AN APPRAISAL OF NIGERIA'S APPROACH TO TAXATION OF DIGITAL ECONOMY: A LEGAL PERSPECTIVE OF THE POLICY OF PHYSICAL PRESENCE OF THE TAX PAYER

Abstract

The digitalized economy has created a big challenge for taxation as there are no robust local laws enough to address the complexities created in digital economy. Digital taxation simply put is the tax policy put in place by various countries designed to be levied on digital transactions like Facebook, Youtube and others, wherein the companies may not have physical presence in their country. Today's digital companies are fast changing the economic landscape with companies like Apple declaring its revenue in 2021 at 118 billion dollars, yet the tax paid are very little or not paid at all. Due to this, countries are assessing the amount of money to be from their country and the amount to be paid as taxes to the countries where these digital companies are generating their revenue. Formerly, the rules of taxing multinational companies in Nigeria have been largely dependent on whether there is a physical presence or permanent establishment in a country, as residence of a tax payer determines his tax liability, in other words, residency and source are the basis for the collection of tax. This work examines Nigeria's approach to Taxation of Digital Economy with innovation in modern business transactions with the existing laws vis-à-vis the collection of digital tax. The work x-rayed the digital tax laws and policies of other jurisdictions like USA and South Africa with a view to extracting some of the relevant policies that can suit Nigeria tax regime. The methodology that was adopted in this work was doctrinal method of research, using analytical and narrative approach in reviewing the tax laws, statutes, case laws, legal opinions of experts in textbook and articles relevant to the subject matter of digital taxation. The work recommended amendment to the current tax laws to address the problems that had plagued the tax system for clarity of the provisions to taxpayers and tax administrators as well as the difficulties of inroad into the digital economy in order to expedite these mechanisms in use. The work further recommends that Nigeria should formulate more direct and confronting laws that will empower the relevant Nigeria tax authorities to administer the assessment, remittance and collection of various taxes on digital space and as well present itself to participate in global discussions like OECD meetings, geared towards the development of the BEPS and its application. This is to ensure that peculiarities of the Nation are considered in the formation of such plans.

Key Words: Taxation, digital economy, e-commerce.

1.0 Introduction

Developments in information and communication technology have immeasurably impacted on the way human beings interact. From simple social interactions to complex multinational transactions, there is no escaping the ubiquitous effect of the digital age.[1]On the other hand, tax is a means of revenue generation used by government to provide essential services to the citizenry. Tax has been recently hit by the advancement in the information and communication technology (ICT). Tax is a powerful tool for actualizing the policies, projects and programmes of government. It is also a medium used by the government to distribute the

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[1]O. O Adebayo, 'Taxation of Electronic Commerce: Prospects and Challenges for Nigeria' <http://dx.doi.org/10.2139/ssrn.1697998> accessed 10th January 2025.

economic resources from the private sector to the public sector for the common good of all.[2] Tax is levied on the income and profits of individuals, companies and organizations. It is based on residence and the physical presence of the tax payer in a particular geographical location or country, so as to give the taxing authority jurisdiction to access and collect tax.[3]

The advent of the internet, the World Wide Web, Facebook, WhatsApp and other social media platforms that enhance the interaction of persons irrespective of geographical location where the parties are located having made business and economic activities to be a "No Respecter of Boundaries".[4] Companies, individuals and organizations have established their presence in these social/ media platforms. Most of them have on-line offices and have rolled out e-marketing plans and strategies to get clients or customers to patronize them.[5] The effect of the above is that they get clients and customers all over the world, who transact with them and at the end they are paid on-line and the goods or services shipped to the client in his country of domicile.

Prior to enactment of the Finance Act[6], the Companies Income Tax Act (CITA) did not make a provision for taxing digital transactions rather it made a general provision that tax is payable on the profit of any company accruing in, derived from, brought into, or received in Nigeria[7]. It simply means that any company whose profits were derived or received in Nigeria pay tax on it. This is no longer the correct position of the law, with regards to the provision of the Finance Act[8]; the Companies Income Tax Act (CITA) was expanded to make companies with electronic or online business within the spheres of Nigeria and having some significant economic presence in Nigeria taxable.[9] In view of the above challenges, the Organization for Economic Cooperation and Development (OECD) set out to formulate an equitable methodology, for the taxation of digital economy that will be generally accepted and used all over the world. However, that seems to be a herculean task set out to undertake by the OECD.[10]

This study analyzed and reviewed the current position of the existing tax laws as it relates to taxation in digital economy in Nigeria and some other jurisdictions, considering the earlier observations, pointing out the challenges and issues associated with those existing laws that bring inefficiency and leakages in the taxation of the digital economy and solution proffered.

[2]C McClure Jnr. 'Taxation Britannica recent OECD and Commission Activity' <http://www.lexology.com/library/details.aspx?g=41f03f100-987b-46f3-b7fi-ffi53cc8428d> accessed 10 January, 2025.
[3]*Ibid*
[4] R Jones, 'Taxation of Electronic Commerce: A Developing Problem, *International Review of Law Computers & Technology* (2002) 16 (1).
[5]R Azam, 'E-Commerce Taxation and Cyberspace Law: The Integrative Adaption Model' *Virginia Journal of Law & Technology* (2007) 12 (3).
[6]Finance Act 2020 (as amended)
[7]CITA 2004 s.9
[8]Ibid
[9]CITA 2004 (as amended) s. 13(2) (a)
[10]E Illamosi 'Taxing Digital Economy in Nigeria' at http://www.businessdayonline.com/taxing-digital-economy-nigeria/ accessed 10 January, 2025.

