

Broadening Nigeria's Tax Base: Focusing on The Taxation of Digital Transactions

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In taxing digital transactions, the Nigerian government purposes to widen its tax base and strengthen its domestic revenue mobilisation capacity. Arguably, this additional tax could provide the country with adequate sources of revenue with which to finance development and go beyond relying primarily on its oil tax revenue. Although the digital financial services industry in Nigeria is among the continent's largest and fastest growing sector, its tax contributions are minimal. This article explores the Nigerian approach to taxing digital transactions, investigating why the industry yields low taxes and to recommend proposals that offer the Nigerian government practical steps to leverage on the potential of imposing this type of tax.

1. INTRODUCTION

The objective of this article is to contribute to existing literature on the relationship between tax and development. It seeks to discuss the concept of the digital tax and its relationship with development in emerging economies, particularly in Nigeria. Focusing on taxing digital transactions is increasingly becoming a necessity for the survival and expansion of Nigeria's economy. This has become more pronounced now that the Nigerian government faces revenue challenges as a result of a drastic fall in oil revenue - which is the major source of revenue to the nation. This is further fueled by the Covid – 19 pandemic that affects every aspect of human life. One of the rapidly evolving areas of taxation is taxing digital transactions. It has been a key focus of tax debates since 2018 (Latif, 2019, 2020). The scenario was a consequence of fast technological advancement witnessed in the 21st century coupled with the serious quest for nations to exploit numerous opportunities provided by the digital economy in improving their tax revenue (ICTD, 2020).

Nowadays, information technology companies have overtaken petrochemical companies in terms of profitability and market capitalization in major world markets. This is demonstrated by the importance and quantum of digital transactions that are taking place across the world. Besides, the internet has become a key element to successful service delivery and enhanced customer relations. Accordingly, information technology-

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based businesses are rapidly growing in tandem with the increase of internet penetration. It shapes a new type of economy, meaning that not only businesses but also countries should adopt/adapt to the new system.

The global digital economy is skyrocketing. In 2016, it was estimated at US\$11.5 trillion which equalled 15.5% of the global GDP (World Bank, 2019). In Nigeria, between 2015 and 2020, its internet-connected population grew from 23.7% to 46.6% (Statista, 2020). This shows the potential use of the internet by Nigerians to transact or generate income from digital transactions. Many developing nations including Nigeria, have been missing out on billions of dollars in tax revenue accruable from digital transactions. It was reported that as many as 20 developing countries could be missing out on as much as US\$2.8 billion in tax revenue from Facebook, Alphabet Inc. (parent company of Google) and Microsoft due to unfair global tax rules (ActionAid, 2020). What remains is for the revenue authorities to tax digital transactions based on the extant provisions of the tax laws and policies to improve revenue generation.

To curtail the menace as discussed above, radical reforms, to develop a mechanism that will capture and tax digital transactions, are being considered by over 130 countries, under the current leadership of the Organization of Economic Corporation and Development (OECD) and G20 (ICTD, 2020). In Nigeria, the first major milestone was the enactment of the Finance Act in 2019, which provides the legal basis for taxing digital transactions which hitherto was non-existent, Similarly, other initiatives will help track digital transactions for tax purposes such as, the partnership between Nigeria Interbank Settlement System (NIBSS) and System Specs Nigeria Limited with the Federal Inland Revenue Services (FIRS). However, these provisions and efforts by the Nigerian state have fallen short of the normal expectation of identifying and taxing the incomes, profits and other gains emanating from the digital transactions within the Nigerian tax jurisdictions. Essentially, digital transactions are on the rise globally and are set to replace traditional physical transactions. Hence, a digital taxation system is needed for enhancing government revenue, thereby accelerating development. This article examines the taxation of digital transactions in Nigeria. In the next sections, an overview of the digital economy is presented followed by a discussion on the taxation of digital transactions. Towards the conclusion, the article considers some of the critical success factors in imposing thus tax and then offers some recommendations to sustainably harness the tax.

