The Uganda Revenue Authority has started collecting VAT from non-resident companies providing electronic services to non-taxable persons in the Ugandan economy, effective 1 July 2022. This article highlights the measures Uganda is set to take in ensuring that there is effective control of base erosion and profit shifting by tech giants whose services are being enjoyed and utilized in Uganda.

1. Background

More than eight years since the Uganda Revenue Authority (URA) held its presentation on Uganda’s perspective on base erosion and profit shifting (BEPS) at The Hague in the Netherlands, the URA is making strides with the development and subsequent implementation of its strategic action plan on the taxation of the digital economy. This comes as a recommendation by the Organisation for Economic Co-operation and Development (OECD) following its 15 Action Points to tackle tax avoidance, improve the coherence of international tax rules, ensure a more transparent tax environment and address the tax challenges arising from digitalization of the economy.

The 15 Action Points were set out to equip governments to apply international instruments in the domestic context in order to address tax avoidance while ensuring that profits are taxed where economic activities that generate profits are performed and where value is created. Pertinent and essential to highlight in this article are BEPS Action Points 1 and 7.

BEPS Action 1 aimed at addressing the tax challenges of the digital economy, specifically recognizing the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation, and the question of how to ensure the effective collection of value added tax (VAT) with respect to the cross-border supply of digital goods and services.

Action 7 aimed at preventing the artificial avoidance of a permanent establishment (PE) with the end goal of developing changes to the definition of PE under the model tax conventions.

Whereas the URA was ambitious in its desire to implement the Action Points, there have been several hurdles delaying the process, which are yet to be overcome by means of the ongoing global tax discussions spearheaded by the OECD. However, for a start, Uganda updated its VAT legislation and is now set to start collecting VAT from non-residents as detailed herein.

2. Uganda’s Measures for Taxing Tech Giants for Electronic Services

2.1. Who are the tech giants and why all the fuss?

Simply put, tech giants are the largest, most dominant companies in the information technology industry. They include Meta (Facebook), Alphabet (Google), Amazon, Microsoft and Apple, also commonly known as MAAMA. They are the dominant players in their respective areas of technology, namely e-commerce, online advertising, consumer electronics, cloud computing, computer software, media streaming and the like. They have been among the most valuable public companies globally, typically offering services to millions of users worldwide.

The tech giants employ business models that advance the use of technology allowing them to operate and generate profits in jurisdictions where they have a limited or no physical presence without creating a taxable presence. Such ways of conducting business have created tensions with the traditional tax concepts and mechanisms, depriving jurisdictions such as Uganda of tax revenues.

Traditionally, doing business required a physical presence in a given jurisdiction where it was required to pay taxes. However, tech giants eliminate the need for a physical or legal presence of a business in a country since goods and services can be produced in another country and sold online via advertising platforms. Tech giants have redesigned the traditional mode of doing business by offering new ways of conducting, managing and executing business transactions using modern information technology.

It goes without saying that tax remains one of the largest sources of revenue for a given country. With a claim of sovereignty over any resources within their boundaries, countries possess the right to tax income produced within their borders, meaning that every sovereign state has legislative, adjudication and enforcement powers over entities that have substantial contact with its citizens. With the globalization of the world economy, countries have to adapt to the new trade trends and ensure that their tax legislative environment is updated accordingly to cater...
for such business models or run the risk of losing out on revenue sourced from their countries.

According to the website DataReportal, Internet users have more than doubled over the past ten years, climbing from 2.18 billion at the start of 2012 to 4.95 billion at the start of 2022 with a compound annual growth rate of 8.6% for the past decade as a whole. Further, today’s total of 4.62 billion social media users is 3.1 times higher than the 1.48 billion figure published in 2012, meaning that social media users have grown at a compound annual growth rate of 12% over the past decade. This goes to show that the increasing number of Internet users has an impact on the increasing turnover of electronic commerce. No doubt the advancement of information technology and proliferation of new Internet-based businesses have since expanded and become a trend in both developed and developing countries. Advances in technology, computers and telecommunications support the development of Internet technology that is leveraged by the tech giants.

While conventional businesses are forced to restructure and implement digital products and/or services, tech giants are already reaping large profits via their platforms with their online advertising services from the various economies with little to no tax.

