

“DEVELOPMENTS IN  
INTERNATIONAL  
TAXATION AND  
TRANSFER  
PRICING SPACE:  
IMPLICATIONS FOR  
NIGERIA”.





## Riddles

I'm tall when I'm young, and I'm short when I'm old. What am I?





## Riddles

I'm tall when I'm young, and I'm short when I'm old. What am I?

**Answer!!! A candle!**



## Brain Teaser

Forward I am heavy,  
but backward I am  
not. What am I?



## Brain Teaser

Forward I am heavy,  
but backward I am  
not. What am I?

**Answer!!! Ton**





What comes to  
your mind when  
you think of the  
word “**International  
Trade**”?

# History of International Trade





Things are no  
longer the same

**“Why?”**



Man invented fire 1.5 million years ago



The world wide web was invented in 1989 by British computer scientist Tim Berners-Lee.

List 5 ways technology has shaped the world today?

# Technology and the Digital Economy



**Retail** - Customers to place online orders and has made it easier for retailers to gather and analyse data on customers, to provide personalized service and advertising.



**Logistics** - The logistics sector has been transformed by digital economy, which enables the tracking of both vehicles and cargo across continents, the provision of information to customers and facilitates the development of new operational processes.



**Financial services** - Banks, insurance providers and other companies, including non-traditional payment service providers, increasingly enable customers to manage their finances, conduct transactions and access new products on line.



**Manufacturing** - The digital economy has enhanced design and development, as well as the ability to monitor production processes in factories and control robots, which has enabled greater precision in design and development and ongoing product refinement.



**Education** - As the digital economy spreads, universities, tutor services and other education service providers are able to provide courses remotely without the need for face to face interaction through technologies such as video conferencing and streaming and online collaboration portals, which enables them to tap into global demand and leverage brands in a way not previously possible.



**Healthcare** - The digital economy is revolutionizing the healthcare sector, from enabling remote diagnosis to enhancing system efficiencies and patient experience through electronic health records. It also allows opportunities for advertising, for example of drugs and other treatments.



**Media** - The digital economy has dramatically changed the broadcasting and media industry, with increasing broadband access in particular opening new avenues for delivery of content for traditional media players, while also enabling the participation in the news media of non-traditional news sources, and expanding user participation in media through user-generated content and social networking.



# Wonders of Globalisation and e-commerce

Globalisation and e-commerce have changed the way money is made and how businesses are structured



World's largest taxi company owns no vehicle



World's most popular media owner creates no content

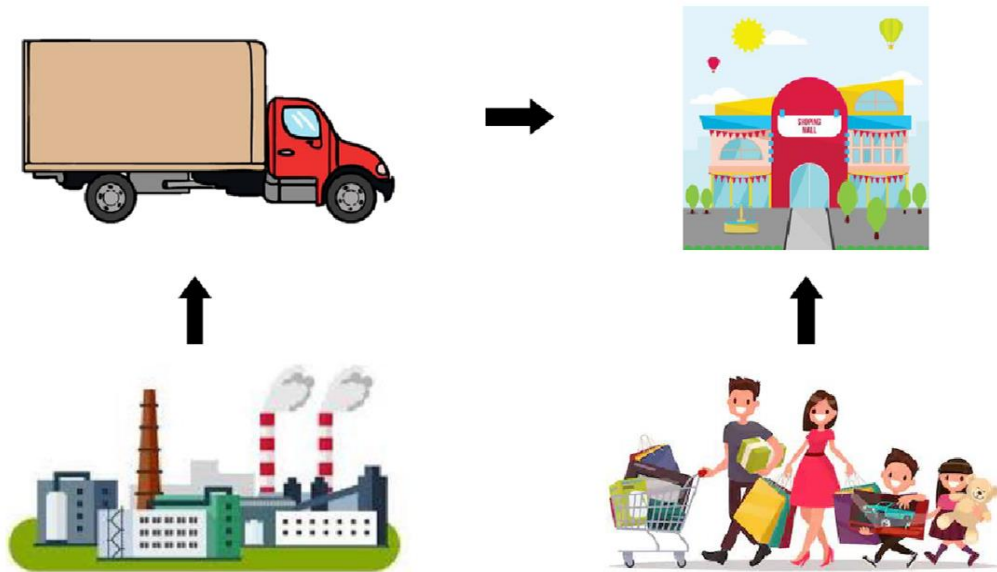


Most valuable retailer has no inventory.

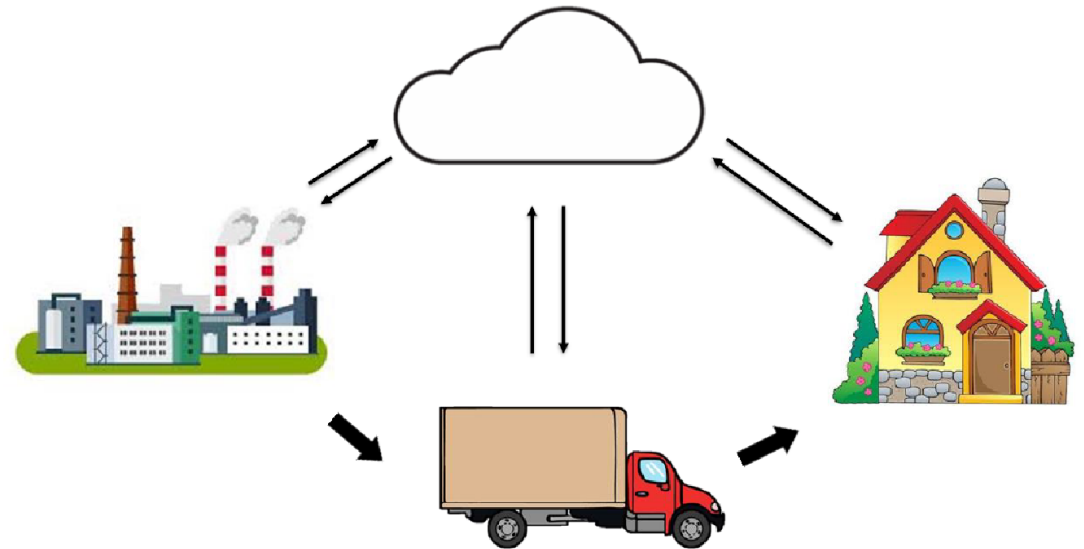


World's largest accommodation provider owns no real estate

## Pre-digital era



## Digital era



Did you know?



