

TAXATION IN THE DIGITAL ERA: THE LEGAL EFFECTS OF TAXING SOCIAL MEDIA COMPANIES IN NIGERIA*

Abstract

Digitalisation of the economy brings with it challenges and tax evasion loopholes that developing nations must grapple with in meeting up with the realities of the time. The Nigerian tax hemisphere is not exempt from the challenges which include but not limited to the unavailability of tax statistics, failure to prioritize tax efforts, poor tax administration, tax multiplicity, regulatory challenges, structural problems in the economy, unavailability of database of all individuals and companies that are taxable, amongst others. Using doctrinal research methodology, this paper examines the implications of taxing social media companies, the challenges involved and the strategies for improving taxation of social media companies in Nigeria.

Keywords: Digital Era, Taxation, Social Media Companies, Legal Implications.

1. Introduction

The tax environment is ever-changing. It has metamorphosed from the traditional door-to-door collection model to a point when this practice would be deemed as barely scratching the surface. With the benefit of heightened international trade and commerce, it appears that this development has caused a train-wreck reaction in the operation of law and business in its traditional sense such that what was initially efficient in taxing the income of individuals and corporate entities is now impracticable given the cross-border nature of business, the increasing complexity associated therewith, and the impact of a clash between the tax laws of various countries.¹ The continual and rapid pace of the emergence of new technologies and business models entering the marketplace challenges tax rules that lawmakers and tax agencies cannot update or clarify quickly enough. Tax practitioners continually face challenges in both understanding the technology and how tax rules apply.²

Emerging in the 1990s with the rapid growth of Internet activities, particularly e-commerce, the 'digital economy' continues to evolve with new applications and business models. For example, rather than buying goods online with a credit card, today you might buy them with a virtual currency. Equally, your client might be engaged in a service business where she has never seen the hundreds of customers she serves, with everything handled online, possibly through a third-party broker using a sophisticated website.³ There are three aspects of the digital economy in which taxpayers engage in. They include (a) transacting business with virtual currencies, such as Bitcoin; (b) providing digital goods and services; and (c) transacting business enhanced by the Internet, such as finding customers, including advertising using the internet. The above categorization can involve some overlap. For example, virtual currencies are a digital good or service. However, a download of a game or music serves a different purpose or need compared to obtaining virtual currency. Also, e-commerce can be the sale of digital goods or services. It can also be the sale of tangible goods online that can more easily reach a worldwide market with fewer costs than required in the bricks-and-mortar model.⁴

Social media facilitates e-commerce for the digital economy. Evidently, social media is a critical element driving the advancement of the flourishing e-commerce sector. As a high yielding tool for marketing, promotion and sales, it helps e-commerce businesses identify customers, engage with them, build trust, gain sales opportunities, and deliver quick support.⁵ There are over 103 social media networks that are available to help subscribers build valuable connections in diverse areas of interest. Some examples of popular social media sites/platforms include Facebook, Instagram, YouTube, Twitter, LinkedIn, Snapchat, Reddit, Wikipedia, TikTok, and Clubhouse, among others.⁶

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¹ G Aliu, 'The Digital Economy and the Tax Landscape: Examining the Evolutionary Trends of Law and Policy in Nigeria' (2021) *UNILAG Law Review* Vol. 4 No. 2, p 106

² A Nellen, 'Taxation and Today's Digital Economy' (2015) *Journal of Tax Practice & Procedure* Vol. 1, p. 15

³ *Ibid*

⁴ *Ibid*

⁵ I Ibanga, social media: Facilitating e-commerce for the digital economy (August 3, 2021) Premium Times, available at <https://www.premiumtimesng.com/opinion/477293-social-media-facilitating-e-commerce-for-the-digital-economy-by-inyene-ibanga.html> <accessed on 3rd March, 2022>

