



CHALLENGES IN DOMESTIC REVENUE MOBILIZATION FROM THE DIGITAL ECONOMY AND THE TELECOMMUNICATION SECTOR





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UNDERSTANDING THE DIGITAL ECONOMY

1.0 Background

Digital transformation is one of the key drivers of the global economy. Digital economy refers to any economic activity that results from online connections among people, businesses, institutions, devices, data etc. It encompasses the broad range of economic activities that involve the utilization of Information and Communication Technologies (ICT) plus the internet which includes trade in electronic transmissions; online platforms or platform-enabled services; supply of ICT goods or services; mobile technology or applications including money transfer, borrowing, and saving services, among others. Digital economy also comprises digital platforms like Google, Facebook and Amazon, platform-enabled services such as car-hailing apps, plus ICT goods and services suppliers. Mobile technology and applications such as money transfer, lending or saving services also constitute the digital economy (Action Aid, 2020).¹ The digital economy thrives on the interconnectedness among people, organizations, and machines that are all enabled by mobile technology, the internet, and the Internet of Things (IoT). By reducing transaction costs, thus improving market efficiency, telecommunication enables economic development (Aker and Mbiti, 2010).²

East African countries have been characterized as 'Break Out' economies, according to the Digital Intelligence Index Report by MasterCard and the Fletcher School at Tufts University.³ This characterization is attributable to the rapid growth in internet penetration and substantive improvements in digital infrastructure in the region's member states. Consequently, the improved digital economy landscape has resulted in a better environment for owners of small businesses to thrive.

Key to the robust and growing digital economy in the region is the telecommunication sector. In Africa, the mobile ecosystem is valued at about USD115 billion and contributes 9% of the continent's GDP.⁴ Africa's digital economy is projected to reach a value of about USD712 billion by 2050 while contributing USD200 billion to the continent's GDP as of 2023 compared to an economic value of USD132 Billion in 2020 with tax contributions of USD15 billion. The sector is significant to East Africa's economy. It is estimated that a percentage point increase in the telecom index usage (fixed line, mobile cellular and internet) contributes to a 0.02(%) real per capita growth.⁵ With increased investment and technological adoption of advanced technologies, the telecom sector demonstrates significant potential for growth with the likelihood of becoming a crucial and pronounced pillar to the region's economy.

1. Action Aid, *Taxing the Digital Economy*, Progressive Taxation Policy Brief, January 2020 <https://actionaid.org/sites/default/files/publications/Digital%20taxes%20progressive%20tax%20brief%20jan20.pdf>
2. Aker J.C., and Mbiti I.M., 'Mobile Phones and Economic Development in Africa', *Journal Of economic Perspectives*, Vol. 24, No. 3, Summer 2010, (pp. 207-32), <https://www.aeaweb.org/articles?id=10.1257/jep.24.3.207>
3. Kitimo A., 'Kenya, Tanzania and Rwanda rank top for rapid digital growth, demand', *The East African*, 16 December 2020, <https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-tanzania-rwanda-rank-top-for-rapid-digital-growth-3230890>
4. Herbert G. and Loudon L., *The size and growth potential of the digital economy in ODA-eligible countries*, K4D (Knowledge, Evidence, and Learning for Development) Helpdesk Report, 1 December 2020, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15963/915_size_and_growth_potential_of_the_digital_economy_in_ODA-eligible_countries.pdf?sequence=1&isAllowed=y
5. Kedir A., Kawo K.N., and Hasan A., "ICT and Economic Growth in East African Countries: A Panel Data Approach", *Journal of Information Engineering and Applications*, Vol.9, No.7, December 2019, https://www.researchgate.net/publication/339999128_ICT_and_Economic_Growth_in_East_African_Countries_A_Panel_Data_Approach

1.1 Rationale for the Study

As with the rest of the world, East African countries acknowledge the fundamental significance of the digital economy in accelerating economic growth. Considering this fact, especially in reference to the telecom sector's value to the region's economy, there is a need for the regional governments to adopt and implement robust policies to govern the sector. More specifically, the governments should consider enforcing a progressive tax regime on the sector to maximize its potential contribution to the economy. However, research currently shows the inefficiencies of the existing taxation models and overall challenges in taxing the telecom sector. There are gaps in policies and regulations, which, it has been argued, provide loopholes for opaqueness in reporting revenue figures by industry players, therefore, allegedly resulting in tax evasion by telecommunication industries. On the government side, there is arguably limited expert knowledge in taxing the telecom sector. There is also weak enforcement of the existing tax regime to ensure full compliance by all players in the sector.

As such, the purpose of this study was to examine the landscape of the digital economy with a narrow focus on the telecoms sector. The study sought to examine the taxation regime in the sector by focusing on gaps in policies and regulations in the sector, the challenges, and opportunities for taxing the telecom sector and the digital economy. The specific objectives of the study were:

1. To examine challenges associated with mobilizing revenues from the telecom sector and the digital economy;
2. To determine opportunities to be leveraged to improve tax revenue mobilization from the telecom sector and digital economy.

CHALLENGES IN DOMESTIC REVENUE MOBILIZATION FROM THE DIGITAL ECONOMY AND THE TELECOMMUNICATION SECTOR

2.0 Introduction

The digital economy in East Africa and its constituent, the telecommunication sector, have grown substantively over the last two decades. This positive growth is expected to be sustained. This positions the telecom industry as a key component in the realization of development – technological and economic – in the region. Revenue growth in the telecom sector offers opportunity to the government to leverage the sector in efforts to bridge revenue shortfalls. This proposition is premised on a robust regulatory framework and a suitable tax policy. However, several factors make the taxation of the digital economy and the telecom sector particularly complex. According to researchers and experts in the sector, factors limit the ability of governments in the region to monitor operations in the sector in order to ensure full compliance with tax requirements. As such, governments miss out on optimizing revenue collection from the industry. Additionally, there are observable challenges on the part of the government in keeping up with the rapid transformation in the sector, which limits the effectiveness of policies and regulations. This section explores some of the challenges that limit effective taxation and monitoring of compliance in the telecom sector in East Africa.

2.1 Inadequate Transparency in Revenue Reporting

Transparency in revenue reporting and tax compliance is a fundamental cornerstone of a well-functioning economy and business environment. It holds immense significance for various stakeholders, including governments, businesses, investors and the public.⁶ One of the challenges associated with realizing revenue from the digital economy is the inadequacy in revenue reporting among Telcos.⁷ While governments can effectively generate taxes required to fund essential public services, develop infrastructure and invest in other programs,⁸ telecom companies have faced allegations of providing inaccurate data or manipulating financial figures to evade taxes or minimize their tax liabilities over the years.

