TAXING TELECOMMUNICATIONS COMPANIES IN NIGERIA: LEGAL CHALLENGES IN THE TELECOMMUNICATIONS INDUSTRY*

Abstract
This study analyzes the various taxes associated with telecommunications companies and the need to properly regulate these taxes considering the humongous economic impact telecommunications industry has on the Nigerian economy. The advents of the telecommunications companies in Nigeria with its economic potentials pose some legal and regulatory challenges with respect to their taxation, given that there is no sector specific legislation put in place for the taxation of telecommunications companies in Nigeria. This paper advocates for a specific tax legislation for the taxation of telecommunications companies in Nigeria which must be fair to the telecommunications companies and in addition, its consumers thus, propping the sustainability, productivity and profitability of the telecommunications industry.

Keywords: Taxation, Telecommunications, Nigeria, Tax legislation

1. Introduction

Telecommunications is an arm of the communications sector providing telecommunications services to individuals, residences, businesses and the government. Telecommunications contributed 12.45% to Nigeria's Gross Domestic Product (GDP) in the year 2020 thus, lifting Nigeria out of recession in the fourth quarter of the year 2020[1] In Nigeria, Telecommunications industry was deregulated and liberalized in 1992. The industry became licensed in 2001, to operate as major players in the market with the advent of Global System for mobile market (GSM). The essence of taxation is to generate revenue for the government and not to drive into the ground, taxable entities by way of tax.[2] The telecommunications companies in Nigeria are currently contending with double taxation and the imposition of over twenty – six taxes, both legal and illegal, which in recent times; there have been complaints of these taxes running down the productivity sustainability, profitability and efficiency of these telecommunications companies and nothing is being done about it by the taxing authorities as at the time of this study.

Telecommunications trade unions are deeply committed to the issues associated with taxation of telecommunications companies. It therefore behooves on the international telecommunications union in conjunction with the association of telecommunications companies in Nigeria, being the local body, to see that issues of this nature do not see the light of the day and that the productivity of telecommunications companies in Nigeria remain high. This would bring a broad spectrum benefit to the Nigerian Government, the economy as well as the telecommunications industry.

2. Telecommunications Companies in Nigeria

Presently, there are about Fifty (50) telecommunications companies in Nigeria; Swift Networks Limited, Smile Nigeria, Spectranet, Globacom, MTN Nigeria, Main One Cable Company Nigeria Limited, 9 Mobile, Airtel Networks Limited, ConnigTechno serve Limited, Reime West Africa Limited, Emerging Markets Telecommunications Services Limited, Paystack Payments Limited, Propertypro. Ng Limited, Vixen Enterprises Limited, Estadysta Nigeria Limited, Partus Solutions Limited, Pagatech Limited, and NTEL etc. Nigeria has witnessed a significant growth in the telecommunications sector over time with room for more improvement. The wide range of services, provided by telecommunication companies in Nigeria are as listed thus:[3] Telephony, Telex, Cellular Mobile Telephony, Facsimile, Radio/Television Carrier, Gentex (Extension of Telex Terminals to rural

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[1] www.ncc.gov.ng> press statement>22/02/21>accessed 14 March, 2021

[2] See Ikenga K.E.Oraegbunam, 'Prospects of Electronic Taxation Jurisprudence in Nigeria', *Afe Babalola University Ado-Ekiti Law Journal*, 2015, Vol. 1, No. 3, pp. 183-214.

[3]National Policy on Telecommunication, Chpt 1

areas), Voice Cast/Press Receipt, Private Leased Circuit, Alternate Leased Circuit, Maritime Mobile Service, INMARSAT, Ship Shore, etc., Global Mobile Personal Communications Services [GMPCS], Data Communications, High Speed Data Transmission, Telegraphy, Public Payphones, Value Added Services, Business Network Services, Computer Networking, Internet Service, Telecommunications Consultancy Services, Paging Services, Mobile Radio Trunking Services.

3. Taxes Payable by Telecommunications Companies

Income Tax: Telecommunications companies,in the same way as every other company in Nigeria incorporated under the Companies and Allied Matters Act, are subject to the payment of income tax which is one of the high yielding/ranking taxes they are liable to. The telecommunications companies pay income tax under the Companies Income Tax Act just like every other company incorporated in Nigeria at the rate of 30%.[4] The administration of income tax for telecommunications companies, both Nigerian and non - Nigerian companies[5] lie within the Federal Inland Revenue service. It is also pertinent to state that payment of income tax does not exclude the payment of other taxes by the telecommunications companies in Nigeria where necessary.[6]

Value Added Tax (VAT): Value Added Tax is a tax on the value added on goods and services at every stage of production of such goods and services which the burden of payment is usually borne by the end consumer. It is an indirect system of taxation.[7] Value Added Tax is fixed at the rate of 7.5%.[8]

Telecommunications Licence Fee: The issuance of licence to telecommunications companies is governed by the Nigerian Communications Act 2003 and it is classified as either class licence[9] where the authorization is general or individual licence; where the authorization, its terms, conditions, obligations, scope and limitations are specific to the service provided. The grant of licences is one of the foundations upon which a telecommunications company can be further taxed.[10] The telecommunications licence is only granted upon payment of the prescribed fees which form part the taxes paid by the telecommunications companies before it can be authorized to do business in Nigeria by the Nigerian Communications Commission.