It becomes imperative, in such an era where tech giants can derive substantial profits from transactions with customers located in another country, for the taxation rules to ensure a fair allocation of taxing rights on business profits, especially where the profits from such transactions go untaxed.

The Uganda government through its legislative body and the URA has therefore set up legislation and administrative measures to ensure that profits sourced by the tech giants from Uganda are taxed in Uganda.

2.2. VAT and the resulting administrative measures

According to section 16(2)(d) of the Value Added Tax (Amendment) Act 2021 (VAT Act), the URA is empowered to charge VAT on electronic services supplied to a recipient in Uganda. This provision, read together with section 31A(1a) of the VAT Act, requires a non-resident supplier of electronic services to charge VAT on the supply, file quarterly returns and pay VAT due on the supply within 15 days from the end of each quarter. The VAT that the URA seeks to enforce is by its nature an indirect tax, and as such the tax burden rests on the consumers, with the tech giants merely acting as collectors.

On 8 July 2022, the URA issued a Public Notice on the registration and return filing by non-resident suppliers of services. The notice reminded all non-resident persons supplying electronic services in Uganda that, among other things:

- under section 16(2) of the VAT Act, any non-resident who supplies electronic services to a non-taxable person present in Uganda makes a taxable supply in Uganda; and
- a non-resident person supplying the above services to a non-taxable person in Uganda is required to:
  - charge VAT on the supply of services to a non-taxable person present in Uganda; and
  - file a quarterly return and pay the VAT due on supplies made to all non-taxable persons in Uganda within 15 days from the end of each quarter.

It is important to note that the URA classified the tech giants among the non-resident suppliers of electronic services for the obvious reason of widening the digital tax base to include very large corporations together with small and medium-sized enterprises.

The electronic services envisaged under section 16(2) of the VAT Act when provided or delivered remotely include:

- websites, web hosting or remote maintenance of programs and equipment;
- software and updating of software;
- images, text and information;
- access to databases;
- self-education packages;
- music, films and games including games of chance; and
- political, cultural, artistic, sporting, scientific and other broadcasts and events including television.

Under its Public Notice, the URA set and informed all non-resident suppliers of electronic services in Uganda that the effective date for implementation of VAT on electronic services by way of online VAT registration and filing of online quarterly VAT returns is 1 July 2022. This means that all the non-resident suppliers of electronic services are expected to file online returns and pay VAT charged for the first quarter of the financial year by 15 October 2022.

Uganda operates a self-assessment tax system that imposes a duty on the taxpayer to calculate their own taxable income and pay the resulting tax due on that income. The calculation is subject to review and verification by designated URA officials when returns are filed and may be subjected to audits as and when the officials deem fit. That said, it remains to be seen how Uganda intends to effectively review and audit the tech giants that have no physical presence in the country.

2.2.1. Mandatory registration

All non-resident persons who supply services to non-taxable persons present in Uganda are required to register for tax as per section 4 of Uganda’s Tax Procedure Code Act, 2014 (as amended), which requires a person to register for taxes in order to get any form of authorization to conduct business in Uganda.
Sections 7 and 8 of the VAT Act (as amended) also make it mandatory to register for VAT. Under the VAT Act, a person not registered can apply to be registered within 21 days at the end of a three-month period during which the person made taxable supplies whose value exceeded one quarter of the annual registration threshold, which is UGX 150 million (USD 39,327.50).

The registration of tech giants will therefore be a good start in helping the URA effect its tax administration and compliance measures.

### 2.2.2. Charging VAT on supply of services to a non-taxable person present in Uganda

The law in Uganda recognizes a non-resident who supplies services to a non-taxable person (a person not registered) in Uganda as having made a taxable supply and is therefore required to charge VAT on the supply of services made to non-taxable persons in Uganda. The implication of this is that every payment made for services provided by tech giants to non-taxable persons (usually the individual final consumer) shall be accounted for and remitted to the URA. The non-resident taxpayer charges VAT at a standard rate of 18% and remits this amount to the URA. This will not apply to a taxable person (a VAT-registered entity – business to business (B2B)) as they are required to account for VAT through the reverse charge mechanism.

### 2.2.3. Return filing and VAT remittance

As stated, Uganda operates a self-assessment mechanism where a taxpayer is required to assess their business with regard to taxable supplies made and then subsequently file a return. In order to implement the requirement for filing returns relating to electronic services provided by various players, non-residents are required to file a quarterly return under Form DT-2031A, which is the designated VAT return form for non-resident suppliers. This return is used to declare VAT on all electronic services supplied by non-residents.