⁶ *Ibid*

The digital economy complicates the system of taxation in Nigeria and emphasises the challenging climate. This is exemplified whilst considering that digital transaction will be processed via a server and the location from where the goods are produced, shipped and the destination of the goods are at different locations and it is expected that the transactions will be taxed. The participants in the digital transactions will therefore need some level of tax knowledge to identify where and when tax consequences will be triggered. A lack of such knowledge may lead to tax non-compliance for persons living/operating in a digital economy. Thus, it is the wide belief that many social media companies operate and earn profits without being taxed and this may not be unconnected to the lack of knowledge on taxation in the digital economy coupled with prevalent challenging climate in the taxing hemisphere. All these thus deepen the atmosphere for noncompliance. In a digital economy, products and services are bought and sold with ease via the instrumentation of the Internet. The Internet equally gives taxpayers access to new income streams, especially, through virtual transactions. Virtual transactions can be concluded in the form of 'real money' or virtual currencies. Even though these transactions are digital, occur in a digital economy and are settled in virtual currencies, they still have taxing implications for the participants. Often, these transactions are neither identified nor recorded. This therefore makes it herculean to apply the relevant tax tool to ensure an effective and efficient taxation.

The Nigerian tax hemisphere is not exempt from the challenges of taxation in digital era. The challenges include; unavailability of tax statistics; failure to prioritize tax efforts; poor tax administration; tax multiplicity; regulatory challenges; structural problems in the economy; underground economy and complexity of the tax laws.⁷ It further extends to unavailability of database of all individuals and companies that are taxable, the tool used for assessing and collecting taxes being inadequate and the absence of firm methods in place. There are no efforts to collate or analyse the limited data available let alone storing the data or making it possible to be assessed or retrieved. This would therefore suggest that the Nigerian tax system is largely inefficient and ineffective.⁸ These are issues that should be addressed for an effective tax system.⁹

The digital economy presents the need for government to adapt the tax systems, equip and advance their digital knowledge and skill to effectively interact with the taxpayers in the digital environment, especially social media companies which are most non-resident Nigerian corporations.

2. A Review of Tax Laws and Regulations in Nigeria

There are several tax regulations in Nigeria. The Federal Inland Revenue Service¹⁰ that is the tax regulatory body of the federal government of Nigeria is empowered by section 2 and schedule 1 of Federal Inland Revenue Service Act, 2007 to administer the following:

1. Companies Income Tax Act (CITA), Cap C21, LFN 2004 (as Amended)
2. Personal Income Tax (Amendment) Act, 2011
3. Value Added Tax Act, Cap V1, LFN 2004
4. Capital Gains Tax Act Cap. C1 LFN, 2004
5. Petroleum Profit Tax Act, Cap P 13 LFN 2004 (As Amended)
6. Stamp Duties Act Cap S8 LFN 2004 (As Amended)
7. Taxes and Levies (Approved List for Collection) Act Cap T2 LFN, 2004

Companies Income Tax Act (CITA), Cap C21, LFN 2004 (As Amended)

This is a 106 provisions law divided into parts XIV. It is a law that regulates the taxation of every profit of a company from all sources. The interpretation Section 105¹¹ of the Act defined a company to mean any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere. Company Income Tax is the main tax administered and collected by the Federal Inland Revenue. In Nigeria, companies are considered artificial persons under the law and are also liable to the payment of tax; this obligation extends to foreign companies by virtue of definition of a company under section 105 of CITA. The implication is that non-resident companies or foreign companies that are unregistered in Nigeria but doing

⁷ L M Leyira, *et al*, 'Tax System in Nigeria- Challenges and the Way Forward' (2012) *Research Journal of Finance and Accounting*, Vol. 3, No. 5, 9-15.

⁸ E D Simeon, *et al*, 'Issues and Challenges Inherent in the Nigerian Tax System' (2017) *American Journal of Management Science and Engineering*, Vol. 2(4): 52-57

⁹ J Olabisi, 'An Assessment of Tax Evasion and Tax Avoidance in Lagos State' (2010) *Journal of Research in National Development*, Vol 8, No. 1.

¹⁰ The FIRS Act, 2007 was enacted by the National Assembly pursuant to its powers in 2nd Schedule. Part 1 of the Exclusive Legislative List, particularly item 58 and 59 in the list of the 1999 Constitution as amended. The FIRS is responsible for assessing, collection and accounting for tax and other revenues accruing to the Federal Government of Nigeria.