Radio and Television tax: Broadcast, being an arm of telecommunications, which is basically television and radio is governed by the National Broadcasting Commission which was set up by the National Broadcasting Commission Act, Laws of the Federation 2004, CAP N11. Taxes on television and radio are made so as to receive broadcasts. It is therefore a hypothecated tax for the purpose of funding public broadcast thus allowing public broadcasters to transmit television programs without or with only supplementary funding from radio and television advertisement.[11] Suffice it to be stated here, that recently a bill was passed to amend the National Broadcasting CommissionAct[12]

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[4]CITA,Cap C21 LFN 2004

[5]Companies Income Tax Act Cap C21, (as amended) 2011, Laws of the Federation, 2004 s13.This distinction is necessary for the purpose of incomes, bearing in mind that some telecommunication companies doing business in Nigeria have their parent company resident outside Nigeria.

[6]Where telecommunication companies have to put up signage, buildings and other activities to enable them carry out their business which requires the payment of tax, the tax will be administered by the proper taxing authority outside the Federal Inland Revenue Service.

[7]This is because it is usually taxed using a middleman and not directly on the tax payer. This also curbs tax evasion, since it is attached to goods and services consumed by individuals.

[8] This is following the recent amendment of the VAT Act, 2007 by the Finance Act, 2020.

[9]For this class of licence to be issued, a registration must be done and such registration is not sacrosanct as the registration could be de registered by the Nigeria Communications Commission in the interest of the public or if there has been noncompliance with the provisions of the Nigeria Communication Act or any instrument issued by the commission or where registration fees have not been paid.

[10]This is to the effect that where a telecommunications company provides unlicenced services to the public, such services not being declared leads to tax evasion. This is because a telecommunications company has no business paying tax for unlicenced services.

[11]<en.m..wikipedia.org>television license> accessed on 15 March ,2021

[12]This is tagged ‘the National Broadcasting Commission Amendment Bill 2018”. This amendment is targeted at improving education among Nigerian pupils by providing educative programs that will cover subjects in the school curriculum.

Turnover tax: The Companies Income Tax Act[13] empowers the charging of tax on turnover of trade or business carried out in Nigeria[14] where it provided as follows:

> ……the Board may, in respect of that trade or business and notwithstanding any other provisions of this Act if the company is a:
>
> (i) Nigerian company assesses and charges that company for that year of assessment on such fair and reasonable percentage of the turnover of the trade or business as the Board may determine.
>
> (ii) If that company is a company other than a Nigerian company and
>
> (a) That company has a fixed base of business in Nigeria, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover attributable to the fixed base.
>
> (b) That company operates a trade or business through a person in Nigeria authorized to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, assess and charge to the extent that the profit is attributable to the business or trade carried on through that person.
>
> (c) That the company executes one single contract involving surveys, deliveries, installations or constructions, assess and charge the company for that year of assessment on such a fair and reasonable percentage of the turnover of the contract.
>
> (d) The trade or business is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, assess and charge on a fair and reasonable percentage of that part of the turnover as may be determined by the Board."

The nonresident companies are taxable in Nigeria only to the extent of the profits derived by it from Nigeria.[15] Telecommunications companies do a lot of businesses with nonresident companies[16] in the area of provision of bandwidth capacities and are therefore subject to payment of Turnover Tax. Delloite, further stated that most of the nonresident companies who deal with telecommunications companies operate a cost-plus arrangement with their customers therefore it is expected that a direct cost of carrying out the projects are recovered while the company earns a markup on the cost.[17]

Public Service Company Franchise Tax: A franchise tax is a tax imposed by the state on the right and privilege of conducting business as a corporation for the purposes for which it was created and in the conditions that surround it. Telecommunication companies fall into this category given that telecommunications services provided are quite essential with the use of e-banking, e-commerce etc.[18]

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[13] s30

[14] This however must reflect and must also equal the company's turnover on its operations in Nigeria.

[15] <http://adebanjitaxandlegal.com> accessed 30 March ,2018; see also the case of *Vodacom v FIRS* (supra)

[16] Value Added Tax Act 1993, s10 requires a nonresident company carrying on business in Nigeria to register with the Federal Inland Revenue Service using the address of the Nigerian party with which it has a subsisting contract.