2.0 Conceptual Framework

2.1.1 Taxation

In *Matthews v Chicory Marketing Board*[11] the Australian Supreme Court[12] held that "a tax is a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered." Notwithstanding the inadequacies of definitions, the basic attribute of a tax as a financial imposition of the government for the purposes of achieving some social end is universally unchallengeable.[13] Governments the world over are saddled with responsibilities of providing social amenities. Taxation is a universally accepted contrivance for financing government services, whether in peace or war, depression or prosperity.[14] It is a device to provide government with regular dependable and continuous source of revenue by transferring money from private hands into government treasury in order to finance the public sector.[15]

The United States Supreme Court in *Nichols v Ames*[16]graphically captured the essence of taxation in the following words:[17]

> "It is one great power upon which the whole national fabric is based. It is as necessary to the existence of prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, it is also the power to keep alive."[18]

The importance of taxation in any nation depends on the uses to which it is put. The primary objective of taxation is said to be generation of revenue for the government. It is important to point out however that the objectives of taxation exceed raising revenue for government. Accordingly, taxation is used to fuel economic growth so as to increase economic objectives.
There are basic concepts by which a government is meant to be guided in designing and implementing an equitable taxation regime.[19] These include the following:

Adequacy: Taxes should be just enough to generate revenue required for the provision of essential public services.[20]

Broadbasing: Taxes should be spread over as wide as possible section of the population or sector of the economy to minimize the individual tax burden.[21]

Efficiency: Tax collection efforts should not cost an inordinate high percentage of tax revenue. Thus, it will be an anomaly whereby the sum spent in the course of collection of the tax is higher than the collected tax.[22]

Neutrality: Taxes should not favour anyone, group or sector over another and should not be designed to interfere with or influence individual decision making.[23]

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[11](1938) 60 CLR 263 at 279. Similar definition was earlier enunciated by the Privy Council in *Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Ltd* (1930 AC 168 at 175)

[12]A. Sanni, '*Taxation in the Guise of Administrative Charges – Imperative of Curbing Abuses of Regulatory Power for Revenue Purpose in Nigeria'* Journal on Current Law Series, (2002) 21 (2), p26-28

[13]C. Allan, '*Theory of Taxation'* (Harmondsworth, Penguin Education, 2007) p.24

[14]A. Sanni, *Revenue Law,* CITN Tax Practice Series, No.28

[15]*Ibid.*

[16]173 US 509 (1899) 515

[17]*Ibid*

[18]*Supra* note.5

[19]R Toby, *Theory and Practice of Income Tax* (London: Sweet & Maxwell publishers, 2012), p.45

[20]*Ibid*

[21]*Ibid*

[22] M. Umenweke, *"Tax Law and its Implications for Foreign Investments in Nigeria"* (Nolix Educational Publication Enugu Nigeria 2008) p24

[23]M. Abdulrazaq, *"Nigerian Revenue Law"* (Malthouse Press Ltd, Lagos 2005) p 11

2.1.2 Digital Economy:

This is the movement of markets from the traditional physical space to the internet space.[24] This is popularly called e-commerce as it encompasses app stores, online advertising, online payment services, cloud computing, participative network platforms and a lot of platforms. The element of a digital economy includes digitalization and intensive use of information and communication technology (ICT), codification of knowledge, transformation of information into commodities and new ways of organizing work production.[25] They offer tangible goods which cannot be measured in terms of value. These businesses generate significant figures in foreign countries without the need to put up offices or have many employees there. This is one of the major reasons tax authorities worry about the digital economy. Due to the virtual nature of these businesses, lacunas are created in the operation of existing tax laws and the authorities are unable to collect taxes from these companies.[26] Traditional businesses are taxed based on the value creation, but due to the electronically based operations of these companies, it becomes challenging to capture what value is created, where it is created and how to measure it.

Digital Economy development has been painfully slow in Nigeria.[27] Some of the problems that have hitherto hampered the growth of digital economy in Nigeria are reasonably well documented. They include the traditionally poor communication infrastructure, which has improved to some extent recently with the telephony services/GSM revolution, poor electricity supply, low personal incomes impacting on affordability of computer systems and services, low level of awareness and computer literacy, outdated business practices and business mentality of some business organizations, slow pace of development of the law to keep up with technological advances among other factors.[28] Digital economy in Nigeria is still in a rudimentary stage, generally speaking, it is unquestionable that there is increasing usage arising from awareness in Nigeria of the benefits and potential opportunities arising from digital economy.[29]

The most obvious area of progress, apart from telephony, is almost certainly electronic banking and payment services, particularly in this current period of the scarcity of naira notes, as a result of the new design of new naira currency and the direction of the Central Bank of Nigeria. Most banks now offer internet banking services which allow customers to conduct banking transactions online, from the convenience of their homes or offices. We are also slowly taking advantage of this new kind of shopping, online shopping, formerly restricted to shops abroad, websites in Nigeria have become more developed even as more people utilize their bank cards to make online purchases and other transactions.[30]

The vast improvement in telecommunications services in the country, is further underscored by a surge in private telecom operators (PTOs) offering "fixed wireless services", which offer

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[24]P. Lambert. "*The Laws of the Internet"* (Bloomsbury, publishing London) p. 490-491

[25]Http://www.authorama.com/ancient-china-simplified-17.html (accessed 19th January 2025)

[26]E. Jakurti. *Taxing the digital economy-it's complicated,* Brookung.edu (accessed, 19th January 2025)

