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ESAMI

International Trade in Services and the Lesotho Economy
An e-commerce perspective

Presentation by
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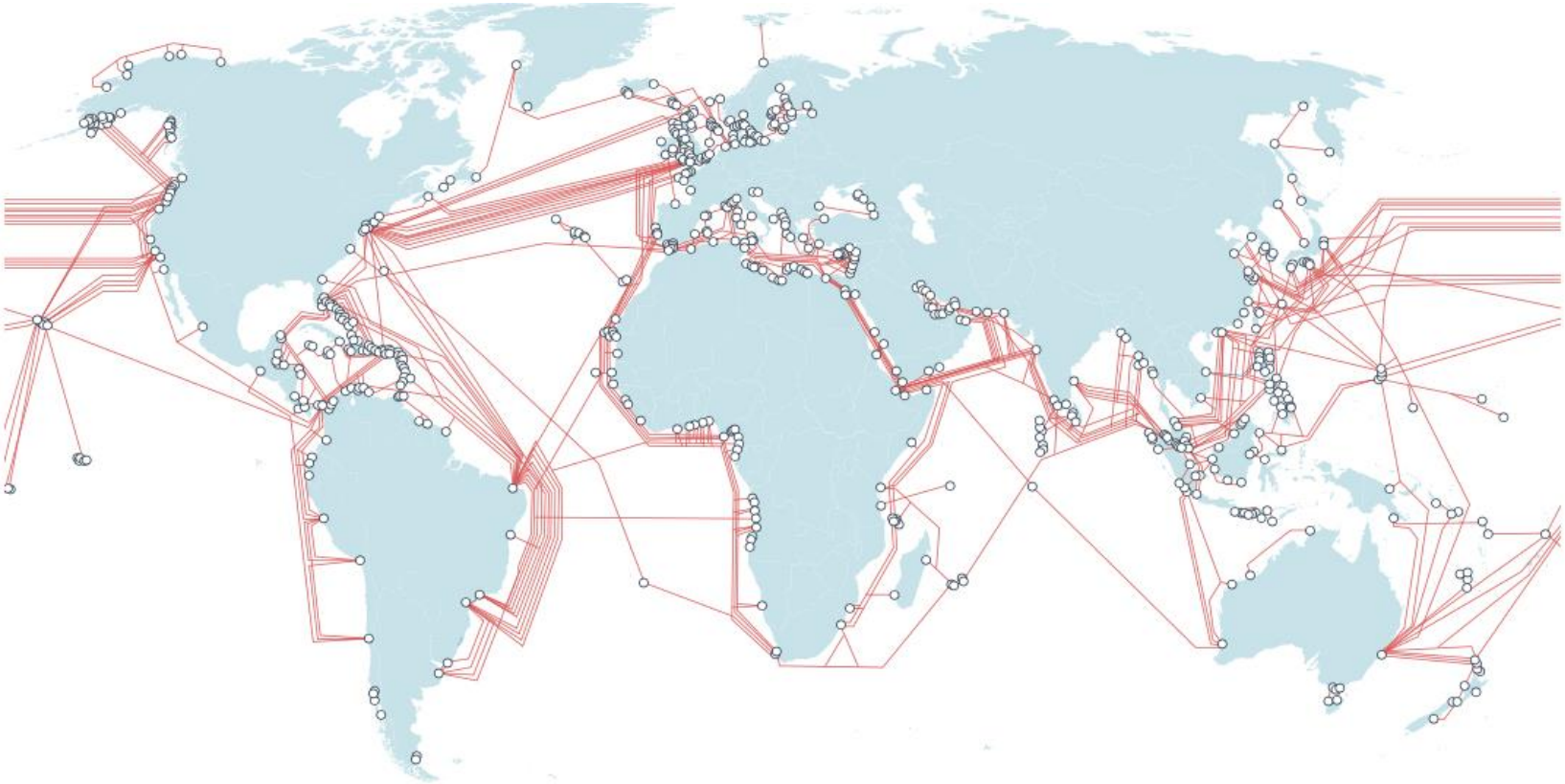
NATIONAL UNIVERSITY OF LESOTHO

