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West African Perspective on Addressing the Fiscal Challenges of the Digital Economy

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ABSTRACT

Today, it is estimated that about 59.5% of the world's population (7.83 billion people) has access to the Internet, with an increase of 7.3%[1] over last year. This has enabled electronic commercial transactions worth 26,700 billion US dollars[2]. However, it must be noted that the tax revenues collected in the digital economy are still very low due to the existing obsolete tax rules. This situation has prompted the finance ministers of the G7 countries, meeting in London from 4 to 5 June 2021, to adopt a reform of international taxation "adapted to the digital age", as described by Rishi Sunak [3], chairman of the meeting. The reform, described as historic, will establish a global tax rate of at least 15% for multinationals in the digital sector, regardless of their tax residence. Faced with this infatuation of the richest countries for the taxation of the FT, what about the countries of the West African sub-region (SROA)? What are the viable solutions that can enable the development of FT taxation in West Africa (WA)? The objective of this paper is to provide some ideas for workable solutions.

[1] https://datareportal.com/reports/ (Accessed June 20, 2021)
[2] https://unctad.org/news/global-e-commerce-jumps-267-trillion-covid-19-boosts-online-sales
[3] https://www.france24.com/fr/info-en-continu/20210605-le-g7-finances-s-engage-sur-un-taux-mondial-pour-l imp%C3%B4t-on-society%C3%A9t%C3%A9s-at-least-15 idem

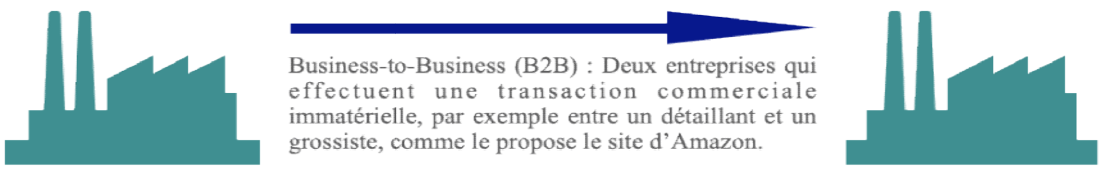
CONTENT

Introduction

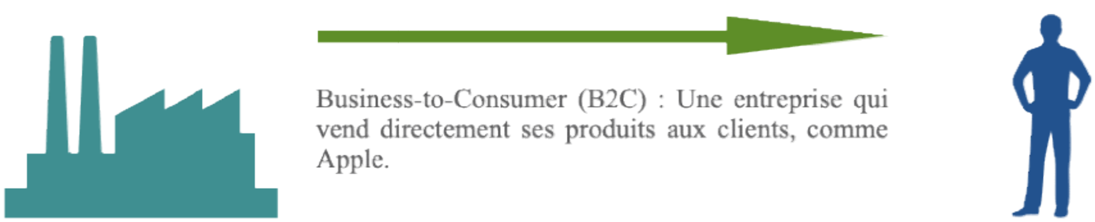
Electronic commerce (EC) has a wide range of definitions that take into account different elements of the digital economy, from online sales to purely digital products and data trade, to new exchanges resulting from the adoption of new digital technologies. This paper conceives of EC as the sale or purchase of goods or services, carried out by a business entity, individual, government or other public or private entity, and conducted through an electronic network (OECD, 2013)[4]. This includes goods or services ordered online and paid for in cash or upon delivery of said goods or services. This type of EC is defined by the method of ordering, which excludes orders by telephone call, fax or email written for this purpose (CEA, 2018) [5].

This conception of the FT covers the following aspects:

Figure 1: The different aspects of FT



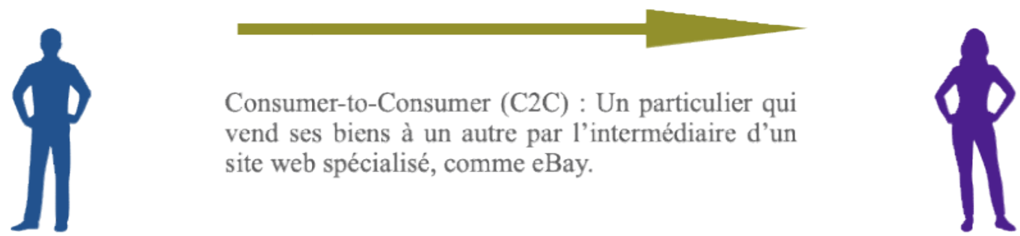
Business-to-Business (B2B): Two companies carrying out an intangible commercial transaction, for example between a retailer and a wholesaler, as offered by the Amazon website.



