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Marie-Louise Fehun Aren

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EXPLORING MINIMAL INDIRECT DIGITAL ECONOMY TAXATION AS A POST-COVID-19 ECONOMIC RECOVERY STRATEGY FOR AFRICAN REVENUE MOBILISATION

Marie-Louise Fehun Aren*

ABSTRACT

The COVID-19 pandemic and its aftermath continue to devastate most areas of society and continue to reveal inherent structural vulnerabilities in the economies, social, and health systems in countries. In addition, the Russia-Ukraine conflict of 2022 and the geopolitics of its resolution continue to create shocks across the globe- evidenced by rising inflation, increased sovereign debt level, recession, and reduced public expenditure among others. While many sectors of the economy were crippled by the back-to-back global economic shocks of the Covid-19 pandemic and the Russia-Ukraine conflict through reduced economic activities resulting in a global recession and reduced tax revenues for public expenditure, the digital economy has surprisingly boomed and continues to grow in this period of uncertainty. This has been directly attributed to the 'lure of the alternative', caused by the social and economic lockdowns imposed by countries, which pushed many persons and companies to explore the next available option- online platforms to conduct business. Although the rise in the use of digital platforms for business activities is commendable, this development has some implications for traditional business frameworks which in turn affects revenue mobilisation for funding public infrastructure projects and services. This is because, in Africa, the digital economy is not as

well-regulated as the traditional economy. This creates an avenue for tax evasion and avoidance, arising from the dynamic and complex nature of digital transactions. This challenge requires that urgent solutions be found for the effective taxation of the digital economy. There will be a need to review/reform economic and fiscal policies and laws to ensure a faster recovery from the economic effects of the COVID-19 pandemic. There would also be a need to create digital tax policies that are equitable for source and market jurisdictions and, lastly, there will be a need for cooperation in tax law and policies across Africa that capture the reality of the growth and ubiquitous presence of digital multinationals in Africa.

Keywords: Digital Economy; Digital Taxes; Tax Law & Policy; Post-COVID-19 Economic Recovery; African Development.

1. INTRODUCTION

The ongoing Russia-Ukraine conflict continues to have negative impacts on African economies through higher inflation, food insecurity, lower growth, financial market disruptions and fledging tax revenues from recession.[1] Before the conflict, Africa was badly hit by the negative impact of the pandemic manifesting as economic recession from reduced economic activities from the COVID-19 pandemic.[2] The economy of Nigeria and South Africa shrunk by 4.1 per cent

[1] The most visible effects of the war on Africa are inflation and spikes in food and energy costs including financial system instability. See David Mhlanga & Emmanuel Ndhlovu, 'The Implications of the Russia–Ukraine War on Sustainable Development Goals in Africa.' (2023) 16 (4) Fudan Journal of the Humanities and Social Sciences 435-454. See also, Ovigwe Eguegu, 'The Russia–Ukraine War: Implications for Africa' (2023) 343 SAIIA Occasional Papers 2, 26, 27

[2] John E Ataguba, 'COVID-19 pandemic, a war to be won understanding its economic implications for Africa.' (2020) 18 (3) Applied Health Economics and Health Policy 325, 328.

and 7.8 per cent, respectively.[3] COVID-19 triggered an economic recession in sub-Saharan Africa (SSA) and negatively impacted public revenues, with a tax-to-GDP ratio contraction of about ten per cent in about 22 African countries between 2019 and 2020.[4] A combination of the pandemic, unsustainable debt levels and the ongoing conflict continue to provoke national economic downturns, even as countries are working hard on maintaining the falling macroeconomic, socioeconomic and governance gains made before the back-to-back global shocks.[5] The shrinking economy and dwindling public revenue are changing the sovereign debt profile of many African countries.[6] Altogether, the multiple global crises derailed the growth trajectory in many African countries before the onset of the pandemic and the Russia-Ukraine War. Notwithstanding these challenges, the digital economy has fared well.

The national lockdown measures implemented by most governments to contain the pandemic spurred unprecedented growth in the e-commerce sectors by accelerating digital transformation and the growth of the digital economy.[7] This is because most businesses to keep afloat and meet the purchasing needs of their consumers, relied on digital trade and services to provide more goods and services, resulting in a 3 per cent rise

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3 World Bank Group, Global Economic Prospects (2021) 101-102.

4 African Union Commission/Organisation for Economic Cooperation and Develop ment, Report on Africa's Development Dynamics 2021 Digital Transformation for Quality Jobs (African Union, 2021) 21.

