

A COMMENTARY ON AIRBNB AS A DIGITAL BUSINESS MODEL: REGULATION AND TAX CHALLENGES FOR EAST AFRICA

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Abstract

This article sets out to discuss two key issues. The first relates to how digital business models can be leveraged for domestic resource mobilisation and the second issue, related to the first, discusses the interplay between digitalisation and tax avoidance. Airbnb and Booking.com are relied on as the case studies from whence these two issues are discussed. Arguably, despite the growth in online business models within East African states, such growth has not been commensurate with the revenue collected from online businesses. Given the increasing popularity of mobile apps among East African customers, online businesses have been able to increase their market share and directly collect income through their smart phone apps compatible with mobile money transfer. This article advances the view that those online businesses not only pose taxation challenges for the East African community but also reflags the need for more capacity building for East Africa's revenue authorities.

Key words: Digitalisation, Airbnb, taxation, data protection.

1. INTRODUCTION

Airbnb is an online digital business model that connects property owners with short term travellers. It operates as an online intermediary without a physical presence. East African property owners have been listed on both Airbnb and Booking.com. The lack of a physical presence of these online accommodation websites pose a challenge when it comes to revenue collection. Revenue authorities of the East African states cannot impose taxation on entities that do not have a local physical presence and the authorities may also be unaware of residents who have received income as a result of letting out their properties to travellers. This article discusses a number of challenges that have arisen as a result of online business digital models. The article leans towards Airbnb for reference material. The rest of the article is structured as follows. Section 2 presents the gaps following digitalisation of businesses. Section 3 explains the impact of digitalisation on taxation. Section 4 discusses digital business models as a leverage for domestic resource mobilisation and section 5 concludes the article.

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2. INFORMATION GAPS FOLLOWING DIGITALISATION OF BUSINESSES

The absence of data sharing between online service providers and the East African revenue authorities presents the greatest hurdle towards tapping into digital business models as a source of domestic revenue mobilisation. In order for these new digital business models that have made an entry into the East African market to be considered as tax streams more attention must then be given to establish how revenue authorities can modify their automated detection tools to identify online sale of services. This would require capacity building in the use of artificial intelligence to analysis data flowing digitally on registered tax payers who provide digital business services. The challenge remains on being able to identify online providers of services who are not resident within East Africa but operate from the region and earn an income. In order to overcome this challenge East African revenue authorities can consider borrowing from the best practices of the developed countries (Bainbridge, 2008).

3. THE IMPACT OF DIGITALISATION ON TAXATION

Since the early 1980s there has been a drastic increase in the demand for smart phones in most African countries. The foregoing partly accounts for the increasing number of companies dealing in mobile phones in the region. These smart phones have enabled mobile subscribers to access credit, transact and also receive money since these phones also operate as a mobile money platform. Accordingly, giving rise to different dimensions of tax, for example, excise duties charged for mobile transactions, using internet services, sending and receiving money through mobile subscriber platforms.

In Uganda, mobile users accessing the internet are charged Over the Top Tax (OTT) (Okiror, 2019) this is imposed for WhatsApp communication to the extent that the Uganda Revenue Authority (URA) has designed a mechanism for denying Ugandans access to use WhatsApp services before paying the OTT despite the topping up of mobile data (Okiror, 2019). There is a high likelihood for the URA online taxes to be more cost effective if its OTT human resources were placed in monitoring departments to devise ways of tracking sales from online payments, thereby identifying revenue streams. Conversely attention should be centred on taxes from online sales resulting from bookings of properties located in Uganda but registered with AirBnB and Booking.com

A considerable faction of members residing within the East African Community as well as their governmental institutions are either delivering or receiving services through online business models. This demonstrates how public and private sectors are resorting to using online methods as strategic approaches that

are associated with business efficiency and better performance of sectors across the different East African countries. The online automated system for filing tax returns is a classic example of service digitalisation in addition to online submissions for East African e-passports. There has also been an increase in the use of online businesses by the different industries in East Africa. Examples include Jumia which operates online orders and deliveries, *Uber* and *Safe-Boda* which operates in the transport sector including Booking.com and Airbnb which offer hotel and household accommodation services for those that are visiting different cities in East African countries. These online business models warrant a contemporary approach to ensure that the methods of tax collection are more effective and reliable.