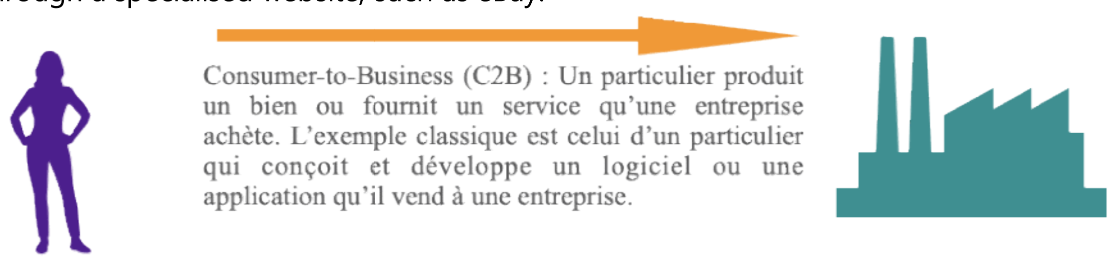
[4] OECD 2013, *Glossary of Statistical Terms. Electronic Commerce.* https://stats.oecd.org/glossary/detail.asp?ID=4721.

[5] ECA, 2018, *Note on E-Commerce in Africa.* https://unctad.org/system/files/non-official document/CEA_UEMOA2018_en.pdf .

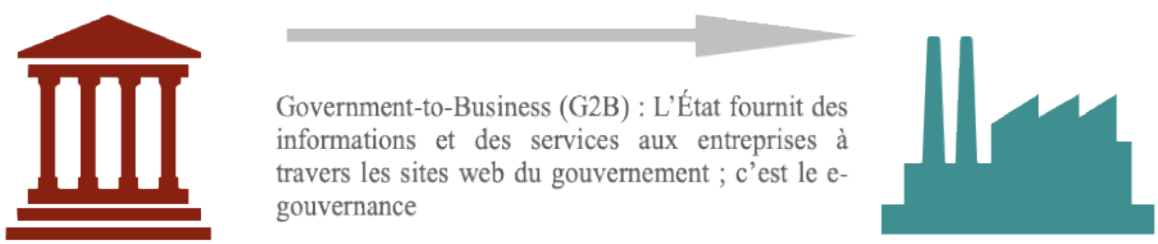
Busines-to-Business (B2B): A company that sells its products directly to customers, like Apple.



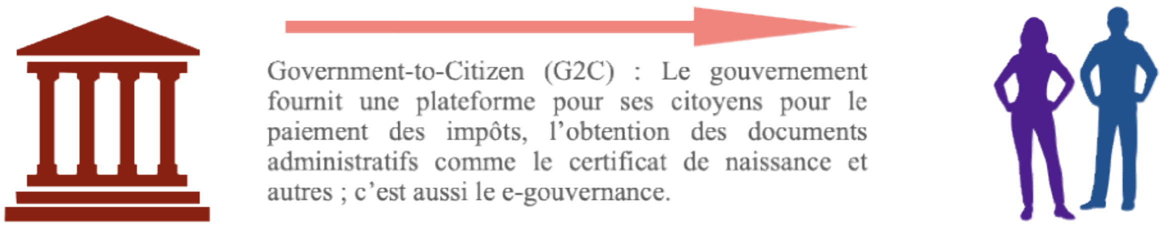
Consumer-to-Consumer (C2C): An individual who sells his or her goods to another through a specialised website, such as eBay.