2.1.1 Influence on Transparency by the Telecom Sector

The telecommunications landscape in East Africa is characterized by diversity, which features a broad spectrum of Telcos, from national giants like Safaricom in Kenya to multinational behemoths such as Airtel and MTN operating across multiple regional countries.⁹ Additionally, the region hosts a multitude of telecom companies, including Amiran Communications Ltd, Acacia Satlink, Advanta Africa, BeMobile App, CableOne Ltd, Echo Mobile, and many more, each contributing to the dynamic and competitive nature of the telecoms sector in East Africa.¹⁰ The region has a mix of mobile

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6. KPMG, *Responsible Taxation: Evaluating the benefits of tax transparency reporting to Nigerian businesses in changing times*, November 2021, Scaling Business in Africa (SBIA), University of Edinburgh, United Kingdom <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/responsible-taxation-evaluating-the-benefits-of-tax-transparency-reporting-in-nigeria.pdf>
 7. John M. Morrissey J. M., *Testimony Concerning Telecommunications Accounting Issues Before the Subcommittee on Oversight and Investigations Committee on Financial Services*, 21 March 2002, Deputy Chief Accountant, U.S. Securities and Exchange Commission <https://www.sec.gov/news/testimony/032102tsjmm.html>
 8. Kopits G., and Jon Craig J., *Transparency in Government Operations*, International Monetary Fund (IMF), Occasional Paper 158, Washington D.C., January 1998 <https://www.imf.org/external/pubs/ft/op/158/op158.pdf>
 9. Wangare J., 'List of telecommunication companies in Kenya', *Tuko*, 13 July 2018, <https://www.tuko.co.ke/270604-list-telecommunication-companies-kenya.html>
 10. Lusha, *Top Telecommunications companies in Kenya*, <https://www.lusha.com/company-search/telecommunications/63/kenya/124/>

operators and non-mobile operators.¹¹ These Telcos offer an array of services, spanning mobile voice, data, mobile money transfers and internet services. Innovations like M-Pesa have revolutionized financial inclusion. Market dominance is a notable aspect, with Safaricom historically holding a significant market share in Kenya and MTN in Uganda and Rwanda, which has triggered concerns about competition and regulatory scrutiny.¹² Data management and privacy raise concerns as Telcos accumulate substantial customer data, prompting discussions about privacy protection and potential market influence. The regulatory environment is in a state of flux, focusing on market competition, dominance and data protection, while market dynamics necessitate agility.^{13,14}

In the telecoms sector in East Africa, revenue reporting by Telcos is influenced by a multitude of factors. Market dominance, as seen with Safaricom in Kenya, prompts increased scrutiny,¹⁵ leading to the adoption of proper reporting standards to ensure transparency and fair competition.¹⁶ Telcos offering a diverse array of services, spanning mobile voice, data, mobile money and internet services, should provide comprehensive reports to accurately depict revenues from each category.¹⁷ Data protection regulations play a crucial role, especially for the Telcos managing substantial customer data, which necessitates privacy compliance and transparent data handling disclosure in revenue reports. Vodacom Tanzania has invested in data protection solutions to secure customer information. Their transparent pricing policies and billing practices contribute to customer trust, demonstrating their commitment to safeguarding data privacy.¹⁸ Safaricom has also been noted to be committed to protecting sensitive customer data so as to maintain customer trust. This safeguarding mechanism by Telcos in East Africa influences their approach to disclosing revenue and tax compliance. As a result, they take measures to anonymize or aggregate data in their reports, ensuring customer privacy is upheld while providing essential financial information to stakeholders.¹⁹

The introduction of innovative services like mobile money platforms, creates new revenue streams, which demand adjustments in reporting to encompass the financial impact of these services.²⁰ Furthermore, the competitive environment compels Telcos to adopt transparent reporting practices

11. Pal D., 'Telecommunications' greenfield ventures conundrum', *The East African*, 31 May 2023, <https://www.theeastafrican.co.ke/tea/oped/comment/the-telecommunications-greenfield-conundrum-4253242>
12. Kamau M. and Sunday F., Regulators face dilemma over telco's grip on market, *The Standard*, 2018, <https://www.standardmedia.co.ke/business/article/2001292816/regulators-face-dilemma-over-telco-s-grip-on-market>
13. Benson E.A., 'Safaricom refutes dominance claims by Airtel, says the market is big enough for healthy competition', *Business Insider Africa*, 3 November 2021, <https://africa.businessinsider.com/local/markets/safaricom-refutes-dominance-claims-by-airtel-says-the-market-is-big-enough-for/klzlm7c>
14. EACO (East African Communications Organisation), *Regulatory Members*, <https://eaco.int/pages/regulatory-member>
15. Ombati T.O., 'Stakeholder Exposure and Sustainable Supply Chain Management Practices in Safaricom, Kenya', *American Journal of Industrial and Business Management*, Vol.8 No.5, May 2018, <https://www.scirp.org/journal/paperinformation.aspx?paperid=84532>
16. Safaricom PLC, *Annual Reports and Financial Statements 2022*, https://www.safaricom.co.ke/annualreport_2022/download-pdf/financials.pdf
17. IFRS (International Financial Reporting Standards) Foundation, *IFRS 9 Financial Instruments*, <https://www.ifrs.org/is-sued-standards/list-of-standards/ifrs-9-financial-instruments/>
18. Vodacom, *Respecting our customers' rights to privacy and freedom of expression is one of our highest priorities*, <https://www.vodacom.com/vodacom-approach-to-privacy-and-security.php>
19. Safaricom, *Partnering for Growth: Transforming Lives*, 2022 Sustainable Business Report <https://www.safaricom.co.ke/images/Downloads/2022-Safaricom-Sustainability-Report.pdf>
20. Klapper, Leora, Dorothe Singer, Laura Starita, and Alexandra Norris, *The Global Findex Database 2025: Connectivity and Financial Inclusion in the Digital Economy*, World Bank, Washington, DC, 2025, doi:10.1596/978-1-4648-2204-9, <https://www.worldbank.org/en/publication/globalfindex>

to foster public trust, attract customers and remain competitive.²¹ Additionally, the complexity of financial transactions involved in processes such as international roaming agreements or network infrastructure investments can make financial reporting complicated, impacting the extent and detail of disclosure.²² The existing compendium of privacy and data protection laws, whilst not comprehensive and sufficiently constituted, provide some ground for telecom companies to conceal their data.²³ This presents a challenge to the enforcement of transparency and accountability. Telecom companies may leverage such policy and legal frameworks to mask operations and activities whose availability may provide frameworks for monitoring compliance with tax requirements as stipulated by laws and policies applicable to the industry.^{24,25}

2.2 Requirements for Transparency in the Telecommunication Sector

Transparency in revenue reporting and tax compliance in the East African telecom industry would signify a state where telecoms companies operate with a high degree of openness and accountability in their financial and tax-related activities.^{26,27}

MTN's alleged tax avoidance practices in Africa, as exemplified by the dispute with the Uganda Revenue Authority, highlight a broader issue in countries where the company operates. Reports of concealing revenue, shifting funds abroad and employing complex tax avoidance strategies such as Transfer Pricing have raised concerns not only in Uganda but also in Nigeria, Ghana, South Africa and others.²⁸ These practices are seen as detrimental to African governments, depriving them of vital revenues needed for development and services.²⁹ Transparency can be visualised as follows:

i. Complete Financial Disclosure: Telecom companies would be required to provide exhaustive financial reports for each country in which they operate. These reports should include not only top line figures like revenue and profits but also a breakdown of expenses, taxes and other financial details.³⁰ This information would adhere to internationally recognized financial reporting standards like International