¹¹ Companies Income Tax Act, Cap C21, 2007, (CITA) s. 105

business in Nigeria or deriving profit from Nigeria are within the scope of companies under CITA, are liable for taxation.¹²

The taxation of income of either individuals or corporate entities is typically premised on basic factors such as structure and the geographical location of a taxable entity with the basic considerations of the source of income and/or fixed base. Section 9 of the Companies Income Tax Act (CITA) subjects all profits of any Nigerian company arising from any trade accruing in, derived from, brought into, or received in Nigeria to Companies Income Tax. Section 13(1) of the CITA states that a Nigerian company's profits are deemed to accrue in Nigeria regardless of where they arise or whether they are brought into or received in Nigeria. As a result, as long as a business is based in Nigeria, it is required to pay tax on its earnings. A foreign or non-resident company ('NRC') is only taxable in Nigeria if it can be proven that it has a commercial presence/business interest in the country and has the ascertainable profit that is or could be attributable to its presence in the country.¹³ The Act further provides that the existence of any of the activities listed under section paragraphs (a) to (d) or a combination of such activities would amount to the existence of an established taxable commercial presence and they include:¹⁴

- a. Having a fixed base in Nigeria - this could mean having a physical presence in Nigeria, having a Nigerian address, or having any significant territorial connection to Nigeria, or if the Nigerian location is a regular stopover for the NRC's business.
- b. Having a contract with a dependent agent in Nigeria who executes commercial transactions on its behalf.
- c. Execution of a single contract in Nigeria for surveys, deliveries, installations, or construction (otherwise known as turnkey projects).
- d. Engaging in a fictitious or artificial transaction in Nigeria involving a related party.

The implication of Section 13 of the Companies Income Tax Act is that foreign companies are required to have a 'fixed base' in Nigeria. However, this is very much not like companies within the digital economy, which tend to structure their businesses in a way that enables them to avoid being caught by the definition of 'fixed base' under Nigerian law. The resultant effect of this is that the tax authorities are unable to collect any form of taxes from these companies.¹⁵ It should also be noted that, while the traditional income tax regime fails to tax companies in the digital economy, the regime for taxing goods is equally inefficient. The rate on this CITA is 30 kobo of every naira of a company's total profit less all expenses for the period which a company reasonably incurred in generating the taxable profit.¹⁶ Under the Act,¹⁷ certain corporate bodies are exempt from taxation, which include statutory or registered friendly society, cooperative society, ecclesiastical or charitable company, companies promoting sporting activities or any company being a trade union.

Personal Income Tax (Amendment) Act 2011

Personal Income Tax is guided by the Personal Income Tax Act.¹⁸ The tax is imposed on income of Individuals, Corporate sole or body of individuals, Communities, Families and Trustees or Executors of any estate.¹⁹ The administering body is the FIRS except for itinerant workers who are being taxed by their state of resident.²⁰ The tax is also administered by FIRS on non-residents, members of the Armed Forces, Police, Officers of Nigerian Foreign Service. An individual is entitled to a Consolidated Relief Allowance of N200,000 or 1% of gross income whichever is higher plus 20% of gross income. The rate of the tax ranges from 7% to 24%, depending on the amount of chargeable income- Individuals are subject to minimum tax of 1% of gross income where the income is less than N300, 000 per annum.²¹ Personal income tax is chargeable on income from profits, salary, remuneration or wage.²² The due date for filing returns of the tax is 31st March of every year. The due date for

¹² I O Aduloju, Taxation of the Nigerian Digital Economy in View of the 2019 and 2020 Finance Act (2022) Social Sciences Research Network, p. 33 available at SSRN: <https://ssrn.com/abstract=4002469> or <http://dx.doi.org/10.2139/ssrn.4002469> <accessed on 24 March, 2023>

¹³ Section 13(2) of CITA

¹⁴ Section 13(2 a – d) of CITA

¹⁵ I O Aduloju, Op cit. p. 34

¹⁶ CITA, s. 40

¹⁷ CITA, s. 23

¹⁸ It was formerly Personal Income Tax Act Cap P8 LFN 2004 (as amended) before it was amended to personal Income Tax (Amendment) Act, 2011.