[27]http://www.naijablog.co.uk/2008/08/e-commerce-in-nigeria.html accessed 19th January, 2025

[28]F. Ovia *'E-Commerce In Nigeria'* http://www.thisdayonline.com/nviewhttp://www.cipaco.org/spip.php?article1158 accessed 21 January, 2025

[29] G.Bamodu,*'The Legal Landscape For E-Commerce In Nigeria (2005)*' <http://www.nigeriavillagesquare.com/articles/gbenga-bamodu/the-legal-landscape-for-e-commerce-in-nigeria.html> accessed 22 January, 2025

[30]Oduntan, Olugbemi Adebayo, *Supra*

data and voice transfer. Hence, this supports Internet use even in some of the more rural parts of the country.[31]

Walter Brenner of the University of St. Gallen in Switzerland states that Digital Economy: "The aggressive use of data is transforming business models, facilitating new products and services, creating new processes, generating greater utility, and ushering in a new culture of management."[32] Recently, TechCrunch a digital economy news site, noted, "Uber, the world's largest taxi company, owns no vehicles. Facebook, the world's most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory, and Airbnb, the world's largest accommodate economy.html action provider, owns no real estate.[33]

The digital economy is made up of an almost invisible market which is hardly monitored or registered, making taxation of the components of such market an almost impossible task. Tax laws have been unable to fully capture the growth of online enterprise and the structure of their profits.[34]

3.0 Legal and Institutional Framework for Taxing Digital Economic Activities in Nigeria

3.1 Legal Framework

3.1.1 The 1999 Constitution[35]

The Constitution distributes taxing powers and empowers the various State Houses of Assembly to enact laws on taxation that will affect their domain.[36] The National Assembly was vested with the powers to legislate for the federation.[37] While that of the states is vested in the respective Houses of Assembly,[38] the National Assembly is exclusively empowered to make laws as contained in the Exclusive Legislative list, any other matters in the Concurrent Legislative list and any other matters with respect to which it is empowered to make laws in accordance with the constitution.[39] The House of Assembly of various states in Nigeria, were empowered to make laws with respect to matters not included in the Exclusive Legislative list, but matters included in the Concurrent Legislative list and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution of the Federal Republic of Nigeria.

3.1.2 Personal Income Tax Act

The Preamble to this Act[40] provides that it is an income tax imposed on individuals, communities and families and on executors and trustees and also for the assessment, collection and administration of the tax. It is tax paid on profits of an income nature as opposed to profit arising on the disposal of a capital asset. The character of an income tax is

[31] *Ibid*
[32] W. Brenner '*What is the digital economy and how is it transforming business?*' https://vox.lacea.org/?q=blog/digital_economy_business accessed 11 February 2025
[33] Deloitte 'Digital Economy' https://www2.deloitte.com/mt/en/pages/technology/articles/mt-what-is-digitaleconomy.html Accessed on 21 January 2025
[34] T Oyedele, Insight on Taxation and Fiscal Policy. (Bloomsbury publishing plc London 2015) p.30
[35] 1999 Constitution of Federal Republic of Nigeria, 4th Alteration
[36] *Ibid*
[37] Chapter 5 of the 1999 Constitution of the Federal Republic of Nigeria, 4th Alteration
[38] *Ibid*
[39] Second Schedule of the 1999 Constitution of the Federal Republic of Nigeria 4th Alteration
[40] Personal Income Tax Act, CAP P.4, Laws of the Federation of Nigeria, 2004.

that the receipt should be recurrent. The taxable person is liable to pay tax in the State where he is resident if on the "1st day of January in a year of assessment, he has a place of residence in that State – The percentage payable as income tax is based on the assessment of the income (the deduction allowed) on taxable persons for each year of assessment. The chargeable income is the total income of the individual for any year of assessment, a taxable person shall without notice or demand made on him file a return of income together with a statement in writing containing the amount of income from every source of the year preceding the year of assessment and the individual shall calculate in his returns the tax payable by him.

Where an individual does not file returns, the tax authority will assess the individual. The authority may also use the returns filed to assess the individual or reject the returns made and use its best of judgment to determine the amount of the "assessable, total or chargeable income of that person and make an assessment accordingly."

3.1.3 Company Income Tax Act

All companies operating in Nigeria outside the oil and gas sector of the economy are required to pay income and education tax as provided in CITA.[41] The rate is 30% of total profit for income tax and 2% of assessable profit for education tax. Non-resident companies are taxed on the proportion of their income earned in Nigeria. Companies are deemed to be resident companies if they are registered or incorporated in Nigeria. While Nigerian companies are taxed on their worldwide income, foreign companies are liable only as regards the portion of their profit which is attributable to business operations carried on Nigeria, according to the provisions of CITA.

3.1.4 Value Added Tax Act

This is a tax on goods and services.[42] This is charged at every level of the distribution chain. It was introduced on 1st January, 1994 to replace Sales Tax which had a very narrow coverage. Taxable persons are obliged to register under the VAT Act. The tax which is at single rate of 7.5% of taxable goods and services is to be borne by the final consumer but collected at each stage of the production and distribution chain. Supply of all goods and services except those specifically exempted are subject to Value Added Tax (VAT). Non-resident companies which transact business in Nigeria are also required to register for VAT and render returns. VAT is imposed on non-exempt supplies of goods and services within Nigeria as well as on goods imported. Export goods are non-taxable. VAT is generally assessed by a taxable person who supplies taxable goods and services and payment made when filing monthly returns.