# The Digital Economy accounts for 15.5% of world GDP

World Bank, 2020

US and China together account for 40% of world's total





“Since robots  
will take our jobs  
then they should  
be made to pay  
tax” \_ Bill Gates



# Course outline

01

Overview of the international tax system

02

The Two-Pillar Solution

03

The perspective of Africa and Nigeria

04

Nigeria's unilateral measures and other recent changes affecting the digital economy

05

Tax reforms needed to address the new way of work

06

Future expectation and conclusion



# Evolution of trade



1771  
B.C.

1920s



LEAGUE OF NATIONS  
SOCIÉTÉ DES NATIONS

Digital  
age





# At the end of this session you will be expected to



1

Have a broad understanding of the Digital Economy (DE)

2

Gain knowledge of the Two-Pillars global tax reforms

3

Understand both Africa and Nigeria's positions on the reforms.

4

Be aware of key tax changes in Nigeria that impact the DE

5

Gain an insight into the future of international taxation.

# 1

## Overview of the international tax system

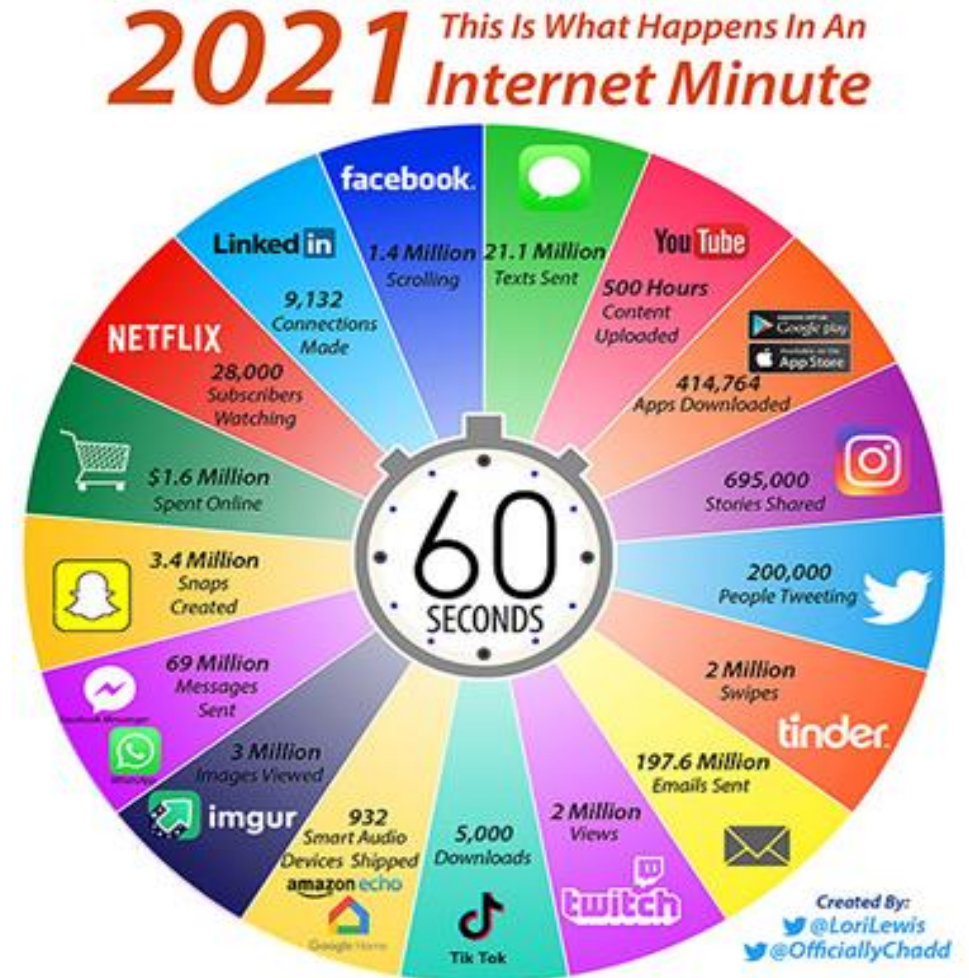


## Introduction

Many investors and enterprises operate across borders with presence in more than one country. With the help of technology, even local businesses are able to attract and sell their products or render services to customers in other countries.

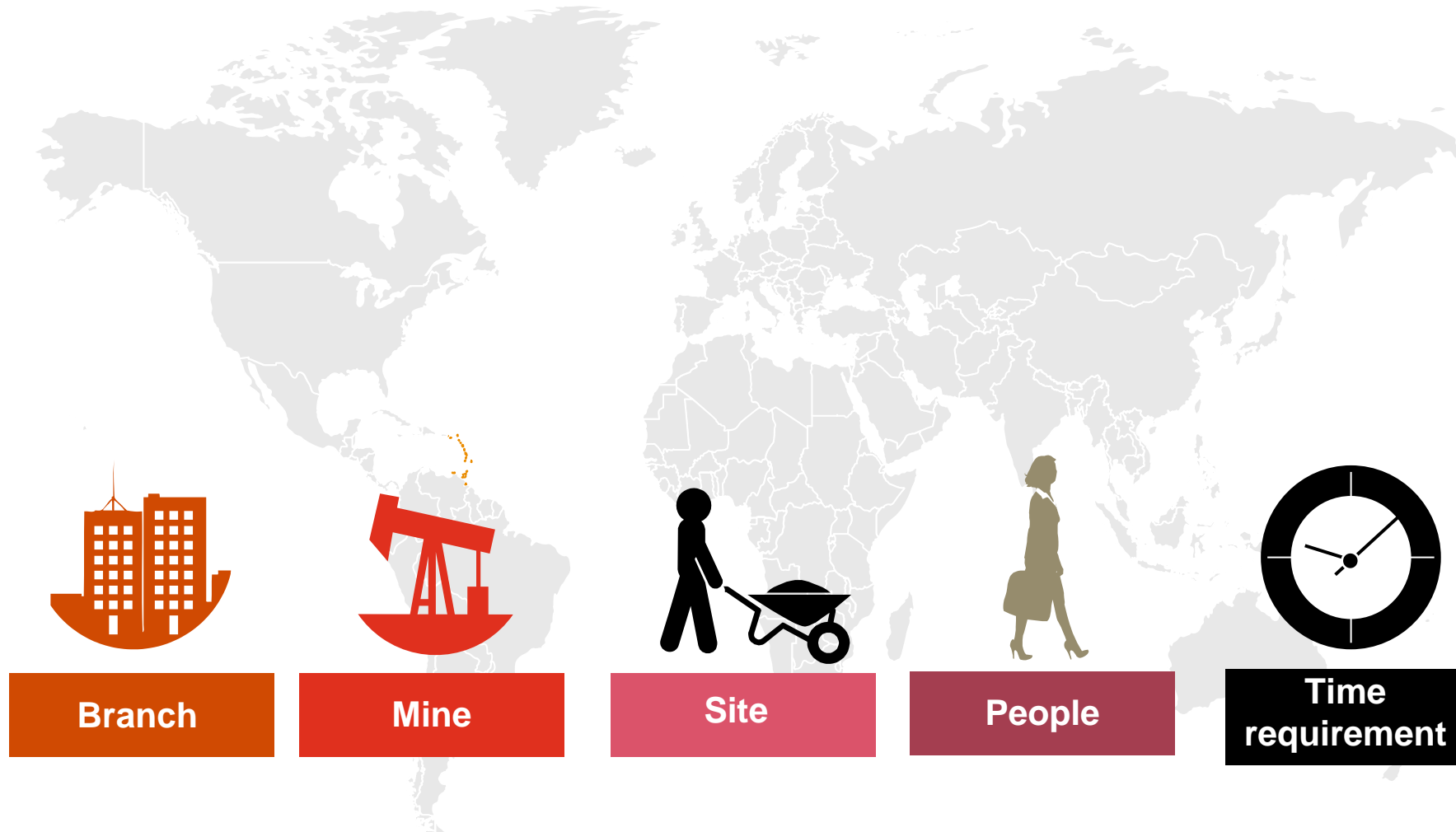
## What is international tax?