¹⁹ PITA, s.1

²⁰ PITA, s.2

²¹ See Sixth Schedule to PITA.

²² PITA, s.3

remittance of PAYE is 10th day of every succeeding month. An employer shall file return of emoluments and tax deducted from the employees in the preceding year not later than 31st January of every year. A person who fails to file a return shall be liable on conviction to a fine of N5,000 and a further sum of N100 for every day during which the failure continues or imprisonment of six (6) months or both. Any employer who fails to file a return, shall be liable on conviction to a penalty of N500,000 for body corporate and N50,000 in the case of individual.²³

Value Added Tax Act, Cap V1, LFN 2004

The Federal Inland Revenue Service is vested with the power of administration and management of VAT in Nigeria. This power is enshrined in the VAT (Amended) Act 2007²⁴. However, the law has been challenged in the case of *Rivers State v FIRS & Anor*,²⁵ wherein the Federal High Court, Port-Harcourt Division, declared the VATA is unconstitutional and transferred the power to collect VAT in Rivers State from the FIRS to the Rivers State Government. The FIRS appealed for the judgment of the Federal High Court and filed for stay of execution of which the Court of appeal ruled that the parties maintain status quo ante bellum which ruling Rivers State Government has appealed to the Supreme Court. By the ruling of the Court of Appeal on the motion for stay of execution, the FIRS is expected to continue collecting VAT until the appeal is determined. Further, VATA is the current structure in relation to taxation of goods, and it imposes a tax on all goods and services, whether produced or rendered in Nigeria or not.²⁶ However, exemptions were granted for medical and pharmaceutical products, basic food items, fertilizers, agricultural and veterinary medicine, books and educational materials, farming, and transportation equipment.²⁷ The application of the VAT Act to services provided by a non-resident company outside Nigeria to a person resident in Nigeria has been a topic of discussion for many years. The Federal Inland Revenue Service ('FIRS') previously held the position that such services should be subject to VAT in Nigeria because the recipient is a Nigerian resident, whereas tax-payers held that such services were not subject to VAT in Nigeria. This was the crux of the dispute in *Vodacom Business Nigeria Limited v FIRS*.²⁸ In the case, Court of Appeal applied the 'destination principle' and determined that a non-resident company's supply of satellite network bandwidth capacities to a Nigerian company was subject to VAT in Nigeria because the bandwidth was supplied and enjoyed in Nigeria. Following this decision, the Finance Act 2019 has now incorporated the 'destination principle' for goods and services into the VAT Act and fixed a major defect in the VAT regime. Thus, it is now expected, in line with the Court's judgement and the provisions of the Finance Act 2019 that recipients of such services deduct the tax from his/her payment to the NRC.

Stamp Duties Act Cap S8 LFN 2004 (As Amended)

The Stamp Duties Act, CAP S8 LFN 2004 (as amended) regulates stamp duties in Nigeria. Stamp duties applies to several instruments specified in the schedule to the Act.²⁹ Under the Act, instruments includes every written document.³⁰ Stamp duties collected from individuals are paid to the respective State Government internally generated revenue service, while corporate bodies pay theirs to the Federal Government.³¹

Petroleum Profit Tax Act, Cap P 13 LFN 2004 (As Amended)

The Petroleum Tax Act is the legal framework which imposes tax on income of companies in the petroleum upstream operations. It is noteworthy that Companies liable to the Petroleum Profit Tax are not liable to Companies Income Tax (CIT) on the same income.

