

## Legal Issues Related To Taxation And Fees On E-Commerce Activities

المسائل القانونية المتعلقة بالضرائب والرسوم على أنشطة التجارة الإلكترونية

Bendaoud houcine , Maitre de Conférences Classe A \*

Université Mohamed El Bachir El Ibrahimi Bordj Bou Arréridj

E-mail: [hocine.bendaoud@univ-bba.dz](mailto:hocine.bendaoud@univ-bba.dz)

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**Abstract:**

The current development of e-commerce is facing similar taxation challenges to those that accompanied the expansion of international trade at the beginning of the century. This is particularly evident today with the emergence of the new economy. However, the inherent characteristics of e-commerce, notably its spatially unlimited nature, its borderless framework, and its often-undefined contractual structures, have impacted its legal and fiscal systems, resulting in serious challenges for tax administrations. These challenges are reflected, first, in the difficulty of determining the tax base; second, in issues related to the calculation of corporate tax and the definition of a permanent establishment for e-commerce entities; and finally, in the collection of taxes and duties that is, identifying the relevant parties and determining who is responsible for collecting the taxes. In addition, the fact that the parties involved often hold different nationalities and seek to evade tax obligations further complicates matters. Therefore, it is imperative for governments and international organizations to develop optimal solutions to subject electronic transactions to taxation, from which tax authorities may ultimately benefit through the expansion of digital commerce.

**Keywords :** E-Commerce, Taxation Challenges, Electronic Transactions**الملخص:**

يواجه التطور الحالي للتجارة الإلكترونية تحديات ضريبية مماثلة لتلك التي رافقت توسع التجارة الدولية في بداية القرن. ويتجلى هذا جلياً اليوم مع ظهور الاقتصاد الجديد. ومع ذلك، فإن الخصائص المتأصلة في التجارة الإلكترونية، ولا سيما طبيعتها غير المحدودة مكانياً، وإطارها غير المحدود، وهياكلها التعاقدية غير المحددة في كثير من الأحيان، قد أثرت على أنظمتها القانونية والمالية، مما أدى إلى تحديات خطيرة للإدارات الضريبية. تتجلى هذه التحديات، أولاً، في صعوبة تحديد القاعدة الضريبية؛ ثانياً، في المسائل المتعلقة بحساب ضريبة الشركات وتعريف المنشأة الدائمة لكيانات التجارة الإلكترونية؛ وأخيراً، في تحصيل الضرائب والرسوم، أي تحديد الأطراف المعنية والمسؤولة عن تحصيل الضرائب. إضافةً إلى ذلك، فإن اختلاف جنسيات الأطراف المعنية وسعيها للتهرب من الالتزامات الضريبية يزيد الأمور تعقيداً. لذلك، من الضروري للحكومات والمنظمات الدولية وضع حلول مثالية لإخضاع المعاملات الإلكترونية للضرائب، والتي قد تستفيد منها السلطات الضريبية في نهاية المطاف من خلال توسع التجارة الرقمية.

الكلمات المفتاحية: التجارة الإلكترونية، التحديات الضريبية، المعاملات الإلكترونية...

\* Bendaoud houcine

## Introduction:

E-commerce represents one of the most significant taxation challenges in the era of globalization, due to its elusive and fluid nature. Despite the remarkable growth of this form of commerce, its taxation remains an unresolved issue worldwide. This is primarily because the virtual economy, which operates through virtual markets and establishments, removes the traditional constraints of time and space through e-commerce platforms. Accordingly, in the knowledge-based economy, it becomes exceedingly difficult to apply the conventional laws and regulatory frameworks of the real economy. Tax collection is one of the most crucial legal aspects that reflects state intervention and dominance over economic institutions, especially considering that taxation constitutes a major source of public revenue.

