

Taxation of Digital Services: what hope for the African States?

By ADJEYI Kodzo Senyo*, KOUEVI Tsootso** and AMAGLO Kokou Essegbe***

Introduction

The changes that have taken place in economic transactions in recent years thanks to digitalization are increasingly challenging the traditional rules of taxation based on physical presence of multinational enterprises (MNEs). According to Charrié and Janin (2015a, p. 2) "the digital economy has four specificities; the non-localization of activities, the central role of platforms, the importance of network effects, and the exploitation of data that distinguish it from the traditional economy, in particular by the modification of the value creation

chains that they induce".

The growing possibility of deriving revenue from a jurisdiction without a physical presence or a permanent establishment has obliged States and international organizations to reconsider the rules of international taxation. Measures to find a solution to this situation are intensifying, both at national and international level. France, for example, to fight against the taxation in other States of digital services consumed on its territory, instituted in 2019 the tax on digital services called the "GAFA tax".

The Organisation for Economic Co-operation and De-

Abstract

Globalization makes it necessary to adapt multinational taxation by taking into account the place of use or consumption of goods and services. "Pillar 1" of the OECD aims to allow States in which multinationals market products or services, or collect data and content from users, to benefit from a portion of their residual consolidated worldwide profit. Since residual profit is a function of the turnover and profit achieved in the jurisdiction, this solution can only be an advantage if, beyond the rules of fair taxation, efforts are made to promote the use of digital services. Internet access is one of the levers that can increase the consumption of digital services. The current situation in Africa according to statistics published by the International Telecommunication Union (ITU) shows low rates of internet access compared to other continents.

La mondialisation rend nécessaire l'adaptation de la fiscalité des multinationales et la prise en compte du lieu d'utilisation ou de consommation des biens et services. Le pilier 1 du projet de l'OCDE a pour objectif de permettre aux États dans lesquels les multinationales commercialisent des produits ou des services, ou recueillent des données et du contenu auprès des utilisateurs, de bénéficier d'une partie de leur bénéfice mondial consolidé résiduel. Le bénéfice résiduel étant fonction du chiffre d'affaires et des bénéfices réalisés dans le territoire concerné, cette solution ne revêt un intérêt que si, au-delà des règles de juste imposition, des efforts sont déployés pour promouvoir l'utilisation des services numériques. L'accès à Internet est l'un des leviers qui permet d'augmenter la consommation de services numériques. Or, il ressort des statistiques publiées par l'Union Internationale des Télécommunications (UIT) que l'Afrique affiche des taux d'accès à Internet qui sont faibles en comparaison d'autres continents.

La globalización obliga a adaptar la tributación de las multinacionales en función del lugar donde se usan o consumen los productos y servicios. El "Pilar 1" de la OCDE pretende permitir a los Estados en los que las multinacionales comercializan productos o servicios, o recopilan datos o contenido de los usuarios, que se beneficien de una parte de sus ganancias residuales consolidadas en todo el mundo. Dado que los beneficios residuales dependen de la facturación y los beneficios conseguidos en la jurisdicción, esta solución solo puede ser ventajosa si, más allá de las normas de equidad tributaria, se toman medidas para promover el uso de los servicios digitales. El acceso a Internet es una de las palancas que puede aumentar el consumo de este tipo de servicios. Según las estadísticas publicadas por la Unión Internacional de Telecomunicaciones (UIT), la situación actual en África indica unos niveles bajos de acceso a Internet en comparación con otros continentes.