3. The Nigerian Approach towards Taxation of Social Media Companies

Digital technologies are transforming every aspect of our lives and Nigeria is also set to take advantage of them in order to become a leading player in the global digital economy. In a bid to fast-track the development of the digital economy in Nigeria, there have been several decisions in respect to this. A notable step towards achieving this goal is the decision to rename the Ministry of Communications to be Federal Ministry of

²³ PITA, ss. 94-95

²⁴ Value Added Tax Act Cap V1, LFN 2004 (as amended) (hereinafter referred to as "VAT Act")

²⁵ Suit No. FHC/PH/CS/149/2020

²⁶ VAT Act, s. 2

²⁷ VAT Act, s. 3

²⁸ Appeal No. CA/LA/L/556/2018

²⁹ Stamp Duties Act, CAP S8 LFN 2004 (as amended), s. 3

³⁰ *Ibid*, s. 2

³¹ *Ibid*, s. 4

Communication and Digital Economy.³² This comes with the view to expand the Ministry schedule to include the Digital Economy mandate and the development of the digital economy which is going to facilitate the diversification of the economy. In light of this, the National Digital Economy Policy and Strategy has been developed in line with the Presidential directives issued to the Honourable Minister of Communication and Digital Economy on the assumption of office.³³ In furtherance of efforts towards a harmonized digital tax policy in Nigeria, there are policies geared towards registration of taxable persons. All taxable persons shall be registered and issued with Taxpayer Identification Number (TIN) applicable nationwide. Tax authorities should leverage on the database of the Central Bank of Nigeria on Bank Verification Number (BVN), National Identity Management Commission (NIMC), Nigeria Communication Commission (NCC), Corporate Affairs Commission (CAC), Federal Road Safety Commission (FRSC), Nigeria Immigration Service (NIS) and other relevant sources.³⁴ In July 2021, about 130 countries backed by US President Joe Biden came together to agree on a global minimum tax as part of a worldwide effort to keep multinational firms from dodging taxes by shifting their profits to countries with low rates.³⁵ The agreement which was announced publicly on 1st July 2021 is an attempt to find a lasting solution to the challenges posed by the increasingly digital economy whereby profits is being accrued to companies from places where they have no taxable headquarters. The agreement calls for a minimum tax of 15%. Technically, the agreement would not come into effect until 2023 as there are necessary work out to be done³⁶ The agreement, announced by the Paris-based Organization for Economic Cooperation and Development, also provides for taxing part of the profits of the largest global companies in countries where they do business online but may have no physical presence.³⁷

As the Nigerian government also joined the train, the Finance Bill was passed by the National Assembly on 31st December 2021. The Act introduces some of the amendments suggested in the previous finance Act. Generally, the Finance was promulgated to recognize digital assets and provide for digital taxation with the amendments of several existing legislations on taxations in Nigeria. The Finance Act first signed into law on 13th January, 2020 and has since been amended up to 2023. The Finance Act 2021 (As amended) is an Act enacted by the National Assembly to amend relevant tax, excise and duty statutes in accordance with macroeconomic policy reforms of the Federal Government.

By the preliminary provision of the Act,³⁸ the Capital Gain Tax Act, Cap C1, Companies Income Tax Act, Cap C21, Customs and Excise Tariffs Etc. (Consolidated) Act, Cap C49, Personal Income Tax Act, Cap P8, Petroleum Profit Tax Act, Cap P13, Stamp Duties Act, S8, Value Added Tax Act, Cap V1 Laws of the Federation, 2004; Corrupt Practices and Other Related Offences Act, No. 5, 2000, Tertiary Education Trust Fund (Establishment) Act, No. 16 2011, Public Procurement Act, No. 14, 2007 and Ministry of Finance (Incorporated) Act, Cap M15 (in the respective Parts referred to as ‘the Principal Act’) are amended as set out in the respective parts.

Part of the tax policy contained in this Finance Act is the introduction of the digital tax.³⁹ The act empowers the Federal Inland Revenue Service (FIRS) to assess and charge the turnover of the digital companies transmitting or operating in the country. In light of this, **S. 8** of the Act provides for the taxation of e-commerce business by non-resident companies on a fair and reasonable turnover.⁴⁰ By virtue Section 4⁴¹ provision the Section 13 of the Companies Income Tax Act is amended by substituting for subsection (2), a new subsection ‘(2) which provides, *inter alia*, that:

(2) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from or taxable in Nigeria where-