21. CFA (Chartered Financial Analyst) Institute, *Financial Reporting Disclosures - Investor Perspectives on Transparency, Trust, and Volume*, <https://rpc.cfainstitute.org/sites/default/files/-/media/documents/article/position-paper/financial-reporting-disclosures-investor-perspectives-on-transparency-trust-volume.pdf>
22. EU (European Union) Parliament, *Technical Issues on Roaming - Transparency, Technical Aspects and Data Overview related to the Proposed Regulation on Roaming*, Briefing Note European Parliament's committee on Industry, Research and Energy (ITRE), (IP/A/ITRE/FWC/2006-087/Lot2/SC1) [https://www.europarl.europa.eu/RegData/etudes/note/join/2007/382177/IPOL-ITRE_NT\(2007\)382177_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2007/382177/IPOL-ITRE_NT(2007)382177_EN.pdf)
23. Mutung'u G., *Competition and Data Protection among Mobile Network Operators*, 27 June 2022, <https://www.cigionline.org/articles/competition-and-data-protection-among-mobile-network-operators/>
24. CIPESA (Collaboration on International ICT Policy for East and Southern Africa), *Leveraging the African Union Data Policy Framework to Bolster National Data Governance Practices*, <https://cipesa.org/2022/06/leveraging-the-african-union-data-policy-framework-to-bolster-national-data-governance-practices/>
25. Intven H., Oliver J., and Sepulveda E., 'Telecommunications Regulations Handbook', *InfoDev*, https://www.itu.int/ITU-D/treg/Documentation/Infodev_handbook/7_Appendix.pdf
26. Jaeger J., *Transparency Gaps in the Telecom Sector*, Compliance Week, 8 December 2015, <https://www.complianceweek.com/transparency-gaps-in-the-telecom-sector/3162.article>
27. TI (Transparency International), *Transparency International Report Shows Telecom Companies Can Do Much More To Prevent Corruption*, 24 November 2015, <https://www.transparency.org/en/press/transparency-international-report-shows-telecom-companies-can-do-much-more>
28. Dowuona S., 'Telcos deny under-declaring revenue, expose propaganda', *Modern Ghana*, 1 April 2015, <https://www.modernghana.com/news/608492/telcos-deny-under-declaring-revenue-expose-propaganda.html>
29. Mayah E., 'INVESTIGATION: How MTN ships billions abroad, paying less tax in Nigeria', *Premium Times*, 26 October 2015, <https://www.premiumtimesng.com/investigationspecial-reports/192159-investigation-how-mtn-ships-billions-abroad-paying-less-tax-in-nigeria.html?tztc=1>
30. Deloitte, *Accounting for Revenue in the Telecommunications Industry: Counting the cost*, IAS Plus, <https://www.iasplus.com/content/d9bad273-c888-4e40-bbfa-4979c1aeb831>

Financial Reporting Standards (IFRS)³¹ or Generally Accepted Accounting Principles (GAAP).³² By doing this, these companies would ensure that their financial information is not only transparent but also consistently structured and comparable across borders.

- ii. **Country-by-Country Reporting (CbCR):** In alignment with global tax standards and Base Erosion and Profit Shifting (BEPS) recommendations, multinational telecoms are required to prepare a country-by-country (CbC) report.³³ The CbC report would contain comprehensive data on the worldwide allocation of income, profit, taxes paid and economic activity among the various tax jurisdictions in which these corporations operate. Such a report is intended for sharing with tax administrations in these jurisdictions, thus enabling high-level transfer pricing and BEPS risk assessments. Alongside traditional financial metrics like revenue, profit, taxes paid, the number of employees and the value of tangible assets, this report would provide an invaluable tool for tax authorities to effectively evaluate and ensure accurate tax obligations within each jurisdiction.³⁴
- iii. **Full Disclosure of Key Operational Metrics:** Transparency would extend to key operational metrics:
 - a. **Revenues:** Telcos clearly report their total revenues generated in each jurisdiction, if applicable, allowing tax authorities to accurately assess the income subject to taxation.³⁵ The average revenue per user (ARPU), determined by dividing the total revenue by the number of average users, signifies telecom operational performance. For service-oriented telecoms, it is crucial for investors to gauge unit-level profit and resource efficiency, with higher ARPU indicating better performance.³⁶
 - b. **Customer Base:** A complete overview of the customer base (subscribers) should be provided, including the number of customers and the nature of their transactions. A steady subscriber growth rate indicates a competitive telecoms company that is keeping up with technology trends and compliance, thereby keeping customers happy and attracting new customers and investors.³⁷
 - c. **Products and Services:** Detailed information on the products and services offered in each country, if applicable, along with pricing structures should be disclosed.³⁸
 - d. **Asset Base:** This includes providing information on tangible assets like property, plants and equipment, which can be used to assess the physical presence and investment in a specific jurisdiction.³⁹
 - e. **Profit Determination Practices:** Transparency would require companies to openly share their profit

31. PwC (PricewaterhouseCoopers), *In depth New International Financial Reporting Standards for 2018*, March 2018, <https://www.pwc.co.uk/audit-assurance/assets/pdf/new-ifrss-for-2018.pdf>

32. Deloitte, *Telecommunications Spotlight: Navigating the New Revenue Standard*, July 2014, <https://www.iasplus.com/content/aa3f1ef5-6c35-4426-9b2d-3abf75a725ab>

33. OECD (Organization for Economic Co-operation and Development), *Country-by-country reporting for tax purposes*, <https://www.oecd.org/tax/beps/beps-actions/action13/>

34. OECD (Organization for Economic Co-operation and Development), *BEPS Action 13 Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment*, September 2017, <https://www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-tax-risk-assessment.pdf>

35. S&P Global, *Guide to Integrated Telecom KPIs*, <https://visiblealpha.com/telecommunications/integrated-telecom-companies/telecom-kpis/>

36. Investopedia, *What Are the Best Metrics to Evaluate a Telecommunications Company?*, 14 July 2022, <https://www.investopedia.com/ask/answers/122414/what-are-best-metrics-evaluate-telecommunication-company.asp>

37. *Ibid.*

38. PwC (PricewaterhouseCoopers), *In depth New International Financial Reporting Standards for 2018*, March 2018, <https://www.pwc.co.uk/audit-assurance/assets/pdf/new-ifrss-for-2018.pdf>

39. Ballard B., and Parsons C., 'Mixed traditions: evaluating telecommunications transparency', *Internet Policy Review*, Volume 11, Issue 1, 14 Jan 2022, <https://policyreview.info/articles/analysis/mixed-traditions-evaluating-telecommunications-transparency>

determination practices. Revised profit determination practices, as outlined by the OECD in June 2018 under BEPS Action 10, emphasize application of the transactional profit split method. This method is considered appropriate when unique contributions, high integration and shared economic risks are present. However, lack of these elements of comparison alone does not justify its use. Transparency mandates companies to openly disclose how they utilize this method, including transfer pricing details, intercompany transactions and measures against profit-shifting, promoting financial clarity and deterring tax avoidance.⁴⁰

- f. Ownership and Corporate Structure:** Transparency would encompass a complete and readily accessible account of a company's corporate structure. This includes providing information about subsidiaries, joint ventures and entities in low-tax or offshore jurisdictions.⁴¹ This level of transparency ensures that the ownership and legal structures of these corporations are known, thus reducing the likelihood of hidden or obscure arrangements designed to minimize tax liabilities.⁴²