International taxation is the process and combination of rules that work together in the determination of the tax payable by individuals and corporations as a result of their economic activities in different countries.





## Under current international tax rules, taxing rights are based on physical presence



## **Permanent Establishment** - Article 5, paras 1-3, OECD Model Treaty

For the purposes of this Convention, the term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or mainly carried on.

The term 'PE' includes especially:

- a place of management,
- a branch,
- an office,
- a factory,
- a workshop, and
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- A building site or construction or installation project constitutes a PE only if it lasts more than 12 months.

## **Service PE**

Services can be more easily delivered without a fixed place of business and the UN model treaty, Article 5, includes a further definition of a "Service PE":

3(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.

## A search for solutions

A close-up photograph of Margaret Hodge, a woman with short blonde hair and glasses, wearing a red top and a patterned scarf. She is pointing her right index finger upwards with a serious expression. The background is dark and out of focus.

*We are not accusing you of being illegal, we are accusing you of being immoral.*  
– Margaret Hodge





# Trade Wars

In some countries far far away ...



**Donald J. Trump**   
@realDonaldTrump

France just put a digital tax on our great American technology companies. If anybody taxes them, it should be their home Country, the USA. We will announce a substantial reciprocal action on Macron's foolishness shortly. I've always said American wine is better than French wine!

# The journey to Pillars 1&2



- Oct 2015: BEPS Report Addressing the Tax Challenges of the Digital Economy
- Mar 2018: Interim report on Tax Challenges Arising from Digitalisation
- Jan & Feb 2019: Policy Note and Public Consultation Document proposing a 2-pillar approach as foundation for a consensus based solution.
- Jan 2020: IF adopted outline of a unified approach on pillar 1, and a progress note on pillar 2
- Oct 2020: IF released blueprint reports on pillar 1 and pillar 2
- 2021: New building blocks on Pillar 1&2 blueprints introduced
- Oct 2021: IF published statement with implementation plan on the Two Pillar solution



## Brain Teaser

A doctor and a bus driver are both in love with the same woman, an attractive girl named Sarah. The bus driver had to go on a long bus trip that would last a week. Before he left, he gave Sarah seven apples. Why?

**Answer!!! An apple a day keeps the doctor away!**





## Brain Teaser

What has a head and tail but no body?

