

# African Footprint

Technical Newsletter of the Crowe Global African firms

## Inside This Issue

Taxation of the Digital Economy - Part 1	2
Infrastructure - Is it the foundation for a successful Tourism, Travel and Hospitality economy?	6
South African Firms offer Encouragement and Connection	8
Data Privacy in South Africa	10
Message from Kamel Abouchacra	12
Convert and Win with a World Class Human Capital Partner	14
Crowe Global 2020 Africa Audit Seminar	15

# Taxation of the Digital Economy - Part 1

Digital Economy refers to an economy that is based on digital computing technologies. Digital technologies are electronic tools, systems, devices and resources that generate, store or process data.

The biggest cause of confusion surrounding the digital economy is the lack of commonly understood definitions. Some of the other issues include potential and real trade wars between nations that taxation of the digital economy could ignite. On 4 December 2019, The Times newspaper in the UK had an interesting heading on its front page; "We'll force tech giants to pay more tax, says Prime Minister Boris Johnson. Furthermore, Prime Minister Boris Johnson has risked a rift with President Donald Trump by suggesting that he will push ahead with a tax on technology giants such as Google and Facebook to ensure that they make a "fairer contribution" through taxation.

The Times has also reported that the US president has threatened France with £1.9 billion of retaliatory tariffs on products including champagne and cheese after it introduced a "digital services tax". Boris Johnson on his part said: "I do think we need to look at the operation of the big digital companies and the huge revenues they have in this country and the amount of tax that they pay. We need to sort that out. They need to make a fairer contribution." Many American tech giants pay little tax in Europe because they channel sales through Ireland, Luxembourg and other countries with favorable tax regimes. Such schemes are legal but have angered traditional bricks-and-mortar retailers who feel they are being unfairly undercut.

It has also been reported that Britain's digital sales tax is forecast to raise UK£440 million a year by 2023-2024. However, as the paper said, trade wars and threats between economic giants don't make for a peaceful and sober approach to taxation of the digital economy. All countries including Kenya should benefit equitably from digital economy activities.

## The Challenge of Taxing the Digital Economy - Part 1

There are several challenges to taxing the digital economy many of which relate to geography and determining where tax should be applicable:

- 1 Difficulty in determining tax jurisdiction due to online functions of place of manufacture and where service income should be taxed.
- 2 Challenges with characterization of tax whether professional, royalty or VAT to be charged since the goods and services involve a mix of expertise, software and equipment.
- 3 Complexities of Base Erosion and Profit Shifting (BEPS) – most digital businesses will structure tax location in a low tax jurisdiction to greatly reduce tax and increase profits.
- 4 Transfer pricing causing loss of revenue from jurisdiction.
- 5 Irrelevance of Permanent Establishment rules in determining taxation as transactions are carried out on digital platform.
- 6 Impossibility in collection of taxes due to cross border supply of digital goods and services i.e. digital goods downloaded through the internet.

Apart from the issues touched on above, the digital economy, if allowed to operate unbridled (from a tax point of view), can lead to a so-called death sentence for an economy. In Kenya in particular, the digital economy has diluted to near death, the heart and fulcrum of the Income Tax Act, Cap 470 (Laws of Kenya) which relies on the concepts of permanent establishment / residency, accrual and derivation of income as the legal foundation upon which the right to levy taxes stand. The concepts which were elements of great thinking, some fifty or so years ago, have been made out-dated by digital disruption in our global market place context.

In countries where economic activities and trade are increasingly happening digitally, attention has been given to tax laws to reduce loss of revenue through non-revenue generating trading activities. Such trading activities (in both goods and services), are generally invisible both in domestic and cross border trading. It is a huge industry and market worth trillions of Kenya Shillings. Nailing down the actual value of the digital economy, who and where to find the giver or receiver of goods and services to legally hold for taxes, will remain a standing challenge.

**Trade wars and threats  
between economic giants  
don't make for a peaceful  
approach**

The concepts of residency/permanent establishment, accrual and derivation of income are in trouble when dealing with a nameless and faceless potential taxpayer or evader.

Despite the challenges of the digital economy, it is not about to go away. To that end, Kenya's steps to propose taxation of the digital economy are not only laudible but overdue. It is a worldwide phenomenon that governments globally are paying more and more close attention to and Kenya should not be left behind.

## What Kenya Proposes

The basic rule under the taxing section of Income Tax Act, Kenya is that the income should have been derived from or accrued in Kenya. An amendment was made to the Finance Act, Kenya 2019 to include chargeability to tax for income accruing through a digital marketplace. The amendment further defines a digital marketplace as “a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means”.

