

Draft law to tax tech giants released: By Jonathan Hore

The quest to tax global digital giants by African countries, Botswana included, has grown thicker as the African Tax Administrators Forum (ATAF) launched and released a roadmap of taxing the tech giants on 30 September 2020. Botswana is an active member of ATAF, a group of African tax administrators which intends to close any tax leakages and enhance tax corporation among member states.

The roadmap titled, 'Suggested Approach to Drafting Digital Services Tax Legislation' comes in the form of a pre-drafted legislation which member states simply need to add their names in certain spaces and then enact the same as a new tax law. ATAF is concerned that companies such as Amazon, Alibaba, Google and Netflix, among others, derive revenue from Africa without paying a thebe in taxes as they do not need offices wherever their clients are located. ATAF proposes that a tax of between 1% to 3% of the annual revenue derived in member countries be subjected to a Digital Sales Tax. The tax is targeted at, among other revenue streams, online advertising, online gaming services and services delivered through online marketplaces. According to ATAF, other African countries such as Kenya and Nigeria have already enacted laws to collect the tax.

The proposed legislation seeks to make it mandatory for the head offices of the tech giants to appoint, in the case of Botswana, a Botswana-resident person for the purposes of paying the tax. The practical challenge with such a law is that it tries to bind persons outside the borders of the African countries, which comes with its own practical implementation hurdles due to geographical distance. If the head office of the tech giant chooses to ignore the law, there is little room for BURS, in our case, to move and try to collect the tax.

ATAF proposes to tax a proportion of the global revenues of the tech giants which are attributable to each respective country and that is on the assumption that the global revenues will be publicly available. Assuming that the global revenues are available, they will then be used to determine locally generated revenue. It is critical to note that tax is easy to collect where BURS has access to bank accounts or debtors of the taxpayer. The fact that the tech giants do not have local bank accounts and debtors will undoubtedly stall collection of the taxes.

There is consensus that tech giants must be taxed on income which they generate from Botswana, in our case, even though they do not have offices here. However, given the fact that their management, accounting records and bank accounts are all sitting outside Botswana, implementing the law here may sound good but it may not yield the desired results. The easier way of taxing these giants is by introducing withholding taxes on all the envisaged online services and requiring Botswana-based clients to deduct and pay the tax to BURS before paying the giants. In the event of non-compliance, BURS will go after the local entities and easily collect the unpaid taxes. This is a more realistic option than legislating to tax persons who are outside one's borders without access to their offices, books of accounts, bank accounts and debtors.