Given that e-commerce has come to dominate real-world commerce, its integration into the tax system could represent a continuously growing revenue stream for the state proportionate to the volume of electronic commercial exchanges. This reality necessitates the establishment of a fiscal policy tailored to the nature of digital economic activity, which in turn has given rise to new challenges faced by tax authorities around the world. These challenges include: determining tax jurisdiction over e-commerce transactions, preventing or addressing double taxation, defining the nature of income generated, ensuring accurate tax assessment, implementing effective tax audits, and combating tax evasion specific to e-commerce operations.

Moreover, opinions remain divided regarding the feasibility and appropriateness of imposing taxes on e-commerce, reflecting the complexity and evolving nature of this global phenomenon. For these reasons and others, this presentation aims to address the following main research question: **How can the Algerian tax legislation subject e-commerce activities to taxes and duties in the same way as traditional commercial activities are taxed?**

In addressing this central issue, we propose to structure this presentation into the following key sections:

**Section one:** The relationship between the structure of tax legislation and the applications of information technology;

**Section two:** The current state of the electronic payment system in commercial transactions, as governed by the Algerian legislative framework;

**Section three:** The challenges faced by Algerian tax legislation in imposing taxes on electronic transactions;

**Section four:** Suggestions and recommendations regarding the adaptation of Algerian tax legislation to e-commerce activities.

## 1. The Relationship Between The Structure Of Tax Legislation And The Applications Of Information Technology

Always The expansion of commercial activity has led states to explore new sources of income in order to impose taxes and allocate part of these revenues to finance their increasingly growing functions. The advent of technical and technological advancements has given rise to a new form of commercial activity, one that reflects these developments and is characterized by features fundamentally different from traditional forms, most notably the absence of a physical location for such activity.

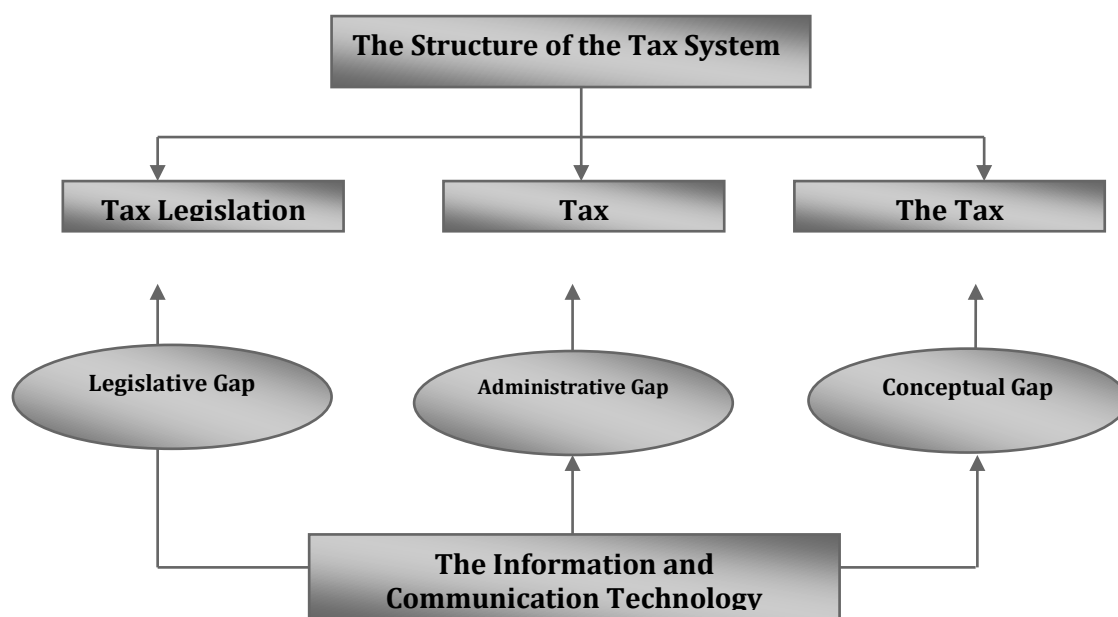
These characteristics encourage taxpayers to resort to unlawful means in order to evade taxation, known as electronic tax evasion, on the basis that such activities are difficult

to subject to taxation and even harder to monitor. However, justice requires that these activities be treated equally with traditional economic activities in terms of tax obligations.