WORLD TRADE ORGANIZATION

WTO CHAIRS PROGRAMME

Cross-Border Data Transfers / Data Flows

Submarine cable map



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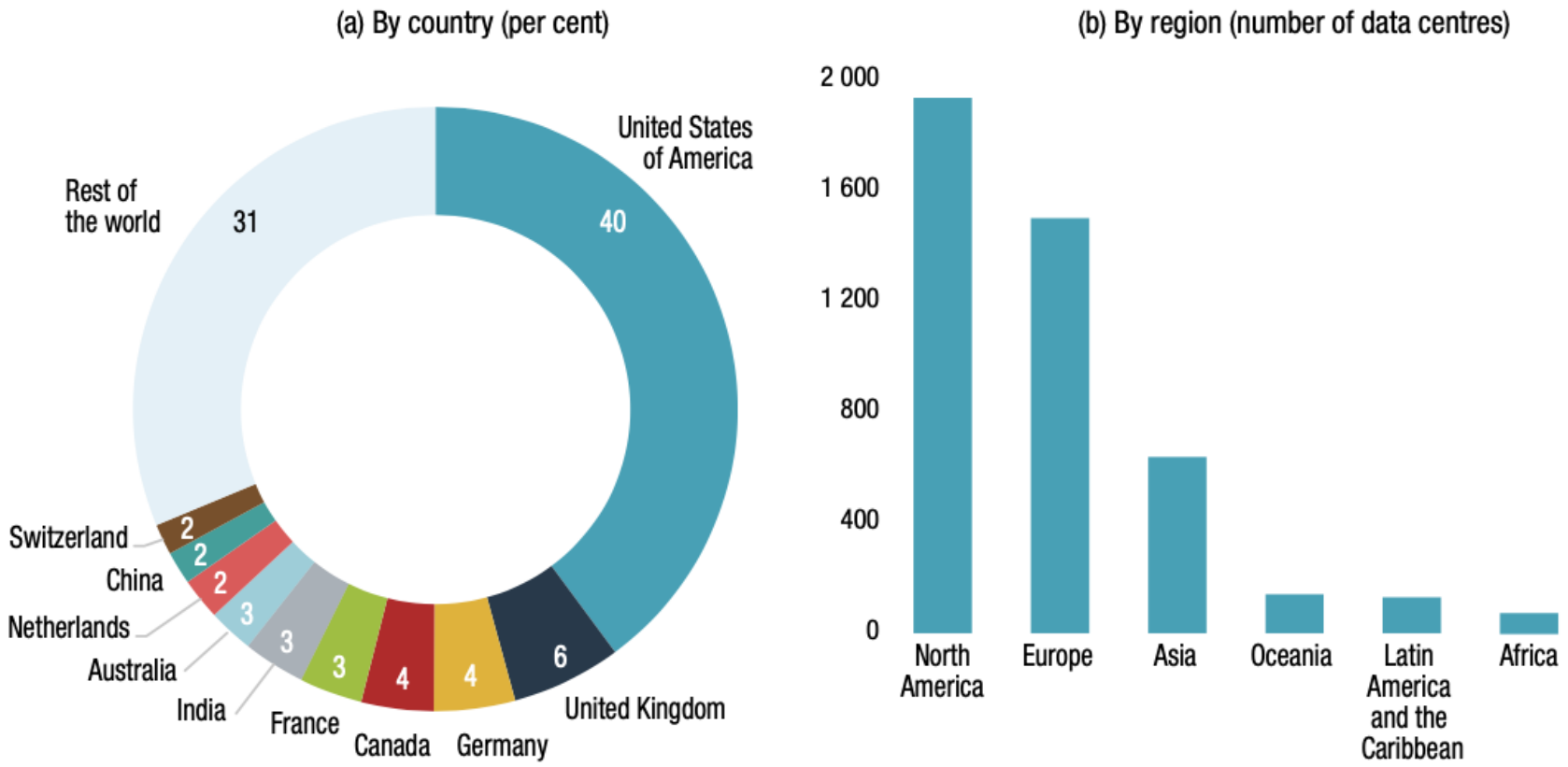
Cross-Border Data Transfers / Data Flows

Geographical distribution of colocation data centres 2019



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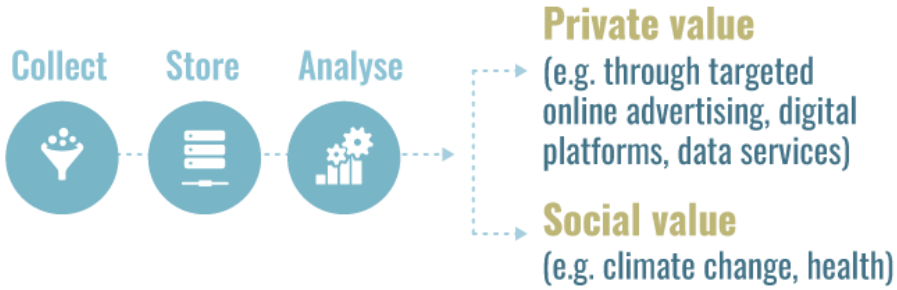
The nature and characteristics of data

Data are **MULTIDIMENSIONAL**

Economic dimension



Non-economic dimension

The **CHARACTERISTICS** of data

- **Data are intangible and non-rival**
- **Access to data can be limited by technical or legal (varying degrees of excludability are possible)**
- **Data can be either a public good, a private good or a club good**

