Report

Digital Giants and VAT in Africa

Tech companies fail to collect VAT in Africa

Summary

Multi-national tech giants such as Facebook, Google, and Microsoft (operating out of their Irish subsidiaries) are failing to collect VAT on sales they make in Africa – even in countries where they have local offices. This appears to be in contravention of local VAT laws requiring non-resident companies to register for VAT, and could be leading to large sums of tax going uncollected.

VAT and Digital Services

Value Added Tax (VAT), known as a goods and services tax (GST) in many jurisdictions, is designed to be a broad based tax on the final consumption of goods and services.[1] As such it is a major source of revenues for governments around the world. In Africa VAT accounts for on average around 30% of government revenues.[2]

VAT is a destination based tax, where the tax rate is based on the location of the consumer. The tax is usually collected by the seller, and is often applied to the sales price. Businesses can claim back the VAT that has been added to goods and services they have bought if they are used in the making of other supplies that are subject to VAT.

For example, a business selling cars adds VAT to the price of the cars it sells. It also buys advertising from a third party to encourage people to buy its cars. While the supply of advertising services to the car seller would be subject to VAT, the advertising firm would be able to offset that "output VAT" against its own "input VAT" costs, such as billboard hire.

1 VAT is collected fractionally, via a system of partial payments whereby taxable persons deduct from the VAT they have collected the amount of tax they have paid to other taxable persons on purchases for their business activities. It is a consumption tax because it is borne ultimately by the final consumer.

2 OECD, Revenue Statistics in Africa 2020, https://www.oecd.org/tax/tax-policy/brochure-revenue-statistics-africa.pdf

When the car seller calculates the VAT they need to send to the tax authority, it is able to deduct the VAT it has paid on the purchase of the adverts. The effect of this is that VAT is assessed on the value added on each part of the production process but ultimately borne by the final consumer and collected by the final seller of the goods.

For similar reasons VAT is not charged on exports by a country exporting goods and services, but is charged on imports of goods.

VAT and the digital economy

VAT has been a particular problem for tax administrations when applied to digital services.

Goods imported into a country cross physical borders where checks can be carried out and taxes levied. Digital services provided remotely are not subject to border checks. This can make it very difficult for tax authorities to enforce VAT charges on digital services provided from abroad.

This is an issue that tax authorities and the OECD have been aware about for some time. In 2013 South Africa announced it would be one of the first countries in the world to introduce specific rules on VAT on digital companies.

The National Treasury stated at the time:

"The current application of VAT on imports does not lend itself to the effective enforcement on imported services or e-commerce where no border posts (or parcel delivery agents like the Post Office) can perform the function as collecting agents, as is the case with physical goods".[3]

After initial regulations were introduced in 2014, which only applied to a limited amount of electronic services, further legislation came into effect on 01 April 2019, widening the definition of electronic services to include any "electronic services" supplied by an electronic agent, electronic communication or the Internet.[4][5] This widening of the net encompasses anything from software to advertising services.

In 2012 the OECD set up the Global Forum on VAT. This resulted in the publication of a set of guidelines for VAT in 2016.[6] Following the BEPS process, the OECD recommended that countries adopt the guidelines to assist with combating tax avoidance in the digital sector in September 2016. These guidelines included the destination principle, which obliges non-resident sellers to pay VAT in the country that they sell their goods. This often requires sellers from overseas to register for VAT or to appoint a local agent to be responsible for their VAT payments.

3 Electronic Services Regulations, *Parliamentary Monitoring Group*, 04 February 2014, https://pmg.org.za/call-for-comment/162/
4 Regulators widen definition of 'electronic services', *IT Web*, 07 June 2019, https://www.itweb.co.za/content/mQwkoq6KbYmv3r9A
5 https://mg.co.za/article/2019-05-24-00-prepare-for-tax-in-digital-economy
6 International VAT/GST Guidelines, *OECD*, 12 April 2017, https://www.oecd.org/ctp/international-vat-gst-guidelines-9789264271401-en.htm

In 2019 it was reported that there were over half a billion monthly internet users in Africa, more than in Latin America, North America, or the Middle East.[7] As internet penetration in Africa grows, so to will the scale of the problem.

Do laws need updating?