2.2.1 Levels of transparency among telecommunication companies in East Africa

The level of transparency among telecom companies in East Africa can be determined by various factors, including their disclosure of revenue information to the public, their adherence to tax regulations and their commitment to data privacy.⁴³ Vodacom Group Limited, which operates in various countries in Africa including Tanzania, has an elaborate Tax Transparency Report that aims to communicate how the group delivers its tax commitments in the various tax jurisdictions where it operates. From its 2023 Report, Vodacom has clearly highlighted its approach to tax controversy and uncertain tax positions such as double taxation, transfer pricing and capital allowances.⁴⁴ To ensure compliance, Safaricom shares detailed annual reports targeting its shareholders, customers, employees and potential investors. Information included in the annual reports includes the market share, subscribers, partnerships, projects as well as financial statements, which include revenue, profits and taxes paid.^{45,46} However, despite these positive disclosure practices, critics argue that certain aspects of Safaricom's business operations, such as its dominant market position and likely influence on policy-making, may hinder competition and public participation.⁴⁷

Safaricom currently faces two significant legal challenges, giving rise to concerns about transparency. The first lawsuit involves its lending service, Fuliza, and its utilization of customers' funds without consent, which potentially suggest a lack of transparency and fair practices. In the second concern, Safaricom's perceived inadequate response to SIM swap fraud may raise questions

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40. OECD (Organization for Economic Co-operation and Development), *Base erosion and profit shifting (BEPS)*, <https://www.oecd.org/tax/beps/beps-actions/actions8-10/>
41. Garcia-Bernardo, J., Fichtner, J., Takes, F.W. et al. 'Uncovering Offshore Financial Centers: Conduits and Sinks in the Global Corporate Ownership Network', *Scientific Reports*, 7, 6246, 2017, <https://www.nature.com/articles/s41598-017-06322-9>
42. IMF (International Monetary Fund), *Guide on Resource Revenue Transparency, 2007*, <https://www.imf.org/external/np/pp/2007/eng/051507g.pdf>
43. Access Now, *Transparency*, <https://www.accessnow.org/issue/transparency/>
44. Vodacom Group Limited, *Tax Transparency Report for the year ended 31 March 2023*, <https://vodacom-reports.co.za/integrated-reports/ir-2023/documents/Tax-transparency-report.pdf>
45. Safaricom PLC, *Annual Report and Financial Statements 2023*, https://www.safaricom.co.ke/images/Downloads/Safaricom_Annual_Report_2023.pdf
46. Safaricom PLC, 'Financial Statements for the Year Ended 31 March 2021', *Annual Report and Financial Statements 2021*, https://www.safaricom.co.ke/annualreport_2021/wp-content/uploads/2021/09/financial_statements.pdf
47. Safaricom PLC, 'Financial Statements for the Year Ended 31 March 2021', *Annual Report and Financial Statements 2021*, https://www.safaricom.co.ke/annualreport_2021/wp-content/uploads/2021/09/financial_statements.pdf

about its transparency and customer data protection measures.⁴⁸ The MTN Group, which operates in various African Countries including Uganda and Rwanda, has been publishing transparency reports highlighting a country-by-country breakdown of external information requests from government and non-governmental entities. The reports list specific legal frameworks and authorities that have power to make requests for each country. The reports also include the market reports per country, which mention the subscriber base and revenue generated in the specific years. MTN has been operating in countries that have experienced internet shutdown, blocked social media, filtered and censored apps and websites, and other disruptions within the last three years (Andere, et al., 2020). According to a report by Access Now (2020),⁴⁹ the prevalence of these practices in MTN's market calls for transparency on shutdown orders it receives and the need to make this information accessible. Access Now also noted that MTN's Report aggregates data request regarding SIM cards, service restriction orders, internet shut downs and more.⁵⁰ It is recommended that the telco disaggregates this data.⁵¹ Airtel Africa, which operates in Kenya, Tanzania and Uganda in East Africa, has been publishing consolidated annual reports, including revenue, profits/losses, taxes paid and subscribers.⁵² However, for the year 2022 and 2023, Airtel operators in the three countries did not publish their annual reports, raising questions of transparency. As the telecom sector evolves, maintaining and improving transparency practices will be crucial in fostering trust among stakeholders and ensuring accountability in the industry.⁵³

2.3 Capacity Limitations among Relevant Associated Authorities

Capacity limitations refers to the inadequacy or constraints within the tax collection system, including human resources, technology and regulatory frameworks, which can hinder efficient collection of taxes from telecom companies. These limitations can encompass a range of issues, such as lack of trained personnel, outdated technology, inadequate data collection and insufficient legal and regulatory frameworks to address the unique characteristics of the telecoms sector.

2.3.1 Gaps in Technical Expertise

Since ICT sector institutions play a significant role in promoting digital transformation, they require skilled and qualified manpower. Effective tax compliance enforcement requires experts with necessary technical knowledge in the telecom sector operations and taxation.⁵⁴ Among the East African Countries, one of the common challenges to digital transformation is limited digital skills and know-how in public institutions. There is a need to build skills and knowledge among government institution employees and use them as agents of knowledge sharing and skills

48. Ngila F., 'Why Safaricom, east Africa's biggest telecom, is getting sued by its customers', Quartz, 9 March 2023, <https://qz.com/why-safaricom-is-being-sued-by-its-customers-1850194457>

49. Oribhabor I., Taye B., and Andere B., 'MTN's first transparency report marks a milestone, but raises questions', Access Now, 13 January 2023, <https://www.accessnow.org/mtns-first-transparency-report/>

50. 2020 Ranking Digital Rights Corporate Accountability Index, MTN, <https://rankingdigitalrights.org/index2020/companies/MTN>

51. Op.Cit., MTN's first transparency report marks a milestone, but raises questions

52. Airtel Africa plc, 'Financial Statements', Annual Report and Accounts 2023, <https://airtel.africa/assets/pdf/annual-report/Airtel-Africa-plc-Annual-Report-and-Accounts-2022-23-FINANCIAL-STATEMENTS.pdf>

53. Op.Cit. What Are the Best Metrics to Evaluate a Telecommunications Company?

54. Gopaldas. R, The challenges and opportunities of bridging Africa's digital divide, Nanyang Technical University, 12 November 2021, <https://www.ntu.edu.sg/cas/news-events/news/details/the-challenges-and-opportunities-of-bridging-the-africa-s-digital-divide>

development, which would boost the growth of the ICT sector and digital economy.^{55,56} For example, a report by Wawire (2020)⁵⁷ noted that the Kenya Revenue Authority has capacity and skills gap that affects its ability to monitor risks of non-compliance and tax evasion. Limited staff capacity among revenue authorities undermines efforts towards formulating sound policies and laws to better mobilize revenues from digital economies.⁵⁸ Wassermann and Bornman (2020) note that the digital economy has various areas of knowledge which revenue authority staff require to be familiar with because shortcomings in these areas translate into challenges in tax compliance. Scholarly articles and reports have noted limitations in capacity and skills needed to mitigate tax evasion and non-compliance among staff members of revenue authorities in East Africa. These challenges underscore capacity issues among revenue authorities, which limit both the adoption of and keeping up with new technologies in the digital economy and conducting day-to-day tax administration functions.