³²Muhammadu Buhari, ‘President Mandate’, *National Digital Economy Policy and Strategy 2020-2030* <https://ngea.gov.ng/Content/resources/DTTWG%20Training_National%20Digital%20Economy%20Policy%20and%20Strategy.pdf> accessed on 28 February 2022

³³ *Ibid*

³⁴ National Economy Policy and Strategy (2020-2030) available at <https://www.ncc.gov.ng/docman-main/industry-statistics/policies-reports/883-national-digital-economy-policy-and-strategy/file> <accessed on 4th March, 2022>

³⁵ D Mchugh, ‘130 Countries Back Bid to Enforce Global Taxes on Amazon, Google, Facebook’ *The Times of Israel* (2nd July 2021)

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ Finance Act 2021 as amended in 2023, S. 1

³⁹S Nwite, ‘Nigeria’s Digital Tax and the Twitter Ban’ *TEKEDIA* January 7, 2022 <<https://www.tekedia.com/nigeiras-digital-tax-and-the-twitter-ban/>> accessed on 26 February 2022

⁴⁰ Finance Act, 2021, Section 8

⁴¹ *Ibid*, Section 4.

- (a) that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base.
- (b) it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised 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, to the extent that the profit is attributable to the business or trade or activities carried on through that person;
- (c) it transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity;
- (d) that trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract;
- (e) the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has significant economic presence in Nigeria;

Provided that the withholding tax applicable to the income under this paragraph shall be the final tax on the income of a non-resident recipient who does not otherwise fall within the scope of subsection 2 (a)-(d) ; or (f) the trade, business or activities 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, so much of the profit adjusted by the Board to reflect arm's length transaction.

The Act further provides for 6% tax on the turnover of digital services through mobile apps, trading platforms, online ads, electronic data storage, high-frequency trading, etc.⁴² Also, the Act went further to modify the administration of the Value Added Tax Act relating to Business-to-Consumer (B2C) e-commerce transactions. This is to prevent tax leakage on transactions between digital suppliers and individual customers who would ordinarily be unable to deduct and remit tax as required under the VAT Act.⁴³ S.30 of the Finance Act was designed to amend **S. 10** of the VAT Act as well as S. 31 and 14 in relation to the VAT obligations of the non-resident digital companies in Nigeria. For instance, Amazon is expected to add VAT to whatever transaction in Nigeria is to be remitted to the FIRS. The Minister of Finance, Budget, and National Planning Zainab Ahmed further expounds that digital non-resident companies need not be registered in Nigeria but need to register as an agent of the FIRS and collect the VAT and remit to the FIRS. She stated thus:

The Minister of Finance expounded that 'the core rationale for this is to modernise the taxation of ICT and digital economy in line with the National Development Plan 2021-2025, to enhance administrative modalities for the taxation of non-resident taxpayers and also reduce non-compliance by non-resident payers to reduce compliance burden.'⁴⁴

For years, entities within the Nigerian digital economy enjoyed the cloak of Permanent Establishment (PE) or fixed base, as required under Section 13 (2) of the Companies Income Tax Act (CITA).⁴⁵ The fixed base provision created a loophole for companies with virtual presence to bypass tax payment. This was contrary to the Nigeria National Tax Policy (NTP),⁴⁶ which was not only desirous of promoting the canon of equality, but also ensuring that the Nigerian Tax Administrative framework meets up with global standards. On the 13th of January, 2020, President Muhammadu Buhari signed the Finance Bill 2019⁴⁷ into law giving a huge boost to the

⁴² *Ibid*, Section 10

⁴³ W Obayomi, 'Nigeria: Snapshots of Finance Act', (2021) *Mondaq* <<https://www.mondaq.com/nigeria/sales-taxes-vat-gst/1151540/snapshots-of-finance-act-2021>> accessed on 26 February 2022

⁴⁴ Samuel Nwite, 'Nigeria's Digital Tax and the Twitter Ban' *TEKEDIA* January 7, 2022 <<https://www.tekedia.com/nigeiras-digital-tax-and-the-twitter-ban/> accessed on 26 February 2022>

⁴⁵ CITA, Cap C21, Laws of the Federation of Nigeria, 2004 (as amended).