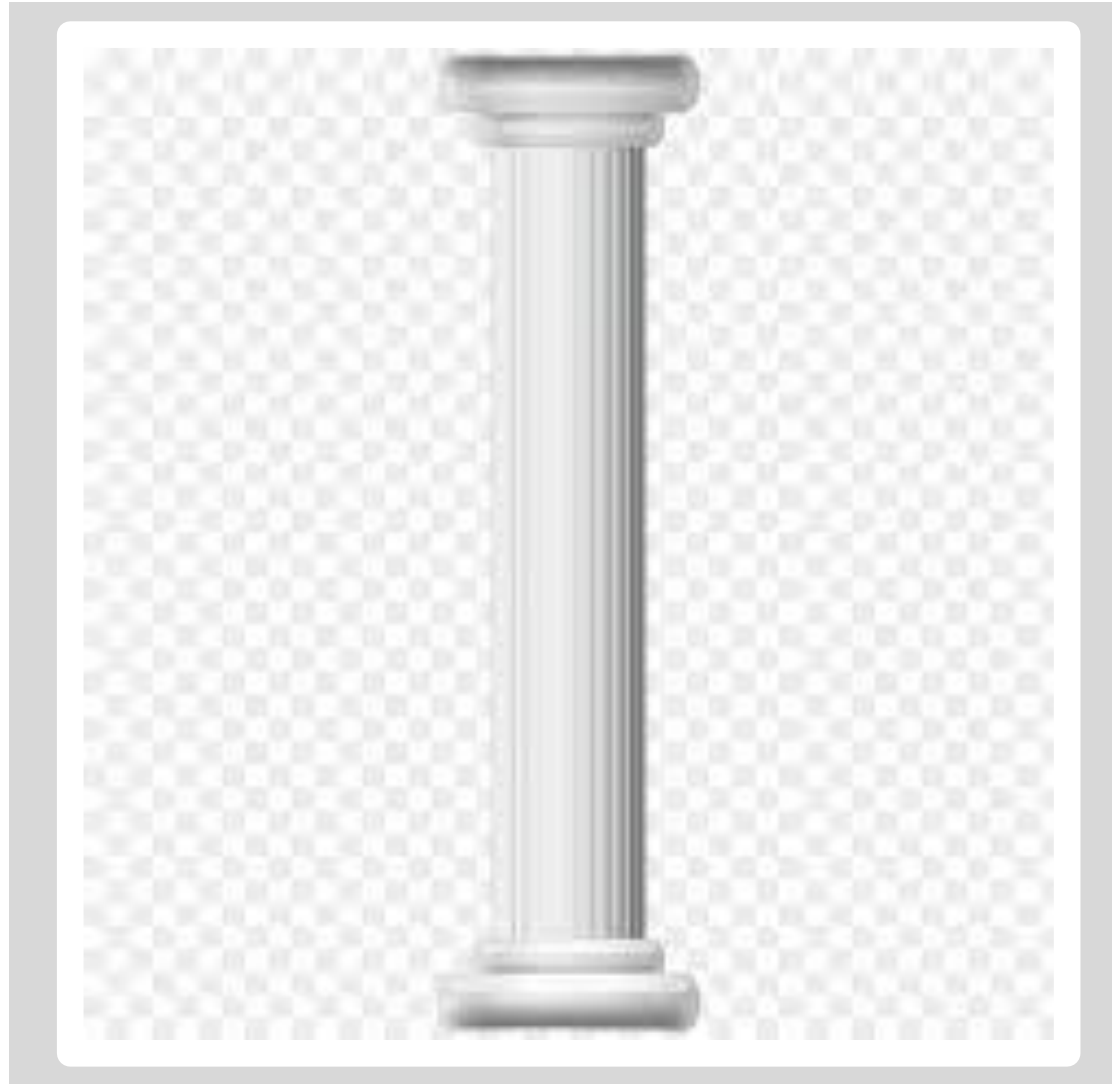
**Answer!!! A coin**

# 2

## The Two-Pillar Solution



# Pillar One



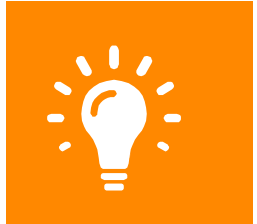


## Objectives

- Address issues of digitalization
- Provide new nexus and profit allocation rules for MNEs
- Neutralise the effects of unilateral measures



# Elements of Pillar 1



## Amount A

- Portion of the MNE “deemed residual” profit to be reallocated to market jurisdictions.
- Large and most profitable businesses (Global turnover of EUR20billion)



## Amount B

- Fixed return for some marketing and distribution activities in the market jurisdiction
- All businesses



## Tax certainty

- Through preventive dispute prevention and resolution mechanisms
- All businesses.

# Amount A

## Scope

- Global turnover above EUR20billion (EUR 10billion 7 years after effective date.)
- Profitability above 10% (measured as PBT by revenue on an accounting basis)

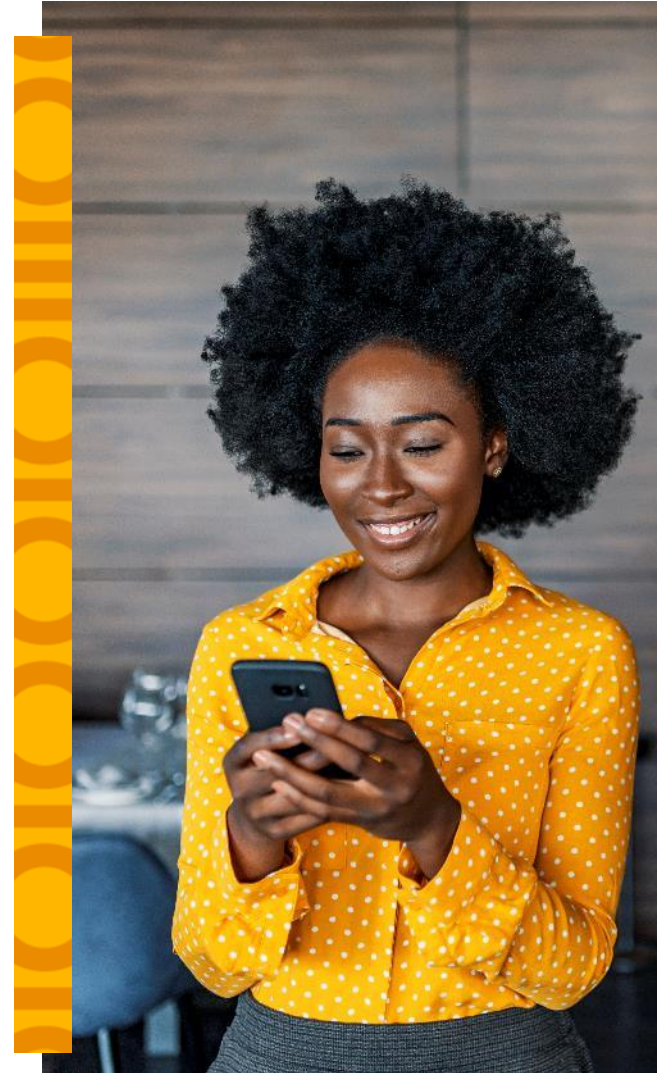
## Quantum

- 25% of residual profit will be allocated to market jurisdictions with nexus using a revenue-based allocation key.

## Nexus

Nexus will exist if an MNE sources a revenue threshold of at least:

- EUR 1 million in a market jurisdiction
- EUR 250,000 in a market jurisdiction if market GDP is less than EUR 40 billion







## Tax certainty

- In-scope MNEs will benefit from dispute prevention and resolution mechanisms which are meant to avoid double taxation issues such as transfer pricing and business profits disputes.

## Arms Length Principle



A simplified application of the arm's length standard by fixing a baseline for marketing and distribution activities.

# Amount A Computation- Simplified example of Numeric Inc.

Particulars	Eur Bn
Total Revenue (A)	182
PBT (B)	40
PBT/Sales (C)	22%
Profitability Threshold (D)	10%
Excess Profitability (E)= C-D	12%
Reallocation percentage	25%
Reallocation %	3%
Amount A available to be allocated to market jurisdictions	5.5

>10%

25% of this amount i.e. residual profit to be reallocated

3% residual profit available for distribution



# Class work: Meji Platforms Inc.

Particulars	Eur Bn
Total Revenue	85
PBT	29
PBT/Sales	A%
Excess Profitability	B%
Reallocation %	C%
Amount A available to be allocated to market jurisdictions	D



## Pillar Two





## Brain Teaser

I can't be bought, but I can be stolen with a glance. I'm worthless to one, but priceless to two. What am I?