3.1.5 Federal Inland Revenue (Establishment) Act 2007

This Act established the Federal Inland Revenue Service (FIRES).[43] The body replaced the erstwhile Federal Board of Inland Revenue; whose establishing Act was repealed by this Act. The Act established the FIRS as a juristic person who may sue or be sued in its corporate name, unlike under the former provision which regarded the Board and not the Service as juristic person. The funding is to be obtained from a percentage to be determined by the National Assembly from all non-oil tax revenue sources. The Act mandated FIRS to establish

[41] Companies Income Tax Act, CAP C21, Laws of the Federation of Nigeria, 2004.

[42] Value Added Tax (Amendment) Act (VAT) No 53, 2007

[43] Federal Inland Revenue Service (Establishment) Act 2007, This Act was enacted to provide for the establishment of the Federal Inland Revenue Service charged with powers of assessment, collection of, and accounting for revenues accruable to the government.

Tax Refund Account from which there shall be refund to tax payers on any over payments of taxes due to remittance after proper auditing has been carried out. It equally gave wide powers to FIRS to enforce the payment of tax liabilities, power to call for returns, books, documents and information, further returns and payment of tax due from tax payers, power to impose various penalties and proceed to enforce payment of such debts. Of importance also is the fact that the Service can also carry out search and seizure procedure on erring tax payers. The power of **detrain** can be utilized in the enforcement of tax due from a tax payer, where an assessment has become final and conclusive and Demand Notice in accordance with the tax laws been served on the tax payer. The Act provides a robust and official dispute resolution mechanism.

3.1.6 Finance Act[44]

On 31 December 2020, President Muhammadu Buhari signed the Finance Bill, 2021 (now the Finance Act, 2021) into law. The Finance Act, 2021, which took effect from 1 January 2022, amended various provisions in 13 Acts of the National Assembly.

Some salient amendments as it relates to the subject matter of this work introduced by the Act includes;

i. **Exclusion of Companies Engaged in Petroleum Operations from the Exemption on Profits in respect of Goods Exported from Nigeria:** Under the Finance Act, 2019, the profits of any Nigerian company derived from goods exported from Nigeria are exempted from companies' income tax (CIT) if the export proceeds are utilized to acquire raw materials, plant, equipment and spare parts. Portions of the export proceeds that are not utilized to acquire raw materials, plant, equipment or spare parts will however be subject to CIT. The Finance Act, 2021 has now excluded companies engaged in downstream petroleum operations from this tax incentive. Companies engaged in upstream or midstream petroleum operations are also excluded.

ii. **Data Protection:** The Finance Act, 2021 amended the Federal Inland Revenue Service (FIRS) (Establishment) Act, 2007 to impose a general obligation on every person acting in an official duty or employed for the administration of the Act that has access to taxpayer information to regard and deal with such information as secret and confidential. Previously, the obligation imposed was in respect of information relating to the profits or items of profits of any company. The Finance Act, 2021 expanded the data protection obligation placed on officials of the FIRS in line with the global movement to ensure data protection, not only due to its primacy as a right but the economic necessity of the same. Given that the key objective of the Finance Act, 2021 is to ensure that there is an alignment between the amended laws and the Federal Government's macroeconomics policy reforms, it is expected that other laws that need urgent attention to stimulate the growth of the Nigerian economy will similarly be considered and addressed in the near future.[45]

4.0 A Legal Perspective: Digital Taxation in the Nigerian Economy

4.1 Taxation of Digital Economy in Nigeria

The Nigerian tax system was typically designed to tax sales of goods or services at the point of sale and corporate personal income in the location where it is earned. The rise of the digital

[44] Finance Act, 2021 (As amended)

[45] 'KEY HIGHLIGHTS IN THE FINANCE ACT, 2021' JDSUPRA (JANUARY 14 2022) HTTPS://WWW.JDSUPRA.COM/LEGALNEWS/KEY-HIGHLIGHTS-IN-THE-FINANCE-ACT-2022-9613787/ ACCESSED 4 FEBRUARY 2025

economy has rendered many established ways of collecting sales or income taxes obsolete. Technology is at the root of this widening tax gap, while eroding how governments pay for the provision of high-quality public services. This has raised up heated arguments among scholars as to whether the digital economy should be taxed or not owing to the fact the existing tax regime is not wide enough to capture transactions that is being carried out in the cyber space in Nigeria.

In order to widen the tax net, the Federal Inland Revenue Services (FIRS) has in some instances, sought to give additional effects to the interpretation of existing legislation to tax digital transactions. For example, the FIRS has argued that the provision of the law[46] which states that the tax shall for each year of assessment, be payable upon the profits of any company accruing in, derived from, brought into or received in Nigeria, should be applicable to digital transactions of non-resident companies. The FIRS position is hinged on the fact that income from digital transactions is clearly derived from Nigeria,[47] and based on the law,[48] should be liable to tax in Nigeria accordingly. However, this position is open to debate as the law,[49] provides further information on how non-resident companies should be taxed, which provided that "if that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base"[50]

Nigerian government has taken steps to implement digital taxation by establishing the Nigerian Tax and Fiscal Law Advisory Team (NTFLAT) in August 2020. The team was tasked with reviewing Nigeria's tax laws and policies to identify gaps and challenges related to digital taxation and recommend measures to address them.[51]

In October 2020, the Federal Inland Revenue Service (FIRS) issued a public notice on the taxation of companies operating in the digital economy, stating that companies with "significant economic presence" in Nigeria would be subject to tax. The notice defined significant economic presence as "the purposeful and sustained interaction with persons in Nigeria through digital channels, which may result in a taxable income or economic value to the company."[52]