5 Justin Damien Guenette, Philip George Kenworthy and Collete Mari Wheeler, 'Implications of the War in Ukraine for the Global Economy' (2022) 10,20

6 African Report, 'African debt: What to watch in 2021 Africa Report' (The African Report Online, 9 February 2021). <https://www.theafricareport.com/64308/ african-debt-what-to-watch-in-2021/ >accessed May 27, 2021.

7 United Nations Commission for Trade and Development, 'How COVID-19 triggered the digital and e-commerce turning point' (UNCTAD News, 15 March 2021) <https:// unctad.org/news/how-covid-19-triggered-digital-and-e-commerce-turning-point>accessed 28 May 2021.

in online global retail trade from 14% in 2019, with figures projected to reach 22 per cent in 2024.[8] In sub-Saharan Africa, countries with a good digital ecosystem enjoyed a boom in digital trade during the lockdown period. Companies within the broader e-commerce ecosystem also experienced impressive growth. For instance, Paystack a financial payment company in Nigeria boasting of over 60,000 merchants across Africa, witnessed a fivefold increase in payment transaction volume compared to its pre-COVID-19 time.[9]The digital economy since the pandemic has become as important as the traditional physical economy.

Digital economic advancement has contributed immensely to wealth creation through the connection of businesses to the global market and digital technological productivity in record time.[10] However, the unprecedented growth of the digital economy is not without its challenges. Some of the problems that have come with the digital economy have created problems of tax revenue mobilisation for a lot of African countries- where it is quite difficult to capture the transaction flows from the digital economy of its omnipresent nature.[11] Also, the digital economy through a digital divide is technologically

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8 Daniela Coppola, 'Worldwide e-commerce share of retail sales 2015-2024' (Statista Online, 21 April 2021) <https://www.statista.com/statistics/534123/e-commerce-share-of-retail-sales-worldwide/> accessed 28 May 2021.

9 Oxford Business Group, 'E-commerce in sub-Saharan Africa: can Covid-19 growth be sustained?' (OBG online, 15 April 2021) <https://oxfordbusinessgroup.com/articles-interviews/e-commerce-in-sub-saharan-africa-can-covid-19-growth-be-sustained > accessed 20 May 2021

10 David J Teece, 'Profiting from innovation in the digital economy: Enabling technologies, standards, and licensing models in the wireless world.' (2018) 47 (8) Research policy 1367, 1387.

11 Favorite Y Mpofu, 'Taxation of the digital economy and direct digital service taxes: Opportunities, challenges, and implications for African countries.' (2022) 10 (9) Economies 219.

increasing inequalities.[12] The digital economy trivialises the rules of international tax eroding the permanent establishment rule.[13] This may unwittingly impair the redistributive fiscal policies of several SSA countries. To minimise the challenges of the internet while benefiting from its numerous developmental opportunities, the digital economy will require a new generation of balanced digital economic growth and fiscal policies. This paper explores the rise of the digital economy in Africa, the opportunities it presents in terms of potential for revenue generation, and the fiscal implications of the digital economy, and gives recommendations on the best fiscal policies to adopt in taxing the digital economy without limiting its growth.

2. THE RISE OF THE DIGITAL ECONOMY IN AFRICA

The digital economy is best described as an economy that uses digital technologies to facilitate economic transactions in trade and services. The digital economy comprises e-commerce platforms, internet banking, electronic payments, online advertising, and the like. The digital economy includes parts of a traditional economy that utilize emerging technologies leading to new markets, internet business, and daily operations arising from these.[14] Generally, studies have shown a positive relationship between digital technological use on economic

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[12] Especially in the least developing countries where more than half of its population experiences internet inaccessibility and shifting labour market dynamics from increased artificial intelligence usage. See UNCTAD (n 8).

[13] Arvid Aage Skaar, 'Permanent establishment: erosion of a tax treaty principle' (2020) 75, 1,5

[14] Brian Armstrong, 'The digital economy is becoming ordinary. Best we understand it' (The Conversation Online, 24 January 2020) <https://theconversation.com/the-digital-economy-is-becoming-ordinary-best-we-understand-it-130398> accessed 27 May 2021.

growth[15] Globally, the digital economy made its first appearance with the emergence of the World Wide Web for public use in the early 1990s.[16] The emergence of the internet and subsequently the digital economy is attributed to the trade liberalisation economic policies of many countries and resulting technological innovation.[17] Since then, more than 70 per cent of key economic sectors have gradually adopted digital technology by using broadband connectivity. Most businesses have turned to the use of digital technology to maximise efficiency and extend market outreach across multiple jurisdictions.[18] The use of digital technology in business transactions is often employed as a complementary model to the traditional mode of business transactions.