⁴⁶ T Oyedele, "Nigeria Has a New National Tax Policy" (PwC, 2 February 2017) available at https://pwc-nigeria.typepad.com/tax_matters_nigeria/2017/02/nigeria-has-a-new-national-tax-policy.html# (accessed 10 March 2022).

⁴⁷ Anderson Tax LP, "President Buhari Signs the Finance Bill, 2019 into Law" (Anderson Tax LP, 14 January 2020) available at <https://andersentax.ng/president-buhari-signs-the-finance-bill-2019->

traditional framework for companies in Nigeria, to effectively cover the taxation of digital activities. Section 4 (b) of the Act amends section 13(2) of CITA by inserting a new paragraph (c and e) which introduce the Significant Economic Presence (SEP) concept under Nigerian law. Section 13(2)(c) of CITA now 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 it transmits, emits, or receives signals, sounds, messages, images, or data of any kind by radio, electromagnetic systems, or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high-frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has a significant economic presence in Nigeria and profit can be attributable to such activity; While Section 13(2)(e) of CITA now provides that: if the trade or business comprises the furnishing or technical, management, consultancy, or professional services outside of Nigeria to a person resident in Nigeria to the extent that the Company has a significant economic presence in Nigeria Having previously established that companies in the digital economy are mostly non-Nigerian companies since they are most likely to not be incorporated in Nigeria, and do not necessarily need to be physically present in Nigeria to carry out business, such entities are not to be are taxed in Nigeria provided that they do not have a significant economic presence (SEP). Thus, SEP is now the new 'nexus rule' and decides whether an enterprise providing digital services or a foreign enterprise providing technical services is liable to income tax on enterprises in Nigeria.⁴⁸

It is worthy of note that the Act failed to state clearly what constitutes Significant Economic Presence introduced under Section 4 (b) of the Finance Act. Rather, Section 4 (4) of the Finance Act provides that the Minister may by order determine what constitutes the significant economic presence of a company other than a Nigerian company. Thus, bearing in mind the need for clarification of the concept and its localization, the Minister of Finance, Budget, and National Planning issued the Companies Income Tax (Significant Economic Presence) Order, 2020 on the 29th of May 2020.⁴⁹ The order states that a non-resident company with a turnover of over N25, 000,000.00 or equivalent in other currencies qualifies under the Act as having SEP. The order retroactively commenced on 3rd February 2020. The Ministerial Order provides that a non-resident company shall have SEP in Nigeria if it satisfies any of these following conditions:⁵⁰

1. The company derives a yearly turnover of N25 million or its equivalent from the following:
 - a. streaming or downloading of books, music, movies, games, or applications;
 - b. transmission of data collected about Nigerian users generated from the users' activities;
 - c. provision of goods and services through a digital platform to Nigeria;
 - d. provision of intermediation services through a digital platform, website, or online application linking suppliers and customers in Nigeria, or
2. uses a Nigerian domain name (.ng) or registers a website in Nigeria; or
3. has a purposeful and sustained interaction with persons in Nigeria by customizing its digital page or platform to target persons in Nigeria. This includes pricing its goods and services in Nigerian currency or providing options for payment in Nigerian currency.

The order provides that the activities carried out by connected persons in any accounting year shall be aggregated in order to determine whether the N25 million annual gross turnover threshold was met. The order further provides that for a foreign company providing technical, professional, management, and consultancy services, there is SEP in Nigeria, when it earns any income or receives any payment from a person resident in Nigeria, or a fixed base or agent of a foreign company in Nigeria. Given the above amendments to Nigerian tax legislation, entities within the Nigerian digital economy are now liable to pay tax in Nigeria. Therefore, all NRCs that meet the above thresholds are required to register with the FIRS for income tax purposes and to file their returns with the tax authorities at the appropriate time.⁵¹ It is important to note that under Section 16 of the Finance Act 2020, the company will be required to provide a declaration of the corresponding year of assessment which includes the complete audited account and financial statements of the operation of the Nigerian company, attested by an independent qualified or certified accountant in Nigeria, where any company is liable to a tax pursuant to Section 13(2) of the CITA, including companies with significant economic presence. It must also include tax computation schedules based on profits attributable to its Nigerian operations, as well as a true and correct written statement containing the amounts of profits from each and every source in

intolaw/#:~:text=On%2013%20January%202020%2C%20President,now%20Finance%20Act)%20into%20law (accessed 10 March 2022).