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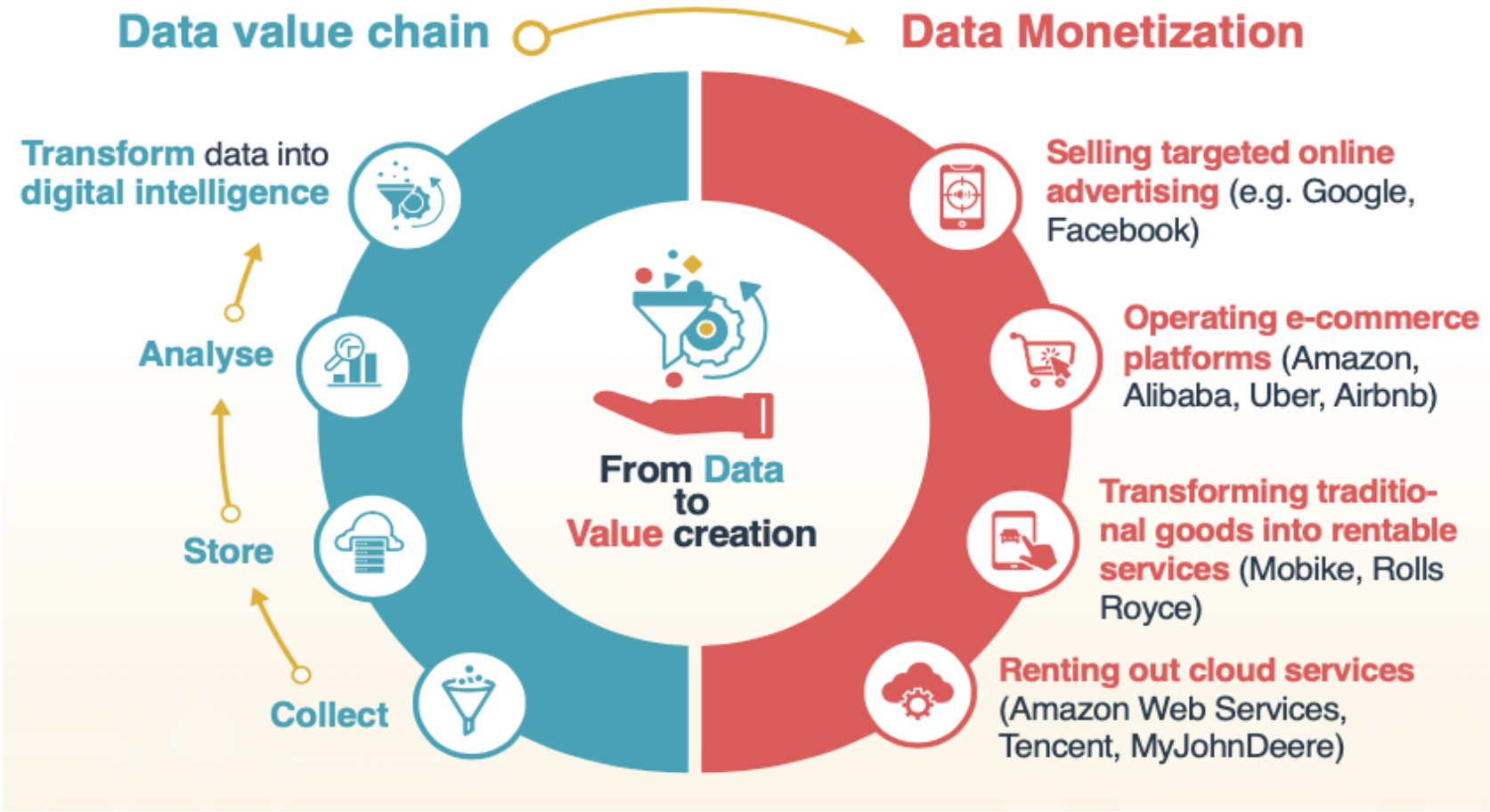
Cross-Border Data Transfers / Data Flows

Geographical distribution of colocation data centres 2019



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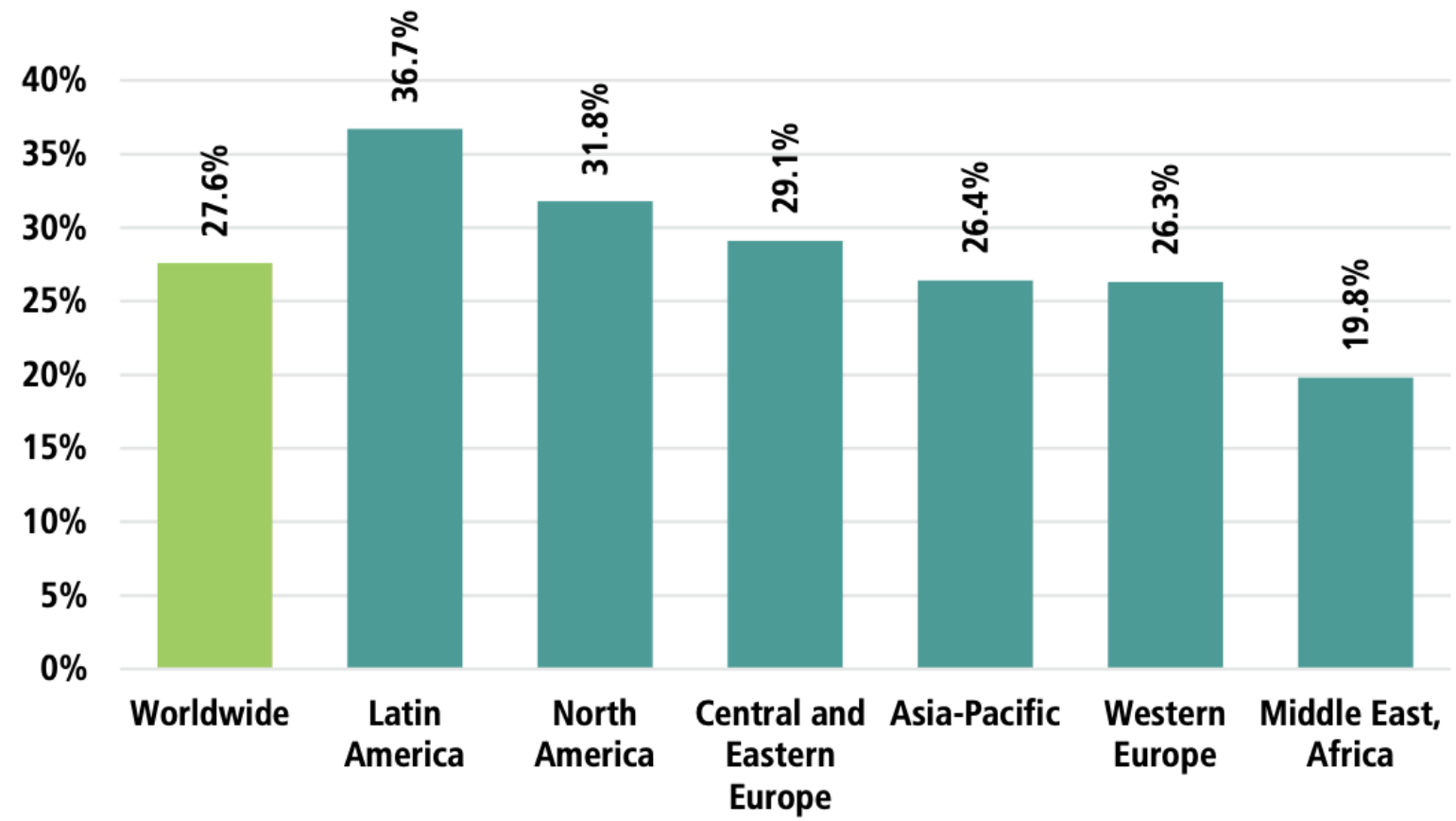
Digital Trade Taxation