2. OVERVIEW OF THE DIGITAL ECONOMY: TRANSACTIONS AND TAXATION

The digital economy refers to an online economy supported by digital technologies. It is also sometimes called the Internet Economy, the New Economy, or Web Economy. The concept was first introduced in Don Tapscott's 1995 best-seller "The Digital Economy: Promise and Peril in the Age of Networked Intelligence." It was among the first

books to show how the Internet would change the way we do business. Since its coinage, the term digital economy has been changing in line with the dynamic nature of information technology development and the way and manner it is deployed by individuals and businesses (Barefoot et al., 2018). For instance, during the 1990s, the focus was mainly on the adoption of the internet and its economic impact on businesses and the economy. This era was popularly known as the "Internet economy" (Brynjolfsson and Kahin, 2002; Tapscott, 1996). As the use of the Internet gained momentum by the 2000s, the interest was shifted to the facilitating conditions that allow the Internet economy to thrive.

It continues evolving to include analyses of different policies and digital technologies, on the one hand, and the growth of Information and Communication Technology (ICT) and digitally oriented firms as key actors, on the other (OECD, 2012 and 2014). The digital economy involves the conduct of economic transaction through ICT facilities as a driver of efficiency in production and structural optimization. (G20 DETF, 2016). The spine of the digital economy is the ever-growing interconnectedness of people, corporations, and machines that results from the Internet, mobile technology and the internet of things (IoT) and the volume of data involved in the process. The evolution of the digital economy is fueled by the rapid growth in emerging technologies.

The 2019 United Nation digital economy report outlined seven recent trends in the digital economy. The ever-growing and transformation of Blockchain; Artificial intelligence (AI) and Data analytics; three-dimensional printing (3D Printing); Internet of Things (IoT); Fifth Generation mobile broadband (5G); Automation & Robotics and Cloud computing, are the emerging technologies that powered the evolution of the digital economy. The benefits of the digital economy for emerging economies are potentially large. That is because it can have significant competitiveness and productivity-boosting opportunities related to access to digital products and services that help optimise processes and production, provide employment, reduce transaction costs, transform supply chains and increase revenue that can be used to in accelerate development. The digital economy offers business the opportunities to transact online.

Digital transactions are those business transactions that are conducted through electronic media. This includes traditional businesses that offer online service option to their customers and government services which are offered to citizens via this electronic medium. Digital transactions are new opportunities that are offered by the digital economy to existing and startup businesses. Many entrepreneurs seized these opportunities to create new businesses and new business models that could not have existed before the digital economy or did not at the size and scale they do today. This ranges from content-on-demand services, like Netflix, Spotify, Arewa on demand; home rental platforms, like Airbnb, Flatfy, Expedia Group and Tripadvisor, to Ride-sharing platforms like Uber, Lyft,

Taxify, Opay, Carma, BlaBlaCar, Relay Rides, Sidecar, Ridejoy, Getaround, Opay; as well as e-commerce companies like Aliexpress, Jumia, Konga.

Previously, the digitalization of the economy was not well captured by the existing international tax system, this resulted in some concerns. The existing international tax rules portray that corporate income tax is to be paid by multinationals, predominantly at the production site instead of the consumers, or the site of digital sector users in particular. To tackle this, the Organization for Economic Cooperation and Development (OECD, 2017) have been trying to agree to adapt the international tax system with over 130 countries. The contemporary proposition is that some of the income taxes of multinational businesses are to be paid at their consumers' location.

Nonetheless, with all these continuing multilateral deliberations, many countries like France and Italy have decided to be using unilateral measures in the taxing of their digital economy (Latif, 2020). Announcement, proposition and even implementation of digital service tax (DST) have made by almost half of the European OECD countries. This DST is a tax on some specific gross revenue streams of large digital companies.