**Answer!!! Love**

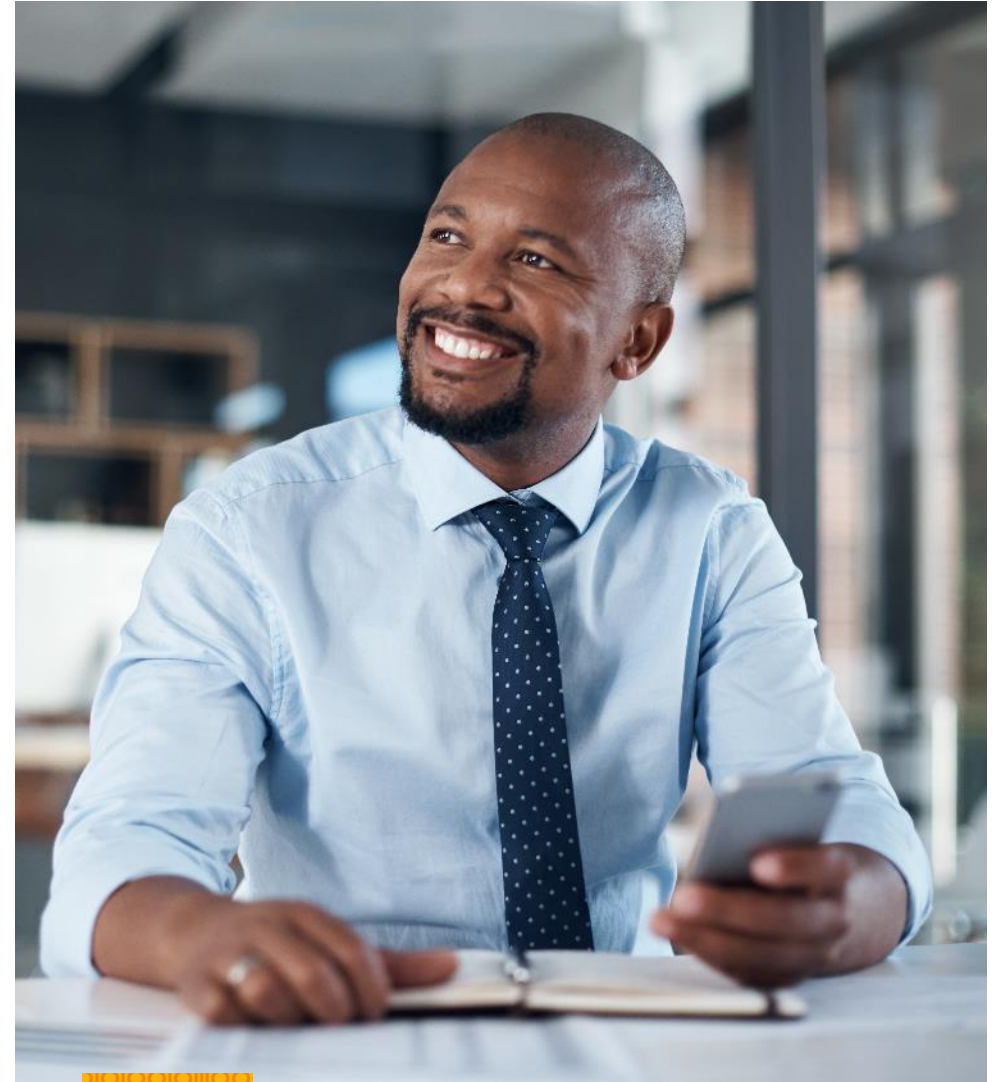


# Elements of Pillar Two

## Think Two ...



Category of change	Elements
1. Treaty based	Subject To Tax Rule (STTR)
2. Domestic based	Income Inclusion Rule (IIR)
	Undertaxed Payment Rule (UTPR)