*ADJEYI Kodzo Senyo, PhD student in Management Sciences, FASEG-University of Lome/Togo, adjeyimanu@gmail.com

** KOUEVI Tsootso, Associate Professor in Management Sciences, FASEG-University of Lomé/Togo, kmamir2@gmail.com

*** AMAGLO Kokou Essegbe, PhD student in Management Sciences, FASEG-University of Lome/Togo, ekamaglo@gmail.com

velopment (OECD), to enable the various States to adapt to the requirements of the modern economy, has proposed a "Two Pillar" solution, one of which relates to taxation principles other than the present ones based on physical presence. It seeks to add to the criterion of physical presence that of economic activity. The State of the users, as well as that of the distribution and marketing activities, will henceforth be taken into account for the taxation of economic activities. This measure targets approximately a hundred multinational companies, and is especially aimed at including the digital giants (Google, Apple, Facebook, Amazon, Microsoft).

Pillar 1 of the proposed solution has two components: amount A and amount B. Amount A, defined according to criteria of turnover and profitability, aims to distribute to jurisdictions of consumption or use (market jurisdictions) a portion of the residual profit made by multinationals. Amount B relates to a fixed return applying to multinationals with a physical presence and relates to certain distribution and marketing activities.

The new rules on the taxation of multinationals at the same time lay the foundations for the taxation of digital transactions. They lead to reflections on the digital sector which today has a large number of users¹.

If the new system can constitute a credible alternative for the taxation of digital transactions as many claim, it is useful to assess the benefit that it can bring to Africa. Indeed, for a State to benefit from the spin-offs linked to the taxation of digital transactions, there must be a lot of users. However, the number of users depends on several factors (ease of access to the service, costs, etc.). The objective of this analysis is to evaluate the indicators of access to the internet in Africa compared to other continents. It is a question of identifying the essential measures to be implemented so that African countries can benefit from this new taxation system.

The traditional system of taxation of multinationals

The traditional corporate tax system is based, subject to agreements between States, on the notion of territoriality² arising from the notion of exploitation. The notion of exploitation is explained by the usual place of exercise of the activity and assessed by three criteria³: the independent establishment; the existence of a representative without an independent professional personality; and the carrying out of operations forming a complete commercial cycle. These criteria do not take into account the place of use of the good or service. It is therefore difficult, if not impossible, to tax the income from the transactions of certain multinationals, including those in the digital sector, which seem to operate on a single market whose beneficiaries (users or consumers) are located in several States. There are various forms of such transactions, for example the law⁴ creating a tax on digital services in France distinguishes in-

come related to access to platforms and income generated by data collection.

Digital transactions

The operations carried out in designated lines of economic transactions are of several types. Perret (2015) and Montel (2017) refer to these transactions as platform economy, collaborative economy, sharing economy, collaborative production, free and peer-to-peer exchanges via the internet, and collaborative consumption. Internet platform revenues include revenues related to access to the platform and revenues generated by data collection. Digital companies offer remote services through algorithms that create value by exploiting data collected from users. They act as a platform between Internet users (buyers) and sales companies. These are facilitation activities aimed at directly or indirectly bringing sellers based outside a State into contact with customers from another State. This is digital intermediation, which is defined as the provision of a digital interface, using electronic communications, allowing users to come into contact with other users and to interact with them, for the delivery of goods or the provision of services directly between these users. Examples include platforms such as Google, Amazon, Facebook/Meta, Microsoft, AliExpress, Booking, Criteo, eBay, Expedia, le Bon coin, Rakuten, Tripadvisor, Twitter, and Uber, etc.

Internet platforms receive a gain (annuity) from this intermediary role. To maximize their gain, they offer free access to have maximum user data.

According to the legislation in France on digital services, digital transactions also involve the purchase or sale of services aimed at placing advertising messages on a digital interface when these services are marketed to consumers or their agents on a digital interface. The advertising messages are targeted according to data collected or generated during the consultation of the interface relating to the user. These services may include, in particular, services for the purchase, storage, and distribution of advertising messages, advertising regulations, and performance measurement, as well as services for the management and transmission of data relating to users.

We can cite, for example, sponsored links, whatever their form, when using a search engine, social networks, information or online news sites, or any other site using advertising or similar services based on tracking.