As a result, tax policy at the beginning of the third millennium has undergone numerous transformations, both academically and practically, as a logical consequence of various factors, primarily the new challenges imposed by economic globalization. This transformation has had both positive and negative effects on the overall tax system. One of the most significant manifestations of this shift is the emergence of e-commerce, which represents a highly advanced stage in the evolution of trade and technological progress in the 21<sup>st</sup> century.

Since fiscal policy is intrinsically linked to commercial activity, it follows that e-commerce generates revenue and profits and is connected to an extensive global commercial network, transcending all types of borders and restrictions. This necessitates the adaptation of fiscal policy to the nature of e-commerce, in terms of the methods and mechanisms of taxation and collection, given that e-commerce constitutes an ever-expanding tax base, and thus requires a tailored approach for its fiscal oversight.

Moreover, the objectives of the tax system, whether economic or social, vary from one country to another, depending on the philosophy adopted by each state( HAMMAM2010 ). Through these objectives, the tax system functions as an effective tool for achieving the various goals pursued by the state. To clarify the challenges posed by e-commerce to the tax system, we refer to the following table) al. 'July 2000(: The figure illustrates the relationship between the structure of the tax system and the applications of information technology.



**Source:** Raafat RADWAN et al., *Taxation in the World of E-Business*, **Journal of Development and Economic Policies**, Vol. 02, No. 02, Kuwait, July 2000, p. 14.

From the above figure, it becomes clear that tax legislation, which was originally formulated based on the nature of traditional commercial transactions, is inadequate in addressing electronic commercial activities. In other words, there exists a “legislative gap.” This gap necessitates that the state develop new legislative frameworks that are aligned with the specific nature of electronic transactions.

It is also evident that the tax administration continues to suffer from operational shortcomings in performing its core functions such as tax identification, auditing, and collection across all tax categories. The administrative methods and systems in use have not undergone the necessary modernization to effectively support these tasks. Thus, there is also an “administrative gap.”

In addition, the taxpayer community suffers from a conceptual gap. Despite the rapid growth in the volume of electronic commercial transactions, there remains a lack of understanding of certain key concepts and terminologies related to e-commerce.

Consequently, these three gaps legislative, administrative, and conceptual pose significant challenges to the overall tax system. They negatively impact both tax revenue generation and the growth of e-commerce, ultimately undermining the efficiency and effectiveness of tax performance.

## 2. The Current State Of The Electronic Payment System In Commercial Transactions, As Governed By The Algerian Legislative Framework

The Law No. 18-05, dated May 10, 2018, relating to electronic commerce, and published in the Official Gazette of the People's Democratic Republic of Algeria, Issue No. 28 dated May 16, 2018, contains( Law No. 18-05 of May 10, 2018, concerning E-Commerce, Official Gazette of People's ,No. 28 ‘. , published on16 May(2018 several key provisions. According to Article 1, the law sets out the general rules governing e-commerce of goods and services. Article 2 stipulates that the law applies to electronic commercial transactions if one of the parties to the electronic contract is either an Algerian national, a legal resident in Algeria, a legal person subject to commercial law, or if the contract is concluded or executed within Algerian territory. Article 3 provides that e-commerce must be conducted in accordance with the applicable legislation and regulations, and that all transactions carried out via electronic communications are subject to the duties and taxes established by the prevailing legal framework. Article 4 states that investments supporting e-commerce activities may benefit from incentive measures in accordance with the applicable laws. In Article 6, the law defines several key concepts as follows:

**2.1- Electronic commerce:** The activity by which an electronic supplier offers or ensures the provision of goods and services remotely to an electronic consumer through electronic communications;

**2.2- Electronic contract:** As defined by Law No. 04-02 of July 23, 2004, governing commercial practices, an electronic contract is a contract concluded remotely without the physical and simultaneous presence of the parties, and exclusively through electronic communication technologies;

**2.3- Electronic payment method:** Any payment method authorized by applicable legislation that allows its holder to make proximity or remote payments through an electronic system.