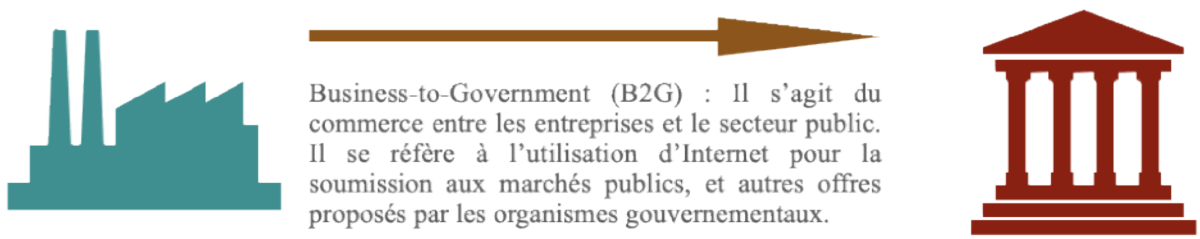
Consumer-to-Business (C2B): An individual produces a good or provides a service that a business buys. The classic example is that of an individual who designs and develops software or an application and sells it to a company.



Government-to-Business (G2B): The state provides information and services to businesses through government websites; this is e-government.



Government-to-Citizen: The government provides a platform for its citizens to pay taxes, obtain administrative documents such as birth certificates and others; this is also e-government.



Business-to-Government (B2G): This is trade between businesses and the public sector. It refers to the use of the Internet for bidding on public contracts, and other tenders offered by government organisations.

Source: (Abdulkarimli, 2015)[6].

The Internet is one of the fundamental tools of the FT. In this regard, access, use and knowledge of the Internet are key to understanding FT in the African context. FT and the digital economy have grown considerably throughout the decade ending in 2019 thanks to improved internet penetration rates, reduced internet costs and the rise of mobile. By 2021, about 42% of the WA population (407 million people) was using the internet, a 17.1% increase from 2020 [7].

Notwithstanding this improvement in the context of the COVID-19 pandemic, what about the fiscal challenges of the FT in WA?

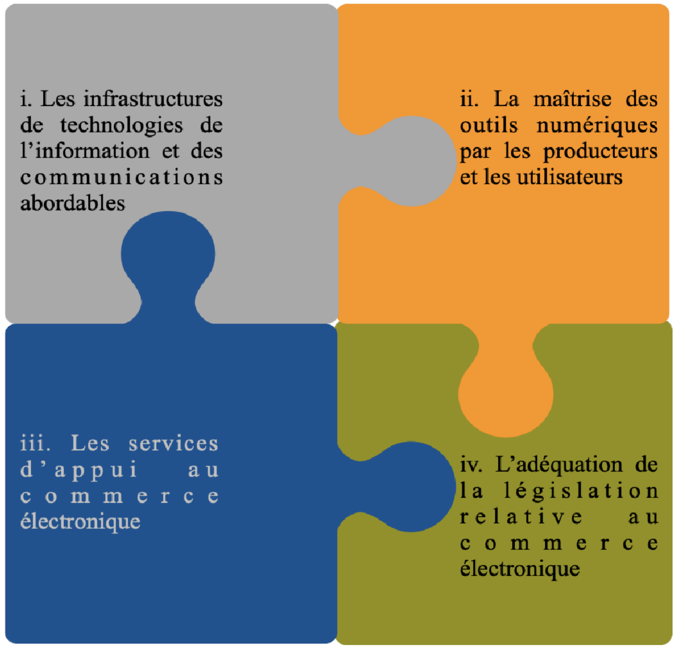
1 FT fiscal challenges in West Africa

Trade facilitation services, such as secure online payments or efficient means of delivery, have important implications for the development potential of FT in Africa,

[6] Orkhan Abdulkarimli, *Taxation of E-commerce,* Baku State University Law Review, volume №1, 2015 [7]https://datareportal.com/reports/ (Accessed 20 June 2021)

especially trade facilitation measures (such as logistics chains for delivery, storage and clearance of small packages).

In light of this, Fredriksson has identified the following challenges: *__Figure 2__: FT Challenges in WA*



__Source__: (Fredriksson, 2013)[7].

i. Les infrastructures de technologies de l'information et des communications abordables Affordable information and communication technology infrastructure	ii. La maitrise des outils numériques par les producteurs et les utilisateurs The mastery of digital tools by producers and users
iii. Les services d'appui au commerce électronique E-business support services	iv. L'adéquation de la législation relative au commerce électronique The adequacy of e-commerce legislation

On the tax side, the challenges faced by the AROS Tax Administrations are not the least. The immateriality, interactivity and internationality of the FT put the tax rules of WA countries to a severe test.

