KRA'S EXPERIENCE ON UTILATERAL MEASURES IN TAXATION OF THE DIGITAL ECONOMY

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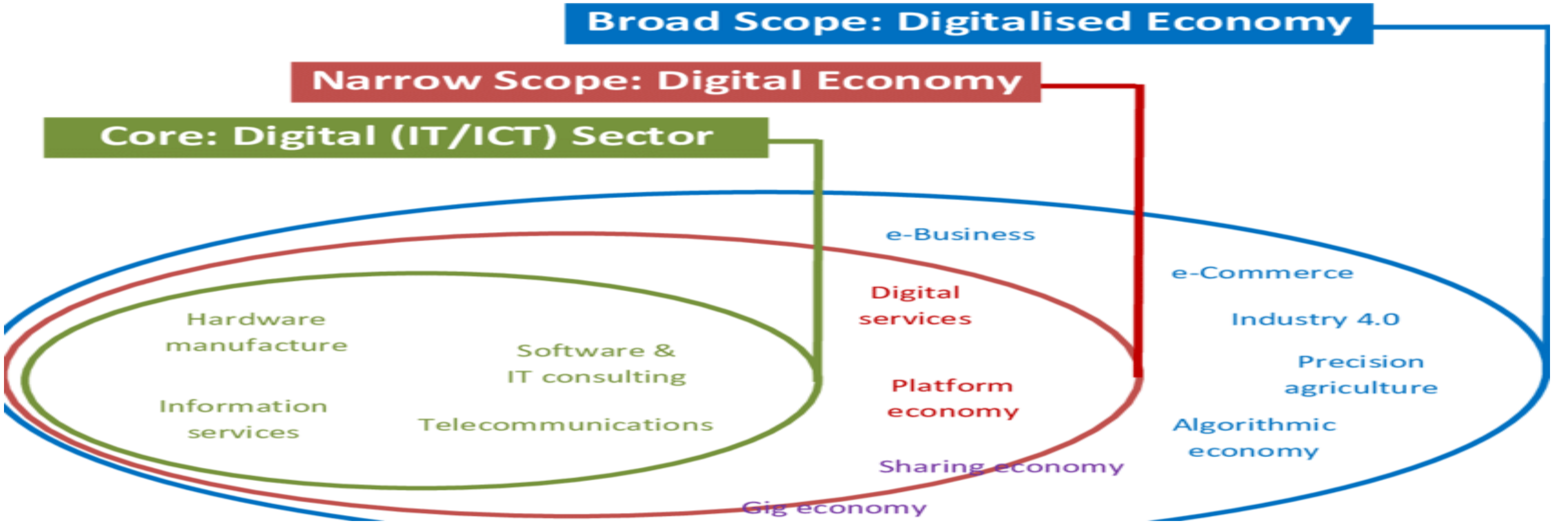
PRESENTATION OUTLINE

THE DIGITAL ECONOMY



TAXATION OF THE DIGITAL ECONOMY IN KENYA

Digital Services Taxes (DST)

- Important to have nexus for the digital players.
- Effective January 2021
- Income derived or accrued in Kenya from services offered through a digital marketplace.
- DST is applied in most jurisdictions.
- WHIT is also levied on advertisement by non-residents.

Introduction of VAT on Digital Marketplace Supplies

- Effective from 2021.
- Objective capture Business to Consumer (B2C) Services e.g. Online Movies, Music.
- Several jurisdictions in line with OECD.

Collaboration with Digital Marketplaces

- Engagement with Digital Marketplaces /Platforms to enhance tax compliance - initiatives e.g., PIN/TIN information sharing, consideration system-system integration.
- These include social media platforms, digital commerce platforms and sharing platforms.
- Collaboration involves letters of request, MAAC and agreements