There is also the need to develop a better legislative regime that can regulate online business dealings with online activities of collecting and processing sensitive personal data for or from East African citizens. It is imperative to borrow a leaf from EU and UK laws of data protection, data collection, data processing, data retention and data sharing by reinstating the need for regulating different actors that comprise activities associable with fundamental aspects of the online world. An online emulation approach becomes instrumentally crucial partly because of the reason highlighted below. The online approach is important in explaining the legal nomenclature on digital data and how it can be a mechanism for designing a taxation regime. Such legal nomenclature includes the data subjects, data processors and data controllers. This also encompasses appreciating the relevance of overcoming the online legal complications. This would be vital in advancing a justification for illustrating how taxation actors should be responding to increasingly growing trends of digitalised transactions across the spectrum.

The online emulation of the UK and EU approach is further important considering the more digitalised trends partly evidenced by recent developments when embarking upon the trial phase of upgrading to 5G by internet service providers. (Nutter 2019). Following progressive development of 5G internet services there is a high likelihood for more persons to consider internet resources for either as service providers or as service users. In preparation for this likelihood there might be a need of ensuring the necessary measures are put in place for purposes of having an online tax supportive data collection mechanism. Furthermore, the online emulation is equally important given the growing reliance on the online business activities among several urban dwellers in East Africa. This development is increasing the possibility for European based data processors to engage in digitalised business dealings with East African based data subjects and data controllers (Harry Surden, 2014).

Additionally, the online emulation of the data-based conception of taxation is instrumentally vital considering that the manner in which online businesses are designed to operate has undeniably remained challenging to tax authorities of most East African countries (Ali Vaziri, 2019). Those challenging complexities are partly a result of a failure by taxing authorities of East African countries to perceivably conceive collected marketable data comprised on websites of data possessors as a monetary capital asset.

3.1. Data subjects and taxation in the digital context

First and foremost, digital business models base all activities on a data subject (Paula Moffatt and Richard Hodgkinson, 2019). A data subject is the person to whom personal data relates or refers to. The use of the term ‘individual’ shows that data subjects must be human beings. Artificial legal persons such as companies are, therefore, not data subjects (Bainbridge, 2008, p. 508). Data subjects refers to people such as the author who has registered for accounts on a website such as Booking.com or Airbnb. Data subjects and data controllers are given online access rights to the websites by the data processor with an online relationship that is demonstrated in figure 1 below. Logging on the website is important in aiding the data controllers to use online activities by filling in their details to search for specific locations or places. In this context the searched places are representative of where the data subjects intending to visit/travel. The features of the website can also give the data subject a chance of selecting the maximum and minimum price which they willing to pay for the accommodating them.

The data-based taxation approach will ensure considerable legal uncertainty regarding where when and from whom government can collect online tax. Addressing those questions would entail appreciating how sales accrue from the relationship between the parties as demonstrated in Figure 1 below (Craig Earnshaw, 2019). A comprehensive response to those questions are also important in as far as the developing of globally reliable data-based taxation system is concerned. Such a system is important in developing different tax regimes through evaluation and an assessment of global value addition to online content or marketing data. Marketing data that is obtained from data controllers by the data processors for use by global travellers (data subjects) (World Economic Forum 2019). For example, it is possible for Airbnb to identify from submitted data details by geographical jurisdiction as Uganda. The data based online taxation regime would enable URA to secure such data from Airbnb or Booking.com to identify Ugandans whose properties are registered on its online services in Urban centres. This data-based tax approach could be furthered upon the personal location details of data controllers most of whom are residing within urban centres. However, the urban centre-based presumption is founded

on the view that Airbnb often have more strategic collaboration with urban residents due to the presence better internet infrastructure (World Economic Forum 2019).