In Africa, the economic liberalisation policies of the 1980s, encouraged by international financial institutions like the IMF set the stage for the arrival of the digital economy.[19] In concrete terms nonetheless, the digital economy in Africa started in Cape Town, South Africa when Mark Shuttleworth built Thawte, a leading digital certification consulting company that provided trusted third-party secure connections to a server via

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15 K Prasad et al, 'Organizational climate, opportunities, challenges and psychological wellbeing of the remote working employees during COVID-19 pandemic: a general linear model approach regarding information technology industry in Hyderabad' (2020) 11 (4) Int. J. Adv. Res. Eng. Technol. 372, 389.

16 Don Tapscott, 'The digital economy: promise and peril in the age of networked intelligence' (1996) 10, 12

17 Edna Maeyen Solomon & Aaron van Klyton, The impact of digital technology usage on economic growth in Africa. (2020) 67 Utilities Policy 101104. < https://doi.org/10.1016/j.jup.2020.101104 > accessed 12 May 2021

18 Ying Liu & Ravi Aron. 'Organizational control, incentive contracts, and knowledge transfer in offshore business process outsourcing' (2014) 26 (1)Inf. Syst. Res 81, 99

19 Aaron C van Klyton, Said Rutabayiro-Ngoga and Lakmal Liyanage 'Chinese investment in the Sierra Leone telecommunications sector: international financial institutions, neoliberalism, and organisational fields' (2020) 47(164) Review of African Political Economy 220, 237

the internet in 1995. The digital certification service company provided the first ever full-security encrypted e-commerce web server commercially available outside of the United States, which was later sold to Verisign when Vodacom backed prepaid airtime.[20] This created a widespread movement to the rest of the continent in the 2000s, egged on by the deregulation and liberalisation of the telecommunications sector in most leading African economies such as Kenya, Côte d'Ivoire and Nigeria.[21] African economies deregulated and liberalised the telecommunications sector quite extensively.[22] Subsequent market forces following the telecom industry deregulation inspired telecommunications' infrastructural investment in Africa. The volume of mobile phone subscribers then steadily rose from the consistency in the telecom sector across Africa, from 247 million from 1998 to 2008 to 367 million subscribers by 2015, in addition to a broadband internet penetration rate from zero to 19 million between 2000 and 2010.[23]

The entry of digitization through the telecommunications sector had a growth effect on other sectors of the economy because of the various digital products available and their replication capability across SSA.[24] especially in the financial

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[20] Enu Afolayan, 'March Mark Shuttlesworth: Africa's first dot com millionaire' (Africa Me Online, 4 March 2017) <https://africa-me.com/mark-shuttleworth-africas-first-dot-com-millionaire/> accessed 2 April 2021.

[21] Supra note 18, Solomon and van Klyton THE IMPACT OF DIGITAL TECHNOLOGY USAGE ON ECONOMIC GROWTH IN AFRICA.

[22] Oladipo Olalekan David and Wynand Grobler 'Information and communication technology penetration level as an impetus for economic growth and development in Africa' (2020) 33 (1) Economic Research-Ekonomska Istraživanja 1394, 1418 and Eric MK Osiakwan, 'The KINGS of Africa's digital economy.' In Bitange Ndemo and Tim, Weiss (eds) Digital Kenya (Palgrave Macmillan 2021) 55, 92.

[23] Nathanael Ojong, 'Remittances, mobile phones, and informality: insights from Cameroon' (2016) 8(3) African Journal of Science, Technology, Innovation and Development 299, 308

[24] id

sector through the financial inclusion of mobile phone users in the provision of financial and digital services.[25] One of the leading countries in SSA taking the spotlight in digital financial inclusion is Kenya. Kenya had a 26 per cent inclusion rate in 2006 and in 2021 a whopping 83 per cent of the population has access to at least basic financial services.[26] Also, Kenya's innovative Equitel, a mobile virtual network operator from an alliance with Equity Bank and Airtel provides, various banking services on mobile devices, creating a widespread usage to remote areas that are still out of reach to other digital finance service providers resulting in a 22 per cent mobile money market share in five years.[27]

Since the onset of the pandemic and the national lockdown restrictions worldwide in 2020, digital solutions led to a greater expansion of the digital economy from a rise of e-commerce activities. In addition, digital companies and online retail platforms have experienced a rise in profits especially from grocery delivery services and online payment services. Jumia, Africa's biggest online retail platform founded in Nigeria reported an almost 50 per cent increase in its transactions in the first half of 2020. Also, Jumia's gross profit increased by 38% to €23.3 million in the second quarter of 2020 from €16.8 million in the second quarter of 2019 due to a surge in marketplace revenue.[28] While the COVID-19-inspired digital