The Cabinet Secretary has been mandated to make regulations to provide for the mechanism of implementing the digital market provisions. These regulations are yet to be made. The VAT Act, Kenya provides for taxation of electronic services. Electronic services is defined as any of the following services, when provided or delivered on or through a telecommunications network:

- websites, web-hosting, or remote maintenance of programs and equipment;
- software and the updating of software;
- images, text, and information;
- access to databases;
- self-education packages;
- music, films, and games, including games of chance; or
- political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.



Supply of imported services which also attracts value added tax was amended by the government through the Kenya Finance Act, 2019 to remove the term “a registered person” and substituted by “any person”. This enlarges the tax base by making it mandatory that all supply of imported services be subject to VAT irrespective of whether the recipient of the services is registered for VAT or not. It is important to recognize that although the compliance management of this may be easy in the case of business to business transactions (B2B), the visibility of such transactions may be lost when the imported services are rendered to individual non-business persons who are final consumers (B2C). The policy makers are likely to be more persuaded to devise legislative framework(s) that can comprehensively bring to charge all imported services including supplies to final consumers.

The concept of imported VAT is built on the fact that when Vatable supplies are imported, the recipient in Kenya would pay the VAT on those supplies. To achieve tax neutrality, the tax laws consider such supplies to a person to be supplies to himself and therefore liable to tax.

Further to the legislative amendments effected through the Kenya Finance Act 2019, the Kenyan Tax Procedures Act 2015 also provides for appointment of fiscal representatives in situations where a non-resident person carries on business in Kenya but does not have a fixed place of business. Although this law has been in place since 2015, the Kenyan tax administration has not provided appropriate infrastructure and an administrative framework to allow for its effective implementation.

Kenya Finance Act, 2019 also introduced the Ajira Digital Program which was effective 1 January 2020 for persons carrying out freelance digital jobs. Digital freelancers must register for the Ajira Digital Program. Once registered, a payment of KES 10,000/= is paid to the government annually for a period of three years in lieu of tax.

What legislation other jurisdictions have in place to tap their share of tax revenue vary only slightly but with one single objective – rightful share of tax revenue from digital trading in goods and services and reduction in practices that erode or transfer tax revenue from one tax jurisdiction to another (for any reason). A key learning point from various countries including the EU which all point in the same direction.

Part 2 will follow in the next edition of African Footprint.

Erastus Omollo  
Crowe Erastus & Co.  
Kenya

# Infrastructure – Is it the foundation for a successful Tourism, Travel and Hospitality economy?

## **What is memorable travel experience?**

As committee members of the Institute of Chartered Accountants, England & Wales, we are often asked what are the foundations for a successful tourism, travel and hospitality economy, which enjoy a steady growth in all aspects, from tourist numbers to RevPAR and everything in between.

For most of us, a memorable experience is a mix of both quantitative factors such as the cost of the holiday. Qualitative aspects, like feeling safe and comfortable when out and about. One of the foundations of a tourism economy is strong infrastructure.

## **Infrastructure – beyond bricks and mortar**

When we think about infrastructure we tend to think about roads, bridges, and rail connections, as these are the first things we see. We tend to only experience soft infrastructures such as telecommunications, and recreational facilities and hopefully not have to experience the law enforcement and emergency services side of infrastructure.



## **Infrastructure contributes to travel experience**

Dubai is a stellar example of how excellent infrastructure ensures both business and leisure travellers continue to return, year on year. Be it a successful Exhibition or simply quiet time on a secluded beach Cabana. Infrastructure is driving tourism. From swift airport immigration, a seamless ride, be it chauffeur driven or on a clean metro seat. To world-class cuisine at your favourite international hotel chain.

## **Governments are investing now**

In preparation for the slow and safe opening up of the tourism industry, governments are making significant investments into infrastructure. It could be as simple as rest facilities at a rural campsite to provide fast and efficient 5G connects, so the global traveller is seamlessly connected.

## **Returns in the years to come**

Countries like the United Arab Emirates and Singapore continue to offer “something new” to travellers, every time they return. Be it the world's largest indoor waterfall to the world's highest viewing deck. History has taught us, and our economist readers will agree, investment in infrastructure, always pays off.