To source the good or the service to a State, it is sufficient that a single internet user targeted by the service is locatable either by their IP (Internet Protocol) address or has provided directly or indirectly any element locating them in this State. Thus, according to the legislation in France on digital services, an advertising service will be considered as provided in a State if at least one advertising message is displayed, during this same year, to an internet user located within this State, regardless of the respective nationalities of the buyer and seller of the advertising service.

Thus, revenue from the sale of digital content that is not a component is considered to originate in a jurisdiction when the place of use of the service is located in that jurisdiction. Revenue from the provision of online advertising services is deemed to arise from a jurisdiction when the location of the advertising viewer is in that jurisdiction. With regard to intermediation favoring transactions (sale or purchase of material goods, digital content or services) through means other than the digital interface, the turnover is affected equally between the jurisdiction of the buyer and that of the seller⁵.

The variety of services offered by digital technology raises questions about the regulation of transactions that take place there, and the deployment of appropriate infrastructure to ensure better access to services.

Regulation of digital service transactions

According to Haepere (2017), the new forms of digital-based economic transactions taking on a growing role make current measurement instruments obsolete because part of the value generated cannot be measured for lack of suitable tools. This situation not only overwhelms current measurement tools, but also creates unfair competition between market players by the fact that digital services seem to escape tax payments. This imposes regulation by adapting the various legislations in this area with a view to setting up new taxation rules.

Regulation here means the necessary provisions to be put in place to guarantee fair conditions of competition between market players, to ensure the cybersecurity of digital services, and to measure the value created. The fair competition also consists in defining adapted and adaptable tax rules so that neither companies nor digital transactions escape the payment of taxes and duties. According to Bansal (2021, p. 2), *"criticism of unilateral measures has been severe, as they circumvent tax treaty rules and result in double taxation"*.

The implementation of tax rules has evolved through national, continental, and now global level initiatives under the aegis of the OECD and the United Nations.

France's digital service tax system

The beginning of the taxation of digital transactions in France is marked by law n° 2019-759 of July 24, 2019, establishing the tax on digital services known as the "GAFA tax" payable by companies in the digital sector. This tax is payable by companies in the digital sector regardless of their place of establishment, for which the amount of sums collected in return for taxable services exceeds 750 million euros for services provided worldwide and 25 million euros for services provided in France. These thresholds are assessed at the level of the consolidated group and not entity by entity.

This initiative aims not only to fight against the taxation outside France of digital services consumed in France, but also to encourage an inclusive solution on a

global level.

OECD's solution for taxing digital transactions

Multinational companies including digital giants can exploit loopholes in the current tax system to evade the payment of their fair share of tax concerning profits (income tax) and transactions (Value Added Tax).

Indeed, on October 8, 2021, 136 members of the OECD Inclusive Framework representing more than 90% of global gross domestic product (GDP) agreed to put in place a more stable and fairer international tax system. They were joined by Mauritania on November 4, 2021. The system put in place is subdivided into Two Pillars (Pillar 1 and Pillar 2). Pillar 1 aims to reform the taxation of multinationals, thus involving digital transactions. The pillar of the digital transaction reform called "Pillar 1" has two components: Amount A and Amount B.

Amount A relates to multinational enterprises whose worldwide turnover exceeds twenty (20) billion euros and whose profitability (pre-tax profit/turnover), calculated using an averaging mechanism, is greater than 10%. The threshold of twenty (20) billion euros is expected to be reduced to ten (10) billion euros after a period of seven years depending on the implementation of the reform.

The proposed taxation system takes into account the jurisdictions of consumption or use of the good/service in the allocation of profits called market jurisdiction. For a multinational to be taxed in the country in which its goods or services are ultimately used or consumed, it must generate at least one (1) million euros in turnover there or at least two hundred and fifty thousand (250,000) euros in turnover for small countries whose GDP is less than 40 billion euros.