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[25] Mike Chitavi, Lauren Cohen and Spencer PN Hagist, 'Kenya Is Becoming a Global Hub of FinTech Innovation' (Harvard Business Review Online February 18, 2021) <https://hbr.org/2021/02/kenya-is-becoming-a-global-hub-of-fintech-innovation > accessed 2 April 2021

[26] id

[27] id

[28] National Association of Securities Dealers Automated Quotations, Jumia Reports Second Quarter 2020 Results (NASDAQ Press Release, 12 August 2020) <https://www.nasdaq.com/press-release/jumia-reports-second-quarter-2020-results-2020-08-12> accessed 12 June 2020.

economic growth is impressive, it does not detract from the untapped opportunities in terms of economic growth and revenue generation opportunities especially in the digital economic space, as digital commerce continues to grow across SSA.

3. FISCAL OPPORTUNITIES PRESENT IN THE AFRICAN DIGITAL ECONOMY

3.1 Economic Growth.

The digital economy in Africa can potentially contribute $180 billion to Africa's gross domestic product (GDP) by 2025.[29] The main factors behind this contribution have also been reported to be innovative technology in internet connectivity, a growing urban population, a budding tech talent pool, a vibrant start-up ecosystem, and the creation of a digital single market under the African Continental Free Trade Area.[30] Despite the onset of the COVID-19 pandemic and the resultant economic restrictions caused by the pandemic, the digital economy in Africa remained resilient and grew from the shift of businesses from physical transactions to digital transactions, and the widespread digital solutions designed to respond to consumer needs.

Interestingly, the mobile technology sector is a seen as major contributor of value in the digital economy 8.6% of sub-Saharan Africa. GDP derived from mobile technologies and services, translated to a $144.1 billion gain.[31] Additionally, 3.5 million people were employed in the mobile sector, and the corresponding taxes from the employment contributed $15.6

[29] International Finance Cooperation and Google, 'e-Economy Report' (2020) 5, 20
[30] id
[31] id

billion to the tax purse. Increased connectivity has presented the opportunity for businesses and communities to advance with new technologies, paving the way for economic development. 144 mobile money services are available across Sub-Saharan Africa, serving more than 469 million registered accounts with daily transactions amounting to $1.25 billion by the end of 2019, compared to 298 million registered accounts for traditional bank accounts in 2017. The African Continental Free Trade Area (AfCFTA) provides a fertile ground for the growth of the digital economy in Africa through an African digital single market from connecting markets across the continent. The connection of markets has the potential to create bigger markets, making them attractive to investors. The AfCFTA if successfully implemented has the potential of contributing over 3.4 billion dollars to Africa's GDP.[32]

The digitalisation of the economy thus encourages economic growth across corporate and personal sectors because of the innovation, and improved digital skills which contribute to personal income and purchasing power. Increasing purchasing power has the potential of increasing demand, and in turn, supply, leading to bigger markets. However, despite the promising reports on the economic growth prospects of the digital economy, the gains from the digitalisation of economic activities are not widespread in Africa due to the differing levels of development status of African countries. Presently, about 28 per cent of Africans use the internet.[33] The overall impact of differing levels of digitalisation in the economic divide is that it creates a digital-inspired inequality that acts as a hindrance to leapfrogging Africa's sustainable development.

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[32] World Bank Group (n 4).

[33] Cristina Duarte, 'Africa goes global' (IMF Online 2021) < https://www.imf.org/external/pubs/ft/fandd/2021/03/africas-digital-future-after-COVID19-duarte.htm > accessed 10 June 2021.

3.2 Potential for Taxing Income derived from Digital Economic Activities.

The digital economy serves as a platform of sorts to produce intangible goods and services using information technology software that facilitates commercial transactions between different types of users. This interaction across many platforms and jurisdictions (in cross-border transactions) generates value that could be taxed especially in the jurisdiction where the activity contributing to the value creation is developed. The continuous and supported market development through digitalization across markets may contribute may enhancing the efficiency of value chains by opening new channels for value addition structural change. From a tax standpoint, this opens the opportunity for enhanced value chain structure to be marginally taxed.[34] Relying on the economic forecasts of dwindling public resources available to African countries in rebounding from the economic impact of the lockdown restrictions, it would be in the interest of African countries to tax the digital economy from its multi-faceted value streams. This would also give a chance for countries to expand their tax base in generating income without recourse to foreign credit and loans.