Several countries have taken unilateral measures in an attempt to tax digital transactions. Israel for example, introduced SEP applicable to foreign enterprises that are resident in countries that have no double tax agreement with them. India adopted a 6% equalization levy, applicable to non-resident companies that are into advertising services. United Kingdom has proposed the adoption of a digital services tax (DST) which should take effect on April 1, 2020. Likewise, DST has also been introduced by the governments of Austria, France and Italy. In 2014 and 2015, South Africa and Kenya, respectively, adopted the destination principle for the collection of value-added tax (VAT) on services and intangibles supplied by a foreign company to a consumer in each country. Nigeria introduced the concept of "Digital Permanent Establishment" of NRC.

3. LEGAL FRAMEWORK OF TAXING DIGITAL TRANSACTIONS IN NIGERIA

3.1. Digital Permanent Establishment Rules (Finance Act 2020)

In Nigeria, prior to the Finance Act of 2020, the Company Income Tax Act (CITA) limits the taxation of income of corporate bodies that are not fully incorporated in Nigeria (i.e non-resident companies NRCs) to a situation where such NRC has a permanent base in Nigeria. That is to say, NRC must have a permanent base in Nigeria before its income been subjected to tax in the country, or concludes contracts through a dependent agent in Nigeria; or engage in turn-key projects in Nigeria; or carries on trade or business with persons who have controlling interests in the NRC, and the conditions made or imposed

between the NRC and such persons in their commercial or financial relations are deemed to be artificial or fictitious by the FIRS.

The Finance Act, 2020 now operates as the principal enactment in the Nigerian tax regime as it has, through needed amendments and substitutions of obsolete tax provisions, brought together all other tax-related Legislations along the course of justifiable taxing of digital transactions in Nigeria. The Finance Act, which comes into operation on the 13th day of January 2020, amended the Companies Income Tax Act, Cap. C21, Value Added Tax Act, Cap. VI and Stamp Duties Act, Cap. S8 Laws of the Federation of Nigeria, 2004, among other tax Laws.

Under the Act, an NRC's profits would now be subject to CIT in Nigeria where 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 a significant economic presence in Nigeria and profit can be attributable to such activity"

Section 4 of the Finance Act explained how to create a "Digital Permanent Establishment" as, first, the non-resident Company is deemed to be operating in Nigeria's digital economy by carrying out transaction in any one or more of the acts contemplated by the section. Second, the activity manifesting the non-resident Company's operation in the Nigerian digital economy must be of a kind to which profit can be attributable. Third, the list of the activities covers the provision of all technical, professional or management services in Nigeria through any of the listed activities. Fourth, the conduct of the activity shall constitute a significant economic presence in Nigeria.

3.2. Companies Income Tax Act (CITA)

Prior to the enactment of the Finance Act 2019, CITA regulates taxation of the profits of companies. According to section 13 of the CITA, profits of Non-Resident Company (NRC) from any trade or business shall be deemed to be derived from Nigeria, provided it has a fixed base to the level that profit is attributable to it, or where it has no fixed base but habitually operates through an authorized agent in Nigeria, or where the business involves a single contract, or where the company engages in transactions which are artificial or fictitious in the opinion of the FIRS. In the abovementioned cases, an NRC will be deemed to have derived profit from Nigeria and taxed accordingly. However, the above provisions of CITA did not make provision for the taxation of digital transactions, therefore, it was difficult to establish the taxable presence of foreign companies carrying on business in Nigeria through digital means; although such

companies were deriving profit from Nigeria. In an attempt to reduce the prevalence of non-taxation of NRCs, and to bring them within the tax net, the National Assembly passed the Finance Act 2019 which was subsequently assented to by the President, to modify certain provisions of the existing tax laws.

3.3. Value-Added Tax (VAT)

The enactment of the Finance Act in 2019 has made some amendments to widen the scope of Vatable goods and services to generate more revenue for the governments. The Act has captured digital transactions to tax thereby making them part of taxable transactions. VAT is a compulsory consumption tax applicable to all categories of goods and services in the country other than those exempted by the Value Added Tax Act. In the case of goods, it can be said to be supplied to Nigeria if the beneficial owner of the right of such goods is taxable under Nigerian tax laws or where either the right or the goods in exercisable, registered or situated in Nigeria. The Act covers a wide range of goods including any intangible asset, product or property to which the taxable person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another except for interest inland.