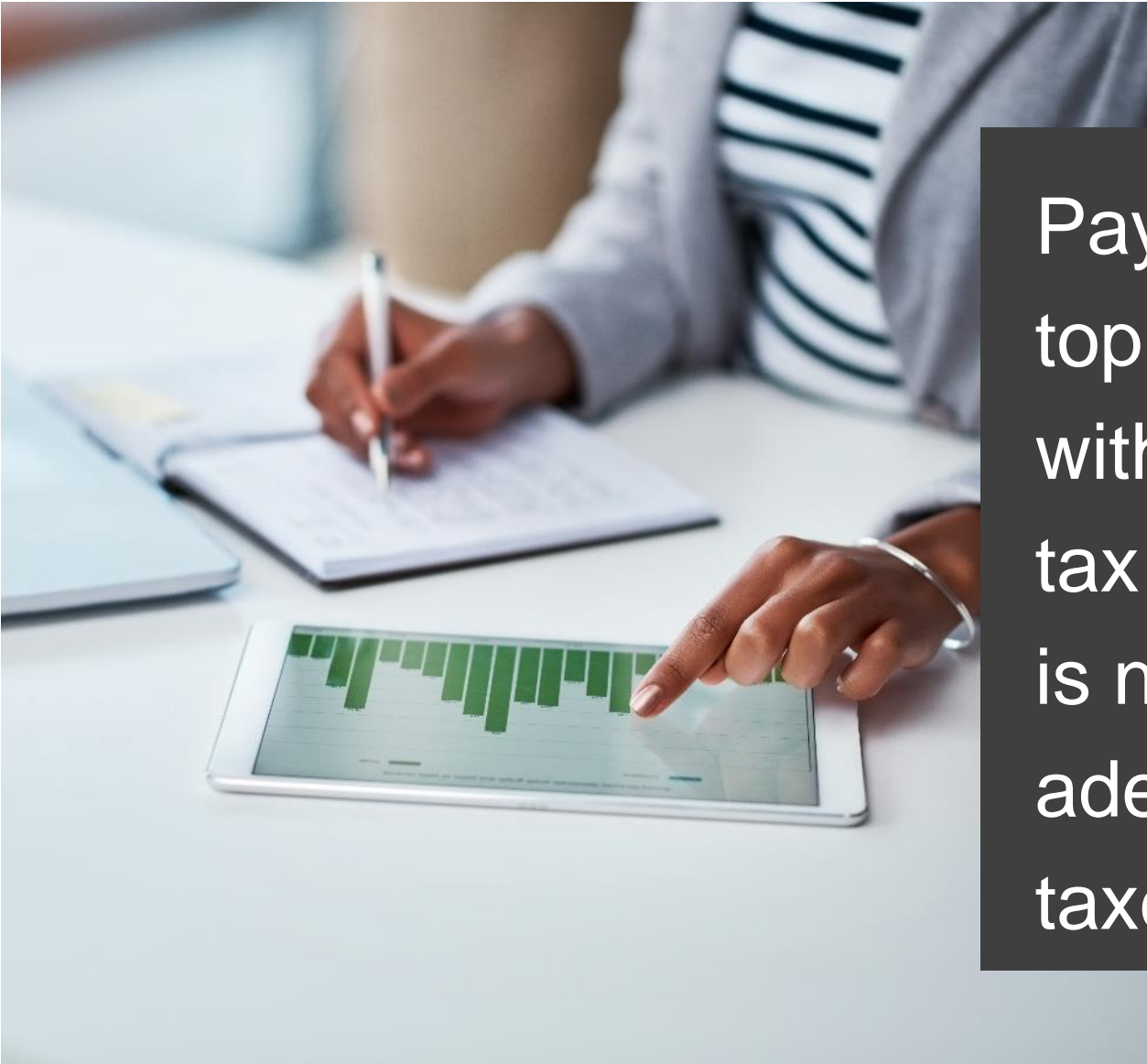
**Treaty**

**Based**

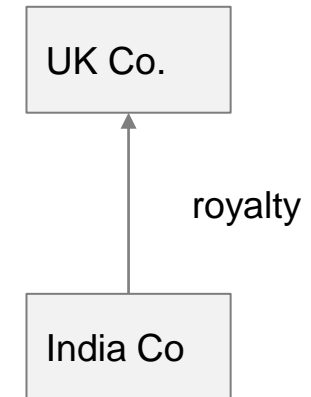
**Change**



# Concept of Subject to Tax Rule (STTR)



Payer collects  
top up  
withholding  
tax if recipient  
is not  
adequately  
taxed.



India deducts WHT on royalty payment at 4% percent. Royalties are exempted from tax in the UK. Assuming that the STTR is contained in the treaty, India has the right to apply the top-up WHT.



# Concept of Subject to Tax Rule (STTR)

Allows countries to levy a top up withholding tax on certain covered related party payments which are taxed below a minimum rate in the related party's country



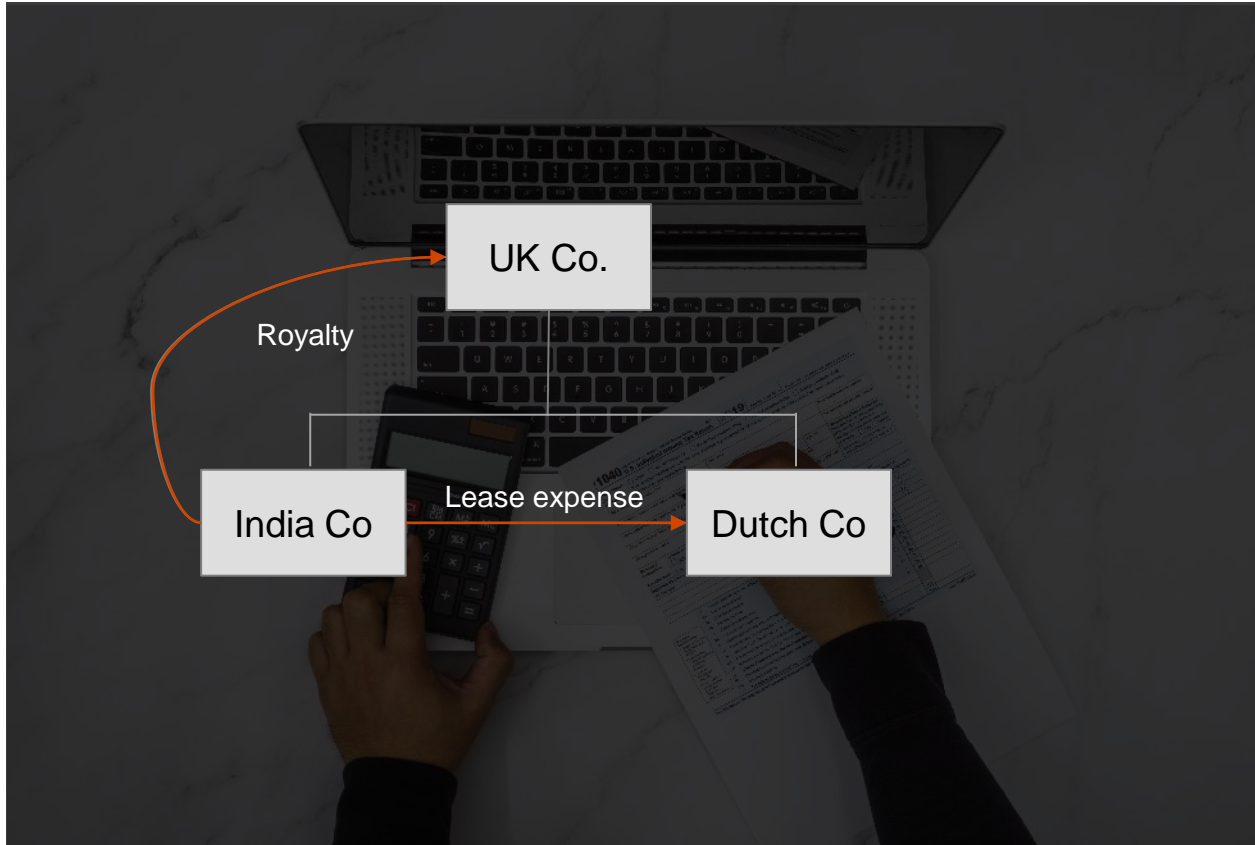
## Covered Payments

- Interest
- Royalties
- Franchise fee or other payment for use of or right to use intangibles in combination with services
- Insurance or reinsurance premiums
- Guarantee, brokerage or financing fee
- Rent or other payment for the use or right to use moveable property
- Consideration for supply of marketing, procurement, agency or other intermediary services

## Implementation Issues

- IF members to include STTR in treaties, when requested by IF member with 2019 GNI per capita of \$12,535 or less, if they apply nominal rate of less than the minimum rate
- Trigger Rate: 9% (Decision in October 2021)
- Based on tax rate applied to the payment not the entity:
- Exclusions envisaged for investment funds, pension funds, not for profit org etc.

# Class work 2



## Key Assumption

- STTR incorporated in India's treaties with Netherlands and UK

## Payment to UK Co:

- 10% withholding tax applies in India on royalty paid to UK Co.
- Royalty income is fully exempt

## Payment to Dutch Co:

- No withholding tax applies in India on payment of lease expense to Dutch Co (*No PE/No Tax*)
- A special lower rate of 5% applies on rental income.