However, if online corporate tax is to be remitted especially in the awake of globally growing trends of digitalising commercial services (World Economic Forum 2019), it might require establishing an international body with a mandate of deciding, communicating and monitoring obligations of online global businesses such as Airbnb. Some of these obligations would entail informing data subjects of the possibility of sharing their personal data concerning the number of online bookings they might have made in their financial dealings for purposes of enabling concerned tax authorities to undertake a value assessment before determining tax liability. The diagram below demonstrates the cross-jurisdiction limitations that might result from the location of different actors in different jurisdictions.

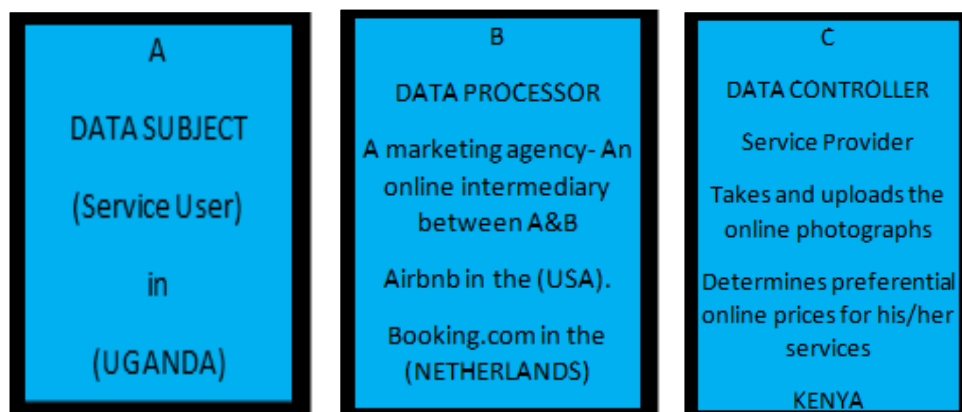


Figure 1: The data-based mechanism of the taxation system

There are online collaborative relationships between the above three distinctive actors. It is imperative to note that those respective actors are not only located in different countries but also acquainted with different legal cultures. This is due to some online actors coming from common law while other coming from civil law jurisdictions. It must be born in mind that each of those jurisdictions have varied legal traditions both in the adjective and substantive aspects. Consequently, in case the data subject was from Uganda then the e-contract might be understood by their lawyers based on common law aspects of contracts whereas lawyers of a data processor such as Booking.com located in the Netherlands would comprehend the contractual obligations based on civil law legal system.

As illustrated, subscribers are normally houseowners (who could either be a tenant or a landlord) who register on Airbnb website. After registration and

successful verification by Airbnb, the house/property owners can upload their house(s) or property(ies) on to the online listings of the company's website. The houseowner can also control what can be seen on the website by deciding what photos or parts of the house/property are uploaded on the online platform. They can also decide what contact details shall be availed and passed on the data subject, as well as the price to be paid. He also submits bank details of the account on which the online visa debit payments should be affected. It is imperative to note that Airbnb retains the duty of processing data from the houseowner by determining whose property be listed on its website (data processor). This is an ongoing online duty through which the company reserves the powers to make key decisions for as long as the houseowner continues to receive customers through online marketing of Airbnb's website facilities. The duty starts from the point when the house/property owner is successfully registered as an interested provider of homebased bed and breakfast services to when the house/property of the owner is voluntarily removed at their free will or administratively removed by the company. Complaints or negative feedback from hosted guests/customers/travellers play a key role in making decisions of administratively delisting houses on the website. There are terms and conditions on the Airbnb which indicates that it is an Irish Company.