2.3.2 Limited adoption and application of technology in tax administration

Technological adoption creates tremendous positive change in revenue mobilisation by influencing areas of tax administration such as facilitating compliance, monitoring compliance and identifying business players for a better tax base (Okunogbe, et al., 2023). As such, there have been commendable efforts from revenue authorities among East African countries to digitize tax revenue collection. For example, Rwanda developed and adopted digital systems aimed at simplifying tax remittances by citizens and businesses, thus leading to an increase in the tax to GDP ratio.⁵⁹ In a quest to sustain an upward trajectory in revenues collected annually, KRA has sought to invest heavily in technology to improve its tax administration in addition to already having a functioning Electronic Tax Invoice Management System (eTIMS) that ensures cases of fraud are minimised.⁶⁰

However, there have been gaps in adoption of technology to strengthen tax administration among African countries as there is still reliance on manual systems.⁶¹ For instance, despite Burundi having an IT system for tax administration – SIGTAS (Standard Integrated Government Tax System) and ASYCUDA World – there was limited automated accounting system, hence taxpayer data was mostly incorrect and inconsistent.⁶² The gap cascades down to limited adoption of technology

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55. World Bank, Kenya Digital Economy Assessment – Summary Report, *Digital Economy for Africa (DE4A)*, 2019, <https://the-docs.worldbank.org/en/doc/345341601590631958-0090022020/original/DE4AKenyasummarypaperfinal.pdf>
 56. World Bank, Uganda Digital Economy Assessment Country Diagnostic, *Digital Economy for Africa (DE4A)*, November 2020, <https://documents1.worldbank.org/curated/en/638411630481877180/pdf/Country-Diagnostic.pdf>
 57. Nelson H. W. Wawire N.H.W., *Constraints to Enhanced Revenue Mobilization and Spending Quality in Kenya*, CGD (Centre for Global Development) Policy Paper 163 January 2020, <https://www.cgdev.org/sites/default/files/PP163-Enhanced-Revenue-Kenya-Full.pdf>
 58. Gupta S., Mulas-Grandos C., Liu J., Salman D. & Ross K., *Institutional and Political Determinants of Statutory Tax Rates: Empirical Evidence from Sub-Saharan Africa*, Center for Global Development, CGD Policy Paper 191, November 2020, <https://www.cgdev.org/publication/institutional-and-political-determinants-statutory-tax-rates-empirical-evidence-sub>
 59. AUDA (African Union Development Agency), *Enhancing Africa's Tax Collection and Management Mechanisms using Smart Technologies*, NEPAD (New Partnership for Africa's Development) Blog, 22 July 2022, <https://www.nepad.org/blog/enhancing-africas-tax-collection-and-management-mechanisms-using-smart-technologies>
 60. KRA (Kenya Revenue Authority), *KRA Sustains Revenue Growth Despite Economic Shocks*, Press Release, 14 July 2023, <https://www.kra.go.ke/news-center/press-release/1956-kra-sustains-revenue-growth-despite-economic-shocks>
 61. Okunogbe O., and Fabrizio Santoro F., 'Increasing Tax Collection in African Countries: The Role of Information Technology', *Journal of African Economies*, Volume 32, Issue Supplement_1, March 2023, Pages i57–i83, https://academic.oup.com/jae/article/32/Supplement_1/i57/7059990
 62. World Bank, Burundi Digital Economy Assessment, *Digital Economy for Africa (DE4A)*, 2020, <https://documents1.worldbank.org/curated/en/605991608528899689/pdf/Burundi-Digital-Economy-Assessment.pdf>

among tax authorities, which limits effective tax administration on telecom companies. This may be attributable to the fast pace of evolution in the telecom sector and a slower adaptation on the side of revenue authorities. This supposition is supported by a report by OECD (2021), which noted that the growth of digital economies has created technological changes that challenge the effectiveness of tax authorities in administering taxes in this sector. Revenue authorities in Africa digitize their tax administration under the assumption that these technologies will effectively work in mopping up revenues from the ever-growing and changing digital economy.

According to Hounghédji and Bassongui (2022), most digitization features of tax administration among African countries cut across ensuring simplicity of tax payment and improving revenue collection by minimizing face-to-face interaction between revenue authorities and taxpayers. This indicates that revenue authorities in East Africa fail to consider business models and trends among businesses in the digital economy in their quest to ensure modernized tax administration.

2.3.3 Slow adjustments of tax regimes and the regulatory landscape to an evolving Telecom sector

When rapid evolution of the industry is not accompanied by corresponding adjustments in the tax regimes and the regulatory landscape to accurately reflect and align with the industry's realities, the government foregoes vital revenue. The telecom landscape has experienced drastic evolution over the last few decades.⁶³ Players in the ICT sector constantly innovate in a quest to create new technological trends and keep up with emerging ones.⁶⁴ This creates complexities that pose a significant challenge to government institutions, which are faced with the decision to either promote or regulate innovation with respect to creating sustainable digital economies (OECD, 2021). Moreover, the dynamism of innovation in the digital economy and ICT sector leads to ineffectiveness of the existing monitoring and regulatory laws.⁶⁵ For instance, a report by the World Bank Group (2019)⁶⁶ noted that Kenya is still struggling with establishing policies and laws that would regulate and foster the growth of the digital economy since regulatory institutions have challenges in keeping pace with evolving digital markets.

According to Latif (2020) telecom companies possess business models anchored in constant innovation, which makes it complex for government institutions to exercise mandates such as collecting tax revenues from them. The gaps and imbalances, on one hand, limit the effectiveness of regulatory and tax enforcement institutions to implement effective tax regimes that would ensure the companies contribute fairly to the revenue base, while creating a suitable environment for the sector players to operate. On the other hand, these gaps create loopholes for telecom companies to evade paying their fair share of tax.

2.4 Heterogeneous Regulatory Regime

Each country in East Africa has more than one regulatory and oversight body in the ICT sector established

63. Ministry of ICT, Innovation and Youth Affairs, *The Kenya National Digital Master Plan 2022-2023*, 2022, <https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf>

64. Ministry of ICT, Innovation and Youth Affairs, *The Kenya National Digital Master Plan 2022-2023*, 2022, <https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf>

65. ITU and World Bank, Regulatory governance and independence, *Digital Regulation Platform*, 15 December 2020, <https://digitalregulation.org/regulatory-governance-and-independence/>

66. Op.Cit., Kenya Digital Economy Assessment – Summary Report

and supervised by the respective ICT ministries. This is a remarkable step towards ensuring that a valuable and growing sector of the economy is supported by suitable regulations and policies for national growth. On the flip side, the presence of numerous regulators in the digital and telecoms space creates multiple legal and regulatory requirements that may be discouraging and expensive for businesses in both sectors.

2.4.1 Challenges in Ratification of Double Taxation Agreements

The OECD (n.d.) defines Double Taxation Agreements (DTAs) as a tax treaty with agreements between two or more countries to eliminate double taxation. Double taxation is defined as imposing taxes on an individual or business entity more than once on the same income and by more than one country.⁶⁷ Double taxation occurs as a result of legislative oversights in taxation and exposes negative tenets of a tax system, thus prompting governments to put in place measures to avoid double taxation incidences.⁶⁸ With countries needing to support cross-border trade and attract foreign direct investment, without the interference of stringent taxation legislations, double taxation agreements are crucial.⁶⁹ In East Africa’s digital space, businesses exist in more than one country and with the liberalization of African economies, a surge in establishment and growth of businesses in the sector is expected.⁷⁰ There was an initial effort by EAC member countries to initiate regional agreements on double taxation through the EAC Agreement on the Avoidance of Double Taxation in 2010. However, only Uganda and Rwanda ratified the agreement upon signing. By 2022 only Tanzania had not ratified the agreement.⁷¹ This points to a lingering ineffectiveness of the agreement as not all countries have committed to support its official operation.