The FIRS also issued a regulation in December 2020, which requires foreign digital service providers to register for tax purposes in Nigeria and appoint a representative who will be responsible for tax compliance. The regulation applies to companies that provide digital services to Nigerian residents, and it requires them to charge VAT on their services and remit it to the FIRS.[53] In 2020, Nigeria amended the Companies Income Tax Act through the Finance Act 2020 to address the basis of taxation for digital economy players. Consequently, Section 13(2) of CITA was amended and the Minister of Finance, Alhaja Zainab Ahmed, issued an Order {Companies Income Tax (Significant Economic Presence) Order, 2020} in

[46] CITA, Section 9 (1) 2004
[47] E Oyindele, 'Taking Digital Economy Nigeria' http://www.businessdailonline.com/taxaing-digital-economy-nigeria accessed 12 March, 2023
[48] CITA, Section 9 (1) 2004
[49] CITA, Section 13 (2a) 2004 (as amended)
[50] *Ibid*
[51] Andersen Tax, ' Taxing the Digital Economy based on Significant Economic Presence: A Guide for the Implementation of the Finance Act, 2019' https://ng.andersen.com/taxing-the-digital-economy-based-on-significant-economic-presence-a-guide-for-the-implementation-of-the-finance-act-2019/ accessed 28 March, 2025
[52] *ibid*
[53] *Ibid*

this regard. The amended CITA and Order brought digital economy players with revenue in excess of N25.0m (about US$65,000 at official foreign exchange rate in January 2021) in any financial year within the Nigeria's tax net.[54]

In reality, the changes created more problems for the affected companies. Both the amended CITA and Order seem oblivious of all the issues that we have explained earlier with regards to income recognition and expense deductibility.[55] To make matters worse, in the Finance Act 2021, these companies would now be required to prepare and submit two sets of financial statements for the purpose of filing tax returns in Nigeria. The first will cover the legal entity's worldwide operations audited by possibly one auditor in a different jurisdiction; whilst the same legal entity is also required to prepare another financial statement covering its Nigeria's operations (possibly audited by another external auditor since only Nigeria's certified auditor is permitted for the one covering Nigeria) and then submit the two to the tax authority. The myriads of problems that will arise is a subject of part three of this series.[56]

Internationally, there is an OCED deal with the G20 on Inclusive Framework on Base Erosion and Profit Shifting (BEPS) in October 2021, which unveiled a Two-Pillar solution deal to tackle the tax challenges arising from digitalization of the economy and introduce a global minimum tax. Pillar 1 seeks to remove the requirement of the physical presence of firms in a country for the country to have a right to tax them. It sets thresholds of profit for big multinational enterprises (MNEs) to be allocated to market jurisdictions from which they derive significant sales. Pillar 2 seeks to curb the incentives for MNEs to shift profits from high tax jurisdictions to tax-friendly jurisdictions through the introduction of a global minimum tax regime of 15 per cent. It is expected that the agreement will generate approximately $150 billion in additional global tax revenues, annually.[57]

Despite the mouth-watering promises of the Two-Pillar solution, four out of the 141 members of the OECD/Inclusive Framework on BEPS – Nigeria, Kenya, Pakistan and Sri Lanka – have refused to sign the Two-Pillar solution plan.[58] One of Nigeria’s major issues with it is the high profit thresholds it sets for multinational enterprises (MNEs) to be taxed by various countries where they have a significant economic presence. Under the multilateral arrangement, a company or an enterprise must have an annual global turnover of €20 billion (euro) and global profitability of 10 per cent to be so taxed.[59]

The chairman of Nigeria’s Federal Inland Revenue Service (FIRS), Muhammad Nami, said in a press statement in May 2023 that “most MNEs that operate in our country do not meet such criteria and we would not be able to tax them.”[60] Instead of the Two-Pillar solution plan, Nigeria has introduced the Digital Service Taxation (DST) in its newly amended Financial

[54] T. Ogungbenro, ‘Taxation of Digital Economy in Nigeria (Part 2): Lessons from abroad’ https://www.mondaq.com/nigeria/tax-authorities/1044622/taxation-of-digital-economy-in-nigeria-part-2-lessons-from-abroad accessed 13 March, 2025

[55] *Ibid*

[56] *Ibid*

[57] A. Adesomoju and M. Abu Wedn, ‘Nigeria, Egypt test different approaches to tax digital economy’ https://www.premiumtimesng.com/news/headlines/545116-nigeria-egypt-test-different-approaches-to-tax-digital-economy.html?tztc=1 accessed 28, March, 2025

[58] *Ibid*

[59] *Ibid*

[60] F. Shuaibu, ‘Nigeria will lose tax revenue if OECD Framework is signed; by Nami’ https://dailytrust.com/nigeria-will-lose-tax-revenue-if-oecd-framework-is-signed-nami/ accessed 28 March, 2025

Act. The unilateral approach, which took effect in January 2022, targets non-resident firms with a significant economic presence at a six per cent tax rate on the relevant MNEs' turnover. Targeted services being sold to local customers include apps, high-frequency trading, electronic data storage and online advertising.[61]

The new tax regime allows Nigeria to tax non-resident MNEs with gross turnover or income exceeding N25 million (naira) or its equivalent (about $65,000). Some non-resident tech giants such as Twitter, Facebook, Netflix and Linked-In, have since registered with Nigerian authorities for tax purposes and now include value added tax as part of subscribers' fees in Nigeria.[62]