The position of some companies is that without new legislation, there is no obligation to collect or pay VAT.[8] Our research shows that the issue is with compliance and enforcement, not with the law itself. Legislation doesn't need to be updated in order to require foreign digital advertisers to collect tax.

We found that the major suppliers of digital advertising services are not applying the law with regard to VAT in Africa, irrespective of whether or not legislation has been updated.

Looking at VAT legislation in many African countries, it is clear that non-resident companies are required to either register as a VAT vendor in the host country, or, to appoint a registered local representative.

Below we have highlighted a select few African countries where the standard message from digital advertising companies is that it is for the customer to self-assess, whether they should be paying VAT.

Algeria

Algeria introduced new VAT rules on foreign suppliers in January 2020,[9] which confirms that operations carried out over the internet are subject to VAT, and that there is no VAT liability threshold.[10]

Angola

Angola introduced new VAT rules in October 2019, with a January 2020 Administrative Ruling stating that digital service suppliers are required to register with the Angolan Tax Authority, appoint a representative in country, to collect and pay VAT in Angola.[11]

7 Last Month, Over Half-a-Billion Africans Accessed the Internet, *Council on Foreign Relations*, 25 July 2019, https://www.cfr.org/blog/last-month-over-half-billion-africans-accessed-internet
8 Email from Facebook sent to TaxWatch 19 August 2020
9 Algeria will levy VAT on Digital Services, *Global VAT Compliance*, 20 March 2020, https://www.globalvatcompliance.com/algeria-will-levy-vat-on-digital-services/
10 Algeria enacts 2020 Finance Act, *EY*, https://taxnews.ey.com/news/2020-0159-algeria-enacts-2020-finance-act
11 Angola VAT system introduced, replacing old consumption tax, *Taxamo*, 20 January 2020, https://blog.taxamo.com/insights/angola-vat-system-introduction

Cameroon

Cameroon changed its VAT rules for foreign suppliers of e-commerce in December 2019, with suppliers now having to register with the country's tax authority in order to meet their obligations.[12]

Since October 2020, Facebook has begun adding VAT to Cameroonian invoices. Microsoft and Google have not followed suit.

Ghana

With a threshold of GH¢200,000 (approximately £25,000), VAT applies to the supply of telecom, broadcast, data and electronic services to consumers.[13]

Kenya

The Kenyan Revenue Authority has announced its intention to crack down on VAT dodging by tech companies, saying that it would work with the Communications Authority of Kenya to get information on which companies are selling into the country.

The KRA deputy commissioner for corporate policy, Maurice Oray, said:

"If you are a resident here, you are supposed to pay the taxes the normal way. If you are not a resident but you have an app that's being used here, your tax representative (a requirement under Section 16 of Tax Procedures Act) must pay your VAT and income tax."[14]

Since April 2021, Facebook has begun adding VAT to Kenyan invoices. Microsoft and Google have not followed suit.

Malawi

Though it wasn't always the case, Malawi reintroduced VAT on internet service from July 2013.[15] Malawi has a VAT threshold of MWK 10m (approximately £9,500).

12 Section 149c of the 2020 Finance Law, it states "The VAT due on commissions received on sales in Cameroon through e-commerce platforms shall be declared and paid into the Treasury by the operators of these platforms", https://www.prc.cm/en/multimedia/documents/8033-law-2019-023-of-24-dec-2019-of-2020-financial-year

13 Ghana VAT on foreign B2C digital service providers, *Avara*, 22 November 2015, https://www.avalara.com/vatlive/en/vat-news/ghana-vat-on-foreign-b2c-digital-service-providers.html

14 Kenyan Revenue Authority to commence taxing income-generating apps, *Techpoint Africa*, 15 August 2019, https://techpoint.africa/2019/08/15/kenyan-revenue-authority-taxing-apps/

15 Malawi re-imposes internet services VAT, *Avalara*, 29 July 2013, https://www.avalara.com/vatlive/en/vat-news/malawi-re-imposes-internet-services-vat.html

Namibia

With a VAT threshold of NAD 500,000 (approximately £24,5000), there are no special rules for the taxation of the digital economy in Namibia.[16]

Nigeria

Section 10 of Nigeria's Value Added Tax Act 1993 No.102, states:

"(1) For the purpose of this Act, a non-resident company that carries on business in Nigeria shall register for the tax with the Board, using the address of the person with whom it has a subsisting contract, as its address for purposes of correspondence relating to the tax.