This implies that any transaction with NRC receiving or supplying intangible goods or services through digital facilities to any taxable person is liable to VAT in Nigeria regardless of whether the goods or services are received or rendered in Nigeria. It must be noted however that, NRC that carry on businesses in Nigeria or with the taxable person in Nigeria are required by law to register with the relevant tax authority for VAT as tax agent using the address of a person to whom it transacts with. In addition, Section 37(3) of the Finance Act, required NRC to disclose in its invoice, the name of the person it transacts with, the VAT and remit the tax in the same currency to FIRS. Where the NRC fail to comply with the provision of the Act, the recipient of the goods or service is obliged to self-account for it and remit the tax payable to the relevant authority. The failure of a taxable person to comply with the provisions attract penalties.

For this Act, a taxable person covers all individual taxpayers and corporate bodies. It must be noted that individuals are required by law to register for VAT purpose in Nigeria which makes it difficult to initial Vat return. This makes it impossible to enforce remittance by individuals where the recipient of the goods or services from the NRC is individual or the self-accounting responsibility upon the failure of an NRC to include VAT in its invoice for the supply of goods and services if the taxable person involved is an individual. On account of the provisions of the Finance Act and the SEP Order made conforming to the Finance Act, NRCs operating in the Nigerian digital economy are now captured within the income tax bracket thereby reducing the level of tax leakages due to the nonexistence of applicable legislation.

4. CHALLENGES AND POTENTIALS OF TAXING DIGITAL TRANSACTIONS

It was reported that the digital economy has accounted for more than 11.5 trillion U.S Dollars in 2016, which is about 15.5% of the global GDP. It is estimated that the digital economy will reach 25% of the global GDP in less than a decade, outpacing the growth of the overall economy (World Bank, 2020). However, countries like Nigeria, with a population of more than 200 million, are currently capturing only a fraction of this growth and need to strategically invest in the foundational elements of their digital economy to be at the same speed. Given the rising statistics on the digital economy and its huge potential, it has become necessary for Nigeria to explore a more creative approach to ensure effective taxation of the digital economy. The potential for Nigeria to raise substantially more domestic financial resources – and to finance its development from digital economy – is huge. Solid results are within reach, even within a short time distance, if the appropriate innovations and support are put in place. The digital economy raises two kinds of challenges to the tax base of developing countries base erosion due to BEPS policies; and base cyberization due to the advances of digital technologies (Jinyan Li, 2014).

The enactment of the Finance Act 2019 and the issuance of the Order is a commendable step in the right direction for Nigeria, with the prospect to increase revenue which can, in turn, be used for infrastructural development. It is however imperative to note that the implementation of the laws may face certain challenges. Given that digital transactions are mainly concluded with foreign companies, it may be difficult to track such transactions or the parties involved, thus making it challenging to ensure compliance with Nigerian law.

While global business structures in the digital economy involve traditional identification challenges, these challenges are magnified in the digital economy. For example, the market jurisdiction may not require registration or other identification when overseas businesses sell remotely to customers in the jurisdiction or may have issues with implementing registration requirements, as it is often difficult for tax authorities to know that activities are taking place, to identify remote sellers and to ensure compliance with domestic rules. Difficulties in identifying remote sellers may also make the ultimate collection of tax difficult. Even if the identity and role of the parties involved can be determined, it may be impossible to ascertain the extent of sales or other activities without information from the offshore seller, as there may be no sales or other accounting records held in the local jurisdiction or otherwise accessible by the local revenue authority.