3.2. Data processors and taxation

Airbnb which is an online marketing agency is the data processor in Figure 1 above whose services are also being rendered from USA hence could be eligible to remitting taxes to the American customs and tax collection authorities in San Francisco (Ian. J. Lloyd 2011). Note, however, that in this respect the data controller is a Kenyan national whose property is presumably situated in Nairobi. This raises a question of whether taxes should be paid to the Kenyan revenue authorities for those online bookings that are affected by the data processors for those online bookings and for those properties situated in Kenya.

Digitalisation increases the likelihood for enabling online businesses to make profits. Through modern methods of machine learning, frequently searched places of the data subject can be studied and observed. Such online techniques are advantageous in giving the data subject quicker access to available accommodation service providers on the online market. (Eugenia Politou, 2019,). The continued failure to appreciate machine learning techniques denies revenue authorities the ability to track records for taxable activities for online undertakings. Having such knowledge, will support revenue authorities to not only reduce their administrative operational costs but also adopt a more expansive online strategy that widens the tax base (Ian. J. Lloyd 2011). Bearing in mind that taxation also remains one of the major reasons for which exemptions from online privacy should be recognised.

Therefore, revenue authorities should devise a data based online tax management strategy. That could demystify the veil of online transactions in order to counter problems of tax avoidance and tax evasion. Courts have permitted regulatory actors to discard data protection as illustrated in *CCN Systems v Data Protection Registrar* (DA/90 25/49/8). The court supported the argument that data exemptions can be made if founded on a rational criterion (Bainbridge, 2008). Another complex concern relates to the challenge of identifying the most appropriate party for shouldering the tax burden without causing double taxation. This concern is also based on the possibility of misallocating the tax burden to a wrong online party. The accuracy and appropriateness of tax allocation is vital, for instance, to ensure that a tax burden that ought to be imposed on the data controller is neither imposed nor extended to a data subject.

4. DIGITAL BUSINESS MODELS AS A LEVERAGE FOR DOMESTIC RESOURCE MOBILISATION

Although digitalisation might have a role to play, it would be overly ambitious to perceive it as a leverage for domestic resource mobilisation. However digital business models such as Airbnb, based on machine learning, have shown that if properly regulated can contribute to revenue generation for the state. The presence of an online national database as well as investing in analysis of big data collection are prerequisites steps for using approaches of machine learning to identify revenue generation streams. This would be dependent on a digital database that is currently lacking in the East African states. The lack of such database accounts for the inability to tax the Airbnb online business model currently operating in East Africa amongst the richer and urban-based residents.

Consequently, access to digital information would provide room for dialogue among the concerned online business actors on one hand and policy makers on the other hand at national or regional levels (Newling, September 2016). Take for example the launch of an investigation in the online business model of Airbnb by Westminster Council (one of the local city authorities in London) in the case of allegedly 1,200 homeowners that were aided by the company's website to illegally let their properties (Newling, September 2016). The administrative action triggered more discussions and dialogue by media and policy makers on how to legally regulate and harmonise online activities of Airbnb in various parts of London and other parts of the UK (Newling, September 2016).

The machine learning approaches of Airbnb have afforded its online business model the capacity and intelligence to understand ways of accurately speculating online behaviours of digitalised actors. However, the above

developments in online competences have also placed Airbnb into situations of legal accountability most of which are unavoidable considering the likelihood of disputes. Airbnb has successfully penetrated the East African market but, there is barely case law in East Africa in which the online marketing company has sued or been sued.

5. CONCLUSION

Airbnb as a digital business model and an intermediary connecting accommodation providers with travellers has diversified the services industry by disrupting hotels as the only providers of accommodation. It has helped introduce cost efficiency into the accommodation industry which has helped travellers save costs. As part of development, Airbnb has reduced costs of business – homeowners who want to list their properties on the website do not have to be incorporated as businesses nor produce a tax payer identification. Conversely, it has also led to the revenue authorities lose out on domestic revenue collection. A balance must be struck between these two extremes. This is the domain of policy and tax reforms.

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