(2) A non-resident company shall include the tax in its invoice and the person to whom the goods or services are supplied in Nigeria shall remit the tax in the currency of the transaction."[17]

It appears companies such as Google, Facebook, and Microsoft are required to include VAT in their invoices so that the customer to whom the supply is made in Nigeria can remit the VAT to the tax authority. There is a similar situation in many other African countries.

Tanzania

The Tanzanian VAT Act was updated in 2015, clarifying that digital and electronic services provided to consumers are subject to VAT.[18]

Uganda

Uganda has clarified the requirements for foreign providers of digital services to levy 18% VAT on sales to local consumers, and that non-resident providers must register with the Ugandan Revenue Authority.[19]

Despite several of these countries updating their legislation, and many saying explicitly that VAT should be charged on the supply of digital services by foreign suppliers, it appears that the online advertising companies didn't get the memo.

16 Namibia - Indirect Tax Guide, *KPMG*, https://home.kpmg/xx/en/home/insights/2019/02/namibia-indirect-tax-guide.html

17 Nigeria Value Added Tax Act 1993, https://www.firs.gov.ng/sites/Authoring/contentLibrary/035860b3-9ecf-400f-8d03-4335e4be5d19Value%20Added%20Tax%20(VAT).pdf

18 Tanzania VAT changes, *Avalara*, 02 July 2015, https://www.avalara.com/vatlive/en/vat-news/tanzania-vat-changes.html

19 Uganda VAT on foreign e-services, *Avalara*, 27 October 2019, https://www.avalara.com/vatlive/en/vat-news/uganda-vat-on-foreign-e-services.html#:~:text=Uganda%20has%20clarified%20the%20requirements,online%20clubs%3B%20and%20dating%20websites.

Digital advertisers in Africa

Google, Microsoft and Facebook all run their Europe, Middle East, and Africa (EMEA) operations out of Ireland. Despite being classed as one region for administrative purposes, the continent of Africa is treated very differently to that of Europe.

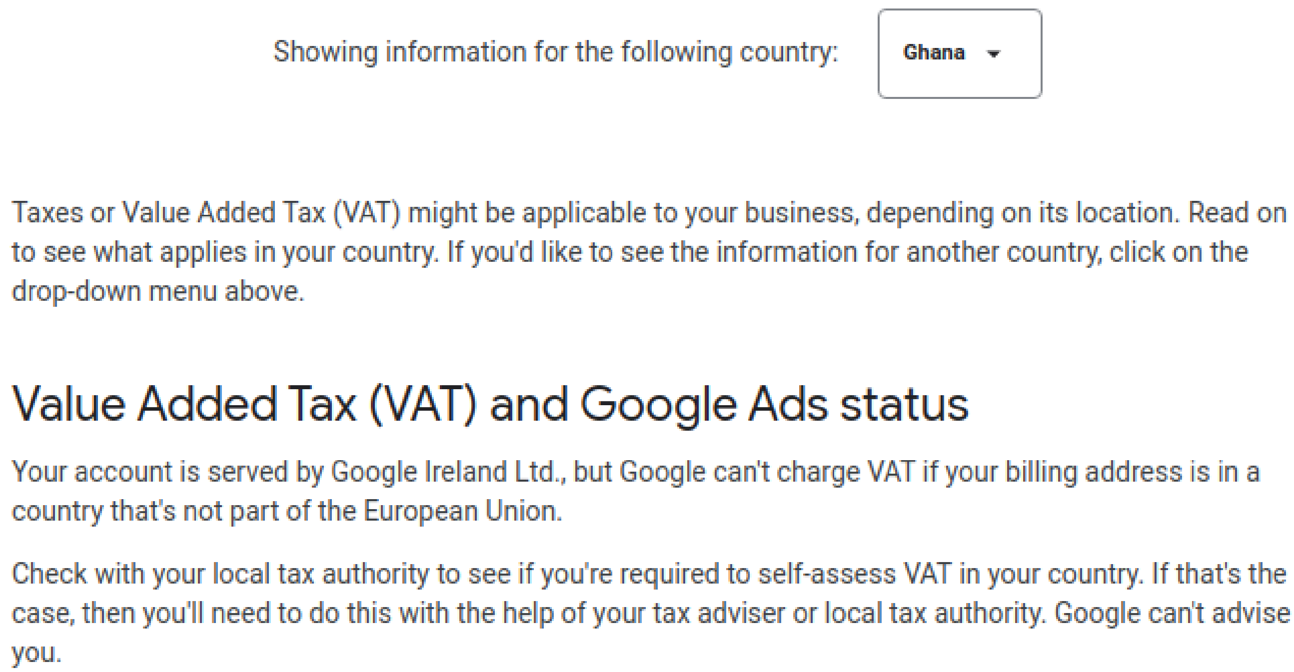
We made a test purchase of Google advertising in the UK, advertising TaxWatch, and received an invoice which did include VAT. However, according to Google's own website it does not charge VAT on purchases made in most parts of Africa.