The return and any other taxes declared are both due by the 15th day of the month following that quarter. With the effective date set as 1 July 2022, non-residents will be required to file their first returns on 15 October 2022. The returns to be filed are manual, and upon completion, they can be scanned and sent to an email address operated by the URA (quarterlyreturns@ura.go.ug). The tax authority is also working on its IT infrastructure to enable non-residents to prepare and file returns online without having to send it through email.

As a way of easing compliance by non-resident taxpayers, the URA made it a point to ensure that the first VAT return filed is deemed as an application for registration (either of the taxable non-resident person or their agent or tax representative). The non-resident is subsequently issued with a tax identification number (TIN) and their name effected on the VAT register pursuant to section 8(5) of the VAT Act.

### 2.2.4. Appointment of agents or tax representatives

A non-resident supplier of electronic services may opt to appoint a tax agent qualified and approved by the URA or a tax representative as a person being in Uganda appointed to represent the non-resident in all their tax affairs, including assisting them in filing returns and fulfilling all other obligations in Uganda.

The law defines a tax representative in the case of a non-resident as the individual controlling the person’s affairs in Uganda, including a manager of a business of that person or any representative appointed by the person in Uganda.

A tax agent appointed to act for and on behalf of a non-resident supplier of electronic services in Uganda is engaged in the following:
- preparation, certification and filing tax returns or other statements or reports required by the URA;
- preparation of requests for rulings, petitions for reinvestigation, protests, objections, requests for refunds or tax certifications, compromise settlements and/or abatement of tax liabilities and other official papers and correspondence with the URA; and
- in meetings and hearings, representing the taxpayer in all matters relating to the non-resident supplier’s rights, privileges or liabilities under the laws or regulations administered by the URA or any other law in Uganda.

On the other hand, the obligations of a tax representative appointed by a non-resident supplier of electronic services include the following:
- a tax representative is responsible for performing any duty or obligation imposed by a tax law on the taxpayer, including the submission of quarterly tax returns and subsequent payment of tax;
- a tax representative making a payment of tax on behalf of a non-resident taxpayer is treated as acting under the authority of the taxpayer; and
- if the tax is payable by the representative of a supplier of electronic services, it is recoverable from the agent to the extent that the assets of the non-resident taxpayer are in the possession or under the control of the tax representative.

It is key to note that a tax representative is personally liable for the payment of any taxes due by the tax representative in that capacity in the event that, while the amount remains unpaid, the representative:
- charges or disposes of any money received or accrued in respect of which the tax is payable; or
- disposes of or parts with money belonging to the taxpayer that is in possession of the tax representative if tax could have been legally paid out of that money.

Additionally, the amounts for which the tax representative of a non-resident supplier of electronic services becomes personally liable under any laws of Uganda are collected and recovered in accordance with the law as if the tax representative were the non-resident supplier. However, much as this will ensure that taxes are duly collected, it poses risks for the tax representatives who could end up paying taxes that are meant to be paid by the non-resident.
Notably, the appointment of a tax representative or a tax agent does not relieve the non-resident supplier of electronic services from performing any obligation imposed on them under a tax law in Uganda that the tax representative/tax agent or taxpayer has failed to perform. Additionally, where the non-resident supplier appoints two or more tax agents or tax representatives, the obligations imposed by law apply to them jointly and severally but may be discharged by any of them.

Where a non-resident supplier of electronic services is unwilling and/or unready to set up a physical presence in Uganda, it would be prudent to appoint tax representatives or tax agents that are well-versed with the tax laws of Uganda.

2.2.5. Use of electronic receipting and invoicing system

Currently, VAT-registered taxpayers are required to use the electronic receipting and invoicing system (EFRIS) to issue e-invoices or e-receipts for every business transaction they engage in (whether exempt or taxable).

EFRIS is an automated compliance system introduced by the URA in 2021 as part of its revenue mobilization strategy intended to manage the issuance and centralized tracking of all invoices and receipts by specified taxpayers in Uganda (currently, only VAT-registered taxpayers are required to issue invoices/receipts via this system).