The tax will be applied to the profit exceeding the 10% profitability threshold. When the scope conditions are met, 25% of this profit called residual profit is distributed between the market jurisdictions concerned according to an allocation key. The allocation key applies to the remaining portion of revenue that cannot be sourced at a transaction level⁶.

However, if in a beneficiary country a tax is already levied on a similar basis, the double taxation will be eliminated either by the exemption method or by the credit method. A protection regime for marketing and distribution activities is also defined. Amount B relates to a fixed return for certain baseline distribution and marketing activities carried out physically in a market jurisdiction.

The new Amount A provision, which excludes extractive industries and regulated financial services, is expected to be in force in 2024. The implementation of Amount A will be through a Multilateral Convention (MLC) which will require the removal of all taxes on digital services and other existing unilateral measures. The key question is the decision to be taken by States with the support of regional organizations.

Challenges for African countries

According to Bansal (2021), “a significant share of the income generated in developing countries comes from multinational corporations and foreign companies as a result of the commercial activities they carry out in these countries”. The agreements of the OECD/Group of Twenty (G20) “Pillar 1” Inclusive Framework will allow the States in which the multinationals market products or services to be allocated a part of the residual consolidated worldwide profit to be taxed. However, if the thresholds set in terms of GDP seem to take into account the vulnerability of certain African economies, the threshold of turnover triggering the nexus in a State depends on several factors.

If the transactions subject to regulation are digital, it is necessary that while fighting for rules taking into account the African reality and adapting existing tax legislation, efforts must be made in terms of access to the internet and its services. This note only aims to assess the efforts undertaken in the field of the Internet in Africa in relation to other continents.

To assess internet access indicators in Africa compared to other continents, we used secondary data collected from the International Telecommunication Union (ITU) on the following indicators:

1. coverage measured by the number of households with home Internet access in rural and urban areas,
2. prices per gigabyte of high-speed data,
3. investments made in telecommunications.

The data covers 196 States divided into six (6) regions according to the ITU classification⁷, including 44 from Africa, 35 from the Americas, 22 Arab States, 40 from the Asia Pacific, 9 from the Commonwealth of Independent States (CIS), and 46 from Europe. The collected data is processed by simple sorting and content analysis.

Household access to the internet

Analysis of data on household Internet access rates reveals that in urban areas, while 72% of households worldwide have access to the Internet, in Africa only 28% of households have access. The other regions have access rates above 50%, including Europe, which has the highest access rate of 88%.

In rural areas, the global household internet access rate is 37%. Europe and the Commonwealth of Independent States (CIS) have the highest access rates of 78% and 66% respectively. In Africa, only 6% of households living in rural areas have access to the internet.

Price of 1 GB of mobile broadband data

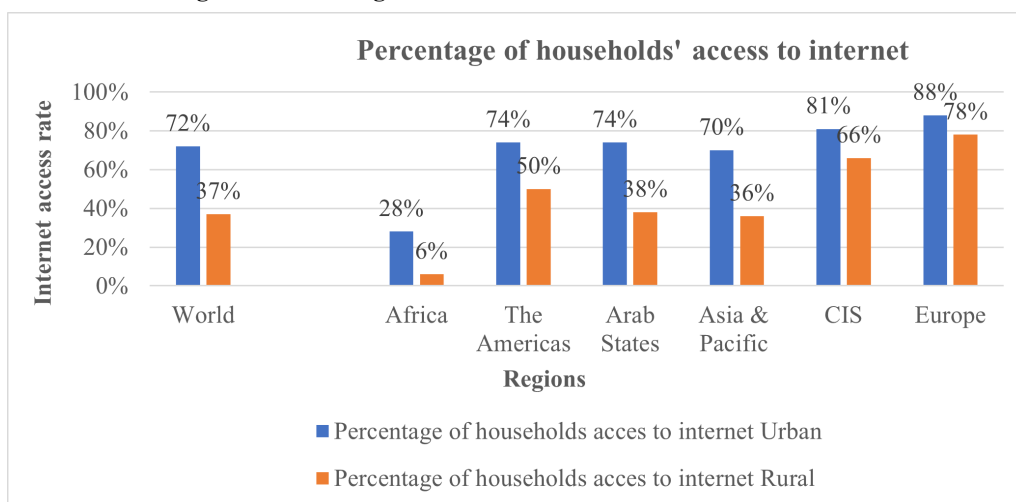
The statistics on prices per gigabyte of broadband data show that Africa has the most expensive data at PPP\$ 8 while the global price is PPP\$ 5.5. The Asia Pacific and Europe have the lowest prices of PPP\$ 3.7 and PPP\$ 4.2 respectively. The other regions have prices between 5 and 7 PPP\$.

