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TAXING DIGITAL GIANTS: A MAMMOTH TASK: By Jonathan Hore

Technology is fast changing our lives as well as the way business is conducted. The advancement in technology also creates its own tax matters. I can confirm that African tax authorities, BURS included, are trying to find ways of taxing these tech giants in each of the respective countries in which they generate revenue. The biggest challenge that the tax authorities face is that the tech giants don't have offices, bank accounts or employees in each country where they have clients, which makes taxing them a mammoth task. I will analyse efforts to tax these tech giants and whether African countries will win the battle. In this article, words importing the masculine shall be deemed to include the feminine.

HOW TECH GIANTS OPERATE

Tech giants basically offer services to anyone in the world through the internet from one or two offices in the world. For example, one can advertise on Google to African internet users. Have you ever googled something and before you get to the page, you are greeted by an advert? Or you were reading an article online and in between it is some advert of a Botswana-based company. So, its that simple, a Botswana-based entity will contact the overseas office of the tech giant and request to place an advert and pay for it. Or, if you are a music fan like me, you may sign to iTunes on your phone and have access to any artist worldwide, for which you pay US$4.99 per month through a direct debit to your local bank account.

Below is how the tech giants work:

- No offices: These tech giants don't need offices in Botswana or Africa in order for them to make money here, since its clients connect via the internet.
- No employees: A tech giant does not need employees in Botswana in order for it to trade with local clients. Again, the internet comes in handy. In fact, most of them are based in the USA, China and Europe and that's where their employees will be based.
- No bank account: It follows that these giants don't need bank accounts in Botswana as payments are made online.
- Revenue earned from Botswana: Without doubt, these tech giants earn revenue from Botswana in the form of advertising, sales commission, monthly account maintenance fees etc.

TAXING THEM HERE

In order for Botswana to levy income tax on any entity, that entity should have a permanent establishment in Botswana such as an office, subsidiary or a branch. In simple, BURS should be able to visit the taxpayer and conduct a tax audit if they need to. Now, lets analyse where the headache of trying to tax these giants emanates from:

- No offices: I stated above that the likes of Google don't need offices in Botswana in order to offer services to residents. Even though they make money from here, as long as they don't have an office here, they don't have what we call a permanent establishment. The absence of a permanent establishment means that they can't be taxed in Botswana.
- No bank account: Even if BURS wanted to collect taxes from these giants, how would it do so when they don't have a bank account here? This proves that these giants are simply untouchable as they can even refuse to pay assessed tax given their remoteness.
- Meagre amounts: You will agree with me that African countries don't contribute a big chunk of the revenue of these tech giants compared to the rest of the world.

Therefore, even if a way of taxing them is found, we are likely to generate meagre taxes from these entities.

A MAMMOTH TASK

So, given the fact that the current legislative framework does not favour the taxation of tech giants, some realistic solution must be reached but that won't be an easy task. It may entail renegotiating all the Double Taxation Avoidance Agreements and that's never easy. My view is that African countries would rather introduce withholding taxes on payers based in their countries rather than trying to get the tech giants to be bound by local legislation. You may know that currently, Botswana-based persons have to deduct withholding taxes whenever they pay non-residents for management & consultancy fees, commercial royalties, interest etc.

Expanding the list of items subject to withholding taxes would be more feasible and practical as African tax authorities have someone to check if there is non-compliance. For example, if BURS was to introduce a withholding tax on all payments made to tech giants (advertising, account maintenance etc) of say 15% of the amount paid, it would receive the money without spending a thebe. If African countries try to chase after the tech giants, then the effort needed to tax such entities will far outweigh the amount of the taxes collected, if any.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.