The following are some examples, without pretending to be exhaustive:

[7] Fredriksson, Torbjörn, 2013, *E-commerce and Development. Key Trends and Issues*. www.wto.org/english/tratop_e/devel_e/wkshop_apr13_e/fredriksson_ecommerce_e.pdf.

1.1 Problem of territoriality

The concept of territoriality is fundamental in tax law. Indeed, in determining the scope of application of the tax, territoriality makes it possible to attach an activity to a category of taxes and to a state tax system. However, the virtual space constituted by the Internet is likely to call into question the rules of tax jurisdiction based on the concept of territory.

1.2 Product qualification problem

Many difficulties arise from the way in which e-commerce operates, which makes extensive use of dematerialisation or digitalisation techniques. This leads to confusion in the classification between a good and a service.

Indeed, the same product can be classified in different ways. For example, a musical album, depending on the way it is presented or delivered, may be classified differently. If the album is sold in a sleeve, it will be considered as a good, whereas if it is transmitted by a computer network, it will be considered as a service.

1.3 Problem of income qualification

One of the consequences of the problem of product qualification is that of income qualification.

1.3.1 Income type problem

The current tax systems classify the various categorical taxes according to the type of income involved.

A C2C electronic transaction may take place as follows: the author of an artistic work X from country A sells his work to a customer Y from country B, with the possibility for the latter to reproduce part of the work for sale, from a closed group on a social network whose server is located in country C. Should the income from this operation be considered as profits from non-commercial professions or capital gains from the transfer of certain rights for valuable consideration? The EC thus questions the classification of income categories.

1.3.2 Source of revenue problem

The effective implementation of source taxation depends on the type of income and the geographic source of the income. The FT does not allow for easy determination of the territorial source of income, particularly in the case of business income, since the current source taxation rules are based on permanent establishment [8]and the FT does not require a permanent establishment. In addition, the FT allows taxpayers to manipulate the source of income to avoid source taxation.

Thus, countries, which apply source taxation, may not be able to tax foreign companies on income generated by transactions with customers in the same country.

1.4 Taxation issues

1.4.1 Difficulties in determining the operative event

The problems are found both in the question of the chargeable event and in the determination of the taxable amount. It is especially in the field of indirect taxation, and more particularly VAT, that the question of the chargeable event is difficult to establish.

According to the provisions of Article 204 of the CGI of Mali[9], "*The chargeable event is defined as the event that gives rise to the State's claim; while the payability is the quality acquired at a given time by this same claim to be recovered without delay by all legal means*".

According to Article 205 of the same code, the VAT chargeable event is constituted by: "... *a) For imports, by the crossing of the customs cordon...*

(b) For sales, by delivery.

By delivery is meant the handing over to the buyer of the goods which are the subject of the contract...".

However, determining the operative event is not easy for electronic transactions. It calls into question the time of performance of the services and the time of delivery of the intangible goods.

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[8] http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/modele-de-convention-fiscale-concernant-le-revenu and-the-fortune-2014-complete-version_9789264239142-en#.V_XN2yQ-1mw#page43

[9] https://www.dgi.gouv.ml/CGI/#_Toc504511810 ditto

1.4.2 Difficulties in determining the tax base

The immateriality of transactions and the development of electronic means of payment no longer make it possible to determine the tax base easily and accurately. Millions of electronic commercial transactions take place on the World Wide Web without the need for invoicing. Without physical invoicing and on the basis of virtual payment, it is difficult for the tax authorities to assess taxes correctly. The commercial operation of an electronic company does not allow to obtain reliable information on the elements of the company's assets, i.e. fixed assets, stocks, products etc.

Another aspect of the problem is the deductibility of expenses. In traditional tax law, in order to determine the profits of a permanent establishment, costs and expenses incurred in the direct interest of the operation and supported by sufficient justification are allowed as deductions. This is notably the case for overheads, staff costs, rent for buildings where the company is a tenant, depreciation and provisions that have been duly constituted.

Division IV of Part II of Ghana's INCOME TAX ACT, 2015 (ACT 896)[10] goes back and forth on the conditions for deductibility of expenses. However, its application for CE businesses that use expense vouchers that can be encrypted will not be wise. Also, in the absence of a permanent establishment, would it be possible to speak of general administration expenses? The question then is whether to assess gross turnover or gross profit without any reference and apply the corresponding tax rate?