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# South African Firms offer Encouragement and Connection

Firms in South Africa have been in lockdown for well past 150 days. Although it has been challenging to work in this new way and not be able to connect in-person, all members, led by the Crowe JHB CEO Mark Watson, have been invited to participate in a daily email message. These messages offer a personal perspective about what they are going through while also delivering poignant and positive ideas about resiliency, connection, and strength. Below are just a few of the touching emails that have been shared over the course of the last 150 days. Sharing these messages offers a way to spread the uplifting messages while also encouraging other firms to send similar email campaigns to their teams.

## **From Mark Watson, CEO, Crowe JHB**

Good morning all.

What wonderful day it is if you are outside and secluded from the breeze. My patio office is open for business again and I so enjoy the feeling of the warm sunshine on my back.

I ask that you all continue to keep all those that are infected by the Covid 19 Pandemic in your thoughts and prayers, there are a lot of folks out there facing hardships of varying degrees, by this I mean not just those who are directly infected with the virus, but those who have family members, friends and colleagues who are affected, those who have sadly lost their employment and means to support their families and of course those who are unable to visit their families and more so the elderly who are isolated in care facilities etc.

I have attached another U tube clip to remind us all that despite all that is going on around us, Covid and many other issues, we are all fortunate to live in a wonderful country.

As with all things life will continue, the current challenges will fade and new ones may surface, we need to take each day one at a time, be thankful for that which we have, the family and friends around us and make plans for the time when we will be able to explore and travel again, visit friends, etc. Just think how you will appreciate the freedom once it returns in due course.

Have a wonderful day and enjoy Satchmo and listen to his words, they are always an inspiration to me.

Stay warm and safe and keep those face masks on when going out.





**From Reinette Theart, Director,  
Crowe Tax & Advisory (JHB)  
(Pty) Ltd**

Morning on this fantastic sunny Sunday.  
My mood is certainly better than a week or so ago – I really don't function well in the freezing cold, so the last few sunny days were very welcome!

With the number of daily new COVID cases still rapidly rising in SA, its sometimes hard to keep positive and keep going. I found the below picture which I thought had some good insight on how to deal with the roller-coaster of emotions we all feel during this time:



And to end off, I am stealing a quote used by Jesus Romero in our EMEA Tax online meeting.



Hope you all have a fantastic Sunday.  
Recharge those batteries and be ready for the next week tomorrow! You have all done a fantastic job in keeping our firm going, so keep it up!

**From Chipo Mashiri, Director,  
Crowe Internal Control  
Solutions**

Good morning Everyone,  
The weather is much better today, thankfully!  
The lockdown is a challenge on a lot of fronts...

With the inundation of COVID 19 news items on most media avenues, it is sometimes difficult not to get carried away by one wave or another – so many different facts and figures, so many different perspectives on the published facts and figures! Sometimes one does not know what to think or believe. But the thing is everyone does have an opinion, a way of looking at things and just because it is not published, it does not mean that it does not matter. The media has a way of expressing opinions as facts that sometimes you forget that you were also around during those days and you seem to remember things differently! Indeed sometime in the near future, maybe 6 months from now someone will be selling us an opinion, a view of the lockdown months and it will not be the way you remembered it... Further into the future still, those who were still too young will believe anything!

That being said I wonder how many of us are keeping a journal of things as they are happening... What recollections do you want your future family members to know? Think about it...

Have a blessed day and keep safe!

**Mark Watson  
Crowe JHB  
Johannesburg, South Africa**

# Data Privacy in South Africa

Crowe Winelands, based in Somerset West/Stellenbosch, a suburb of Cape Town, South Africa is a dynamic practice offering many innovative services to its client base.

South Africa is one of the many African countries who have recently promulgated data privacy laws. As we shift into the 4<sup>th</sup> industrial revolution, data, which has an intrinsic value, has become enormously important. It is said that "Data is the new oil". Some other countries in Africa who for example have also promulgated personal data privacy laws are Nigeria, Kenya, Uganda, Zambia and Mauritius.

The new privacy laws ensure that global trade can be managed in a way which protects the rights of people's personal information, yet trade can occur, as long as organisations manage the personal information in a responsible manner.

Apart from people's human right to privacy, an additional driver for recently enacted Data Privacy laws across Africa and elsewhere, has been the European Union's GDPR protecting the personal data of people who reside in EU countries. Countries wanting to trade with the EU needed to come up with equivalent laws for their own residents to ensure that outgoing and incoming transfer of information is protected.

