



**UN ECONOMIC & SOCIAL
ECONOMIC COMMISSION FOR
AFRICA (UNECA)**

**Wshop on Legal Framework for the Development
of Information Science and Technology
(Knowledge Economy)**

**Legal issues related to E-commerce and
Taxation, Addis Ababa, 27th Apr-2May,09**

Presenter;

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What is E-Commerce?



- Evolved through the development of digital technology.
- undertaking commercial activities on-line/electronically.
- the use of data message or production of electronic information instead of paper based method.
- a commercial exchange system, which makes use of the computers, and communication network advances
- business -to-consumer (B2C) and business to business (B2B), consumer-to-consumer (C2C)



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Legal implications of e-commerce

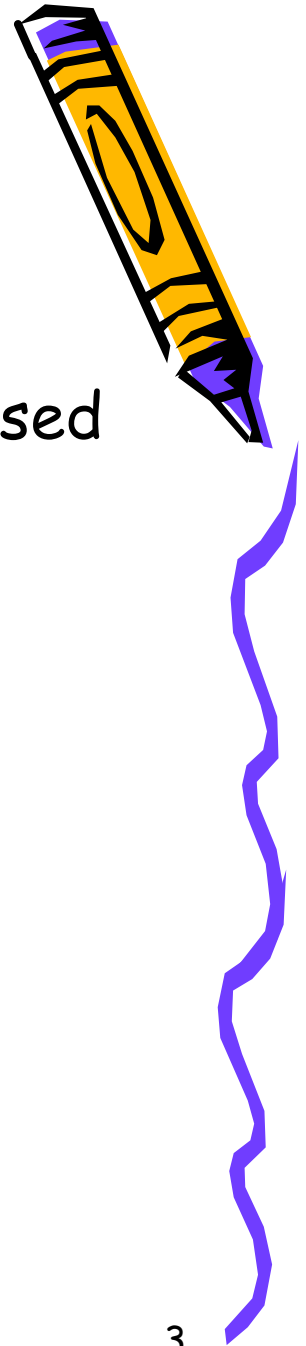
- ❖ The laws were designed to facilitate paper-based transactions
- ❖ Legal Requirement of:
 - ❑ Writing
 - ❑ Manuscript signatures
 - ❑ Original documents & seal
 - ❑ Fall of hammer under physical auctions
- ❖ Digital infringement of IPRs
- ❖ Evidential requirement of originality
- ❖ Lack of legal framework on cyber payments
- ❖ Evolution of cyber crimes



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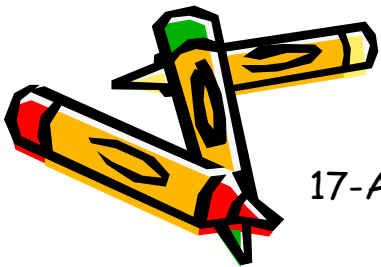
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Legal Issues on e-commerce



- *where things really happen?*
- *How should the transaction be authenticated?*
- *How to determine the minors when making e-transactions?*
- *who are behind the screen (identification)?*
- *Declaration of the Independence of Cyberspace” ?*
- *How can we solve the jurisdiction problem in dispute settlement*
- *Which Legal System will apply?*
- *Do we have Cyber laws that protect on-line consumer?*



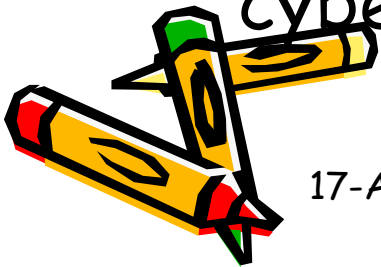
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Challenges on e-commerce