Nevertheless, it is noteworthy to conclude that Nigeria has moved in the opposite direction relative to most other countries.[63] The major challenge of this approach is the uncertainty that it will create for the digital economy players. We have no doubt in our mind that where the final income statement of the affected companies shows a net operating/tax loss and therefore no income tax payable, the Federal Inland Revenue Service will put such company to task. We therefore strongly advise that FIRS should revisit the approach and learn from most other countries that have put similar but better compliant-friendly legislation in place for the purpose of taxation of digital economy players.[64]

4.2 Taxation of Digital Economy in USA

The taxation of the digital economy in the USA is a complex and evolving topic. Here are some key points to keep in mind:

1. Sales Tax: Sales tax on digital goods and services is determined at the state level in the USA, and can vary widely depending on the state. Some states have specific laws that exempt certain digital products from sales tax, while others treat digital goods and services the same as physical goods and services. As of 2021, there is no federal sales tax on digital goods or services.[65]
2. Income Tax: The taxation of income from digital activities is also determined at the federal and state levels. The IRS treats income from digital activities the same as income from other sources, so individuals and businesses that earn income from selling digital products or services are generally subject to income tax on that income.[66]
3. Digital Advertising Tax: Some states, including Maryland and Connecticut, have recently passed laws that impose a tax on digital advertising revenue generated by large technology companies. These laws are being challenged in court and their future is uncertain.[67]

[61] A. Adesomoju and M. Abu Wedn, 'Nigeria, Egypt test different approaches to tax digital economy' https://www.premiumtimesng.com/news/headlines/545116-nigeria-egypt-test-different-approaches-to-tax-digital-economy.html?tztc=1 accessed 28, March, 2025

[62] *Ibid*

[63] The World Bank, ' Nigeria Digital Economy Diagnostic: A Plan for Building Nigeria's Inclusive Digital Future' https://www.worldbank.org/en/country/nigeria/publication/nigeria-digital-economy-diagnostic-a-plan-for-building-nigerias-inclusive-digital-future accessed 13 March 2025

[64] The World Bank, ' Nigeria Digital Economy Diagnostic: A Plan for Building Nigeria's Inclusive Digital Future' https://www.worldbank.org/en/country/nigeria/publication/nigeria-digital-economy-diagnostic-a-plan-for-building-nigerias-inclusive-digital-future accessed 13 March 2025

[65] A. Avalara, ' Your essential resource for retail tax compliance in 2023' www.avalara.com accessed 13 March, 2025

[66] *Ibid*

[67] *Ibid*

4. International Taxation: The USA is part of the Organization for Economic Cooperation and Development's (OECD) efforts to establish a global minimum tax rate for multinational corporations, including those operating in the digital economy. The Biden administration has proposed a 21% minimum tax rate for foreign income earned by US-based corporations, including those in the digital economy.[68]

The taxation of the digital economy in the USA is a rapidly evolving area of law, and individuals and businesses should consult with a tax professional for specific guidance on their tax obligations.

4.2.1 Comparative Analysis between USA and Nigeria

While both Nigeria and the USA have implemented digital taxation policies, there are significant differences on how they approach this issue.

1. Taxation Scope: In Nigeria, the Finance Act 2020 imposed a 2% levy on the value of electronic transactions by foreign companies operating in Nigeria. The tax applies to companies that have no physical presence in Nigeria but have a significant economic presence in the country. The levy applies to services such as advertising, digital downloads, and online transactions.[69] In contrast, the USA does not have a federal digital tax. However, individual states have implemented their own digital taxation policies. For example, states such as California and New York have imposed sales tax on digital goods and services, while states like Illinois and Texas have not.[70]
2. Taxation Rates: In Nigeria, the digital tax rate is 6%[71] of the transaction value. This is significantly lower than the digital tax rates in other countries such as France and the UK, which have imposed digital tax rates of 3% and 2%, respectively.[72]In the USA, the tax rates vary by state. For example, California imposes a sales tax of 7.25% on digital goods and services, while New York imposes a sales tax of 4% on digital goods and services.
3. Tax Administration: In Nigeria, the Federal Inland Revenue Service (FIRS) is responsible for the administration of digital taxes. Companies that are subject to the digital tax are required to register with the FIRS and submit their tax returns electronically.In the USA, digital taxation is administered at the state level. Companies that are subject to digital taxes in a particular state must register with the relevant state tax authority and submit their tax returns to that authority.
4. Taxation Compliance: In Nigeria, compliance with digital taxation has been a challenge due to the difficulty in tracking online transactions. Many foreign companies operating in Nigeria have been accused of not complying with the digital tax regulations. In the USA, compliance with digital taxation has also been a challenge. Many digital transactions occur across state borders, making it difficult to enforce compliance. However, some states have developed mechanisms to track online transactions and enforce compliance.[73] In conclusion, while Nigeria and the USA have both implemented digital taxation

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[68] A. Avalara, ' Your essential resource for retail tax compliance in 2023' www.avalara.com accessed 13 March, 2025

[69]Glamtush, 'Nigeria did not endorse the OECD minimum corporate tax agreement in country's best interest-FIRS' https://glamtush.com/nigeria-did-not-endorse-the-oecd-minimum-corporate-tax-agreement-in-countrys-best-interest-firs/ accessed 28 March, 2025

[70] Ibid

[71] R. Asquith, 'Nigeria 6% Digital Services Tax' <https://www.vatcalc.com/nigeria/nigeria-6-digital-services-tax/> accessed 25 March, 2025

[72]*Ibid*

[73]Glamtush, 'Nigeria did not endorse the OECD minimum corporate tax agreement in country's best interest-FIRS' https://glamtush.com/nigeria-did-not-endorse-the-oecd-minimum-corporate-tax-agreement-in-countrys-best-interest-firs/ accessed 28 March, 2025

policies, there are significant differences in how they approach this issue. Nigeria has a federal digital tax rate of 2%, while the USA has state-level digital taxation policies with varying tax rates. Both countries face challenges in enforcing compliance due to the difficulty in tracking online transactions.