Under the Tax Procedures Code (E-Invoicing and E-Receipting) Regulations, 2020, taxpayers are mandated to use a centralized invoicing and receipting system to monitor and manage the issuance of fiscal documents for the purpose of ensuring that their transactions are tracked.

Non-resident taxpayers providing electronic services will therefore be required to issue e-invoices and e-receipts in order to effectively perform transactions in Uganda. It remains to be seen how the URA will integrate and harmonize EFRIS with the accounting/invoicing standards of the tech giants.

2.2.6. Procedure for filing the returns and initial registration for non-residents providing electronic services

The URA has taken measures to simplify the return and registration process by providing a return form for non-residents that is accessible to anyone. To access the form, a taxpayer can:

- visit the URA web portal at https://ura.go.ug;
- select "Download manual return form";
- select "Domestic taxes";
- select "Return form"; and
- under "Return forms", select "DT-2031A (VAT return form for non-resident suppliers)".

The taxpayer then downloads, fills, scans and emails the form to the URA email address specifically provided for filing returns under quarterlyreturns@ura.go.ug and pays the tax within 15 days from the end of each quarter.

2.3. Imposition of income tax

A non-resident company is only subject to Uganda income tax on income derived from sources in Uganda.

The Income Tax Act 1997 (ITA) (Cap 340, as amended) imposes a withholding tax of 15% on all payments made to non-resident persons who derive any dividend, interest, royalty, rent, natural resource payment or management charge from sources in Uganda.

The obligation to withhold tax lies with a withholding agent, who is defined under the ITA to mean any person required to withhold tax upon making any payment to a payee, a payee being any person who receives a payment from which tax is required to be withheld.

The tax rates are subject to existing double taxation agreements between Uganda and the country of residence of the non-resident entity.

Tech giants (read non-residents) who source income from Uganda are required to pay 15% withholding tax on income earned. However, given their business model of e-transactions, it is still quite challenging for the URA to track the income to collect the resulting tax.

Accordingly, the URA has indicated that Uganda is still considering levying income tax on non-resident entities, targeting the income they source in Uganda. Implementation plans are underway as the discussion is still ongoing on the global stage, spearheaded by the OECD.

2.3.1. Transfer pricing and the concept of PE

As the primary legislation regulating transfer pricing in Uganda, the ITA empowers the Commissioner General of the URA to distribute, apportion or allocate income, deductions or credits between the parties to any transaction who are associates. This is necessary for the purposes of reflecting the chargeable income that the taxpayers would have realized in an arm’s length transaction.

In so doing, the commissioner general can determine the source of income and the nature of any payment or loss as revenue, capital or otherwise.

The Income Tax (Transfer Pricing) Regulations 2011, on the other hand, apply to controlled transactions, defined as transactions between two associated enterprises if a person who is a party to the transactions is located in and is subject to tax in Uganda and the other person who is a party to the transaction is located in or outside Uganda.

In addition, the anti-avoidance provisions contained in sections 90 and 91 of the ITA require transactions between associates to be at an arm’s length. These provisions are often applied by the URA in instances where they are of the view that a non-resident person may be transferring profits from Uganda in non-arm’s length transactions.

As a general taxation rule, the requirement for a PE or a fixed base is a threshold that needs to be satisfied before a
source country can tax residents of other treaty countries on business profits. currently, Uganda’s ITA defines a PE to mean a place where a person carries on business and includes:

- a place where a person is carrying on business through an agent, other than a general agent of independent status acting in the ordinary course of business;
- a place where a person has, is using or is installing substantial equipment or substantial machinery for 90 days or more;
- a place where a person is engaged in a construction, assembly or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to such a project; and
- the furnishing of services, including consultancy services, by an enterprise of a contracting state through employees or other personnel engaged in the other contracting state, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 90 days within any 12-month period.

The above conventional definition of a PE does not include the model where a tech giant has a significant digital economic presence in Uganda. The companies do not have any semblance of a branch or agent conducting business in Uganda as their management and operations are mostly centralized in a given jurisdiction.

As noted, tech giants employ business models that advance the use of technology allowing them to operate and generate profits in jurisdictions where they have a limited or no physical presence without creating a taxable presence. It becomes rather difficult for a country to determine the arm’s length profit margin of a transaction when there is little to no physical presence and also where an entity is not tax registered.

There is a need therefore to update this and perhaps include the digital PE concept. However, for a start, one could note that the VAT obligations (registration, filing and remittance) being imposed above are a step in the right direction.