1.5 The problem of tax control of electronic transactions

By offering companies new possibilities for communication, exchange and organisation, the FT creates new risks of tax fraud and evasion.

The auditor, relying on the provisions of international conventions or other documents, should ask the following questions to identify the tax impact:

- How to apply the international rules on the allocation of the tax base between the state of residence (i.e. the state of the seat or effective management) and the state of the source (i.e. the state where the economic transactions take place)?
- How to apply consumption taxes to services rendered via the Internet?

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[10] https://www.bcp.gov.gh/acc/registry/docs/TAX%20896-INCOME%20TAX%20ACT,%202015%20(ACT%20896)%20AS%20AMENDED%20BY%20ACTS%20902,%20907,
%20915,%20924,%20941,%20956,%20967%20AND%20973.pdf idem

- Once these rules are set, how can we control the transactions and the FT operators?

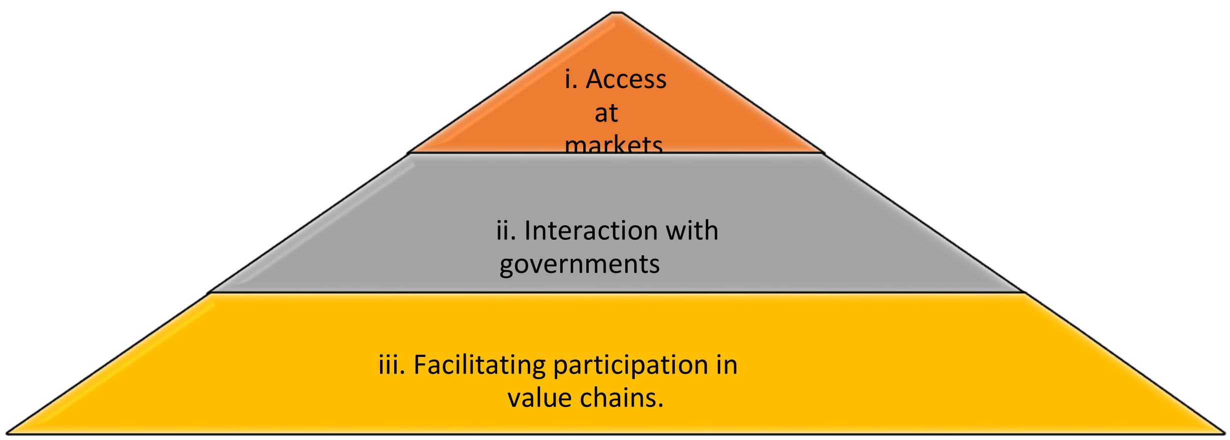
The digital economy is constantly changing and it is necessary to monitor possible future developments in order to assess their impact on tax systems.

In view of these major challenges, what are the approaches to solutions that SROA can adopt for a better taxation of the FT?

2 Perspectives on FT taxation in West Africa

The opportunities for FT development in the SROA are enormous. According to MacLeod, these opportunities can be represented in the figure below:

Figure 3: Opportunities for FT development in WA



Source: (MacLeod, 2018) [11]

These opportunities for FT growth were expanded by the coronavirus health crisis, which forced SROA governments to increase resources for the telecommunications sector as travel was limited.

Nevertheless, these potentialities should not overshadow the means necessary for an optimal taxation of the FT in the SROA.

2.1 Legislative component

[11] MacLeod, Jamie, 2018, *Using digital trade for development in Africa* in *How Should Africa Engage in E-Commerce and the Digital Economy? Bridges Africa*, Vol. 7, No. 2.

The Economic Community of West African States (ECOWAS) has made legal provisions to regulate electronic transactions in the AROS. These include:

- THE ADDITIONAL ACT A/SA. 1/01/10 on the protection of personal data within ECOWAS adopted on 16 February 2010 at the 37th^{e}session of the Conference of Heads of State and Government[12];
- THE ADDITIONAL ACT A/SA. 2/01/10 on electronic transactions in the ECOWAS region adopted on 16 February 2010 at the 37th session of the Conference of Heads of State and Government[13];
- Directive C/DIR. 1/08/11 on the fight against cyber crime in the ECOWAS region adopted at the 66th Ordinary Session of the Council of Ministers held in Abuja from 17 to 19 August 2011[14].