In addition, the digitalisation of economic transactions makes it easy for the revenue authorities to monitor sales and payment platforms from recorded transactions, unlike the informal sector where it is difficult to monitor transactions. Sales transactions could be monitored through a compulsory customer e-receipt system, obligating e-merchants to remit digital sales tax to the government, thereby increasing the public revenue for the development and financial health of the

[34] Saidu Mansur Adam, et al. 'Exploring E-commerce Opportunities for a Better International Trading and Tax Revenue Generation: A Review for Developing Countries.' (2022) 10, 3 Journal of Science Technology and Education 110

country which could increase investment into the country. However, it has been observed that it is difficult to ring-fence the digital economy for tax purposes because traditional businesses are also using digital technologies, in addition to the difficulty in determining the jurisdiction in which value creation occurs.[35]As a result of modern advances in ICT, many forms of business can conduct business transactions at a greater scale across numerous jurisdictions without a taxable presence.

4. FISCAL IMPLICATIONS FROM THE DIGITAL ECONOMY

The digital economy provides numerous benefits in terms of economic growth and revenue generation. Accompanying these benefits, however, are fiscal implications that give rise to several challenges in fiscal policy decisions. One of these challenges is that the digital economy provides a fertile ground for fiscal evasion due to the difficulty in detecting digital transactions especially for countries that lack the infrastructure and capacity to easily detect and monitor digital transactions. This section thus examines some of the fiscal implications raised by the digital economy, especially in cross-border digital corporate taxes.

4.1 Enlarged opportunities for cross-border tax avoidance by dominant international firms.

The growth of the digital economy has heavily contributed to the obsolesce of essential international tax norms due to the evolving physical-based business model to a digital business model, especially for cross-border transactions. A core international tax rule challenge for African countries is the

[35] Organisation for Economic Cooperation and Development, 'Addressing the tax challenges of the digitalization of the economy' (Public Consultation, 2019) 8, 29

difficulty in attributing profits to a business entity operating across various jurisdictions, even when there is some evidence of a taxable presence.[36] Previously, tax authorities could easily monitor businesses for tax purposes under the physical presence or the presence of effective management of most business establishments and attribute profits to businesses via these criteria. However, the sophistication made in technology coupled with the opportunity provided by the national restrictions due to the COVID-19 pandemic has enabled many non-resident business entities to provide high-value services/products in many jurisdictions across Africa without a physical presence.[37] Also, some non-resident businesses can effectively manage and outsource many functions without a physical presence or evidence of effective management activities. For example, advances made in computer software innovation, like the 1000 Minds application, provide business analysis and intelligence services that dispense with the need for physical management. Also, the use of drone technologies can ensure product delivery.

Complicating matters is the difficulty in attributing value to data used in digital transactions because of the monetisation of data. This is due in part to advancements made in digital technologies that provide an opportunity for business entities operating in the digital economy to gather and use a huge amount of information in cross-border business transactions often evading detection.[38] The overall implication of this development is that it raises the issues of value attribution created from the generation of data through digital products and services. The digital commerce model has also complicated

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[36] Mustapha Ndajiwo, 'The Taxation of the Digitalised Economy: An African Study' (107 ICTD Working Paper, 2019) 99

[37] Supra note 36, OECD.

[38] Organization for Economic Cooperation and Development, 'Addressing the Tax Challenges of the Digital Economy' (Final Report, 2015) 52, 93

the characterisation of income for tax purposes arising from uncertainties concerning the proper characterisation of payments in e-commerce. The continual increase in digital technologies and the decreased need for physical (taxable) presence to carry on business, the increasing role of network effects, and varied customer interactions, raise interrogations as to the efficacy of the rules used in international tax to determine tax nexus with a jurisdiction.

Digitalization of the economy has further increased reliance on intellectual property such as international trademarks. These intangible assets can now be exploited in mass markets where the owner has no or little physical presence. The current international rules on profit allocation do not address new value streams and the value from the international trademark system without a taxable physical presence. Thus, a lot of African countries that do not have the sophisticated technological capacity to tax income from these newer forms of value streams under the existing international profit allocation rules that are still based on the existing transfer pricing principles, will find themselves missing out on a lot of taxable income.

The digital economy also creates challenges for value-added tax (VAT) systems where goods, services and intangibles are sourced privately from international digital suppliers. This is due to the absence of an established global framework and VAT information exchange system that guarantees VAT collection in the jurisdiction of market consumption, which a lot of African countries are. Likewise, the high cost of VAT compliance by SMEs engaged in cross-border digital commerce from the absence of an international standard for charging, collecting, and remitting taxes to different tax authorities has

adverse tax implications for many SSA countries.[39] There is also a danger of loss of revenue and trade distortions from managing tax liabilities generated by a high volume of low-value transactions.