Figure 1
Global ecommerce sales growth by region in 2020



Source: eMarketer

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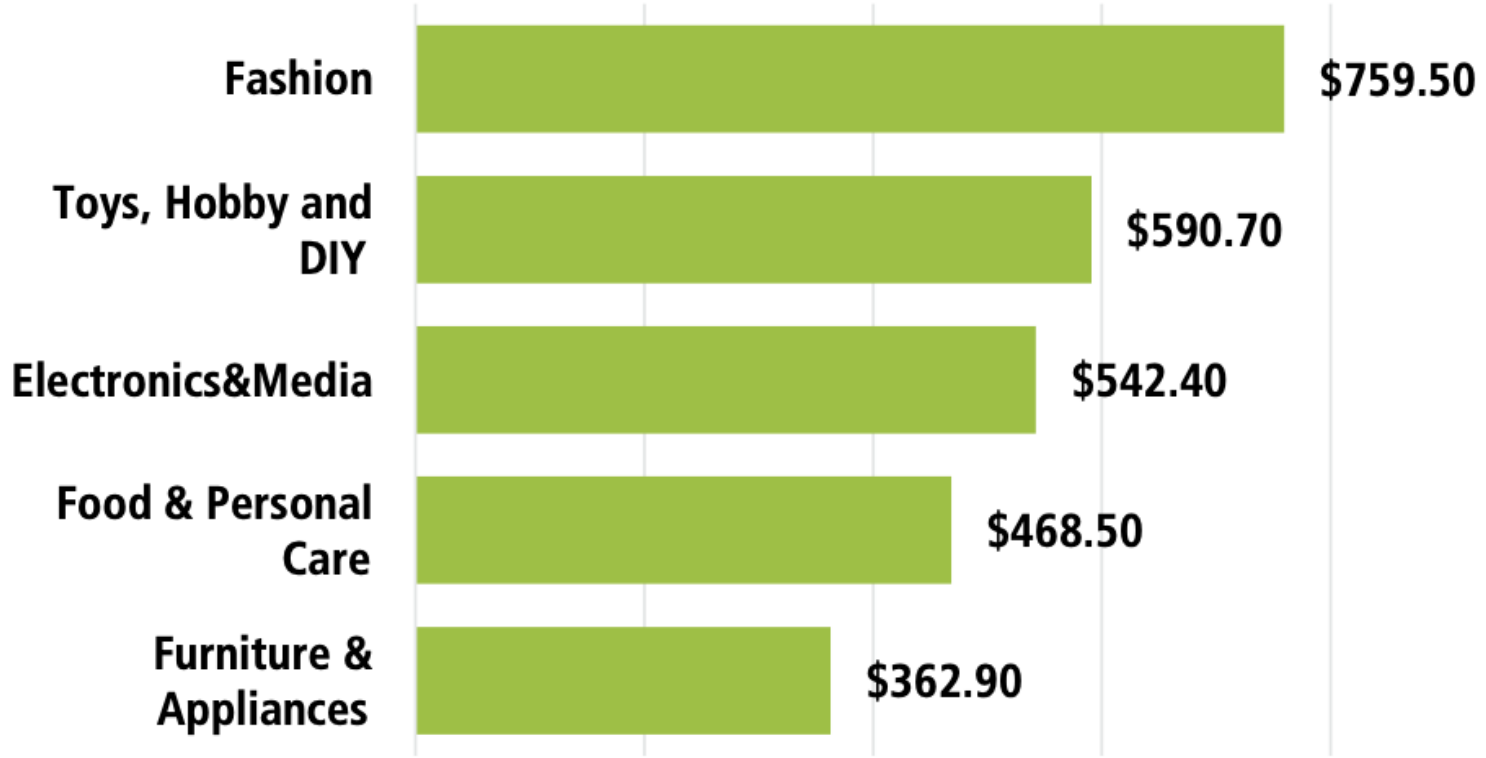
Digital Trade Taxation