This article also includes definitions of other relevant terms such as: Electronic consumer, electronic supplier, electronic advertising, pre-order, domain name.

Law No. 18-05 dated May 10, 2018, concerning electronic commerce, contains numerous provisions addressing this matter. According to the first article of this law, it establishes the general rules governing electronic commerce for goods and services. The second article states that the law shall apply to electronic commercial transactions in cases where one of the parties to the electronic contract holds Algerian nationality, is lawfully residing in Algeria, is a legal person subject to commercial law, or where the contract is concluded or executed within Algerian territory. The third one affirms that electronic commerce shall be carried out in accordance with the prevailing legislation and regulations, and that all transactions conducted via electronic communications shall be subject to the duties and taxes prescribed by such laws and regulations.

Furthermore, the fourth article provides that investments supporting electronic commerce activities may benefit from incentive measures in accordance with applicable legislation. The sixth article sets forth key definitions for the purposes of this law, as follows:

**2.4- Electronic Commerce:** An activity through which an electronic supplier offers or guarantees the provision of goods and services remotely to an electronic consumer via electronic communications;

**2.5- Electronic Contract:** As defined under Law No. 04-02 of July 23, 2004, which governs commercial practices, it is a contract concluded remotely without the physical and simultaneous presence of the parties, relying exclusively on electronic communication technology;

**2.6- Electronic Means of Payment:** An activity Any authorized means of payment, in accordance with applicable legislation, which enables its holder to make payments either in proximity or remotely through an electronic system.

The same article (Article 6 of Law No. 18-05/2018) also provides definitions for several other key concepts such as: electronic consumer, electronic supplier, electronic advertising, pre-order, and domain name.

The same article referenced above is further reinforced by Article 27, which addresses in detail the means of payment in electronic transactions. It provides that:

Payment in electronic commercial transactions may be made either remotely or upon delivery of the product, using authorized payment methods in accordance with the applicable legislation.

When the payment is made electronically, it must be processed through dedicated payment platforms, which are established and operated exclusively by banks approved by the Bank of Algeria and Algérie Poste, and connected to any type of electronic payment terminal via the public telecommunications network.

In the case of cross-border commercial transactions, payment is made exclusively remotely via electronic communications. The connection between the electronic supplier's website and the electronic payment platform must be secured through an electronic certification system.

Electronic payment platforms, whether established or operated, are subject to supervision by the Bank of Algeria, to ensure their compliance with interoperability requirements, as well as the confidentiality, integrity, and security of data exchanges.

In general, this law addressed many elements that require clarification, such as: cross-border transactions, conditions for practicing electronic commerce, requirements related to commercial transactions through electronic communication, obligations of the electronic

consumer, duties and responsibilities of the electronic supplier, as well as crimes and penalties.

It is worth noting that the beginning of Internet ( Achour KETOUCHE & Hadj Kouider GOURINE) use in Algeria dates back to March 1994, with the initial use by the Centre for Research on Scientific and Technical Information (CERIST). This center, which is affiliated with the Ministry of Higher Education and Scientific Research in Algeria, was established in 1986 and was entrusted with several tasks, including the creation of a national information network and its connection to regional and international networks. The first step was Algeria's connection to the Internet through Italy, as part of a project supported by UNESCO known as RINAF (Réseau Informatique Africain).

For the first time, the Algerian legislator regulated the Internet as a legal economic activity under Executive Decree No. 98/257 dated August 25, 1998, which sets the conditions and procedures for the establishment and operation of Internet services. This was amended by Executive Decree No. 2000/307 dated October 14, 2000, whereby Article 4 of the decree stipulates) Executive Decree No. 2000/307 dated October 14(: "Authorization to establish and operate Internet services for commercial purposes under the conditions specified below shall only be granted to legal persons subject to Algerian law, hereinafter referred to as Internet Service Providers."