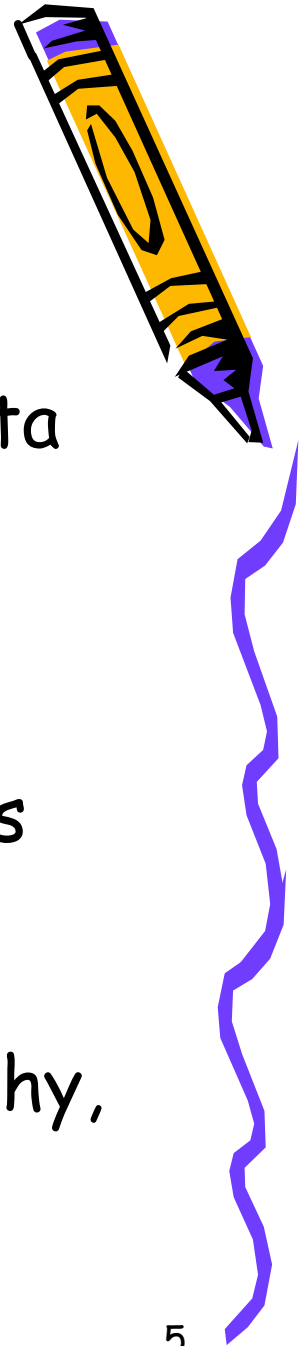
- Cyber security (e-crimes, privacy & data protection)
- evidential obstacles arising from the existing requirement of original and written documents
- Lack of legal framework on e-signatures
- E-Jurisdictional problem
- Lack of Regional Legal framework
- Misuse of e-commerce (child pornography, cyber-squatting)



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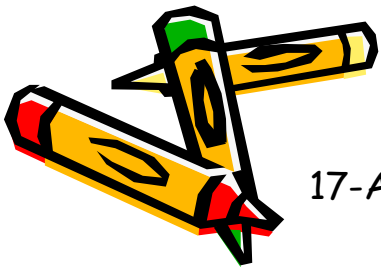
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Suggested solutions

- 1. **UNCITRAL Model Law on e-commerce & e-signatures** (he functional equivalent approach)
- 2. **The UN Convention on the Use of Electronic Communications in International Contracts, 2005**
- 3. **Regional Laws (EU Electronic Commerce Directive**
- **EU Directive on Unfair Terms Directives Council & Distance Selling Directive for online consumers**
- 4. **National Laws e.g South Africa, India, Malta etc**



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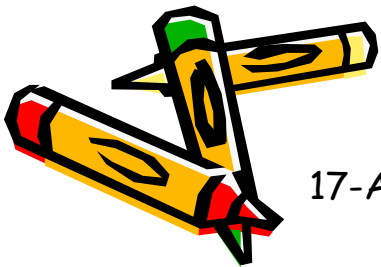




Cyber taxation



- The impact of digital technology on e-commerce has posed a great challenge on Taxation system at global level
- The technology facilitates the transactions of digitized goods and services on-line
- People can order and make payments online
- Most laws applies principles on source, residence, permanent establishment and jurisdiction for the purpose of taxation



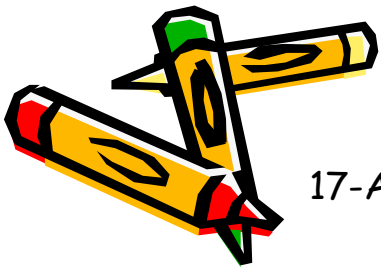
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Legal Issues on e-taxations