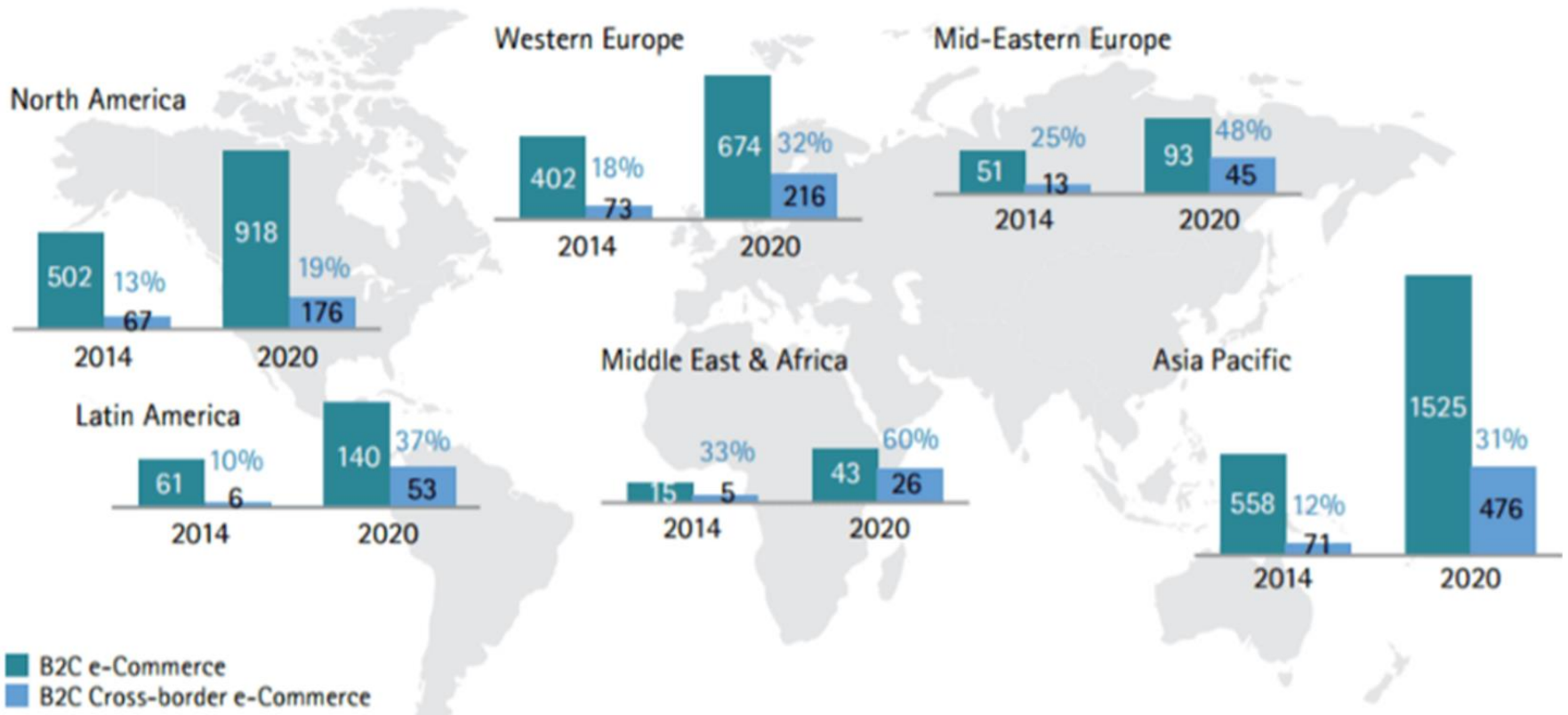
Figure 5
Top online shopping categories worldwide in 2021 (billion USD)



Source: Statista.com

Digital Trade Taxation

Global cross-border e-commerce transaction value, 2014-2020 (billion USD)



	2014-20 incremental B2C cross-border e-Commerce trade volume (billion dollars)	Contribution of global total incremental trade volume (%)
Asia Pacific	405	53.6%
Western Europe	143	18.9%
North America	109	14.4%
Latin America	47	6.2%
Mid-eastern Europe	32	4.2%
Middle-East and Africa	21	2.7%