Capacity Building

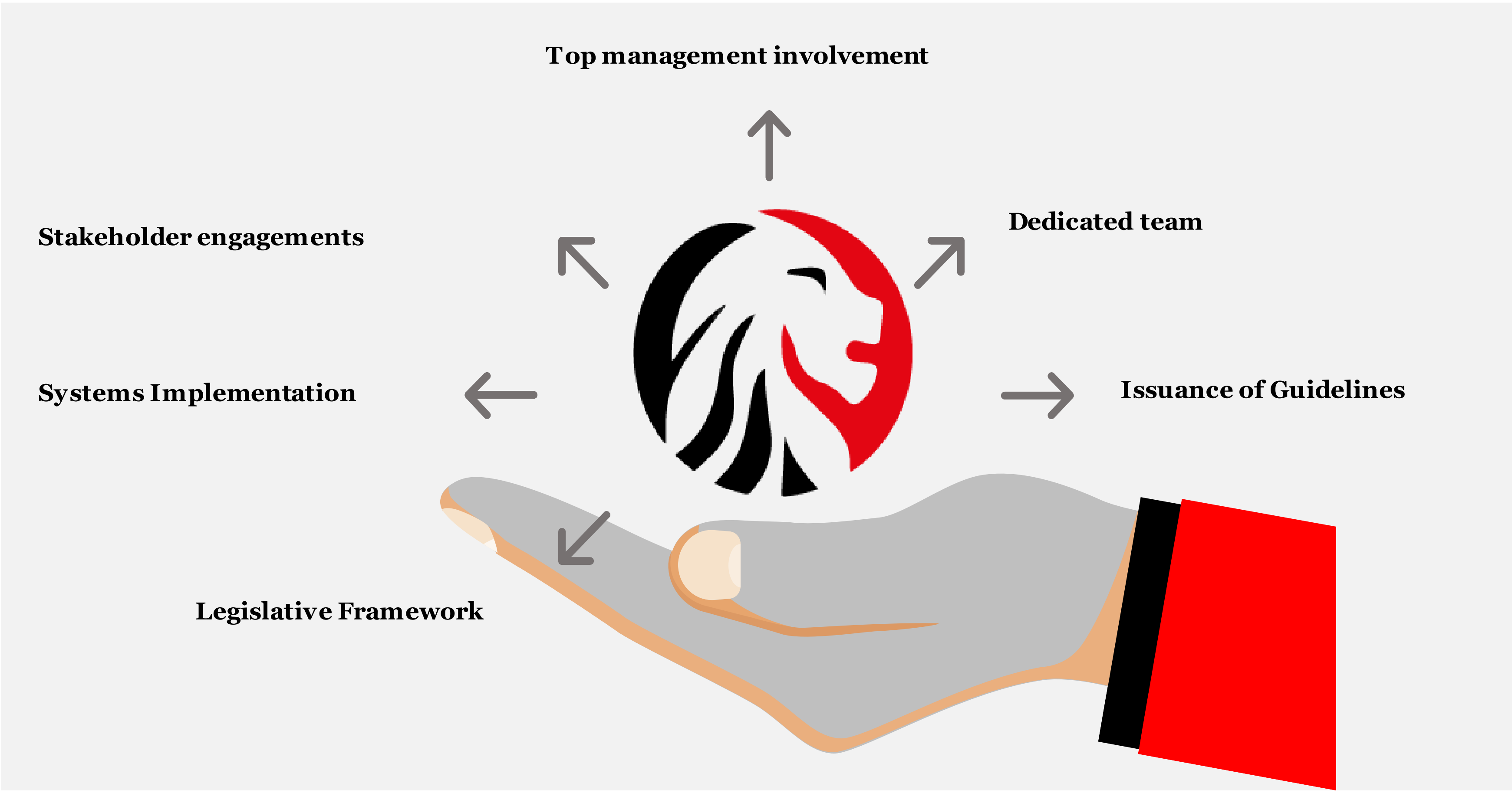
- Training
- Acquisition of tools from International Partners for monitoring digital economy and Social Media for enhanced tax compliance.

Global Approach

- Kenya member since Jan 2017
- Forefront in the Inclusive Framework discussion with respect to the 2-pillar solution.
- Global Approach seeks to stop DST and similar unilateral measures.

INITIATIVES UNDERTAKEN: DST & VAT

- Smooth and seamless operation of DST and VAT on the digital economy, initiatives undertaken.



DST IN KENYA

What is DST?

Digital Service Tax is payable on income derived or accrued in Kenya from services offered through a digital marketplace. #DigitalServiceTax

Kenya Revenue Authority

When does it come into effect?