Telecom companies are likely to experience juridical double taxation where their operations in more than one state have respective revenue authorities impose taxes on their incomes.⁷² Table 10 shows that the rates by which various incomes are taxed in East Africa jurisdictions varies.

Table 10: Corporate Taxes and Proposed EAC Maximum on Double Tax Treaty

	Kenya	Uganda	Tanzania	Rwanda	Maximum Proposed Rates for EAC Double Tax Treaty
CIT	37.5%	30%	30%	30%	N/A
Interest	25%	15%	10%	15%	15%
Dividend	10%	15%	10%	15%	10%
Royalties	20%	15%	15%	15%	15%
Management Services	20%	15%	15%	15%	15%

67. OECD. (n.d). Glossary of Tax Terms. <https://thedocs.worldbank.org/en/doc/345341601590631958-0090022020/original/DE4AKenyasummarypaperfinal.pdf>

68. GOK (Government of Kenya), *Double Taxation Agreements*, The National Treasury & Economic Planning Kenya, <https://www.treasury.go.ke/agreements/#:~:text=Double%20taxation%20is%20a%20tax,taxed%20in%20two%20different%20countries>

69. Ronalds, *Double Taxation Agreements in Kenya: Who is a resident person?*, <https://ronalds.co.ke/double-taxation-agreements-in-kenya/>

70. Abendin S., and Duan P., ‘International trade and economic growth in Africa: The role of the digital economy’, *Cogent Economics and Finance*, 9(1), 1-25, <https://doi.org/10.1080/23322039.2021.1911767>

71. Anami L., *Sign and ratify DTA by the end of 2023, EAC tells member states*, The East African, 28 February 2023, <https://www.theeastafrican.co.ke/tea/business-tech/eac-pushes-members-to-sign-and-ratify-dta-4138926>

72. DePasquale P., and Varley A., *Telecommunications and Methods for Avoiding Double Taxation*, Baker & McKenzie Zurich https://www.itu.int/ITU-D/finance/work-cost-tariffs/events/tariff-seminars/Geneva_Taxation/pdf/DePasquale_Varley-Contribution-e.pdf

Source: Price Waterhouse Coopers East Africa Tax Reference Guide 2008/2009^{73,74}

The presence of telecom companies in multiple jurisdictions indicates the growth potential of the digital economy but also poses taxation challenges in terms of the complexity caused by their physical presence and allocation of business profits made by companies operating in different jurisdictions.⁷⁵ In the past governments have initiated tax laws for businesses based on their brick and mortar activities. The laws have been ineffective and irrelevant since digital economy businesses disregard physical presence in various jurisdictions.⁷⁶ Cross-border operations of telecom companies due to technological advancements face difficulties in contributing to growth and further trade because of double taxation. Consequently, the right approach for governments faced with this situation is to enter into unilateral or bilateral double taxation treaties.⁷⁷ For instance, wireless telecom services provided by companies may lead to double taxation and confusion, especially with regard to establishing the exact physical location of origin.⁷⁸ According to Donald (2021),⁷⁹ DTAs play a crucial role in preventing fiscal evasions from cross-border transactions while promoting investment. This is relevant to the digital economy and telecom companies, especially those with Multinational Enterprise (MNE) status, since tax obstacles in the form of double taxation are eliminated, thus positively impacting domestic tax revenue mobilization. This suggestion is supported by Mpofu (2022)⁸⁰ who noted that despite the digital economy providing an opportunity for increasing tax revenues for governments, they should take note of taxation practices such as double taxation that eventually limit the growth of digital economy business and their contribution to overall national economic growth.

Besides ratification of the DTAs, the East African Community (EAC) member states are yet to develop a joint strategy for taxation of the digital economy. This state of affairs creates challenges for businesses operating across borders because they may encounter different tax regimes and compliance requirements in each country of operation.⁸¹ The absence of a coordinated tax approach can also result in potential revenue losses for governments and create uncertainties for businesses. Each regulatory institution in different countries has varying policies and laws on taxation, which may lead to inconsistencies and conflicts when businesses operate across borders. In terms of licensing, the EAC member states have adopted different approaches spearheaded by various regulatory institutions. Tanzania led with converged licensing, which supports triple-

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73. Petersen, H., and Nerré, B., *Tax systems and tax harmonisation in the East African Community (EAC)*, Report for the GTZ and the General Secretariat of the EAC on Tax Harmonization and Regional Integration, January 2010, Integration https://www.researchgate.net/publication/277049029_Tax_systems_and_tax_harmonisation_in_the_East_African_Community_EAC_Report_for_the_EACGTZ_program_Support_to_the_EAC_integration_process
 74. EATGN (East African Tax and Governance Network), *Delays by Ratification: Examining Regional Harmonization of the East African Community (EAC) Double Taxation Agreement*, 2022, <https://www.eatagovernance.net/wp-content/uploads/2022/09/f-Delays-by-Ratification-FA1-003.pdf>
 75. ITC (International Trade Centre), *International E-commerce in Africa: The Way Forward*, 2015, Geneva, <https://intracen.org/file/internationalecommerceinafricalowrespdf>
 76. Hendriyetty N., Evans C., Kim C.J., and Taghizadeh-Hesary F. (Eds), *Taxation In the Digital Economy: New Models in Asia and The Pacific*, Routledge, 2023, <https://www.adb.org/sites/default/files/publication/822701/taxation-digital-economy.pdf>
 77. Op.Cit., DePasquale P., and Varley A., *Telecommunications and Methods for Avoiding Double Taxation*
 78. *Ibid.*
 79. Nsanyiwa D., *Double Tax Treaties - Could it be the right time for tax treaty renegotiation?*, KPMG, https://assets.kpmg.com/content/dam/kpmg/ke/pdf/thought-leaderships/2021/Thought%20Leadership_Double%20tax%20treaties.pdf
 80. Mpofu, Favourate Y., 'Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries', *Economies*, 10: 219, <https://www.mdpi.com/2227-7099/10/9/219>
 81. Clyde Mutsotso CUTS International 2010 https://www.cuts-geneva.org/pdf/BIEAC-RP10_Harmonisation_of_EAC_Tax_Policies_and_Laws.pdf

play services,⁸² that is, telecommunication; while Uganda focuses on infrastructure licensing to promote full competition. Kenya is transitioning to a unified licensing framework, with a service-level emphasis. However, the focus has been at the service level, with some of the segments being international gateway, mobile communication and data operator's license, among others. Rwanda issues individual and standard telecom licenses, while Burundi offers a single type of license for commercial services. This diversity highlights variations in license award criteria and responsibilities among the member states.⁸³ This lack of alignment can impede the growth of a seamless digital ecosystem (Nyaga, 2011).

2.5 Transfer Mispricing Practices by Telecommunication Companies

Transfer pricing refers to setting prices for transfer of property or services between associated business enterprises constituting part of an MNE. Transfer mispricing arises from abuse of transfer pricing practices where incorrect and unjustified prices are allotted to transactions between associated enterprises.⁸⁴ As such, transfer mispricing is a failure to adhere to domestic and global laws established to govern the practice.