Source: Accenture, Global Cross Border E-Commerce Market 2020, June 2015

Digital Trade Taxation

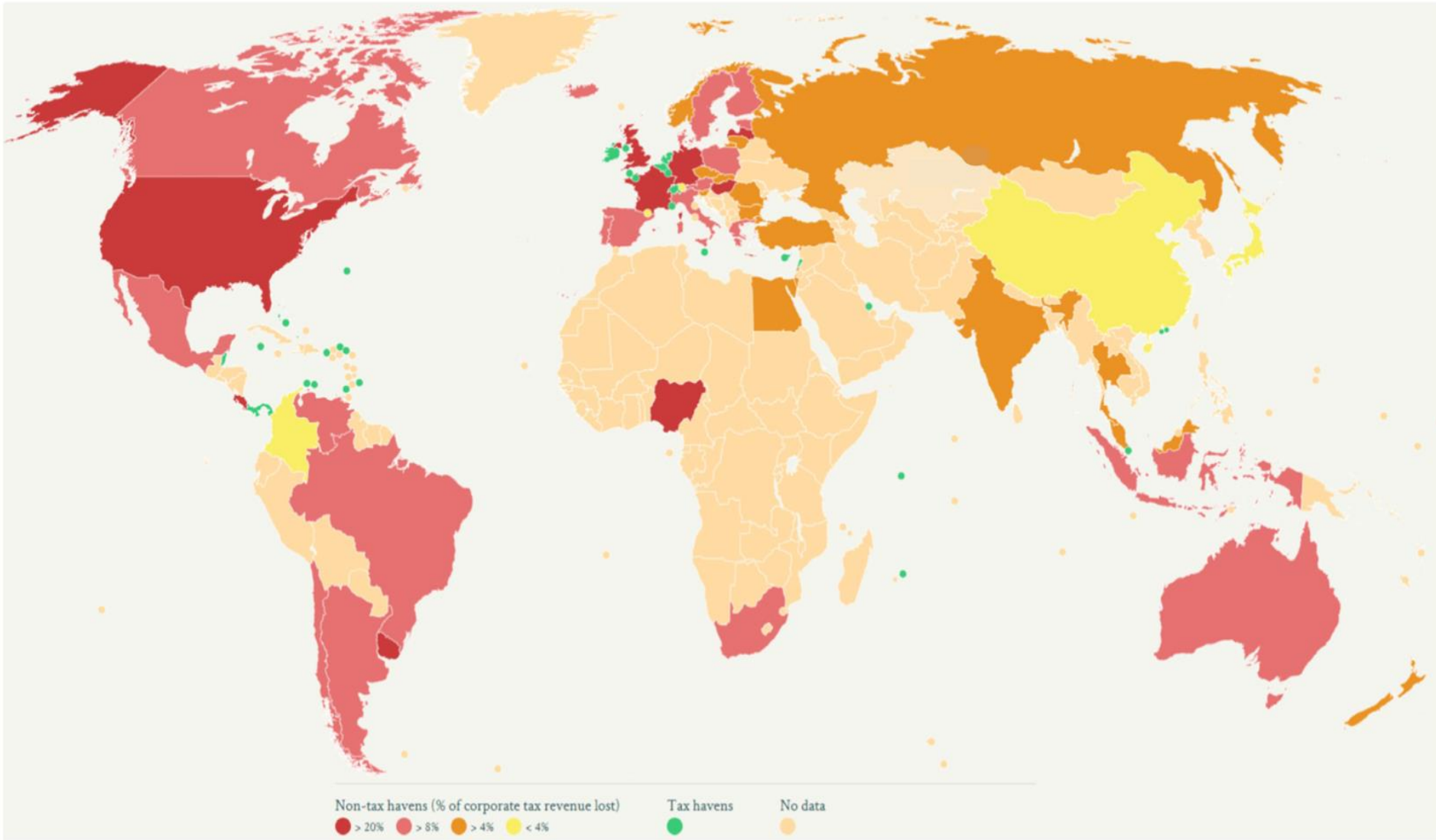
Comparative analysis of tax situation of e-commerce companies versus brick-and-mortar hypermarket retailers (billion USD, cumulated for 2015-2020)

	profit before taxes	cash taxes paid	effective taxa rate (cash tax / profit before tax)
Walmart	109.4	31.7	28.9%
Alibaba	99.6	13.3	13.4%
Costco	28.9	6.8	23.4%
Seven Eleven	15.5	5.4	35.1%
Aeon	7.9	4.7	59.4%
Amazon	58.7	3.7	6.2%
Ebay	15.8	2.5	15.9%
Ahold Delhaize	11.4	2.4	21.0%
Tesco	6.7	1.4	20.3%
Casino	0.4	1.3	302.6%
Mercadolibre	0.3	0.6	195.9%
Qurate	4.3	0.5	12.2%
JD.com	7.5	0.4	5.9%
ETSY	0.5	0.03	6.1%
7 e-commerce companies	186.6	21.1	11.3%
7 hypermarket companies	180.2	53.6	29.8%

Source: Syndex

Digital Trade Taxation

Percentage of corporate tax revenue lost by shifting income to tax havens, 2018 estimates



Source: Missing profits of nations research project

Digital Trade Taxation

Source: KPMG, Taxation of the digitalized economy, September 2021

Digital Trade Taxation

Source: KPMG, Taxation of the digitalized economy, September 2021

Digital Trade Taxation

- Corporate tax avoidance schemes have become consolidated and increasingly more sophisticated
- To close the tax gap on e-commerce operations, states impose (1) sales taxes, (2) digital services taxes- coordinated action (OECD).
- Labour tax avoidance is also a challenge directly related to:
  - Types of contracts workers have,
  - Working conditions etc.