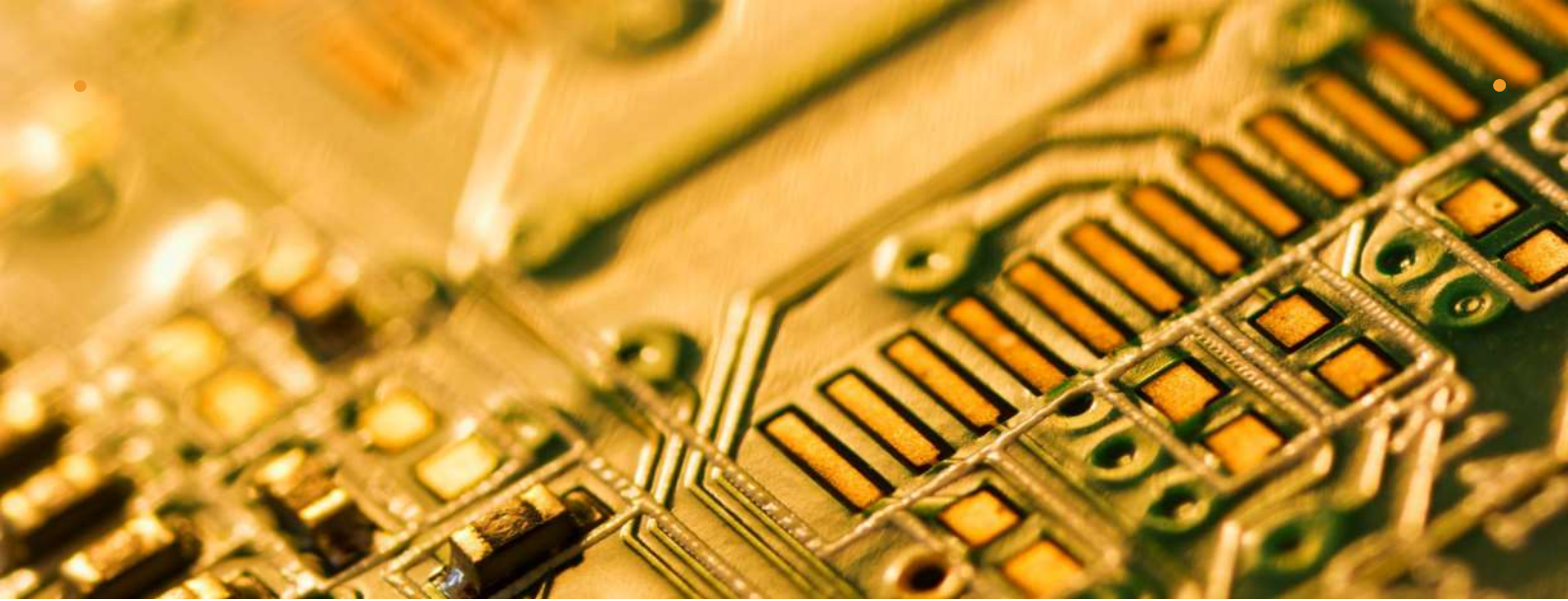
Managing Director of Crowe Winelands, Rowan Marais, identified the need to provide their clients with solutions to manage their ongoing compliance requirements using software as a service (SAAS) called POPIA365 in South Africa and GDPR365 abroad.

The South African law commenced on 1 July 2020 and SA entities have 12 months to demonstrate compliance. Any entity that has personal information about persons need to comply.



Rowan Marais

## Data is the new oil



The Act read with its regulations can mean that a certain amount of re-design is required within an organisation, especially in the areas of consent management, direct marketing, human resources and information technology and security.

In addition, organisations must map the personal data they process in order to create relevant privacy notices as well as providing the ability for individuals to request any information held about them.

Where an organisation outsources its processing to third parties, it must be noted that both the organization and the third party could jointly and severally be held liable should any breaches occur at the third party. This is onerous and can result in major fines to both parties. It does mean that outsourcing arrangements must be managed in a responsible manner and the personal information held is only used for the purpose declared to the individual.

Rowan Marais elaborates - "The POPIA365 service is ideal for our clients, from small data intensive companies through to large corporates. We find it beneficial because of its collaborative platform which enables us to assist clients remotely with their compliance accountabilities. The service is simple and intuitive as well as affordable to organisations."

Rowan Marais  
Crowe Winelands  
Somerset West, South Africa

# Message from Kamel Abouchacra

Dear Colleagues:

I am delighted to be addressing you all in the Africa Footprint as the new Regional Executive of Europe, Middle East, and Africa. I would like to update you on regional matters with emphasis on developments in Africa.