Telecom investment

Information on the level of investment in telecommunications reveals an investment in Africa of US\$ 6.3012 billion against US\$ 315.3165 billion globally. The Americas and Asia & Pacific are the regions that have invested the most in telecommunications with respectively US\$ 126.7737 and US\$ 100.9181 billion of investment in 2019.

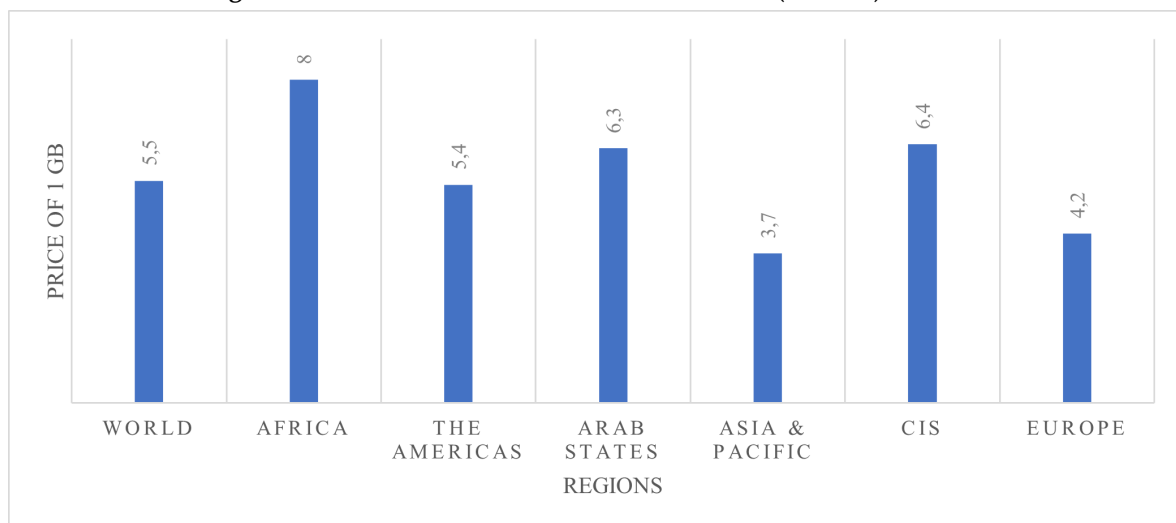
Analysis of global telecommunication data reveals that among all regions, Africa has the lowest rate of internet access at high prices and has made little investment in telecommunications. These data corroborate the study by Charrié and Janin (2015b) who, after estimating Facebook's advertising revenues, attributed only 12% to the rest of the world including Africa, while the United States, Europe, and Asia-Pacific end up with 27%, 46% and 15% of revenues respectively. The challenges today are to improve the services leading to the creation of value, to identify the value created and to define fair taxation rules. This

Figure 1. Percentage of households' access to internet in 2019



Source: [FactsFigures2020.pdf \(itu.int\)](#)

Figure 2. Price of 1 GB of mobile broadband data (in PPP\$) in 2019



Source: [ICT price trends 2020 \(itu.int\)](https://www.itu.int/ITU-T/ict/price_trends_2020)

data confirms the report⁸ by We Are Social and Hootsuite in 2020 that Africa has the lowest internet penetration rates in the world, alongside India, all below 50%. If the Maghreb (50%) and South Africa (51%) are doing well, West Africa hardly reaches 41% while Central Africa remains a digital desert at 12%. These connectivity statistics provide an idea of the data and user transactions consumed subject to the new taxation.