There are fiscal implications from the tax value of shifting forms of digital business functions. While delivery services or client services may be considered auxiliary services that are not core goals of a business using the traditional business model, in the digital business however, it is quite different. Business functions may vacillate steadily from core business to auxiliary business where taxable value, may be obtained. For instance, health consultancy in addition to the sale of health products. The difficulty lies in characterising the income for tax products and whether the health consultancy is a service ancillary to the sale of the product, or the product is ancillary to the digital health consultancy.

Lastly, while global business structures in the physical economy also involve traditional identification challenges, these challenges are amplified more in the digital economy. For example, the market jurisdiction may not require registration or other identification when foreign businesses sell remotely to customers in the jurisdiction or may have issues with implementing registration requirements. This may create problems for tax authorities to easily identify where digital activities are taking place for bringing remote sellers into the domestic tax base and to ensure compliance with domestic rules. Difficulties in identifying remote sellers ultimately make tax collection from these cadres of taxpayers difficult.

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[39] Organization for Economic Cooperation and Development, Electronic Commerce-Commentary on Place of Consumption for Business-to-Business Supplies (Business Presence, Commentary, 2003) 1, 21

4.2 Digital inequality and the fiscal redistributive function of the government.

Whereas digital platforms have decreased the expenses from business functions and provided greater access to ICT services for businesses, digital technologies are also changing the dynamics of business operations by redesigning market structures, especially during the COVID-19 period. This is because the paybacks of the new technologies are not evenly spread across the digital economy because of the capture of the lion's share of the digital market by the dominant business players like Amazon in the US and Takealot in South Africa.[40] The way the new technologies are deployed across industries and firms has important implications for their economic impact and the distribution of rewards. Digital technological innovation interacts with market conditions and greatly for both productivity growth and income distribution.[41] It has been observed also that productivity growth is comparatively strong in leading firms at the technological frontier. However, it slowed considerably in many smaller firms, pulling aggregate productivity growth lower. The growing inequality in productivity between businesses causes income disparities to rise. Digitalization especially in upper-middle-income countries has resulted in enormous wealth; however, the wealth is mostly concentrated in a small number of countries, companies, and individuals.[42]

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40 Competition Commission South Africa, 'Competition in the Digital Economy' (Public Comment Document, 2020) 6, 26.

41 Eric Brynjolfsson and Brian Kahin, 'Understanding the digital economy: data, tools, and research' (2002) 15-20

42 Zia Qureshi, 'Inequality in the Digital Era In BBVA Work in the Age of Data' (OpenMind BBVA, 2019) 30-38.

Digitalized inequality, therefore, raises fundamental challenges for policymakers in SSA. As technological advancement overlaps with a concentration of value in a small percentage of dominant digital firms, changes in the financial and labour markets may also drive income inequality higher, making the distribution of both capital and labour income more unequal and shifting income from labour to capital through the increased use of artificial intelligence in business processes.[43] In Africa's situation, COVID-19 inspired economic slump, reduced income from taxes, and increasing level of sovereign debt may contribute to weakening the government's responsibility in relieving the disparity of market incomes arising from digital inequality.

5. POLICY RECOMMENDATIONS

The continuous expansion of the digital economy is a reality in COVID-19 times, because of its presence in every aspect of daily living. To this end, it has contributed to economic growth, created numerous new economic opportunities, added to the swifter realisation of the UN SDGs, and spurred innovation and productivity for businesses. On the other hand, it has created an avenue for 'fiscal injustice' by providing opportunities for many businesses to expand across many tax jurisdictions and realise huge profits to avoid contributing to the tax purse of market jurisdictions where they derive value. This section provides policy considerations that may be useful to policymakers in arriving at effective policies that would be more responsive to the changing aspects of the digital economy and achieve balanced and inclusive policy outcomes.

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[43] id

5.1 Multilaterally Expand Tax- Treaty Norms and Standards with Impact on the Digital Economy

There have been reforms to the domestic tax laws in African countries to accommodate the unique digital nature of the economy and tax digital transactions. Countries like Nigeria and Kenya for instance, have Digital Tax legislation using the significant economic presence criteria to connect taxable presence to taxable income. The relatively swift unilateral responses may be quite helpful in curbing tax revenue flight from cross-border digital transactions which may be channelled to development and economic recovery plans, especially in the COVID-19 economic recovery period. Similarly, unilateral approaches to digital taxation in Africa also serve as a temporary gateway and starting point to responding appropriately to the reality of the digital economy. However, unilateral responses without a corresponding multilateral approach to complement unilateral measures, especially at the regional level may be insufficient to respond to tax revenue flights from the inability to tax the digital economy for several reasons. First, many of the tax treaties with African countries still contain the Permanent Establishment Criteria that prevent effective taxation of the digital economy.[44] The Permanent Establishment criteria do not fully accommodate the elusive ubiquity of the digital economy for taxation. Secondly, the New OECD Pillars Rules as a global multilateral solution to taxing the digital economy based on the OECD/G20 Base Erosion and Profit Shifting (BEPS) appears quite insufficient as a viable solution for African countries for taxing the digital