However, the effective implementation of these legal provisions is an uphill battle within the space. The SROA leadership needs to internalize these provisions for their effective implementation.

As the undeniable foundation of any tax procedure, the legal provisions of the SROA countries need to be revisited to incorporate reforms that take into account the ever-increasing evolution of the FT in the area. The harmonization of procedures should not be neglected. For example, in Togo, the 2021 management finance law subjects electronic commercial transactions to VAT. Thus, Article 175 of the Togo's CGI [15]provides: "*Are also subject to value added tax except for specific exemptions:* ......

6. operations inherent to the sale of goods and services, including advertising carried out on Togolese territory or through foreign or local EC platforms

However, it is clear that texts alone are not enough and that it is essential to explore other aspects for effective taxation of FT in WA.

2.2 Logistical component

The West African coasts have enormous assets for maritime activities. The establishment of community port systems which are neutral and open platforms,

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[12] https://www.statewatch.org/media/documents/news/2013/mar/ecowas-dp-act.pdf
[13] http://www.osiris.sn///IMG/pdf/transactions_electroniques.pdf
[14] https://issafrica.org/ctafrica/uploads/Directive%201:08:11%20on%20Fighting%20Cyber%20Crime%20within%20ECO WAS.pdf
[15] http://www.droit-afrique.com/uploads/Togo-LF-2021.pdf ditto

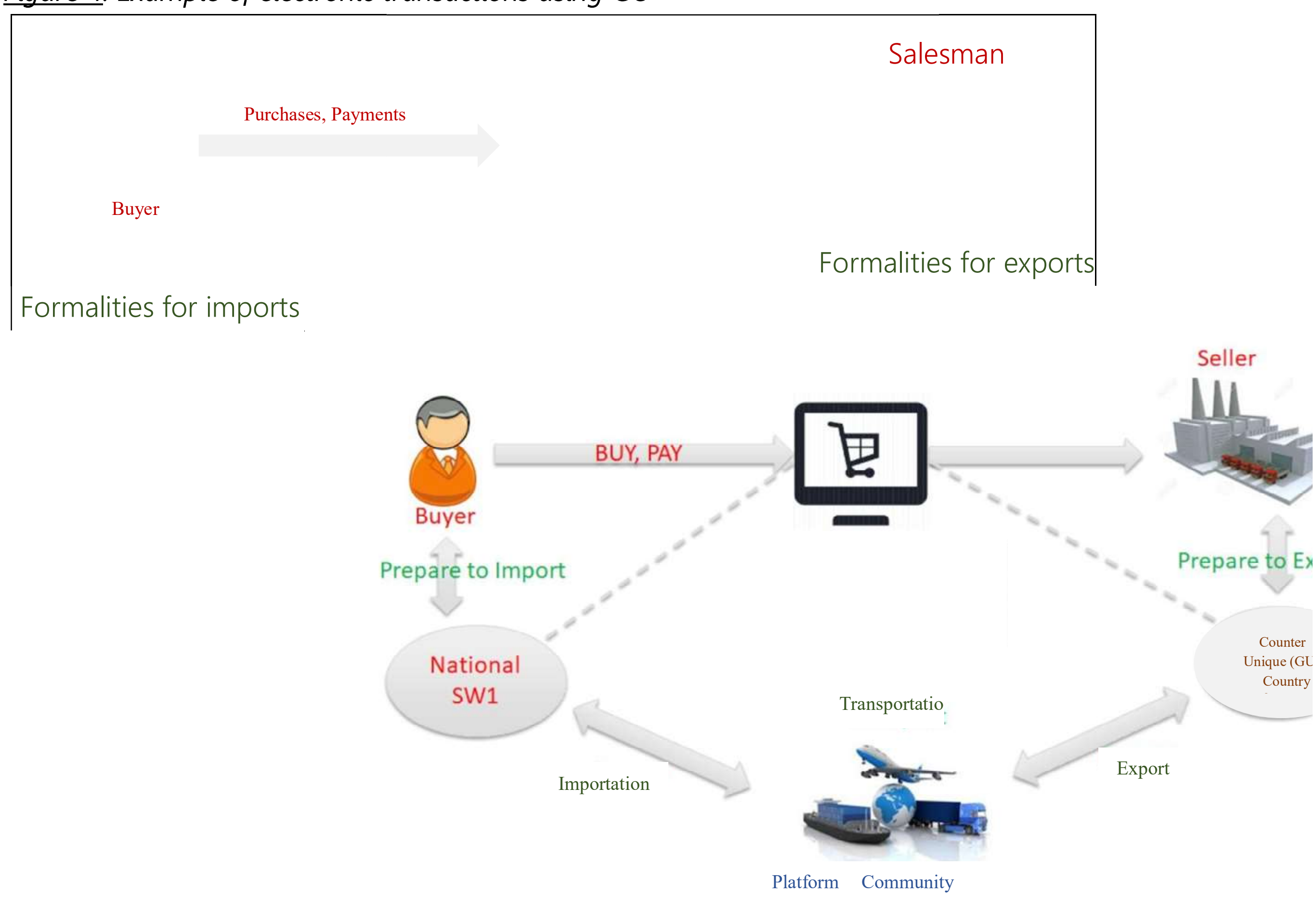
allowing secure and intelligent exchanges between private and public operators in order to improve the competitiveness of logistics services would be a major asset[16].