Moreover, the Algerian legislator addressed, in Article 323-1 of the Civil Code, that )No(:

"Proof by writing in electronic form shall be considered equivalent to proof by writing on paper, provided that it is possible to verify the identity of the person who issued it, and that it is prepared and stored in conditions that ensure its integrity."

Accordingly, the Algerian legislator has equated electronic writing with traditional writing in terms of evidentiary value, affirming that the electronic document or electronic instrument results from the use of electronic means via the Internet to conduct most legal transactions.

Since mere recognition by the Algerian legislator of the electronic instrument as a means of proof is insufficient, and since granting it the same probative value as paper-based documents is not enough, the legislator introduced the concept of electronic signature for the first time in Article 327 of the Civil Code, which stipulates: "The electronic signature shall be admissible under the conditions mentioned in Article 323 bis 1 above," in order to confer evidentiary value upon the electronic instrument.

Through this mechanism, the electronic signature, the authentication of electronic transactions is performed by an electronic notary, who acts as a neutral third party and may be an individual, company, or independent body serving as a mediator between parties to authenticate their electronic dealings.

It is important to note that the primary role of the electronic notary or the electronic certification authority is to identify the parties engaged in electronic transactions, verify their legal capacity, examine the content and integrity of the transaction, and ensure its seriousness and lack of fraud or deceit ( Ezzehra NADJI );2006.

Since the activity of electronic certification service providers is an economic activity subject to registration in the commercial registry under the Commercial Code, the electronic certification body becomes responsible for authenticating the electronic contract. Moreover,

the Algerian legislator addressed electronic payment methods in Ordinance No. 05/06 of 23 August 2005 concerning anti-smuggling measures. Article 3 states (Algerian Official Gazette No. 59): "For the purpose of combating smuggling, preventive measures and procedures may be adopted. In this regard, in particular... the generalization of the use of electronic payment methods..."

The legislator went further by amending Articles 414 and 502 of Ordinance No. 75/59 dated 26 September 1975, which constitutes the Commercial Code. Article 6 of Law No. 05/02 dated 6 February 2005 states (Algerian Official Gazette No. 11): Regarding Article 414: "The holder of a bill of exchange payable... may also present it using any means of electronic exchange specified in the applicable legislation and regulations." And concerning Article 502: "The physical presentation of the check to one of the clearinghouses is considered a presentation for payment, which may also be carried out using any means of electronic exchange defined by applicable legislation and regulations." Therefore, it becomes clear that the Algerian legislator has established an electronic settlement system in commercial transactions.

As a result, we can assert that such transactions are recognized as regulated economic activities subject to legal oversight. It is also worth noting that following the enactment of Executive Decree No. 2000/307 mentioned earlier, two companies, Gecos and Eepad, established themselves in the Algerian market and laid the groundwork for e-commerce in Algeria (Rachid ALLAM, 2010,)

Consequently, we can say that the initial signs of Algerian e-commerce have emerged. The public authorities have confirmed on several occasions their intention to develop e-commerce. For example, during the opening of the International ICT Exhibition (MEDIT) on May 18, 2009, under the theme "E-Commerce and the Knowledge Economy," both the Minister of ICT and the Minister of Commerce announced the launch of e-commerce in April 2009, affirming that Algeria will soon have a legal and regulatory framework to govern electronic commerce (Soumia DIMECHE, , 2011).