[44] See, Art 5 UK/South Africa Double Taxation Convention (4 July 2002), entered into force 17 December 2002 and amended by a protocol (8 November 2010) and entered into force on 13 October 2011. See also, Art 5 on Permanent Establishment in Agreement Between The Kingdom Of The Netherlands And The Federal Republic Of Nigeria For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income And Capital Gains (1991).

economy because of its very complex rules around Amount A and B.[45] The complexity around these rules leaves the real effect of dropping the number of in-scope companies affected by these rules, thereby leading to insignificant amounts of tax revenue generated from Amount A of the OECD Two Pillar Solutions.[46] Similarly, while the call for a UN Tax Convention is gaining momentum, there is the possibility that African countries may not benefit much, because African countries are generally uncoordinated and disorganised in approaching global forums, usually as 'nations' rather than 'blocs', which negatively influence their ability to influence outcomes that are favourable to African best interests.[47] Third, unilateral digital tax provisions developed by African countries have a possible side effect of promoting harmful tax competition through tax arbitrage from different standards and tax rates that foreign

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[45] Organisation for Economic Cooperation and Development /G20 Base Erosion and Profit Shifting Project Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Brochure, 2021) 1, 22 <https://www.oecd.org /tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> accessed 29 October 2023.

[46] South Centre Statement by the South Centre on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, (Statement, July 2023) <https://www.southcentre.int/wp-content/uploads/2023/07/SC-Statement-on-IF-Two-Pillar-Solution-July-2023.pdf 1-4> and Vladimir Starkov & Alexis Jin, Comparing Tax Revenues to Be Raised by Developing Countries from the Amount A and the UN Model Treaty Article 12B Regimes (2022) 156 South Centre Research Paper 39-42. https://www.southcentre.int/wp-content/uploads/2022/06/RP156_A-Tough-Call_EN_REV2.pdf accessed 23 October 2023.

[47] Martin Hearson, 'Tax treaties in sub-Saharan Africa: A critical review' (2015) Tax Justice Network Africa 32, Hearson notes Africa's generally disorganised approach to influencing the UN instruments compared to the European Union's coordinated approach which produces results.

enterprises may easily exploit due to the highly mobile nature of digital profits or income.[48]

Thus, the unilateral approach adopted by African countries is laudable but barely adequate to cover effective taxation of the digital economy, because multinational corporations are capable of exploiting differences in domestic digital tax rules. It is recommended that a sub-regional and common standard for taxing the digital economy be designed in the respective African sub-regions through their respective organisations and gradually move to a regional standard. These standards should include a common definition of digital economy, adopt similar nexus standards to digital profit, develop standards around digital or virtual establishments, and other necessary standards. Along the same line of recommendation, African countries should review their existing tax treaties, especially the income-attributing provisions of the tax treaties such as provisions on the permanent establishment to create a nexus or right to tax that includes the digital presence of a company or presence through a digital proxy. This should be in line with the standards developed at the sub-regional standards earlier recommended. It is hoped that this recommendation if adopted will reduce harmful tax competition from differences in domestic digital tax legislation. However, this recommendation may require a great deal of political will from a common desire to place enforcement structures within the respective tax administrations to curb tax avoidance arising from taxing the digital economy while accommodating the pressing revenue concerns of low-income African countries that are more vulnerable to incentivising foreign investment through tax breaks and concessions.

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[48] Sol Picciotto, 'International tax, regulatory arbitrage, and the growth of transnational corporations' (2015) 25, 3 UNCTAD Transnational Corporations 27, 53

5.2 Regionally adopt the DST Provisions of the OECD, The Interim Report with limits.

Measuring the digital economy and related value creation and capture is beset with complexities. Firstly, there is no widely accepted definition of the digital economy. Secondly, reliable statistics on its key components and dimensions are lacking. While several programmes are coming up to improve the situation, these are still unsatisfactory and are striving to manage the speedy rate of advancement of the digital economy. Depending on the definition, estimates of the size of the digital economy range from 4.5 to 15.5 per cent of global GDP figures.[49]

The OECD report on taxing provides guidelines on the characteristics of interim measures for taxing the digital economy by proposing a digital service tax (DST) as a short-term measure, at three per cent on gross 'digital services' revenue earned in a jurisdiction by a digital service provider DST would apply to revenue derived from supplies of specific digital services (supply of advertising space, facilitation of digital interactions, data generation through user-provided information). Proposals have also been made to ensure DST would be collected in the state of user location and apply only to entities with a global revenue exceeding EUR 750 million and EU revenue derived from digital services exceeding EUR 50 million.[50] DST will be deductible against corporate income tax (CIT), which will reduce or eliminate double taxation. Regionally, the African tax government could agree on the imposition of a digital service tax multilaterally with ranges or

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[49] United Nations Conference on Trade and Development, 'Value Creation and Capture: Implications for Developing Countries' (Digital Economy Report, 2019 2019) Overview.