All digital services that take place in the digital marketplace will be charged 1.5% of the gross transactional value effective 1st January 2021. #DigitalServiceTax.

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What is the rate?

Digital service tax of 1.5% shall be charged on the gross transaction value of all digital services

Kenya Revenue Authority

Contact Centre

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DST INCOME ESTIMATES

- According to Statista (2020), Revenue in the eCommerce market is projected at US$1,093m in 2020 while,
- Revenue in the eServices market the estimation is US$82m (2020).

<u>This is summarized below:</u>

	eCommerce	eServices
Revenues (2020)	Kshs 114,765 (US$1,093m)	Kshs 8,610 (US$82m)
Revenues (2024)	Kshs 235,515 (US$2,243m)	Kshs 14,385 (US$137m)
Scope	• Sale of physical goods via a digital channel to a private end user (B2C) • Purchases via desktop computer (including notebooks) and purchases via mobile devices (e.g. smartphones)	• Online booked and digitally issued event tickets for sports events, music events and cinemas • Fitness wearables and fitness apps for detecting /tracking/ analyzing and sharing vitality • Online dating services, including matchmaking, online dating and casual dating • Online ordered food delivery, including Restaurant-to-Consumer and Platform-to-Consumer delivery

DST INCOME ESTIMATES

	REVENUE KES IN MILLION	DST EST. (1.5 %) KES IN MILLION	VAT EST. (16%) KES IN MILLION	TOTAL EXPECTED KES IN MILLION	SOURCE/BASIS
eServices					
Statista eService revenues	**8,610**	**129.15**	**1,205**	**1,334.15**	Statista, 2020
Subscription based - Netflix	354	5.31	56.64	61.95	Statista, 2019
Taxi Hailing Apps	4,725	70.88	756	826.88	Mercy Corps, 2019
Online Accommodation Services	1230	2.58	224.34	226.92	Airbnb Africa Insight Report,2017
Online Professional Work Platforms (All) e.g. Upwork	5,775	10.40	N/A	10.4	Mercy Corps Report, 2019
Business Process Outsourcing Platforms	20,973.75	314.60	N/A	314.60	Statista, 2021
eServices Total	**41,668**	**532.90**	**2,242**	**2,774.90**	
Statista eCommerce	**114,765**	**103.29**	**N/A**	**103.29**	
Total	**156,433**	**636.20**	**2,242**	**2,878.19**	
Additional 20% to support undocumented platforms	31,286.60	127.24	448.40	575.64	
TOTAL	**187,720**	**763.44**	**2,690**	**3,453.83**	