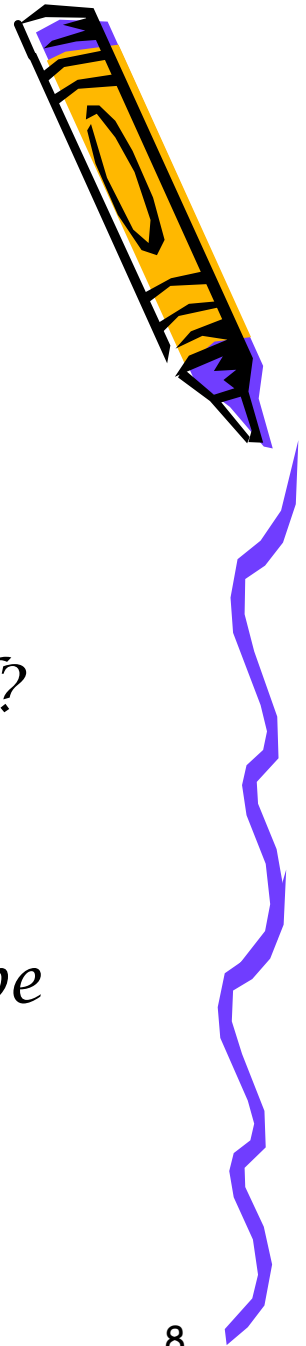
- *Where a business is to be regarded as established for fiscal purposes?*
- *Where cyberspace transactions do takes place?*
- *Where and where taxes can be collected?*
- *Which Legal system will apply?*
- *Do we have harmonized laws or Legal Instruments at International Level?*
- *How can we reform our Tax laws to cope with e-developments?*



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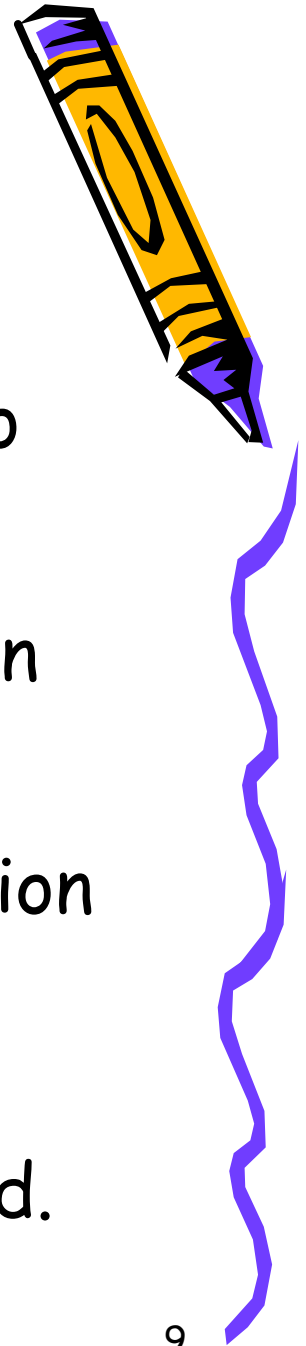
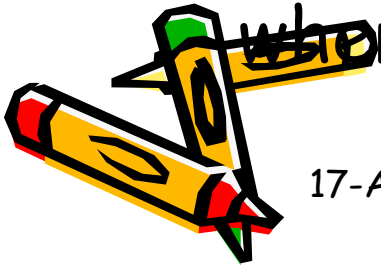
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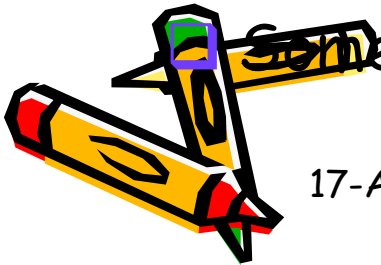
Challenges on Cyber taxation

- ❑ E-commerce creates some challenges to tax systems that were designed with a different model in mind.
- ❑ Problems in collecting sales and taxes on remote transactions.
- ❑ remote firms do not have nexus and therefore do not have sales tax collection responsibility.
- ❑ **Location:** Existing tax systems tend to determine tax consequences based on where the taxpayer is physically located.



Challenges....