Firstly, I would like to welcome our new member firm in Togo, Crowe TG Icaaf Sarl. The firm provides audit, tax, and advisory services in Togo, and I am delighted to welcome Gabrielle Wagbu, Managing Partner. Please reach out to Gabrielle to welcome her to our network.

Secondly, I have participated in two Crowe regional Africa calls since I took on the role in July. The calls are invaluable during the pandemic since we are meeting less in-person. This provides our members in Africa with a platform to voice their opinions on matters impacting their business and stakeholders. Of particular interest are the discussions about strengthening our service capabilities,

responding more efficiently to cross border proposals, and supporting our members and their people.

## Survey Results

Thanks for taking the time to complete the survey. I am happy to report good engagement. There are a few key takeaways for me.

In terms of the level of support, survey responses indicated that you want to regularly hear from me about major regional and network developments. You also seek more coordination amongst members to make the most of cross-border opportunities. And, you are interested in knowing about what other members are doing to cope with the current pandemic and the future implications on our business as a whole.



Kamel Abouchacra



## What to Expect

Here are a few things you can expect to hear more on that address the feedback from the survey and some of the initiatives from our mid-term strategy review:

- Quarterly regional EMEA virtual events to keep you updated about regional and network developments;
- The next version of the Leadership Academy for EMEA and what it should look like during the pandemic and in a post-COVID-19 world;
- Things we can do to continue to stay connected and engaged outside of in-person meetings, remaining mindful of the new firms that have joined us and have yet to meet with us in-person; and
- Fun social events so we can continue to connect on a non-work level.

I look forward to serving you all in my role to support your needs and continue to strengthen and expand our footprint in Africa!

Kamel Abouchacra  
Regional Executive Director EMA  
Crowe Global  
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# Convert and Win with a World Class Human Capital Partner

Crowe DNA, based in Paardevlei business park outside Cape Town, is a proud member firm of the Crowe Global network, ranked as the 8<sup>th</sup> largest Audit, Tax & Advisory network of firms in the world.

We offer clients world class Human Capital & Organisational Development solutions, tailored to suit your specific business needs.

Our Human Resource experts and Organisational Psychologists can help you address and manage your critical human capital requirements, so that you can focus on your core strength of growing your business.

## Our Human Capital Services

### HR Advisory

- Recruitment and Selection
- HR Management processes
- Labour Law / Industrial Relations
- Reward, Remuneration, Benefits
- OHSA; WSP & B-BBEE planning
- Merger & Acquisition projects
- Due Diligence & HR Audits

### OD Advisory

- Organisational Development
- Psychometric Assessments
- Learning and Development
- Talent Management
- Employee Engagement
- Leadership / Team Coaching
- Change Management

Plus, Crowe DNA also offers Career Assessments and related Career Guidance Planning for scholars from Grade 9 to University level. Contact our expert team of qualified professionals who will gladly assist students and parents to make the right decisions to ensure your child's career gets off to a winning start.

Dale Holloway  
Crowe DNA  
Somerset West, South Africa



# Crowe Global 2020 Africa Audit Seminar

The Crowe Global 2020 Africa Audit Seminar is taking place on 16-18 November 2020.

The event is open to all personnel from the audit practices of Crowe Global's member firms in Africa.

The seminar will focus on the practical application of Auditing Standards, applying audit technology applications. Our member firms in Africa are making significant investments in technology and the seminar is an opportunity to share experience and best practice in a fast-changing environment. Firms will also share knowledge about new Quality Management standards that bring risk management into audit firms with the aim of raising stakeholder confidence in the work of auditors.

In a remote environment, we can anticipate a record participation in this established event. More information about the event will follow soon, including details of the external keynote speaker.

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## About Crowe Global

Ranked eighth largest accounting network in the world, Crowe Global has over 200 independent accounting and advisory firms in 130 countries.

For more than 100 years, Crowe has made smart decisions for multinational clients working across borders.

Our leaders work with governments, regulatory bodies and industry groups to shape the future of the profession worldwide. Their exceptional knowledge of business, local laws and customs provide lasting value to clients undertaking international projects.

Crowe provides global reach on a personal scale. Crowe firms focus on the future, the client experience and working with clients to build something valuable, substantial, and enduring. Close working relationships are at the heart of our effective service delivery.

At Crowe, our professionals all share one commitment, to deliver excellence.