3. Challenges Faced by the URA in Implementing the Taxation of Tech Giants

In implementing taxation for tech giants the URA will be facing the following challenges:

- Manual form: the return form provided by the URA for filing returns is a manual form, which could create problems in terms of access. The revenue authority intends to provide an automatic form for registration.
- Characterization: the revenue authority finds it hard to characterize services as electronic services. Uganda has limited Internet penetration, which could lead to difficulties in allocating and classifying services as electronic services such that the non-residents will have obligations and liabilities in respect to business-to-customer (B2C) and not B2B supplies. From this, the businesses, registered or not, shall retain the obligation to account for VAT under the reverse charge VAT mechanism as the position is currently, which prevents the possibility of double taxation.

The URA, through the parliament of Uganda, intends to streamline the VAT provisions relating to electronic services such that the non-residents will have obligations and liabilities in respect to business-to-customer (B2C) and not B2B supplies. From this, the businesses, registered or not, shall retain the obligation to account for VAT under the reverse charge VAT mechanism as the position is currently, which prevents the possibility of double taxation. However, there are practical hurdles for the non-resident to identify and track B2B and B2C transactions.

4. Recommendations

Here are some of the global recommendations advanced in addressing the challenges of taxing the tech giants.

- Setting up significant economic presence (SEP) is intended to give jurisdictions the right to tax businesses that have a sustained interaction with their economies, even if that does not involve having a physical presence there. In order to remedy the shortcomings of non-resident companies not having a physical presence in Uganda, non-resident companies can set up SEP in Uganda. To do this, the taxpayer will have to look at other key factors, such as user base, the existence of web pages tailored to the local market and locally derived digital content. The allocation of profits to the SEP could be based on some form of fractional apportionment.

As part of the solution to BEPS, the government has also devised a means of negotiating special deals with tech giants to ensure that they pay more tax in Uganda. This, however, has been disregarded by most taxpayers as they allege that the revenue authority is favouring non-resident suppliers of electronic services.

In 2018, the US Supreme Court in the case of *South Dakota v. Wayfair, Inc & Others* ruled that a state could charge tax on out-of-state businesses without a physical presence in that taxing state. However, as already noted, this is not necessarily the law in Uganda.

With regard to licensing of digital companies, the government of Uganda is planning ways of enacting laws setting up registration, licensing and regulation of electronic services, trading and holding companies.

Uganda also intends to apply an additional tax on revenues earned by multinational enterprises (MNEs). The challenge is that once this is passed in addition to VAT, the implication of this tax will be faced by the final consumer of the electronic services and this could lead to double taxation.

With regard to enforcing automatic information exchange for tech giants, Uganda seeks to make it mandatory to have an automatic exchange of information with different jurisdictions in line with the OECD guidelines on curbing tax evasion.

The URA, the African Tax Administrative Forum, the Global Forum on Transparency and Exchange of Information for Tax Purposes, the OECD, World Bank Group and others have successfully worked for the strengthening of tax transparency. Uganda intends to use this as a benchmark to extend the exchange of information to tech giants.

### 5. Comments and Conclusion

The OECD has repeatedly highlighted the risks developing countries like Uganda face when it comes to the digital economy involving multinational enterprises (read tech giants) and the loopholes in the tax systems that create room for profits to escape from the country.

In October 2019, the OECD issued a proposal on the Inclusive Framework (the global alliance implementing the BEPS Actions) intended to form a consensus on how to allocate profits. The proposal aimed at creating a basis for jurisdictions to tax profits arising from digital and electronic services carried out by MNEs without PEs or branches under the existing domestic tax laws.

The OECD set ambitious timelines to ensure that profits are taxed from the source of the sales made by these companies.

As much as Uganda has been steadfast and aggressive in coming up with legislation to tax VAT on electronic services provided by non-resident suppliers in line with OECD BEPS Action 1, and in line with the Pillar One and Pillar Two recommendations by the OECD, it remains to be seen how these provisions will be implemented taking into consideration the various challenges that Uganda faces as a developing country. This article, though, has highlighted the administrative solutions proposed by the URA and other stakeholders in trying to resolve the aforementioned challenges and has laid out the taxing points and procedural requirements that have to be undertaken by the tech giants in order to ensure compliance with tax laws in Uganda.