## Questions

1. Would an STTR be triggered from the transaction with UK Co? If yes, what percentage of the royalty would be subjected to further tax?
2. Would an STTR be triggered from the transaction with Dutch Co? If yes, what percentage of the royalty would be subjected to further tax?

**Domestic**

**Based**

**Change**



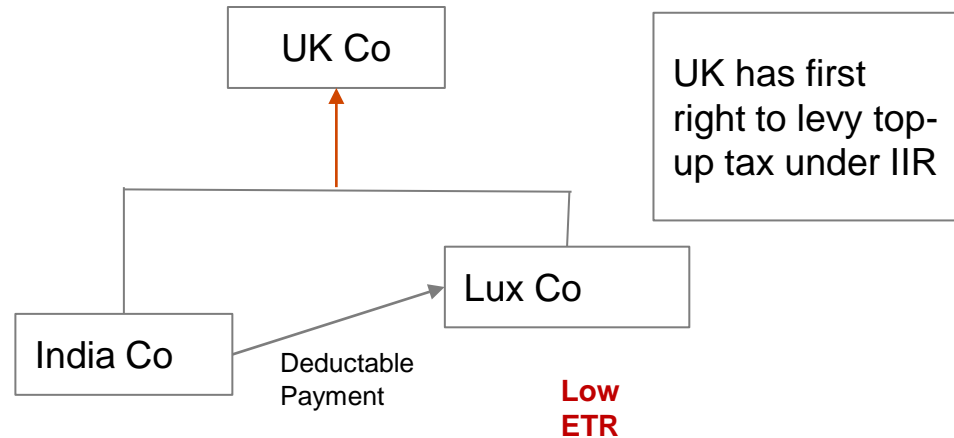


The Income Inclusion Rule (IIR)- Imposes a top-up tax on the group parent entity in respect of low taxed income of overseas group entities.

The Undertaxed Profit Rule (UTPR) which denies tax deductions if the low tax income of a group entity is not subject to tax under an IIR

Both rules are applicable to MNEs with a global turnover of EUR750 million. A minimum ETR of 15% is required in each jurisdiction where the MNE operates, an ETR below 15% in any jurisdiction e.g. Nigeria will trigger the GloBE rule.

# Concept of the Globe Rules



India gets a right to collect top up tax by denying deduction on payment to Lux Co **if UK does not levy IRR**

## Three pre-requisites that trigger the GloBE rules:

- i. A EUR 750m group revenue threshold is met- but countries can use lower threshold only for IIR
- i. Income of the group entity is taxed at below the minimum effective tax rate (not less than 15%)- Complex rules envisaged for ETR calculation
- i. The entities must not fall within the list of excluded entities



# The 2-Pillar proposals (BEPS 2.0) Snapshot

## Pillar One – Profit allocation and nexus

**Scope** – MNEs with global turnover above €20 billion and profitability above 10%. Extractives and Regulated Financial Services are excluded.

**Nexus** – Turnover of at least €1 million (€250 thousand) from market jurisdictions (small economies).

**Quantum** - 25% of residual profit will be allocated to market jurisdictions using a revenue-based allocation key.

**Dispute resolution** – This is expected to be mandatory and binding to prevent and resolve disputes.

## Pillar Two - Global minimum tax

**Tax rate** – A minimum tax rate of 15% will be applicable on MNEs with a global turnover of 750million Euros.

- i. An Income Inclusion Rule (IIR) - allows for more tax on income of parent company due to low tax of subsidiary.
- ii. Undertaxed Profit Rule (UTPR) - denies deductions to be taken or requires an adjustment to the income of a low tax subsidiary to allow for the entity paying the minimum tax rate.
- iii. Subject to Tax Rule (STTR): Paying countries will be able to charge a top-up tax in respect of specific types of intra-group payments made to other group companies, where the recipient country has a nominal tax rate less than a minimum tax rate

(i) and (ii) being considered as GloBE rules

**Exclusions** – Government entities, pension or investment funds that are ultimate parent entities are not subject to the Global Anti-Base Erosion (GloBE) rules. Also excluded are the income from International Shipping as defined under the OECD Model Tax Convention.



# Where we are now

Pakistan, Nigeria, Kenya and SriLanka did not sign the two-pillar agreement.



# Developments on the Solution

Date	Developments
Dec 2021	Release of publication which describes scope, definitions and operative provisions of the GloBE rules
Mar 2022	Release of commentary document to further clarify certain terms and illustrate the application of the GloBE rules.
Apr 2022	Public consultation for the <a href="#">development</a> of simplifications and <a href="#">safe harbours</a> .
Dec 2022	Release of Implementation Package covering three issues: 1.GloBE Information Returns 2.Safe Harbours 3.Tax Certainty Options
Feb 2023	Release of Implementation Package on <a href="#">Administrative Guidance</a> for the Pillar Two. This is the final part of the implementation framework for the GloBE Rules with further guidance on issues which were not addressed in the March 2022 commentary.

# Countries who have announced implementation of Pillar Two

Released Draft Legislations	Intention to adopt	Made related announcements
EU	Australia	Colombia
South Korea	Canada	Taiwan
Switzerland	Hong Kong	UAE
UK	Japan	
	Mexico	
	Singapore	

- South Korea is the first country to codify the minimum tax laws into its local legislation and it is expected to take effect in 2024
- The 27 EU countries have unanimously agreed to adopt the minimum tax and have till the end of 2023 to transpose this into local laws.
- Japan announced it would implement IIR in 2024.
- UAE on 1 June 2023 introduced a corporate tax for the first time.



# 3

## The perspective of Africa



# ATAF's perspective



Representative for  
Africa on the Inclusive  
Framework



Technical support for member  
African countries with regards to  
the Two Pillar Solution