[17] More often than not, these nonresident companies are usually not incorporated in Nigeria in compliance with Companies and Allied Matters Act and some of them make more than a 20% turnover but yet taxed on a deemed turnover of 20% thus, creating a loss for the Nigerian government.

[18] In other words, a telecommunication company can be described as a public service company.

Nigeria, practices the franchise system in some sectors of the economy.[19]The telecommunications sector is not left out in applying the franchise scheme,[20]it is common knowledge that the telecommunications sector in Nigeria is growing rapidly that the average Nigerian makes adequate use of a smart phone which requires a lot of data usage.[21]

Telecommunications Property Tax: Telecommunications companies could own real and personal properties.[22] They enjoy a tax holiday for the manufacture and installation of equipment; such properties are not subject to tax. However, personal properties of the telecommunications companies[23] are subject to tax.

National Information Development Fund: Telecommunications is an arm of information communications technology which is the wheel that spurs on telecommunications. Telecommunications companies contribute to the National Information Development Fund.[24] Telecommunications companies are an integral part of the National Information Technology Development Agency which is why the Nigerian Communications Commission is a stakeholder in the Agency.

In addition to the above taxes, telecommunications companies in Nigeria are further liable to pay fees and levies under the various regulatory bodies and in addition, the following taxes: Capital Gain Tax, Withholding Tax, Stamp duties, Right of occupancy fees, Signboard and advertisement permit fees, Tenement rates, Business premises registration and renewal of registration fees. It is apposite to state that some of these taxes appear under more than one tax head as contained in the Taxes and Levies (approved list for collection) Act thus, advancing the incidence of double taxation.

4. Legal Challenges in the taxation of Telecommunications companies

Double taxation: this has been curbed on paper by the provisions of the Taxes and Levies (approved list for collection) Act. Practically, multiplicity of tax still prevails and poses a huge challenge to the tax system to telecommunications industry as well as other industries in Nigeria. Telecommunications companies in Nigeria are affected by double taxation principally in the areas of tax on profits, annual operator levy on turnover and value added tax on consumption of telecommunication services. According to the president of the Association of Telecommunications Companies of Nigeria Mr. Olusola Teniola, mobile operators currently pay on the aggregate twenty-three (23) different taxes to various agencies of the government at the Federal, State and Local government level and most of the taxes are illegal, yet they must be paid. This incidence of double taxation of telecommunications companies led to the inauguration of the Industry Working Group on double taxation for telecommunications companies by the Nigeria Communications Commission. In recent times, the issue of double taxation on telecommunications companies is a growing cause for alarm and may lead the telecommunications industry to be counterproductive.[25] Telecommunications Companies in Nigeria, in the light of the incidence of double taxation had submitted a memorandum to the

[19]Reference is made to the healthcare sector, entertainment sector, beauty sector, food industry etc. its advantages ranges from doing business with a known brand to easy start up, financing and staff procurement. Its disadvantages of course ranges from the possibility of a high startup cost to making royalty payments to the franchisor and challenges in introducing new ideas to the business as a result of the fact that the franchisor must approve such new ideas.

[20]Recourse will be taken to 9mobile, who has embraced the franchising scheme in the telecommunication sector, having a lot of franchise centers across the country.

[21]With the advancement in technology e.g. digital marketing, e- commerce, e- banking etc. the use of smart phones has become common place in Nigeria today.

[22]This includes cables, lines, poles, towers, long distance and local exchange and wireless property

[23]This includes wireless cellular telephones, properties used to deliver voice over internet protocol which requires broadband connections from the user's location.

[24]National information Technology Development Act 2007, s 12(2)(a)

[25]<https://businessday.ng/columnist/article/mtn> accessed 12 July, 2019

senate committee on communications wherein it was emphasized; the need for urgent action on the double taxation of telecommunications companies.[26]

Unequal distribution of tax burden on consumers: The customers, who are the end consumers of telecommunications services, are the most important public for the telecommunications companies thus, maximizing consumer satisfaction will lead to high profitability of the telecommunications companies and in turn, the Nigerian government gets rewarded in tax. Distribution of tax burden is usually measured with the consumers' income and consumption. Consumers of telecommunications services bear the burden of the Value Added Tax paid by the telecommunications companies which was only recently increased from 5% to 7.5%.

Tax burden is usually borne by consumers by way of tax inclusive price system[27] or the tax exclusive price system. Telecommunications companies in Nigeria, adopts the tax exclusive price system, thus, a consumer would not know the actual value added tax on the goods and services intended for purchase and the consumer will under value the actual cost.