[50] Organisation for Economic Cooperation, 'Tax Challenges Arising from Digita lisation Inclusive Framework on BEPS' (OECD/G20 Report on Pillar One Blueprint, 2020)

brackets for the digital tax income, while agreeing on the definition and thresholds of digital services tax. In addition, the various tax authorities should cooperate on a tax agreeable tax percentage that would serve as a digital service tax, perhaps lesser than the suggested three per cent, taking into consideration the uneven spread of digital economic activities in SSA and the contraction of the economy from the impact of the COVID-19 economic measures.

5.3 Capture Digital Taxes without discouraging Digital Innovation Business.

Tax mobilisation is vital without upsetting the present tax rate set-up. One of the ways to go about this is to expand the tax base to capture the digital economy without discouraging digital businesses and further development of the digital economy. A perfect way would be to reduce the business taxes like the corporate or partnership taxes against the digital service tax. It may appear counter-productive initially by reducing the amount of corporate income tax realised, however, as more digital transactions get taxed, the tax income derived would increase. This is because, under general tax rules, tax authorities can only directly tax corporate profits, however, a DST tax owing to its indirect nature can be taxed once a digital transaction has occurred. In the long term, this would increase the volume of tax realised from digital transactions. An acceptable percentage would be between 0.5% - 1.5%, while regular corporate tax or VAT taxes be reduced to about one per cent. Another policy recommendation would be not to arbitrarily increase this type of tax to prevent tax apathy and planning around this type of tax. In addition, tax income realised from this source of tax should be employed in programmes and policies that will ensure the growth and usage of digital platforms as a long-term strategy to potentially digital

innovation and the use of digital platforms for transactions. A recommended measure may be the use of Artificial Intelligence (AI) in capturing digital taxes.[51] African countries can significantly improve the collection of digital taxes from cross-border digital taxes by integrating smart technologies into their taxation systems. Although AI in its present form risks exacerbating social and economic inequalities between those countries that play an active part in its development and those that do not. However, specific AI for digital tax administration provides an invaluable opportunity for Africa to make up for shortcomings in inefficient tax administrative capacity by harnessing the precise execution of AI in its global drive to curb tax evasion and excessive tax avoidance. This is possible as Africa has already proved its ability when it comes to technological developments, as seen with mobile money and internet access. It can do the same in taxation, leveraging a problem-solving AI policy to serve its citizens and become a key player in the AI revolution in tax administration regarding taxing the digital economy.

6. CONCLUSION

It is clear from global and African statistical figures that the use of digital technologies in the economy, especially as an alternative response to the reduced physical business transactions from lockdown measures imposed globally, has transformed the world of business and tax income realisation. A key test for policies is to positively exploit the potential of the digital economy to accelerate more robust and inclusive economic growth. It is believed that the economic growth

[51] Emmanuel O Arakpogun et al, 'Artificial intelligence in Africa: challenges and opportunities' In: A Hamdan et al (eds) The Fourth Industrial Revolution: Imple mentation of Artificial Intelligence for Growing Business Success (Studies in Computational Intelligence, 2021) 375, 388.

derived from inclusive digital economic policies would contribute to the tax purse of African countries. However, digital intervention policies may not be enough in itself as they need to be complemented by investments in physical infrastructure, electricity, literacy, and smart regulations. Policymakers in achieving a balanced policy outcome, should also balance public and private interests and be more responsive to change. Swift policy responsiveness should intensify as advances in artificial intelligence and other innovations take the digital economic revolution to a different level. New thinking and policy creativity will be essential in designing fiscal policies, digital tax innovative measures, analysing the infrastructure supporting the digital economy, and digital competition policies.

As research and development to enhance innovation in the digital economy take place, so should tax policy and legislative reforms occur domestically, regionally, and continentally, especially in ensuring that rules of engagement between countries in intra-African digital trade are conducive to the functioning of the digital economy and tax ecosystem. The gains made in growing the digital economy and the future benefits of its GDP-enhancing prospects should be advanced by cooperative arrangements that will advance the African digital economy and its tax potential to the next level of economic growth from increased digital economic activities.