In addition to these port and airport hubs, GU systems for centralising all trade formalities will be needed. GU is mainly implemented to facilitate border procedures and thus acts as a great catalyst for cross-border FT.

GU systems have a key role to play in cross-border customs procedures and logistics, including the facilitation and acceleration of formalities, such as rules of origin, electronic certification standards, e-notification and e-validation and other regulatory requirements.

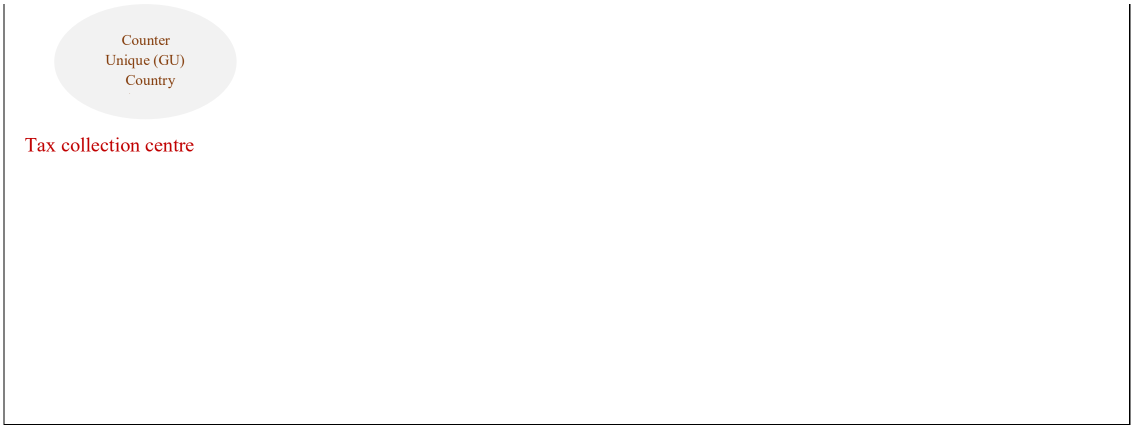
By their nature and design, most GU platforms in Africa are more regulatory oriented and less supply chain oriented. There is therefore a need to complement existing GUs with cross-border FT functionality, so that they can be used for the collection of required taxes and duties[17].

Figure 4: Example of electronic transactions using GU



[16] https://webbfontaine.com/fr/r

[17] https://african-alliance.org/AACE/wp-content/uploads/2020/03/E-Commerce-Strategy-for-CFTA.pdf ditto



Source: (AACE, 2019) [18]

For land transport, the construction and operation of Juxtaposed Control Posts (JCP), which bring together all the actors in the logistics chain, will facilitate the collection of taxes and duties.

It is fundamental to note that the pooling of collection points in the SROA countries will allow for a proportional distribution of the revenues from this collaboration, in accordance with the provisions that will be made.

In the majority of SROA countries, people do not have post office boxes. This is compounded by the lack of reliable physical addresses as most streets are unnamed and dealerships do not have identification numbers. This situation is pushing companies that are in the business of delivering FT to make a technological leap to use geolocation of their customers.