Any output VAT Google collects in relation to supplies to UK customers could be offset against Google UK's input VAT expenses. By contrast, there is no such incentive to collect output VAT in those African countries where Google does not have input VAT costs. Absent the opportunity to offset input VAT, the incentive flips: VAT-free sales are preferred because the lower cost to the consumer is likely to boost sales volumes.

Outside of the European Union, and South Africa, customers seeking information on VAT on the Google website are told "Google can't charge VAT if your billing address is in a country that's not part of the European Union".[20] The use of the word 'can't' is clearly incorrect, because the company does charge VAT on South African accounts.

Instead, potential customers are told that they should self assess as to whether they should pay the VAT themselves. It is likely that many people do not self-assess, and any VAT that is required to be paid is lost. If those that are required to self-assess do not, then they themselves are committing tax evasion.

20 Taxes in your country, *Google Support*, https://support.google.com/google-ads/answer/2375370?hl=en-GB


Showing information for the following country: Ghana

Taxes or Value Added Tax (VAT) might be applicable to your business, depending on its location. Read on to see what applies in your country. If you'd like to see the information for another country, click on the drop-down menu above.

Value Added Tax (VAT) and Google Ads status

Your account is served by Google Ireland Ltd., but Google can't charge VAT if your billing address is in a country that's not part of the European Union.

Check with your local tax authority to see if you're required to self-assess VAT in your country. If that's the case, then you'll need to do this with the help of your tax adviser or local tax authority. Google can't advise you.

Google did not respond to our requests for comment.

Facebook appears to have a similar policy. Setting out the following on their website:

"If your country isn't listed, that means we don't have tax information for that country. Please contact your local tax authority for this information."[21]

The site then sets out the position in a number of countries where VAT is added to the bill. The countries listed by Facebook include South Africa, Zimbabwe, and Cameroon where it is stated that VAT will be added to invoices where the customer is located in those countries. For Zimbabwe and Cameroon, this is a relatively recent addition with the site stating that it started to add VAT in those countries from late 2020. A Ghanaian Facebook advertising invoice seen by TaxWatch showed only the cost and an Irish VAT registration number – no VAT had been added to the bill.

When asked why Facebook doesn't charge VAT on advertising sales made outside of the EU, the response we were given was:

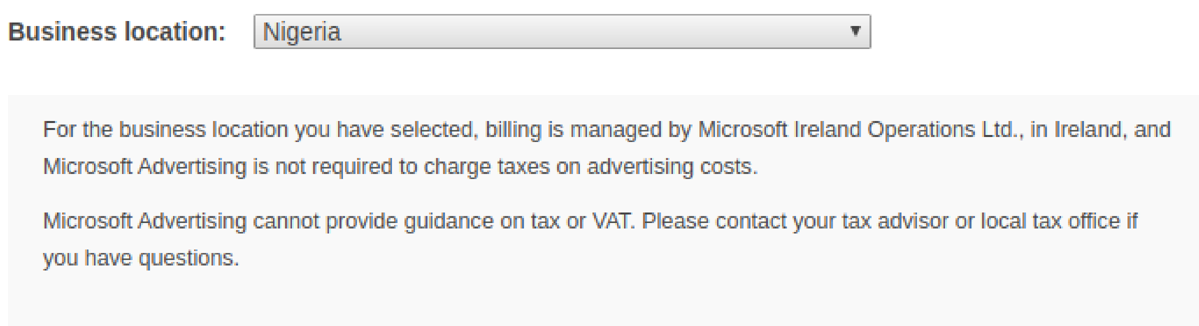
"Facebook is registered, charging and remitting VAT in countries outside of the EU where applicable legislation has been implemented requiring foreign providers to tax the supply of electronic services (e-services). Tax regulations vary country by country. In general the e-services regimes apply to the supply of services to consumers. Advertising is, in general, supplied for business purposes. For