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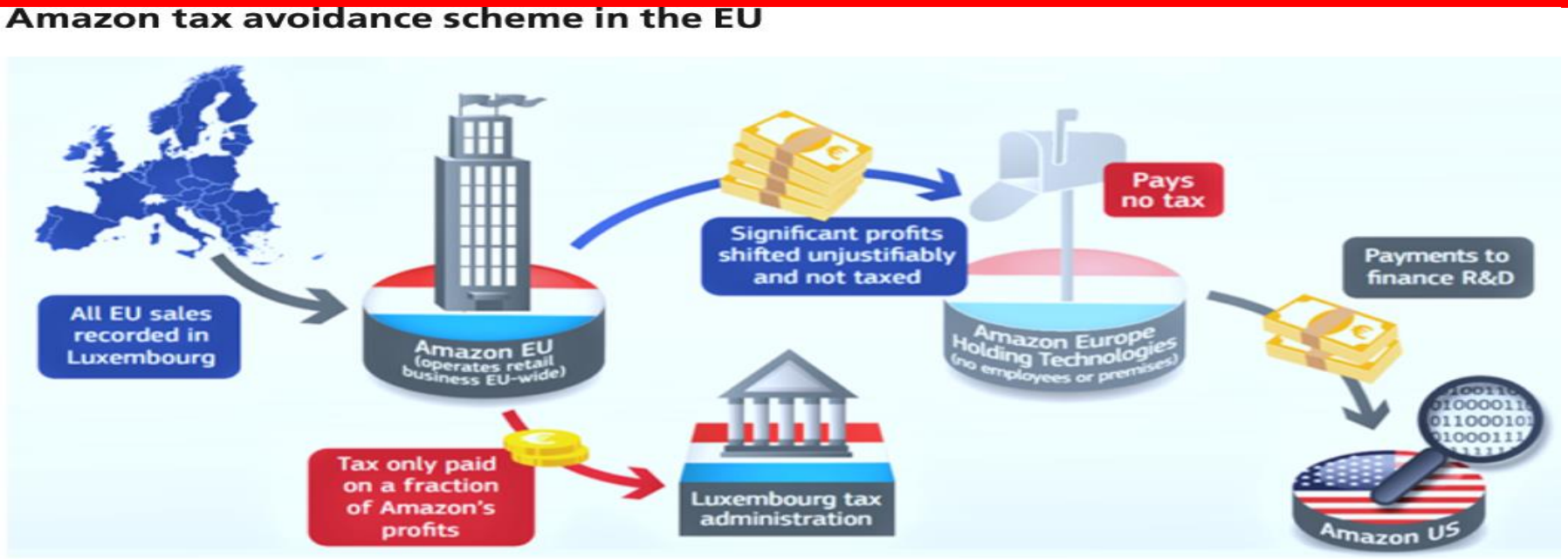
Digital Trade Taxation



- Amazon **used royalty pricing between two of its European subsidiaries** to effectively reduce its taxable profit in Luxembourg and through another set of intra-group payments, finance R&D projects undertaken in the US .
- In 2009, Amazon EU S.à.r.l., in Luxembourg reported **more than €519 million in royalty expenses** while the limited partnership Amazon Europe Holding Technologies SCS, in Luxembourg, had an **influx of the same amount** "based on agreements **with affiliated companies**"

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Tax Challenges of Taxing the Digital Economy

Digital elements are considered tax-disruptive when they increase **the complexity of traditional tax administration and tax enforcement practices.**

Digital elements	*Description*	*Examples*
Digital communication	Networking infrastructure used by the parties to an economic transaction to connect and communicate with each other	Internet (e-mail, internet telephony, online streaming)
Digital content (tax-disruptive)	Any content that exists in the form of digital data or digital object; digital content relies heavily on intangibles since its support is digital (bits) instead of physical (atoms) and is intrinsically linked to the existence of digital technology	E-books, software, domain names, mobile apps, social media, digital audio, digital images, websites, World Wide Web (www), digital video streaming, website hosting, webpages, cybersecurity, website positioning, antivirus protection, cloud data storage, search engine, internet access, online games, cloud-based apps, digital data and databases, digital platforms
Digital automation (tax-disruptive)	Minimum or no human intervention is required on the provider side since the process is automated and controlled by consumers, who contribute data and content and customize the content	Search engines, data mining, media streaming, visa processing, price comparison, online booking, customer support, translation, employee analytics, résumé drafting, ticketing
Digital distribution (tax-disruptive)	Distribution over an online delivery channel, like the internet, thus bypassing physical distribution methods	E-mail, e-commerce, online gambling, online gaming, peer-to-peer file-sharing networks, online advertising, online tax filling, online digital media streaming, software and video game downloads, e-learning, digital content delivery networks
Digital payment	Payment methods based on binary encoding technology	Electronic funds transfer methods (for example, credit and debit card payments, automated teller machine transfers, wire transfers, stored-value cards, online bill payments)

Tax-Disruptive Digital Business Models

- Tax-disruptive digital business models in their most basic form ***entail the online distribution of automated digital content*** (online sales, online subscription plans, online license agreements) or ***the granting of online access to automated digital content or multisided digital platforms that connect online users***, ***users tend to influence the monetization strategies of business models***.
- The following are the most common user-centered monetization strategies associated with tax disruptive business models:
  - Sale of users' ***demographic data*** (race, gender, economic status, level of education, family status, income level, employment)
  - Sale of users' ***behavioral data*** (values, personality, attitudes, opinions, lifestyles, interests)
  - Sale of users' ***activity data*** (browser history, purchase history, recent activity)
  - Sale of user-***targeted advertising*** (based on user traits and preferences)
  - Sale of user-***created content*** (blogs, reviews, opinions, databases, media file sharing)
  - Appropriation of ***user-developed intangibles*** (video games' fan-made content, collective translations, server emulators)
  - Sale of the ***digital business (exit)*** after its value has been enhanced by the contributions of users in exchange for free-of-charge access to digital contentand digital platforms.

