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INTERNATIONAL ECONOMIC LAW AND THE CHALLENGES IN IMPOSING THE DIGITAL TAX IN DEVELOPING AFRICAN COUNTRIES

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Abstract
Digitalisation has created a new economy built on cross border data and financial flows. This situation presents the Economic Commission for Africa, the United Nations and the World Trade Organisation with a challenge and an opportunity centered around the question on imposing digital taxation. There is a growing global consensus that the digital economy is relatively undertaxed when compared with traditional businesses (Szczepanski, 2018). Certain inherent characteristics such as reliance on cross border provision of services without physical presence, easy transfers of intangible assets, and novel ways to create value make it particularly easy for multinational enterprises to limit their tax liabilities and sometimes utilise this forum to evade taxation. In order to provide a solution to this problem, domestic states, regional blocs and international bodies have recommended to reform the corporate tax framework and the VAT system to align it with income generating transactions within the digital economy (UN Committee of Experts on International Corporation in Tax Matters, 2017). The latter has been updated in European Member States to consider the changes resulting from digitalization within the framework of international economic law, with a move in particular toward a destination-based system. In other words, the country from whence the income is derived, for example digital advertising, is the proper state to tax such income.

African states, however, are unable to benefit from this system since the bilateral treaties signed with countries whose companies have a digital presence in African markets for example Jumia and Uber, do not recognize digital presence as a permanent establishment to trigger taxation. Online

platforms providing services to users in the form of contacting independent taxi service providers and decentralized financial transactions or money transfers, without physical presence have created a mismatch between tax rules and digitalization. This has resulted in domestic states losing revenue and economic presence. It has also resulted in political differences on the question of which state is to tax income earned through the digital economy. This means that there is a gap in general policy recommendations on taxing the digital economy.

The aim of my paper therefore will be to first address the challenges of taxing the digital economy and second, to offer potential solutions towards aligning the digital economy with the tax rules governing traditional businesses. The methodology employed will purely be descriptive and explanatory following review of country case studies in regulating the challenges posed as a result of the digital economy. The literature to be addressed in the paper will focus on recent government responses in highlighting the problem with taxing the digital economy and identifying what key areas need policy recommendations, which the paper then offers to provide.