The SROA tax authorities can hold these companies accountable by designating them as legal taxpayers.

2.3 Technical component

2.3.1 The self-liquidation and self-assessment method

We would like to point out that this method already exists in most of the current tax systems, it should be extended to FT activities. For business-to-business or B2B transactions, the reverse charge method seems to be the most practical because the foreign company, as a supplier of goods or services, is no longer required to register for consumption tax.

2.3.2 Recovery by third party intermediaries

In the search for efficiency, it is possible to envisage an entirely new system in which third parties, such as financial intermediaries, would be designated to collect consumption taxes.

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[18] ibid

This method of collection has long been used by the Republic of South Korea. Indeed, this country has relied on a win-win partnership with credit card operators such as Visa, MasterCard, etc... to boost VAT collection in commercial transactions[19].

2.4 African cooperation

The challenges faced by the AROS countries are virtually the same in other African sub-regions, hence the need for synergy at the continental level to find appropriate solutions.

To this end, the African Continental Free Trade Area (ACFTA), which brings together fifty-four countries of the continent[20]is the preferred framework for this cooperation.

For many observers, FTAA is the catalyst for EC in Africa, especially in the context of the COVID-19 pandemic. To this end, it can support the implementation of the AFRICA ETRADE HUB project [21]in various sub-regions to build platforms that bring together several trade information portals.

Both the FTAA and the European Union (EU) may set a threshold amount at which all B2C businesses must be subject to VAT. This single threshold is 10,000 euros and this provision will come into force in Europe from 1st July 2021. In addition, a GU will be used to avoid registering for VAT in each EU member state[22].

2.5 Global cooperation

At the multilateral level, a total of 71 WTO members (including Nigeria, the only African country) have expressed interest in moving forward as a group for plurilateral discussions on the EC, due to the lack of agreement among WTO countries at the Eleventh Ministerial Conference held in Buenos Aires in 2017 (ECA, 2018).
SROA can use the exchange of information for tax purposes in the global forum to better tax the FT.

The announcement by the G7 Finance Ministers on June 5, 2021, at the end of the London Summit, setting a global tax floor on digital multinationals of at least 15% is seen as the "turning point" in the process of taxing the digital economy.

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[19] https://rsmus.com/what-we-do/services/tax/indirect-tax/value-added-tax/digital-services/south-korea-digital-services vat.html

[20]

[21] https://african-alliance.org/AACE/2020/03/06/atelier-technique-sur-lelaboration-de-specifications-fonctionnelles project-details-aftra-02-04-december-2019-casablanca/ idem

[22] https://solutions.lesechos.fr/compta-gestion/c/nouvelles-regles-europeennes-de-tva-en-matiere-de-e-commerce simplifications-and-opportunities-for-small-businesses-25357/

African countries in general and those of the SROA in particular should seize this opportunity to effectively and efficiently tax the digital giants.

Conclusion

For a long time feared by the majority of tax administrations, even the most well-equipped, the digital economy has made the rain and the sun shine in the face of jurisdictions that have not been able to anticipate the technological boom and the opportunities for tax optimization exploited by the digital industry. In the wake of the Sars-Cov-2 global health crisis, which has plunged the world economy into an unprecedented slumber, the digital giants have seen their revenues explode in the face of health restrictions such as lockdowns, social distancing, and limitations on gatherings and travel.

At a time when humanity seems to be entering the post-covid-19 phase, thanks to a number of health measures, this is an ideal time to adopt effective and efficient taxation strategies for the sectors that have benefited from this crisis, in order to restore the resilience and economic recovery capacities of States.

In order to replenish the coffers of the States through taxation, several initiatives are undertaken by various working groups. The group of the seven richest countries recently published its conclusions.

Africa, although less affected by the pandemic, also suffered a contraction of its GDP (-4.9% to

This situation [23]is likely to plunge millions of Africans into poverty. It is to remedy this situation that ways and means are being sought to mobilize sufficient internal resources for dynamic economic growth on the continent. This mobilization goes through the taxation of the FT.

Throughout this document, we have presented the tax challenges posed by the FT sector and the viable and workable solutions for optimal taxation of the sector.

[23] https://www.cairn.info/economie-africaine-2021--9782348067310-page-7.htm