Improve value created

Improving the value created requires investing in infrastructure to improve access to digital goods and services. African countries must therefore:

- improve access to digital goods and services for users (consumers, businesses);
- promote free or low-cost access for users to the services and content of their choice, the portability of services, content, and user data;

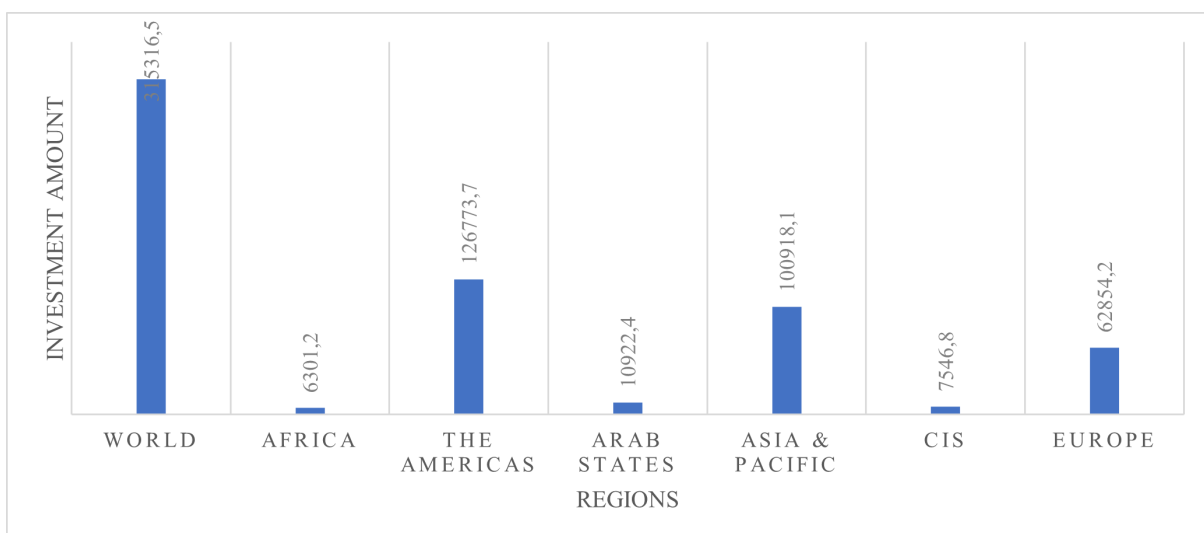
- implement the African Union's (AU) continental program for the development of innovative digital networks and services, taking into account current issues based on the regulation of platforms and cybersecurity⁹;

- adapt the continental legislative and regulatory framework to best practices on data management (circulation and use of data) that make it possible to provide the tax authorities with data related to the digital transactions and other information relevant to the taxable base.

Identify the end use jurisdiction

The data on digital transactions attributed to Africa are estimates made from publications made by the multinationals themselves. The difficulty lies in allocating these turnovers by country. Like all other taxes, taxation requires good control of the taxable base. It is a question here of estimating the end market jurisdictions where

Figure 3. Telecommunication investment (US\$ millions) 2019



Source: International Telecommunications Union (ICT infrastructure and access, Excel format)

goods or services are used or consumed. Further, the quantification of this amount is needed to find out the share of amount A that will be allocated to Africa.