⁴⁸ Finance Act 2021 as amended, s. 4

⁴⁹ Anderson Tax LP, Op Cit.

⁵⁰ IO Aduloju, Op cit. p. 35

⁵¹ CITA s. 55

Nigeria, as well as duly completed Company's income Tax Self-assessment forms.⁵² Despite some efforts, Nigeria is still lagging behind in digital revenue realization through taxation of social media companies.

4. Conclusion and Recommendations

Social media provides novel areas of taxation which developing economies of the world can leverage on to increase their revenue generation. The novel areas of taxation under digital era are without challenges which most developing countries like Nigeria are failing to grapple with despite some efforts. It is worthy of note that despite efforts made so far, Nigeria's taxation of social media companies has not been effective and the implication is that there is decrease in revenue to the government of Nigeria. In Nigeria there have been efforts towards a harmonized digital tax policy which entails registration of taxable persons. All taxable persons shall be registered and issued with Taxpayer Identification Number (TIN) applicable nationwide which is applicable to all companies registered in Nigeria. Despite this effort, there are still loopholes with respect to unregistered social media companies in Nigeria carrying on virtual business or providing platform for virtual transactions in Nigeria. A voyage to some other countries of the world shows that some international best tax practices which Nigeria should adopt which include taxation of multinational firms and tech giants such as Google and Facebook which are now subject to tax based on the profit that accrued to them within the jurisdiction shifting the totality of their profit abroad especially where the annual income is up to \$1b.⁵³ This policy is a paradigm shift from the indeterminate significance economic presence and ensures that social media companies scooping billions of profits do not escape the wide spread tax net.

In view of the issues, challenges, complexities and implications of taxing social media companies in Nigeria and taking cognizance of the fact that there is compelling overriding incentive to struggle with these complexities than dwelling on them, this paper recommends as follows:

- a. There is urgent need for tax authorities to intensify efforts towards taxable persons' data collection, storage and usage. Tax authorities should leverage on the database of the Central Bank of Nigeria on Bank Verification Number (BVN), National Identity Management Commission (NIMC), Nigeria Communication Commission (NCC), Corporate Affairs Commission (CAC), Federal Road Safety Commission (FRSC), Nigeria Immigration Service (NIS) and other relevant sources⁵⁴ in identifying taxable persons. The current uncoordinated registration by different agencies should be harmonised.
- b. It is also necessary for government of Nigeria to adapt the tax systems, equip and advance their digital knowledge and skill to effectively interact with the taxpayers in the digital environment, especially social media companies which are most non-resident Nigerian corporations. There is need to employ tech gurus as well as train tax officers in digital technology to enable them to build, manage and control a central tax data server that will work in synergy with states tax servers to be created for each state.
- c. There is dire need for collation, identification and control of social media companies in Nigeria in order to increase revenue by taxing them.
- d. The government should also as a matter of urgency grant license to social media companies having economic presence in Nigeria whether registered with Corporate Affairs Commission or not specifically for the purposes of taxation.
- e. Review and amendment of various tax laws and policies are necessary in order to bring them in line with international best practices in taxing social media companies in Nigeria.
- f. It may be apt to criminalize tax evasions as well as establish robust tax enforcement agency for the country.

⁵² I O Aduloju, Op cit. p. 37

⁵³ Reuters, Google and Facebook Now Paying Full Tax, Australia Says 21 March 2017
<<https://www.google.com/amp/s/www.bbc.com/news/world-australia-39337325.amp>> accessed on 7 March 2022

⁵⁴ National Economy Policy and Strategy (2020-2030) available at <https://www.ncc.gov.ng/docman-main/industry-statistics/policies-reports/883-national-digital-economy-policy-and-strategy/file> <accessed on 4th March, 2022>