21 Will I be charged tax on my purchases of Facebook ads?, *Facebook*, 16 July 2020, https://www.facebook.com/business/help/133076073434794

example, in South Africa, the e-service VAT regime developed over the years and it is now applicable to the supply of e-services to both businesses and consumers. FB is registered, charges and remits applicable VAT. “[22]

Facebook’s statement does not appear to be accurate. Ghana’s VAT Act specifically says that non-residents who provide “telecommunication services or electronic commerce” must register if they are likely to make sales exceeding 120,000 Ghana Cedis ($20,900) per year.[23] However, Facebook’s pages on VAT do not mention Ghana.

With a population of 30 million, we suspect that Google Ads likely exceeds this low threshold.[24] We questioned Google as to the value of their advertising sales in Ghana, but the company refused to comment. Microsoft’s website states explicitly that it does not charge VAT on advertising in African countries (outside of South Africa) – stating that it is not required to do so.[25]



When questioned on the findings of this report, a Microsoft spokesperson stated “Microsoft is fully compliant with all Local laws and regulations in every country in which we operate. We serve customers in countries all over the world and our tax structure reflects that global footprint.”

Even without a physical presence, Microsoft operates in every country in which it does business. As a global seller of software and advertising, that includes African countries in which it is required to collect VAT.

All of these approaches appear to run counter to the law in many African countries, which states that non-resident companies should register for VAT if they are selling into those countries.

22 Email sent to TaxWatch 19 August 2020
23 Section 6 of Value Added Tax Act 2013, https://gra.gov.gh/wp-content/uploads/2018/11/vat_act_870.pdf
24 Alphabet Inc. 10-k for fiscal year ended December 31 2018, reveals that the revenue for Google Ads in the Europe, Middle East and Africa (EMEA) region was $44.5bn in 2018. This means that Google would only have to generate 0.000047% of its EMEA revenue from Ghana in order to cross the threshold requiring the company to register for VAT.
25 Tax or VAT information, *Microsoft Ads*, https://help.ads.microsoft.com/apex/index/3/en/52032

Legislation in many African countries is clear that non-resident companies are required to either register as a "VAT vendor" in the host country or to appoint a registered local representative. This is also stated in tax briefings prepared by large accountancy firms for the region.

Impacts

It is beyond the scope of this study to determine the impact of non-compliance on the continent as a whole. This would require substantial work to calculate and necessitate detailed knowledge of advertising sales in each country. It would also be complicated by the fact that many businesses that purchase advertising would largely be able to reclaim the VAT paid on advertising sales.

However, there are important consumers of advertising who do not provide services which are subject to VAT and therefore would be subject to VAT on their purchases of advertising. This includes political parties and NGOs.

In addition, commissions earned on online marketplaces (for example the Google Play Store) would be subject to VAT.

In South Africa, Prenesh Ramphal of the South African Revenue Service (SARS) has stated that between 2014 and 2019, the new regulations implemented there collected in excess of R600 million ($43 million) a year – around R3 billion ($215 million) in its first five years.[26] With the 2019 addition to the regulation casting the net further to include all electronic services, SARS can expect to collect even larger amounts of VAT in future years.

VAT legislation is clear that non-resident sellers should be collecting VAT on behalf of the local tax authorities. We believe that tax authorities on the continent should take a close look at whether the digital giants have incurred substantial VAT liabilities in their jurisdictions which have yet to be paid.

26 New VAT rules lead global tax reform, Mail & Guardian, 26 April 2019, https://mg.co.za/article/2019-04-26-00-new-vat-rules-lead-global-tax-reform