Tax-Disruptive Digital Business Models

Categories of transactions and their business models	*Digital elements present*				
	Communication	*Content*	*Automation*	*Distribution*	*Payment*
Traditional transactions and business models					
In-person transactions involving physical supply of goods and services paid using a physical payment method (babysitters, street vendors, flea markets, cash sales)	×	×	×	×	×
Digital transactions and business models					
In-person transactions involving the physical supply of goods and services paid using digital payment methods (credit card sales, online utility bill payments)	×	×	×	×	✓
Online transactions involving the physical supply of goods and services paid using a physical payment method (free posting sites for classified advertisements, like Craigslist; websites of physical retail stores to reserve goods online)	✓	×	×	×	×
Online transactions involving the physical supply of goods and services paid using a digital payment method (online marketplaces, like Amazon or eBay; online ride-hailing services, like Uber; online food delivery services, like Uber Eats; online booking of hotels, like Marriott; online stores of physical retail stores, like Zara)	✓	×	×	×	✓
Tax-disruptive digital transactions and business models					
Online transactions involving online supply of digital content, digitally automated and digitally distributed, paid using digital payment methods (online marketplaces, like Amazon; online retailers of digital content, like Apple iTunes Store or Amazon Kindle Store; digital distribution platforms, like Microsoft Store; digital media services, like Netflix or Spotify; web search engines, like Google)	✓	✓	✓	✓	✓

Tax-Disruptive Digital Business Models

Taxonomy of tax-disruptive digital business models

Type of tax-disruptive digital business model (and examples)	*Digital transactions (by the same taxpayer) to monetize a business idea and get user input*
Content-related	
1. Sale of nonuser digital content (Kindle Store, Apple iTunes Store)	1.1. Online sale of digital content digitally automated and digitally distributed for a price
2. Licensing of nonuser digital content (Microsoft, IBM, Cisco, Oracle)	2.1. Online licensing to use digital content (software end user license) for a license fee
3. Subscription to nonuser digital content (Netflix, Spotify, Amazon Prime)	3.1. Online subscription to access digital content and other benefits for a subscription fee
Regulated activities	
4. Virtual banking (First Direct, ING Direct, Revolut)	4.1. Internet-only bank offering retail banking services remotely via digital channels
5. Virtual insurance (ZhongAn, Bowtie Insurance)	5.1. Internet-only insurance company offering retail insurance services via digital channels
6. Online gambling (Bet365, Bwin, Betfair, 888)	6.1. Online gambling and betting activities directly between the user and the website
Multisided platforms	
7. Online e-commerce marketplace (Amazon, Uber, Airbnb, Booking, eBay, Alibaba, Tencent, Expedia, crowdfunding platforms, online poker)	7.1. Free online access to multisided platforms 7.2. Digital platform operator acting as a broker and charging a transactional fee for each trade executed between users of the digital platform
User-related	
8. Sale of user-related data and user-contributed digital content (Facebook, Instagram, Twitter)	8.1. Online access to digital content in exchange for legal rights to sell user data and content 8.2. Sale of user-related data and digital content
9. Online user-targeted advertising (Google Ads, Amazon, LinkedIn, Alibaba, YouTube, Facebook, Reddit)	9.1. Online access to digital content in exchange for legal rights to exploit user data and content 9.2. Sale of online user-targeted advertising
10. Sale of user-related goodwill as part of the sale of a digital business (exit business strategy) (Instagram, LinkedIn, WhatsApp, Skype, Waze, YouTube, Fitbit)	10.1. Online access to digital content in exchange for legal rights to benefit from user base, user-related data, and user-created digital content 10.2. Sale of digital business (exit) whose value is enhanced by user-related goodwill

Tax-Disruptive Digital Business Models

Network Effect of Multisided Digital Platforms

- Multisided digital platforms that create value by facilitating connections between different but interdependent user groups.
- Each side of the network depends on the presence of the other, as demand by one group increases demand by the other group and vice versa.
- One of the tax challenges associated with the network effect from multisided digital platforms **is the role of data and user participation in the creation of value and how it should be taxed**.

Users supply digital input (data, digital content) in exchange for access to digital content (Google web search engine, Amazon e-commerce marketplace, Facebook social media platform, Gmail e-mail services).

- Another tax challenge posed by the network effect **is the new value creation paradigm derived from the interaction of different user groups**.

Tax-Disruptive Digital Business Models

Network Effect in Tax-Disruptive Digital Business Models

Tax-disruptive digital business model	*Presence of network effect*
1. Sale of nonuser digital content	X
2. Licensing of nonuser digital content	X
3. Subscription to nonuser digital content	X
4. Virtual banking	X
5. Virtual insurance	X
6. Online gambling	X
7. Online e-commerce marketplace	✓
8. Sale of user-related data and digital content	✓
9. Online user-targeted advertising	✓
10. Sale of user-related goodwill	✓

Tax-Disruptive Digital Business Models

Lack of Physical Presence and Scale without Mass

- **Digital technology allows business to operate in a country without a physical presence** thus the notion of a brick-and-mortar permanent establishment inapplicable with digital activities going untaxed.
- It poses a significant tax challenge since, traditionally, physical presence **has been the main factor used to determine the right of a country to tax foreign businesses generating activity conducted within its borders.**
- In the absence of a physical presence and lack of applicable nexus rules, **current tax rules cannot determine the existence of a permanent establishment in the territory, and income generated from digital activities therein goes untaxed**.

Scope of Application of a Revised Notion of Permanent Establishment

Tax-disruptive digital business model	*Within the scope of a revised notion of permanent establishment*
1. Sale of nonuser digital content	✓
2. Licensing of nonuser digital content	✓
3. Subscription to nonuser digital content	✓
4. Virtual banking	✓
5. Virtual insurance	✓
6. Online gambling	✓
7. Online e-commerce marketplace	X
8. Sale of user-related data and digital content	X
9. Online user-targeted advertising	X
10. Sale of user-related goodwill	X

Million Dollar Questions?

Who are the suppliers?

Where do they come from?

What about the services regime?

Domestic capacity?

National Regulatory Framework?

Are we reliving 1945?