At present in the reform, the difficulty of sourcing revenue must be taken into account. Multinationals in their logic of reducing their profits on a global scale can affect the taxes attributable to one State for the benefit of another. It is therefore up to Africa to insist in the negotiations that the conditions for implementing the new reform be adapted to its reality. For example, relating to the amount of turnover that can trigger a taxable nexus, make the MNE liable to pay taxes and hence allowing the source jurisdiction to benefit from amount A, to invest in infrastructures and programs that can capture the places where the digital goods and services are consumed. The global¹⁰ measurement solution proposed by the OECD through the revenue sourcing rules for Amount A is a commendable step forward in this regard. It is therefore necessary, through a global or continental mechanism, to set up a statistical device or program that will make it possible to collect data and measure the activities of digital companies concerning data flows (e-commerce, advertising revenues) in Africa.

Conclusion

African jurisdictions at the time of the implementation of the global taxation system for multinationals while estimating the potential share that may be due to them must work on the strategies to be put in place to maximize the contribution of the new rules to their economies. As the transactions subject to taxation rely on digital technology, in addition to efforts for fair taxation rules, it is also necessary to work for better access to the Internet on the continent. This brief aimed to highlight the current situation in Africa in terms of connectivity. The analysis of information on access to digital services relegates Africa to last place. The situation may remain the same without substantial investments in this area.

Efforts for fair taxation rules that take into account the realities of the continent with the improvement of the continent's access to the internet and the establishment of a data collection system on digital transactions will enable African countries to maximize the benefits of the new international taxation system. The African Union's digital transformation strategy for Africa (2020-2030) is an asset to meet the continent's connectivity challenge. This strategy with effective taxation rules will allow Africa to make this new tax a source of real resilience against the various economic changes now imposed on African jurisdictions.

Endnotes:

¹ According to the report from the Ministry of Economy and Finance of France (<https://www.economie.gouv.fr/projet-loi-taxation-grandes-entreprises-num%C3%A9rique>), 750 million internet searches are carried out every day in the European Union and 150 million publications are posted every day on social networks in the European Union.

² Article 209-I of the tax legislation in France (General Tax Code).

³ Jurisprudence of the Council of State in France ([CE, 12 décembre 2014, n° 356871, Société Euro-Car SPRL](https://www.legifrance.gouv.fr/eli/decision/2014/12/11/1415000))

⁴ Article 299 of the tax legislation in France (General Tax Code).

⁵ See <https://www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-two-pillar-solution-to-the-tax-challenges-of-the-digitalisation-of-the-economy.htm>.

⁶ See <https://www.oecd.org/tax/beps/public-consultation-document-pillar-one-amount-a-nexus-revenue-sourcing.pdf>.

⁷ See <https://www.itu.int/hub/membership/our-members/directory/?myitu-members-states=true&request=countries>.

⁸ *We are Social and Hootsuite, Digital Report 2020*

⁹ See <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>.

¹⁰ See <https://www.oecd.org/tax/beps/oecd-invites-public-input-on-the-progress-report-on-amount-a-of-pillar-one.htm>.

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Appendix

Table: Study data

	Percentage of household access to internet		Price of 1 GB of mobile broadband data in PPP\$	Telecom investment in millions
	Urban	Rural		
			-	-
World	72	37	5,5	315316,5
Africa	28	6	8	6301,2
The Americas	74	50	5,4	126773,7
Arab States	74	38	6,3	10922,4
Asia & Pacific	70	36	3,7	100918,1
CIS	81	66	6,4	7546,8
Europe	88	78	4,2	62854,2


Source: International Telecommunications Union (ITU) reports (2020)



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The South Centre
International Environment House 2
Chemin de Balexert 7-9
PO Box 228, 1211 Geneva 19
Switzerland
Tel.: +41 (0)22 791 8050
south@southcentre.int
<https://www.southcentre.int>

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Efforts to reform international cooperation in tax matters are exhibiting a distinct acceleration. The direction of change must recognize and incorporate innovations in developing country policies and approaches, otherwise the outcomes will obstruct practical paths to development.

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