made online in Africa is worth billions of US dollars. African revenue authorities are thus becoming increasingly aware of value that is derived in-country with no corresponding tax revenue being collected. The view was expressed that countries are seeking a new nexus rule, unconstrained by a physical presence.

2. Why DST now and what do we call it?

The reason is simple, the digital economy is exploding, in the view of many countries, value is created in countries through user behaviour, and revenue authorities in the current economic climate are trying to find ways to close the revenue gap. In Africa, Nigeria, Kenya and Zimbabwe are some of the countries that have introduced DST legislation, either as part of the current corporate tax regime or as a separate tax. In each jurisdiction, submissions have been made to address challenges experienced with the legislation.

3. ATAF’s suggested approach

The [ATAF Suggested Approach to Drafting Digital Services Tax Legislation](#) is intended to provide African countries that are considering introducing a DST with a suggested structure and legislative content. The suggested approach draws from legislation enacted in other jurisdictions, lessons learnt and aims to provide a level of alignment and consistency throughout Africa.

The suggested approach emphasises the need that DST should not negatively impact the growth of the digital sector in African countries. It proposes that countries introduce minimum thresholds and a low percentage as DST is levied on gross revenue and is thus payable even where losses are made. In addition, the suggested approach allows for group reporting by one representative entity to ease the administrative burden in cases of companies forming part of the same group subject to DST in one jurisdiction.

A set-off provision is also included in the suggested approach, whereby a resident or a non-resident entity with a permanent establishment in the country, may take into account the DST paid when calculating the corporate income tax payable for that period, provided certain requirements are met.

ATAF recommends that taxing jurisdictions indicate that it will be an interim measure until such time as consensus is reached.

4. The European Union perspective

From an EU perspective, DST legislation has been introduced or announced in a number of jurisdictions, namely France, Italy, Austria, United Kingdom, Turkey and most recently Spain. Although there are similarities, the legislations in the various jurisdictions are not identical. This poses practical issues for digital services suppliers as filing requirements, dates for submission of returns and data set requirements differ, and as a result increases compliance costs.

Conclusion

ATAF's suggested approach is not law as tax is by its nature a sovereign matter and jurisdictions will need to enact their own legislation. In the absence of law, however, courts may refer to "soft law", such as the OECD standards and the ATAF approach document.

Articles and resources that would be of interest to you

Digital services tax in Africa – The journey so far

The economic slowdown naturally translates into declining revenues for tax authorities across the globe, which will most likely lead to revenue authorities across the world to look at other sources from which to collect taxes.

Subject matter experts, Norman Mekgoe and Mohamed Hassam, expect that the digital economy will be high on the list of many African revenue authorities as an untapped source of funds. Click [here](#) to read the full article

Draft digital services tax regulations issued

On 7 August 2020, the Kenyan Cabinet Secretary for National Treasury and Planning issued [draft regulations](#) containing details on the persons affected by and the scope of the recently introduced Kenyan digital services tax (DST), which is set to take effect as from 1 January 2021. [This article](#) summarises the key aspects of the draft DST regulations.

Deloitte Tax Atlas – DST, A global view on digital services taxes (DSTs). This [online portal](#) helps you keep track of the unilateral DSTs being implemented around the world. To request access, *and acknowledge that we may use and share your personal information according to our [Privacy Statement](#) with Deloitte UK for the purpose of requesting the creation of your user account*, please send your name, organisation, and email address to zadstatlas@deloitte.co.za.

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