In Kenya, the legislation regarding transfer pricing is found in Section 18(3) of the Income Tax Act. Amendments were made to the legislation with some of them borrowed from the UN and OECD Transfer Pricing guidelines to adequately address base erosion and profit shifting.⁸⁵ The transfer pricing legislative framework in Kenya has its scope covering some specific local transactions and cross-border transactions.⁸⁶ However, prior to the amendment, the legislation was less elaborate and vulnerable such that on its first application in a case between Unilever Kenya Ltd and the Commissioner of Domestic Taxes in 2005, it was found to be unclear.⁸⁷ In Uganda, the Income Tax Act has the anti-avoidance provisions of section 90 and 91, which govern transfer pricing via the arms' length approach.⁸⁸ Nevertheless, the arm's length principle has been deemed too complex to apply because business models are ever-changing and evolving.⁸⁹ The digital economy and telecom sector are characterized by disruptive changes in ICT, which create frequent shifts in how businesses in the economy operate. Thus, it is hard for governments to effectively employ the arm's length principle to enhance better transfer pricing practices among digital MNEs (Eden, et al., 2019). The Income Tax Act, Cap.332, of Tanzania has section 33 outlining the legislative requirements to guide transfer pricing practices. The Tanzania Revenue Authority further determines the conduct of

82. ITU (International Telecommunications Union), East Africa Regional Information Infrastructure (EAR II), Vol 1, https://www.itu.int/dms_pub/itu-d/opb/ldc/D-LDC-ICTEARI-2007-PDF-E.pdf

83. Kariuki Nyaga, J., *Convergence of Information and Communication Technology (ICT) sectors in the East African Community (EAC): Challenges for the current legislative and regulatory frameworks and lessons from the European Union experience*, 22nd European Regional Conference of the International Telecommunications Society (ITS): "Innovative ICT Applications - Emerging Regulatory, Economic and Policy Issues", Budapest, Hungary, 18th-21st September, 2011, International Telecommunications Society (ITS), Calgary, <https://www.econstor.eu/bitstream/10419/52170/1/672559935.pdf>

84. UN (United Nations) Tax Committee - Subcommittee on Practical Transfer Pricing Issues, *An Introduction to Transfer Pricing*, Background Paper -Working Draft, Chapter, https://www.un.org/esa/ffd/wp-content/uploads/2011/06/20110607_TP_Chapter1_Introduction.pdf

85. Njuguna G., Transfer Pricing developments – Kenya's experience, International Tax Office Blog, KRA (Kenya Revenue Authority), 31 August 2021, <https://www.kra.go.ke/news-center/blog/1425-transfer-pricing-developments-%E2%80%93-kenya%E2%80%99s-experience>

86. EY Global, Kenya revamps Transfer Pricing rules, 12 September 2023, https://www.ey.com/en_gl/technical/tax-alerts/kenya-revamps-transfer-pricing-rules

87. Op.cit., Transfer Pricing developments – Kenya's experience

88. PWC, Uganda Corporate - Group taxation, <https://taxsummaries.pwc.com/uganda/corporate/group-taxation>

89. De Robertis G., The end of the arm's-length principle?, 13 September 2018, KPMG, <https://responsibletax.kpmg.com/article/the-end-of-the-arm-s-length-principle->

transfer pricing using the arm's length principle but adjustments may be made with regard to abiding to the arm's length principle in order to fully adhere to the Income Tax Act, Cap.332, and with domestic circumstance.⁹⁰ Rwanda's transfer pricing rules came into effect on 14th December 2022 after the publishing of the Ministerial Order number 003/20/10/TC of 11/12/2020. The rules borrow from the OECD Guidelines and allow the application of the most suitable and appropriate method of transfer pricing. The transfer pricing rules in Rwanda include provisions for Country by Country Reports (CbCR) where MNEs and affiliate enterprises report on company structure, allocation of profits, revenues, assets and employees respective to the jurisdictions of operation. The purpose of this legal requirement is to fortify transparency in operations among MNEs and align to BEPS action plans.⁹¹ One of the major challenge facing Burundi's digital economy is lack of effective and crucial regulations.⁹² Additionally, the EAC shows a lack of regulations regarding transfer pricing in the Republic of Burundi.⁹³ This legislative void in Burundi's digital economy serves as a sign for impending difficulties in ensuring that tax authorities can effectively generate revenue from digital economic activities in future.

The digital economy is dominantly characterised by the ability of the players to offer services while existing in numerous jurisdiction with or without a physical presence. This is attributed to technological advancements and the flexibility of these enterprises.⁹⁴ Businesses take advantage of the arm's length principle of regulating transfer pricing practices, whose applicability is to transfer tangibles and intangible across physical borders/jurisdictions.⁹⁵ According to OECD (2018)⁹⁶ three critical characteristics of digital economy businesses make it difficult for taxation laws on aspects such as transfer pricing. These characteristics are: i) cross-jurisdictional scale without mass/physical presence; ii) reliance on intangible assets; and iii) data, user participation and synergies. The dynamic nature of digital economy business models challenge transfer pricing regulations, especially on collecting taxes thus, placing them in doubt on their applicability and effectiveness.⁹⁷ In Africa, the arm's length principle and other transfer pricing legislations are ambiguous and susceptible to abuse hence necessitating action from governments on restructuring of tax policies and laws for effective revenue mobilization from the digital economy businesses.⁹⁸ Nonetheless, on a general scale, some African countries have adequate transfer pricing laws but fall short in their enforcement capacity as well in their ability conduct elaborate transfer pricing audits.⁹⁹ Abuse of transfer pricing contributes to tax base erosion and profit shifting among enterprises

90. Tanzania Revenue Authority, Transfer Pricing Guidelines 2020, 1 July 2020, https://www.trab.go.tz/uploads/documents/en-1662104143-TRANSFER_PRICING_GUIDELINE%202020.pdf

91. Deloitte, Rwanda - General Rules on Transfer Pricing 2020, Tax and Legal , February 2021, <https://www2.deloitte.com/content/dam/Deloitte/ke/Documents/tax/Deloitte%20Rwanda%20Tax%20Alert%20Feb%2021.pdf>

92. Op. Cit., Burundi Digital Economy Assessment

93. EAC (East African Community), Income tax - Transfer pricing, <https://www.eac.int/financial/eac-tax-matrices/income-tax-transfer-pricing>

94. Copenhagen Economics, Transfer Pricing in the Telecommunications Industry, October 2017, <https://copenhageneconomics.com/wp-content/uploads/2022/05/telco.pdf>

95. Whitmer D., 'Identifying transfer pricing risks in the digital economy', News; Kreston Global, 18 August 2023, <https://www.kreston.com/identifying-transfer-pricing-risks-in-the-digital-economy/>

96. <https://www.oecd-ilibrary.org/docserver/9789264293083-en.pdf?expires=1695892793&id=id&accname=guest&checksum=A030D742837EAD0ED9644FE6B50C10E5>

97. Eden L., Srinivasan N., and Lalapet S., 'INSIGHT: Transfer Pricing Challenges In the Digital Economy—Part 1: Hic Sunt Dracones?' Bloomberg Digital Tax Report, 30 May 2019, <https://news.bloombergtax.com/daily-tax-report/insight-transfer-pricing-challenges-in-the-digital-economy-part-1-hic-sunt-dracones>

98. Mpofu FY, Moloi T. Direct Digital Services Taxes in Africa and the Canons of Taxation, *Laws*, 2022; 11(4):57. <https://doi.org/10.3390/laws11040057>