According to statistics from the National Center of the Commercial Register, there were 186 e-commerce websites by the end of 2012, and 64 new commercial websites were registered in January 2013 (assima BENARAB & Fatima BOUGACI, L'Eco Magazine, No. 61, March 1–15, 2013,), including 40 sales websites, showing rapid growth. If this pace continues, the number is expected to reach nearly 800 e-commerce websites by the end of 2013. E-commerce in Algeria is primarily categorized into two main types: Business-to-Consumer (B2C), Business-to-Business (B2B)

### 3. Challenges of Algerian Tax Legislation in Imposing Taxes on Electronic Transactions

Among the main challenges raised in the field of tax treatment of online transactions, we particularly mention the following (MERAZGA Salah, No. 23, June 2005, )

**3.1- The spatial dimension of taxation:** Commonly referred to in the tax legislation of all countries as the *territoriality of taxation*. This challenge arises from the fact that electronic commerce does not require a specific physical location for its practice, which results in the generation of revenues and profits that do not belong to a defined territory. This implies the absence of the principle of territoriality, which normally entitles a state to impose taxes based on its sovereignty over its national territory.

**3.2- Distortion of the principle of tax justice:** This distortion is evident in the fact that some products traded through e-commerce escape any form of customs or tax barriers, unlike similar products that cross borders through conventional customs checkpoints and are subject to various taxes and duties imposed by the importing or exporting country.

**3.3- Difficulty in proving electronic transactions:** Traditional systems rely on accepted means of evidence, such as formal and sometimes notarized contracts, a practice that tends to disappear in the new format of online commerce.

In addition, the lack of alignment of current legislation with the nature of e-commerce, along with fears that taxing electronic commerce may encourage increased tax evasion, and the disconnect between the structure of the tax system and new information technologies, pose further challenges.

In reality, taxation of e-commerce is a problem that requires a solution, not an unsolvable dilemma. The call to refrain from imposing taxes on e-commerce should not be seen as absolute, as the inevitable outcome of this form of trade is its eventual subjection to taxation, sooner or later.

#### 4. Proposals and Recommendations on Subjecting Algerian Tax Legislation to Electronic Commerce

In light of the inadequacy of traditional tax rules to address the specific nature of electronic commerce, the Algerian tax legislator has no choice but to consider establishing an alternative tax specifically tailored to this type of commerce. The idea of such an alternative tax first emerged in November 1994, in a report presented by Arthur Cordell and Thomas Wade to the Club of Rome, as part of efforts to stop the erosion of tax revenues caused by the shrinking of the tax base resulting from the shift away from traditional commerce to electronic commerce, which is difficult to track and monitor for tax purposes.

This alternative tax later became known as the "BITS" tax (Byte-Based Tax) or the Byte Tax. Furthermore, a proposal was made to impose a consumption-based tax instead of a tax on productive units. An additional suggestion was the "email tax", which appeared in 1999. Based on the above, the Algerian legislator could consider adopting one of the following approaches:

**4.1- The byte tax or digital units tax:** This is an electronic tax imposed on electronic commerce based on the amount of digital information or the time taken to electronically transmit it over the internet. It is assessed by measuring the density of information transferred or the electronic connection.

Theoretically, the number of bytes (bits) used by an information technology device when using the internet can be evaluated and calculated. The consumption of bytes is considered by the tax authority as the only means capable of measuring the significance and volume of data transfer. Thus, the tax base consists of the transmission of information electronically over the internet, varying narrowly or broadly according to the density of data transmission, which is indicated by the number of digital units transmitted electronically. To estimate the tax base, an electronic measuring device (counter) must be used.

The tax rate can be estimated at 1% per megabyte, and it can be applied proportionally or progressively (SEDDIK, 2002), depending on the duration of connection and the type of line used significant tax revenues are expected given the volume of information transmitted electronically every moment. As for tax collection, it can be made directly from the taxpayer

or through their bank account. Internet service providers may also assist in collecting this tax by assessing the taxable material, with the possibility of prepaid payment by subscribers, specifically for internet users.