## Positives

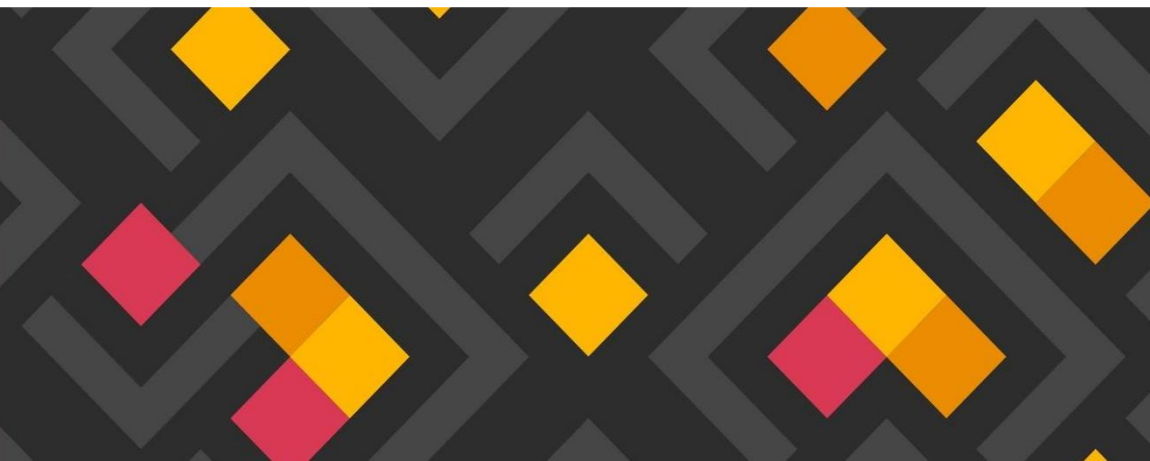
## Areas for attention

- New Pillar 1 rules are currently simpler than the initial proposals.
  - Extension of sectors under Pillar 1 rather than the initial proposal.
  - Welcomes the introduction of a global minimum tax rate.
  - The exclusion of the activities of the extractive industries
  - The adoption of a country's economic size in allocating taxing rights (nexus)
  - The use of simplified conventions in dealing with TP challenges especially Amount
  - Successfully obtained an elective as opposed to a mandatory binding dispute resolution mechanism
- 
- Advocacy for reallocation of profits using a portion of the MNEs **total profits** instead of its **residual profit**.
  - Allocation of **at least 35%** (rather than 20%-30%) of residual profit defined as profit in excess of 10% of revenue to market jurisdictions
  - Recommendation of a **higher global minimum tax rate** of at least 20%
  - Need to make it **essential** that the intended elective binding dispute resolution mechanism is made available to **all African countries**. This relates to African countries with limited capacity.



# 4

Nigeria's unilateral  
measures and other  
recent changes affecting  
the digital economy



# Nigeria's perspective

Nigeria is one of the 4 IF members yet to sign the proposals. Others are Pakistan, Kenya, and Sri Lanka

Reasons why Nigeria is yet to sign the Pillar One and Two proposals:



**Concern of a potential revenue loss amidst dwindling revenues**



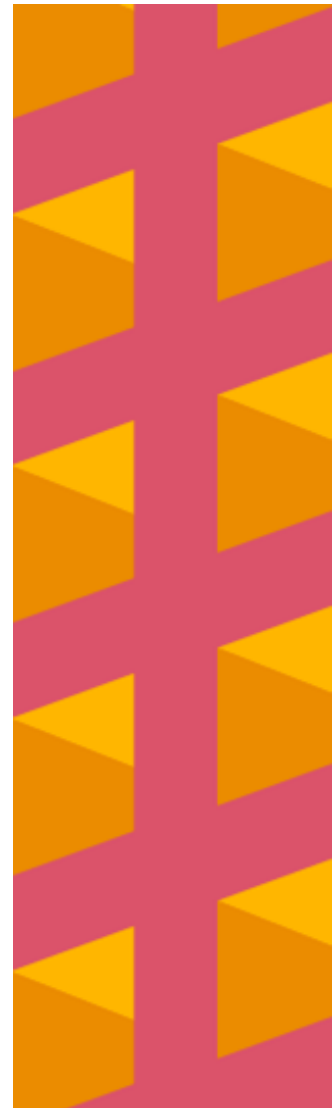
**Prospective increased income obtainable from unilateral measures**



**Concerns regarding fairness and equity in the allocation of profits to market jurisdictions**



**Binding arbitration and implementation hurdles**



# Background and context



2019

Introduction of Significant Economic Presence (“SEP”) rules

Introduction of VAT reverse charge on imported services



2020

Requirements for filing , Extension of SEP rules to non-resident individuals, Use of technology to gather information.

Mandatory VAT registrations for non-residents, requirement to charge VAT



2021

Inclusion of framework to tax SEPs on deemed basis

Non residents have primary responsibility to collect and remit VAT

# Recent development on the taxation of NRCs and the Digital Economy



The introduction of a “deemed profits” tax regime for non-resident companies that create a Digital Significant Economic Presence (SEP) in Nigeria.

In practice, a 20% margin is deemed on turnover and subjected to CIT at 30% (effective 6% on turnover)



Non-resident companies who supply taxable goods and services are required to register for VAT



Non-residents are now primarily responsible for the collection and remittance of VAT on transactions with Nigerian customers.



- Increase in cost of online companies products and services
- Increase in administrative duties of NRCs
- Raises cost of doing business in Nigeria
- Discourage/reduce use of services from NRCs
- MNCs with an effective tax rate of 15% in Nigeria and global turnover of 750 million Euro will be pay top-up tax.

# 5

Tax reforms needed  
to address the new  
way of work



# Africa needs to develop a fit-for-purpose approach to digital taxation

Africa must find a balance between taxation of the digital economy without stifling innovations and development.

Neither should there be double taxation nor double non-taxation.

COVID-19 has shown that technology is no longer a nice to have but a necessity for survival. Tax authorities cannot afford to lag behind.

01

PE consideration for contingencies

02

Rules for PE around remote working

03

Rules on remote working within same country but different states.

04

SEP update for Personal Income Tax

**Transfer pricing**” generally refers to how related parties price goods and services, assets, intellectual properties, loans, guarantees and other commercial transactions between them.

Areas of audit focus by tax authorities include management and technical services fees, intellectual property fees e.g. royalties, group head office costs and shared service costs etc.

**Questions being asked**

- Are they shareholder functions?
- Is there duplication?
- Does the recipient have the resources to obtain the services in house?
- What evidence is there of the services and its benefits to the recipient?
- Is the fee arm’s length (% of turnover fees)?





# 6

## Future expectation and conclusion



# The bigger issues and next steps

**01**

The need to simplify, provide clarity and certainty e.g. definitions, scope etc

**02**

Plans for non-signing members of the Two Pillar Solution



Impact assessment of implemented measures e.g. DST, SEP etc

**03**

FIRS need to reassess its digital tax strategy using data

**04**



**Does the world or Africa need a Plan B?**

A photograph of a woman with dark skin and curly hair, wearing a white button-down shirt, smiling and clapping her hands. She is wearing a black watch on her left wrist and a ring on her right hand. In the background, other people are seated at a conference table in a modern office setting. A white mug is on the table in front of her.

# Conclusion





# Thank you



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