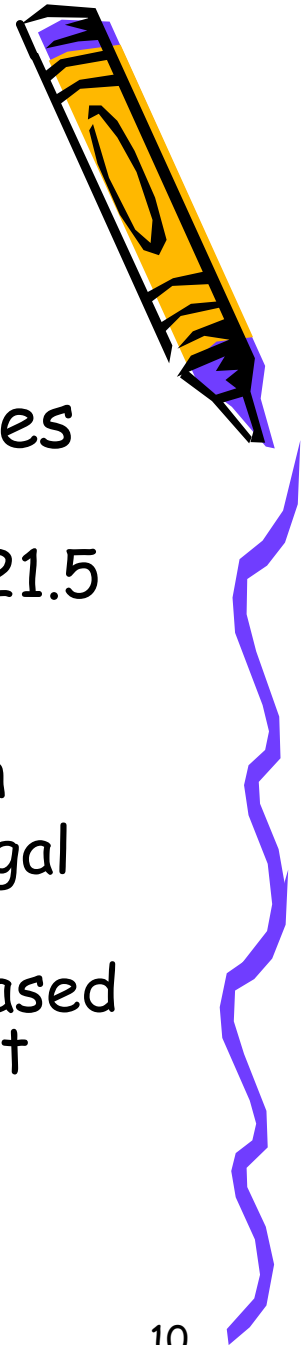
- ❑ State and local government tax revenues are reduced.
- ❑ US, the 2008 revenue loss ranged between \$21.5 billion and \$33.7 billion (The University of Tennessee)
- ❑ every state applies its own system of taxation
- ❑ Lack of harmonized Laws and international Legal Instruments
- ❑ Legal requirements of traditional principles based on source, residence, permanent establishment
- ❑ Likelihood of double taxation & tax evasion
- ❑ ~~Some~~ countries might get more revenues



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Suggested solutions

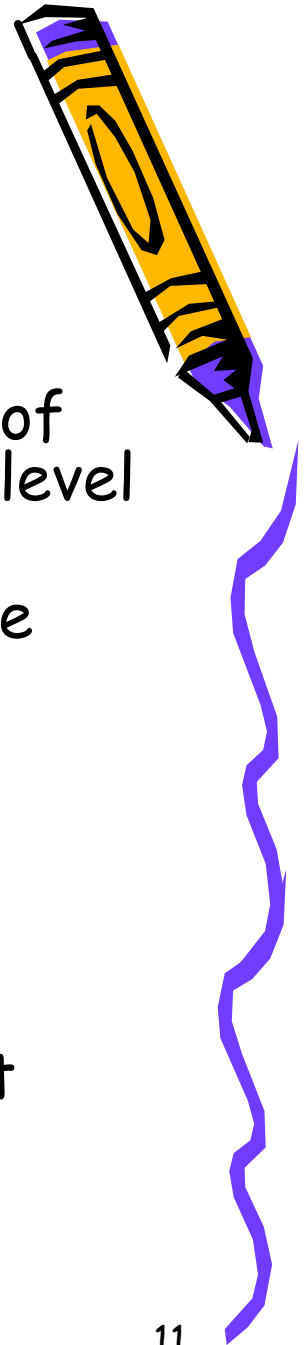
- Use of OECD Model Tax convention (the raft of bilateral tax conventions negotiated at global level)
- OECD Model Tax convention deals with Income and Capital tax
- Downloaded goods/service or data such as software, audio or visual works the taxation mechanism can be based on Article 5 OECD
- Article 7 of the OECD Model Tax Convention provides that the profit of an enterprise of a Contracting State shall be taxable only in that state enterprise...



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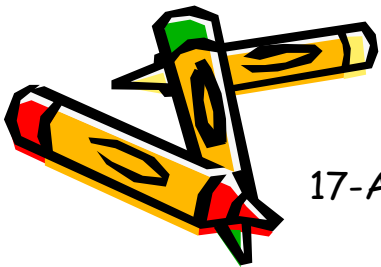




Conclusion



- *Discussion*
- *Questions,*
- *Comments*
- *The Way Forward*



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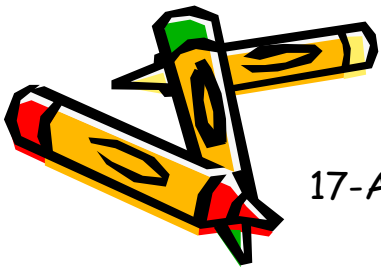


The End .

**Thank you for your
attention!!!!**



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