Accordingly, this proposed electronic tax is considered the best means to overcome the tax challenges posed by electronic commerce, as it is imposed on the only measurable and traceable element, allowing a tax linkage based on it. Therefore, the Algerian tax legislation might adopt this method, taking into account that the byte tax is generally applied without discrimination; it is imposed on all connections regardless of the type or purpose, whether commercial, civil, or mixed. This indiscriminate application results in discrepancies in tax treatment. However, this issue can be addressed by allowing complaints to be raised at the tax administration level, where careful investigation and adjudication of disputed cases can be conducted.

**4.2- The byte tax or digital units tax:** A consumption tax is defined as: "a tax levied on certain types of consumed goods or on all consumed goods with the aim of achieving economic, social, and financial objectives. It is characterized by its flexibility and difficulty to evade, thus aiding in collecting taxes from evaders as well as those who earn high incomes from intangible transactions over the internet, where they spend their income regardless" (Raafat RADWAN et al.).

There is also the possibility of imposing this tax through internet service providers, who would assess their transactions with customers and then withhold the tax (withholding tax) to be transferred to the state. Accordingly, the Algerian tax legislator could rely on this method to subject electronic commerce to taxation, considering it easier and simpler than the byte tax method. The same dispute resolution mechanism could be applied, i.e., by examining contested cases.

**4.3- Exemption of customs duties on electronic commerce:** There is a global call to impose a zero customs duty rate on all cross-border electronic commerce transactions conducted in digital form or to consider the internet a free trade zone, thereby exempting all digital products traded electronically from all customs duties and taxes. The main reasons for exempting customs duties on electronic commerce include:

- 1- The distinction has not yet been made between simple digital transactions of a civil nature, such as emails, and complex digital transactions of a commercial nature, such as ready-made software;
- 2- The dispute over the classification of digitally transmitted products in customs tariff schedules has not yet been resolved, whether they are classified as services, goods, or specific products.

In Conclusion, opinions differ on the possibility of imposing taxes on electronic commerce. Despite the existence of various views regarding the tax treatment of this type of commerce, there are several arguments in favor of imposing taxes, summarized as follows:

- Taxation of electronic commerce is neither a new nor an impossible matter;
- Tax revenues can be used to support unemployment resulting from electronic commerce;
- It helps limit the expected growth of the informal economy;
- It expands the tax base, which contributes to increased local and national economic development.

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### **Conclusion:**

This study has allowed us to observe the extent of the Algerian legislator's commitment to preparing the legislative framework for the taxation of electronic commerce, notably through the enactment of numerous laws and regulations governing electronic transactions, the most recent being Law No. 18-05 dated May 10, 2018, concerning electronic commerce. We have also demonstrated the possibility for the Algerian legislator to adopt the byte tax (digital units tax) as a means to subject electronic commerce to taxation, provided that it is taken into account that the byte tax is a general tax applied indiscriminately to all communications, regardless of the type or purpose of the connection—whether commercial, civil, or mixed resulting in variations in tax treatment. We clarified that this issue can be resolved by examining complaints submitted to the tax administration, which would thoroughly investigate and adjudicate disputed cases. Furthermore, the legislator may also employ the consumption tax method for taxing electronic commerce, as it is an easier and simpler alternative to the byte tax, provided that any arising disputes are similarly resolved through judicial examination of contested cases. In addition to the points addressed in this paper, particularly those in the fourth section concerning proposals and recommendations for subjecting Algerian tax legislation to electronic commerce, it is possible to put forward several recommendations deemed necessary to resolve the challenges of taxing electronic commerce, summarized as follows:

- 1-The necessity to develop tax laws and regulations in line with the developments in electronic commerce;
- 2-The necessity to attract and continuously develop qualified human resources;
- 3-The necessity to improve information systems within various tax departments, alongside enhancing attention to electronic payment methods;
- 4-The necessity to keep pace with the advancements of leading countries in electronic commerce;
- 5-The necessity to provide all necessary resources for tax and customs administration staff to monitor and document all electronic transactions;
- 6-The necessity to expedite the resolution of issues related to the taxation of electronic commerce, in accordance with the principles of fairness and equality among all taxpayers.

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