Based on the above premise, consumers of telecommunications goods and services tend to bear more tax burden than anticipated by them. It would therefore be correct to say that there is an unequal distribution of tax burden on consumers of telecommunications goods and services. The consumers, being ignorant of taxes embedded in tariffs and charges carry on as though the goods and services are devoid of tax thereby diminishing the consumers' utility and social welfare and will ultimately negatively impact on the profitability and sustainability of telecommunications companies in Nigeria.

Communication Tax Bill: Communications Tax Bill 2016 is a bill which seeks to impose charge and collect Communications Service Tax (CST) on service fees payable by users of electronic communications services at the rate of 9%.[28] Deloitte[29] highlighted that the tax is payable whether or not the person making the supply is authorized to provide electronic communications services.
Price water coopers[30] observed that the bill is a direct copy and paste of the Ghana Communications Service Tax Act. It was further stated that the major challenges that the bill has are:

a. The communications service tax is to be borne by the consumers of telecommunications services.
b. The bill does not clarify whether there will be a charge, if the subscribers of telecommunications service is outside Nigeria.
c. The communications service tax bill still imposes the payment of 5% of annual revenue tax. This will discourage service providers from challenging the government where the quality of service enjoyed by consumers will be affected thereby increasing the tax burden on both the telecommunications companies and their consumers.

There has been an outcry by the stakeholders in the telecommunications industry that the communications service tax bill would cause an additional tax burden for telecommunications users, worse than what is currently obtainable in the telecommunications sector.If the communications service

[26]I Olanrewaju,'The high and multiple taxation as an impediment to quality telecommunication service in Nigeria'(2016) (63-70) *International Journal of Business and Law Research 4(1*)
[27]This is where the product price of goods and services are on the face of it reflected, the value added tax of such goods and services whilst the tax exclusive price system is the direct opposite on the basis that the value added tax is contained in the final product price of such goods and services reflected for consumers to see.
[28]The implication of this is that in addition to the payment of the specified tariff for a service, the consumer pays an additional 9% of the amount paid for the recharge as tax.
[29]<https://www2.deloitte.com/ng/en/pages/tax/articles/ng-proposed-communications-tax-bill.html.> Accessed 09 April, 2019
[30]<www.pwc.com/nig.taxalert/plans>to>introduce>a>new>tax>on>communications>services> Accessed 10 January, 2018.

tax bill is passed into law in its current state, it will put a lot of pressure on the telecommunications sector thereby making their productivity low and the sector unattractive for investors.

Absence of specific tax legislation: Currently in Nigeria, we have 16 Tax Laws none of which is specifically for the taxation of the telecommunications companies.[31] It is therefore not good enough that there is no specific legislation taxing telecommunications companies in Nigeria. This reflects the fact that where telecommunications companies in Nigeria are made to pay numerous taxes under different headings, some of which amounts to multiple taxation, the government stands to lose both the income tax from telecommunications companies and the personal income tax of its employees due to low financial productivity and an inevitable shut down of the telecommunications companies.

5. Conclusion

The Nigerian Communications Commission Act 2003, which is the principal legislation for the regulation of the telecommunications industry, did not make provisions to unify the numerous taxes imposed on the telecommunications industry. It is saddening to say the least that the principal legislation created a lacuna in that regard. Be that as it may, as a result of the fact that there is no specific legislation for the taxation of telecommunications companies in Nigeria, the taxes which telecommunications companies are subject to in Nigeria are scattered in different tax legislations.

Given that Nigeria was not prepared adequately for the boom in the telecommunications industry arising from privatization, the constitutional framework put in place for taxing telecommunications companies fell short of expectation in the areas of inadequacy and ineffectiveness. The resultant effect of the incidence of double taxation and the absence of sector specific tax legislation for the telecommunications industry is very crippling. The telecommunications industry is Nigeria's star non-oil economy and if allowed to collapse as a result of multiple taxation will occasion a complete shutdown of the economy given that telecommunications companies virtually run the economy; ranging from the banks, airlines, businesses as well as the government itself. Nigeria is moving beyond over reliance on oil revenue following the downslide in the oil and gas sector. The telecommunications sector is the next best high revenue yielding sector of the Nigerian economy. It is therefore suggested that the Nigerian government and all stake holders in the administration of tax in Nigeria ensure that the telecommunications sector are provided with a specific tax legislation which would remove every incidence of double taxation and ensure the longevity and profitability of telecommunications companies in Nigeria as well as attract donor funding and foreign direct investment to boost the Nigerian economy. It is further suggested that taxes applicable to telecommunications companies should be well defined and specific to provide for an efficient and procedural framework for enforcement.

[31]J Olakanmi & Co,*Compendium ofTax Laws*(3rdedn, Abuja: Law Lords Publication,2012) p vii