4.3 Taxation of Digital Economy in South Africa

South Africa has introduced various tax measures to address the taxation of the digital economy.

Firstly, in 2019, South Africa introduced new rules that require foreign suppliers of electronic services to register for value-added tax (VAT) in the country if their annual supplies exceed ZAR 1 million (approximately USD 68,000). These rules aim to ensure that foreign suppliers of electronic services pay VAT on their supplies in South Africa.[74] Secondly, in 2020, South Africa introduced a new digital services tax (DST) on non-resident companies that provide digital services to South African customers. This tax is charged at a rate of 2% on the value of digital services supplied and is aimed at ensuring that these companies pay their fair share of taxes in South Africa.[75] Finally, South Africa has also been actively participating in the work of the Organization for Economic Co-operation and Development (OECD) on the taxation of the digital economy.[76] The OECD is currently working on a global solution to address the tax challenges arising from the digitalization of the economy, and South Africa is participating in this work to ensure that its interests are represented.[77] In summary, South Africa has introduced measures to ensure that foreign suppliers of electronic services pay VAT, introduced a digital services tax on non-resident companies, and is actively participating in the work of the OECD on the taxation of the digital economy.[78]

4.3.1 Comparative analysis between South Africa and Nigeria:

Both South Africa and Nigeria have introduced measures to tax the digital economy, but their approaches differ in some respects. South Africa introduced a digital services tax (DST) in April 2020, which applies a 15% tax on the supply of certain electronic services by non-resident companies to South African customers. The tax applies to companies that generate more than R1 million ($68,000) in revenue from the sale of digital services in South Africa. The DST is aimed at companies that operate in the digital economy but have little or no physical presence in South Africa, such as streaming services, social media platforms, and e-commerce sites.[79]

On the other hand, Nigeria introduced a digital services tax (DST) in January 2021, which imposes a 2% tax on the online transactions of companies with significant economic presence

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[74] R. Kabwe, 'Value-added tax in the digital economy: a fresh look at the South African dispensation' http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532021000300004 accessed 13 March, 2025

[75] R. Kabwe, 'Value-added tax in the digital economy: a fresh look at the South African dispensation' http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532021000300004 accessed 13 March, 2025

[76] A Olatunji, ' Africa and the Taxation of Digital Economy' https://www.linkedin.com/pulse/africa-taxation-digital-economy-abdulateef-olatunji-abdulrazaq/?trk=articles_directory accessed 21 March, 2025

[77] M. Lorraine, 'A review of South Africa's approach to the taxation of the digital economy in light of International development' https://repository.up.ac.za/handle/2263/80465 accessed 13 March, 2025

[78] Ibid

[79]VAT CALC, 'VAT obligations on electronic services; invoicing rules updated 2022' https://www.vatcalc.com/south-africa/south-africa-vat-on-digital-services-by-non-residents/ accessed 28 March, 2025

in Nigeria. The tax applies to companies that generate more than N25 million ($61,000) in revenue from the sale of digital services in Nigeria. The DST is aimed at generating revenue from the digital economy, particularly from the activities of multinational companies that have a significant presence in Nigeria but do not pay taxes on their profits in the country.[80]

In terms of similarities, both South Africa and Nigeria are focused on taxing the digital economy to generate revenue and level the playing field for local companies. Both countries are also targeting multinational companies that operate in the digital economy but have little or no physical presence in the country.[81]

However, there are also differences between the two countries' approaches to digital taxation. South Africa's DST is higher than Nigeria's DST, which may make South Africa less attractive to digital service providers. Nigeria's DST also applies to companies with significant economic presence, whereas South Africa's DST only applies to non-resident companies that generate more than R1 million in revenue from digital services.[82] In conclusion, while South Africa and Nigeria have taken steps to tax the digital economy, their approaches differ in some respects. South Africa has a higher DST rate and focuses on non-resident companies, while Nigeria's DST rate is lower and applies to companies with significant economic presence in the country.

4.4 Challenges and Prospects to digital taxation

There is no clear consensus on the most effective way of taxing online shops transactions. Traditionally, the major principle considered in determining the taxability of income earned by foreign entities is physical presence or permanent establishment.[83] Specifically, the Companies Income Tax Act (CITA)[84] provides that "the profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria if that company has a fixed base of business in Nigeria to the extent that the profit is attributed to the fixed base" irrespective of this provision of the law[85] which has clearly spelt out the mode of taxation of various entities in Nigeria, the law is not wide enough and is not in conformity with the current digital age and advancement today. The existing laws therefore cannot and would not be a sufficient tool to address the leakages of revenue government incur on transaction.