99. Mashiri E., Dzumira S., and Canicio D., 'Transfer pricing auditing and tax forestalling by Multinational Corporations: A game theoretic approach', *Cogent Business and Management*, (2021), 8: 1907012 <https://www.tandfonline.com/doi/full/10.1080/23311975.2021.1907012>

thus, watering down efforts by governments to effectively mobilize revenues (Sebele-Mpofu, et al., 2021). Transfer pricing has been deemed a commonly used practice by MNEs to encourage base erosion and profit shifting, which has weakened the effectiveness of corporate tax and revenue mobilization among countries.¹⁰⁰ African countries struggle with negative implication of transfer pricing practices by MNEs, such as tax base erosion, which cut deep into expenditures needed to increase investment for these countries' socioeconomic growth.¹⁰¹ In the context of the digital economy and telecom sector, businesses tend to shift their tax burdens to countries with low tax rates by lowering the selling price between their subsidiaries thus, promoting cases of tax avoidance and evasion (Nurdiansyah, 2023). Mashiri & Sebele-Mpofu (2015), further note that transfer pricing practices by MNEs impact economic growth and the progress of developing countries whose development funding is pegged on taxing the MNE operations. According to UNCTAD (2020),¹⁰² African countries experience loss of revenues amounting to about USD 60–89 billion annually due to trade mispricing, tax evasion and abuse of transfer pricing strategies as a result of fragile tax administration capacities and legislations around transfer pricing. The growth of the digital economy in East Africa, and Africa as a whole, should be considered an untapped area for revenue mobilisation. There is, therefore, an urgent need for governments and respective revenue authorities to seal loopholes through which MNEs abuse international tax laws and perpetuate BEPS (Oguttu, 2020).

2.6 Tax Base Erosion from Tax incentives to the Sector

Tax incentives are fiscal or non-fiscal reliefs aimed at lowering tax burdens for companies or individuals to stimulate investments.¹⁰³ While tax incentives seek to promote investments in various sectors of a country's economy, their impact has hidden costs, especially on revenue mobilization when not properly utilized.¹⁰⁴ A report by the OECD (2022)¹⁰⁵ indicates that the commonly used forms of tax incentives by developing countries are: tax exemptions, reduced rates, tax allowances, and tax credits, which account for 87%, 69%, 65%, and 23% of use, respectively. In East Africa, countries have varying tools for tax incentives to promote investment. Table 11 indicates the various tools of investment tax incentives used to attract domestic and foreign investment.

100.OECD (Organization for Economic Co-operation and Development), Part 1 - Report to G20 Development working group on the impact of BEPS in low income countries, https://www.oecd.org/content/dam/oecd/en/publications/reports/2014/07/part-1-of-a-report-to-g20-development-working-group-on-the-impact-of-beps-in-low-income-countries_e955e508/95d7abb0-en.pdf

101.Kabala, E. and Ndulo, M., 'Transfer Mispricing in Africa: Contextual Issues', *Southern African Journal of Policy and Development*, Vol. 4, No. 1, Article 6. <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1048&context=sajpd>

102.Sebele F., 'Sustainable mobilisation of tax revenues to enhance economic growth in Sub-Saharan Africa: Challenges, opportunities, and possible areas of reform', *International Journal of Research in Business and Social Science* (2147-4478) 11(9):222-233, December 2022, https://www.researchgate.net/publication/366583985_Sustainable_mobilisation_of_tax_revenues_to_enhance_economic_growth_in_Sub-Saharan_Africa_Challenges_opportunities_and_possible_areas_of_reform

103.Tax Justice Network Africa & ActionAid International, *Tax competition in East Africa: A race to the bottom?*, April 2012, https://www.taxjusticeafrica.net/sites/default/files/publications/eac_report.pdf

104.OECD, *OECD Investment Tax Incentives Database – 2022 Update: Tax incentives for sustainable development (brochure)*, OECD, Paris,2022, <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/investment/oecd-investment-tax-incentives-database-2022-update-brochure.pdf>

105.Ibid

Table 11: Investment Tax Incentives Instruments used by Different East Africa Countries

Country	Investment Tax Incentive
Kenya	Tax Exception, Tax Reduction, & Tax Deduction
Uganda	Tax Exemption, Tax Deferment, Tax Holiday, & Tax Deduction
Rwanda	Tax Deduction & Tax Holiday
Tanzania	Tax Exemption, Tax Reduction, & Tax Holiday
Burundi	Tax Exemption & Reduces Rates

Source: KPMG¹⁰⁶

While some scholars and fiscal policy experts support the use of tax incentives to create a remarkable investment thus, creating flows of technologies and other resources to host countries, others suggest that tax incentives lead to tax base erosion.¹⁰⁷ Additionally, tax incentives tend to be costly to developing countries since they cause unhealthy competition among regional neighbours where policies are made to allot more generous concessions to investors. In the long run these countries strain revenue mobilization due to over-reliance on incentives to attract investments.¹⁰⁸ Tax incentives have created investment competition and further profit shifting among MNEs thus, making tax incentives wasteful, especially when the MNEs were already engaging in tax base eroding activities.¹⁰⁹ This situation is evident from a statement by the Kenya Revenue Authority that noted that Kenya loses an estimated USD 2.916 billion every year.¹¹⁰ In Uganda’s Financial Year 2022/2023 estimates, the country was likely to lose about USD 756.85 million as a result of tax exemptions.¹¹¹ According to Nachilongo (2021), Tanzania incurred losses of up to USD 214.63 billion in a period of eight years due to harmful tax incentives, double taxation and a flawed tax administration system. According to a study by ActionAid in 2016, Rwanda was missing out on annual tax revenues ranging from USD 115 million to USD 176 million, while Burundi lost USD 52 million because of tax incentives. These reports illustrate that even though nations employ tax incentives to draw in investments, they ultimately experience drawbacks over time as these incentives diminish their tax bases.

Despite the potential negative impacts of tax incentives, when issued and monitored appropriately, they can stimulate innovation, discourage tax-driven income shifting practices and attract mobile intellectual

106.KPMG, Investing in Africa: A Guide to Tax/Incentives in Africa, 2017, <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/ng-incentives-in-africa.pdf>

107.UNESCAP (United Nations Economic and Social Commission for Asia and the Pacific), *Tax Incentives and Tax Base Protection in Developing Countries*, April 2017, https://www.unescap.org/sites/default/files/S3_Tax-Incentives-and-Tax-Protection-Base.pdf

108.Kasibiwa A., An Introspective look into Tax Incentives, KRA (Kenya Revenue Authority) Blog, <https://www.kra.go.ke/news-center/blog/1893-an-introspective-look-into-tax-incentives>

109.UNDESA (United Nations Department of Economic and Social Affairs), *Tax Consequences of Digitalized Economy*, UN Tax Committee <https://financing.desa.un.org/what-we-do/ECOSOC/tax-committee/thematic-areas/tax-consequences-digitalized-economy#:~:text=At%20the%20same%20time%2C%20countries,without%20the%20offered%20tax%20incentives.>

110.The Star, Kenya losing Sh360bn to tax competition annually – report, 5 December 2022, <https://www.the-star.co.ke/business/kenya/2022-12-06-kenya-losing-sh360bn-to-tax-competition-annually-report/>

111.Murungi P and Wadero A. A., ‘Counting the cost of tax exemptions’, *Daily Monitor*, 27 June 2023, <https://www.monitor.co.ug/uganda/business/prosper/counting-the-cost-of-tax-exemptions-4284898>

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