CHALLENGES OF DIGITAL DEVELOPMENT IN THE ECONOMY TO TAX

Complexity of digital business models

Identification of digital transactions

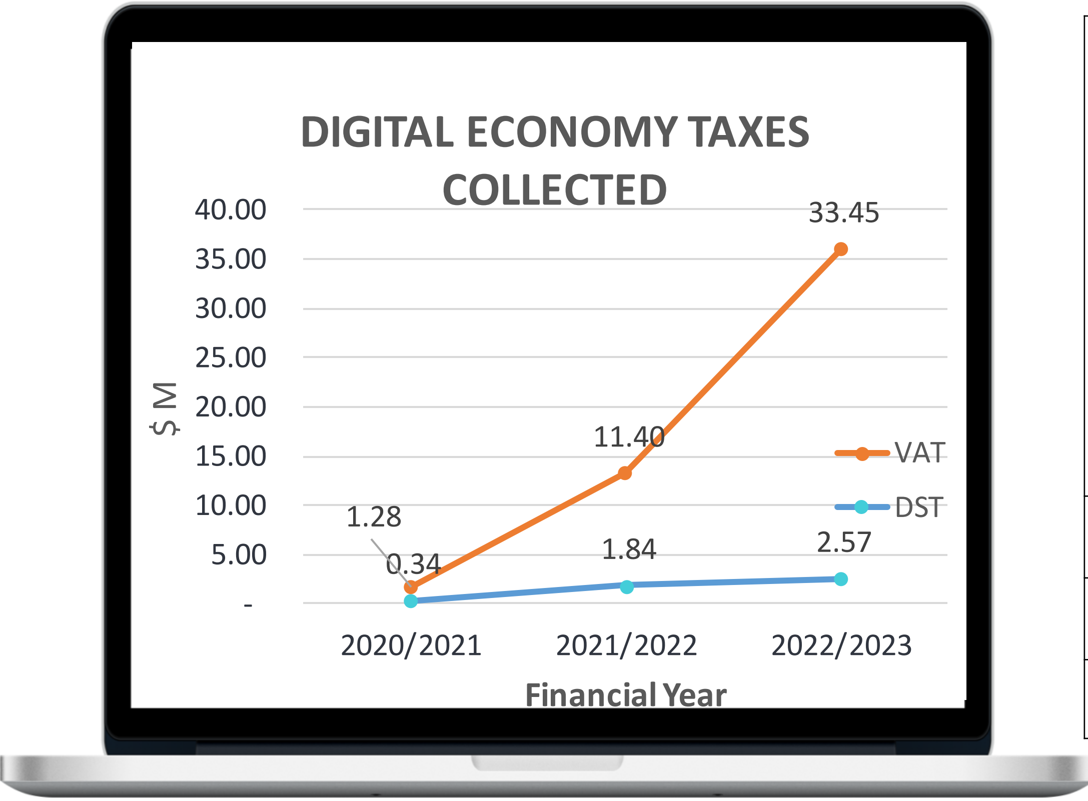
Rapid Pace of technological changes

Legislative Framework

Un-level playing field

Lack of knowledge on the size of the Digital Economy

Taxes Collected by KRA within the Digital Economy



Financial Year	DST Realized	DST Target	VAT (EIS)Realized - USD M	VAT (EIS) - USD M
2020/2021	0.34	6.08	1.28	0.88
2021/2022	1.84	1.00	11.40	2.17
2022/2023	2.57	2.92	33.45	26.92

VAT

DST

CHALLENGES OF DSTs and SIMILAR UNILATERAL MEASURES

Category	CHALLENGES
LEGAL	- Robust laws to support DST - Provisions of various Data Protections Act, GDPR and impact on information on the non-resident merchants from 3rd parties. - DST and tax treaties- Limited taxing rights. UN Art 12B would come in handy if the same were to be adopted. Art. 12B is still under discussion in Kenya.
COMPLIANACE FRAMEWORK	a) Identifying Non-Residents doing business in Kenya - recruitment. b) Verification of DST declared and paid by Non-Residents. c) Enforcement mechanisms in case of non-compliance
ADMINISTRATION	Collaboration with Other Government Agencies and third-party data sources.
POLICY GLOBAL APPROACH	Might perpetuate double taxation where the DST paid is not creditable in the residence country.

Issues with the Amount A Solution

01 Timing

02 Complexity

03 Firmed up impact assessment to compare with DST

04 Non-IF countries

05 Issues for developing countries

06 Political goodwill to implement

07 Cost of administration and implementation of the two pillars

08 Flexibility and adaptability to changing face of the digital economy. Crypto assets, Metaverse, ChatGPT etc.

COST –BENEFIT ANALYSIS

Multilateral measure would provide Kenya with a number of benefits:

Increased Revenue and trade flows:

- The estimates though not verified show higher revenues compared to DST unless the rate is increased from 1.5%
- Estimates provided by OECD, South Centre and Internal work.
- Data includes DST and VAT collections Vs ADS entities within Scope of amount A.
- Reduced instances of trade restrictions between countries.

Compliance costs:

- Multilateral approach seems to be favoured on reduced compliance cost for both taxpayers and tax admins.
- Enforcing DSTs and unilateral measures requires various tools increasing compliance costs.

Increased Fairness and reduced tax avoidance

- Tax allocated based on the market. Ropes in both digital and non-digital entities.
- Measures for anti-avoidance input in the mechanism

WORK DONE AND WAY FORWARD

- Specific impact assessment of DST vs digital companies.
- Discussion with trading partner countries
- Agreed that Kenya shall review DST once the work on Amount A is complete. Kenya actively participates in the TFDE.
- Discussion and consideration of GloBE Rules together with the QDMTT is ongoing.


Thank you