The implication of the above principle and Section of the CITA[86] is that a non-resident company that is able to provide services to Nigerians and earn fees for these services, but has no fixed base or permanent establishment in Nigeria, may not be deemed to have derived income from Nigeria for tax purposes.[87] A major challenge is therefore, determining at what point such non-resident company will be seen to have conducted business in Nigeria, since it does not require a physical presence in Nigeria to conduct its business transactions.[88] This is particularly so as even the customers that complete transactions on online platforms may not

[80] ibid
[81] Ibid
[82] Ibid
[83] S.Adu, 'Taxation in the digital economy-How much will things change?' https://www.pwc.com/ng/en/assets/pdf/tax-watch-april-2016-tax-in-the-digital-economy.pdf accessed 13 March, 2025
[84] CITA, Section 13 (2a) 2004
[85] *Ibid*
[86] *Ibid*
[87] O. Oyedile, 'Taxation of Digital Economy in Africa" AO2 Publishing express (2021) 21 (2), p34
[88] *Ibid*

be aware of the exact location of the digital goods and services they are consuming. In some instances, the jurisdiction with the taxing right may be in dispute as the consuming. In some instances, the jurisdiction with the taxing right may be in dispute as the location of the seller can be different from the location of the goods being sold.[89]

4.4.1 Challenges:

1. Difficulty in defining the digital economy: The digital economy is constantly evolving, making it difficult to define and classify. This can make it challenging to determine which businesses and activities fall within the scope of digital taxation.[90]
2. Cross-border taxation issues: The digital economy is global in nature, which can create challenges for tax authorities in determining the appropriate jurisdiction and tax rules to apply. This can result in double taxation or taxation gaps.[91]
3. Lack of consensus among countries: There is currently no consensus among countries on how to tax the digital economy. This can lead to different tax rules and rates across different jurisdictions, creating compliance issues for businesses.[92]

4.4.2 Prospects:

1. Increased revenue for governments: Taxation of the digital economy has the potential to generate significant revenue for governments, especially as digital business activities continue to grow.[93]
2. Level playing field for traditional businesses: Taxing the digital economy can help level the playing field for traditional businesses that have been subject to taxation for years.[94]
3. Simplification of tax compliance: Digital taxation has the potential to simplify tax compliance for businesses, as it could lead to a more streamlined and standardized tax system.[95]

While the taxation of the digital economy presents significant challenges, it also presents significant opportunities for governments, businesses, and the economy as a whole.[96]

5.0 Conclusion and Recommendations

5.1 Conclusion

The Internet is an opportunity and a challenge of the 21st century. It is an opportunity for liberty, equality, and digital economy. It is a challenge to the state, international order, and the law. This work has made a humble attempt to appreciate the natural challenges posed by digital economy in the area of taxation against the backdrop of historical development of the internet phenomenon as well as general tax principles and bases in Nigeria.

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[89] *Ibid*

[90] O. Isiadino, 'Taxation of Nigeria's Digital Economy: Challenges and Prospects' https://www.mondaq.com/nigeria/tax-authorities/810276/taxation-of-nigerias-digital-economy-challenges-and-prospects accessed 14 March, 2025

[91] *Ibid*

[92] *Ibid*

[93] Andersen Tax, 'Taxation of Nigeria's Digital Economy: Challenges and Prospects' https://ng.andersen.com/taxation-of-nigerias-digital-economy-challenges-and-prospects/ accessed 14 March, 2025

[94] Andersen Tax, 'Taxation of Nigeria's Digital Economy: Challenges and Prospects' https://ng.andersen.com/taxation-of-nigerias-digital-economy-challenges-and-prospects/ accessed 14 March, 2025

[95] *Ibid*

[96] *Ibid*

Prominent global, regional and national efforts at addressing the digital taxation conundrum have similarly been lucidly evaluated. A clear lesson that can be gleaned from this is that while these efforts are commendable and continuous, much still need to be done. Further, the need for global cooperation and harmonization was properly highlighted.

The tax authorities should extend broadly to ensure a deeper understanding of the nature of digital economy as it is today, and as it will develop tomorrow. Additionally, current international tax principles can and should be applied to cyberspace activities, but these should be modified and adapted to meet the unique characteristics and needs of cyberspace. The tools for making these adaptions include case law, new legislation, and international treaties, depending on the nature and difficulty of the challenge. Lastly, the law of taxing digital economy should emerge in an evolutionary, rather than revolutionary, manner.

5.2 Recommendations

The following recommendations are thus made towards combating the issues associated with taxation of digital economy in Nigeria.

A. Interim Measures:

i. The existing tax laws should be reviewed to be in tandem with changes in the economic landscape. The amendment to the existing tax laws should address the issues and provide clarity to tax payers and tax administrations on the taxation of the digital economy in Nigeria. These existing laws include; Section 9 (1) and Sections 13 (1 & 2) Companies Income Tax Act (CITA) CAP C21 Laws of the Federation of Nigeria 2004.

ii. The enactment of laws specifically for taxing digital economy businesses is recommended taking cue from United State of America. This will be based on the income and value added taxes to cover all aspects, using the rates in existing laws.

iii. Where the enactment of laws face opposition as a result of the strenuous process of enactment in Nigeria, the automation of the system of administering the current laws is recommended. The manual administration subsisting after the introduction of integrated Tax Administration System (ITAS), should be abandoned as the administration must adapt to the system.

iv. A review of business residency operation is recommended. The operation of foreign companies in the online space be considered as existent even with non-registration. Thus, the presence of the digital businesses must be established for its registration and proper identification for tax purposes

v. Identification of suppliers of courier services who distribute the digitally transacted tangible goods for the purpose of collecting value added tax.

B. Support for OECD Measures: Nigeria should present itself to participate in the global discuss towards the development of the BEPS and its application. This is to ensure that peculiarities of the Nation are considered in the formation of such plans.