It may be possible to obtain this information from third parties such as the customers or payment intermediaries, but this may be dependent on privacy or financial

regulation laws. Other challenges include the dearth of digital infrastructures such as fibre optic connectivity, Mobile Network infrastructure and digital literacy and of course cost of accessing digital services. This could be addressed by deploying technology to secure a proper database of the various online suppliers of goods and services, as well as putting in place regulations that empower tax authorities to work with banks and other institutions in identifying payments relating to digital transactions. Such measures should, however, take into consideration financial regulations and international privacy laws. It may also be difficult to determine the extent or magnitude of transactions and the portion of the NRC's global income that was derived from Nigeria, without requisite information from the relevant entity. The Order is also silent on the indices and accounting mechanisms for profit attribution, it will thus be necessary for the FIRS to issue Guidelines providing clarification on the indices for profit attribution.

4.1. Critical success factors

Critical to appropriate capturing and taxing digital transactions is for a country to have Digital Economy that is prosperous and inclusive. WorldBank (2019), outlined 5 critical synergetic elements that are necessary for building a digital economy. These include digital infrastructure, digital platform, digital financial services, digital entrepreneurship and digital skills.

4.1.1. Digital Infrastructure

One of the critical elements that will give a solid foundation to the digital economy is digital infrastructure. This involves investment in all the equipment, hardware and software that connects and links people, businesses government with local and global digital service, thereby boosting revenue and accelerating socio-economic development. This is because the higher the number of people that are connected to the internet, the more possibility for generating revenue. A survey by World Bank (2019), reveals that, in developing countries, a 10% increase in broadband will lead to a 1.4% increase in GDP. It is also found that Nigeria is the biggest digital market in sub-Saharan Africa with a strong digital infrastructure and active digital entrepreneurial environment. However, this infrastructure is concentrated in urban areas as there is a wide digital infrastructure gap between the Country's urban and rural areas.

4.1.2. Digital Platforms

These are the avenue where digital products and services are accessed. Both government and private organization use these platforms to offer services to users. For example, these platforms enable producers to transfer value to and interact with the

consumer. Similarly, government use these platforms to offer social services to citizens. Therefore, more investment in this platform will increase the number of users and revenue to the government as well (UNCTD, 2019). This is critical to the success of the digital economy which Nigeria is one of the largest players. In 2016, the Nigerian online payment market was valued at N167 billion. This has attracted huge foreign investment as a result. It is found that, with more investment in digital infrastructure, platforms and right skills, the subsector will witness tremendous growth, more jobs and tax revenues.

4.1.3. Digital Financial Services

Digital financial services (DFS) are services provided by banks or non-bank financial institutions to enable individuals and businesses to conduct transactions electronically or online. Pazarbasioglu, C., Mora, A. G., Uttamchandani, M., Natarajan, H., Feyen, E., & Saal, M. (2020) defines DFS as financial services whose delivery are dependent on digital technologies. They open a pathway to a range of digital financial services in addition to digital payments, including credit, savings, and insurance. For the growth and survival digital economy, access to affordable and appropriate digital financial services is critical. This will increase the participation of individuals and businesses. Currently, digital financial services are rising rapidly in Nigeria, which makes it difficult for the government to supervise and checkmate their activities. Furthermore, despite the increase in access to digital financial services, the usage of digital financial services is very low compare to other countries within the region.

4.1.4. Digital Entrepreneurship

According to European Commission (2015), digital entrepreneurship is generally defined as creating new businesses and transforming existing ones in which information technology is the medium delivery. Digital entrepreneurship and innovation create an ecosystem to bring the digital economy to life with new, growth-oriented ventures and the transformation of existing businesses, which contribute to net employment growth and help enhance the competitiveness and productivity of the economy. Despite its entrepreneurial potential, Nigeria remains an insignificant player in the global digital economy in terms of exports of digital goods and services. Therefore, to harness the potentialities of the digital economy, the government need to support indigenous digital startups and other growing companies in the industry.

4.1.5. Digital Skills

Economies require a digitally savvy workforce to build robust digital economies and competitive markets. Digital skills constitute technology skills, together with business

skills for building or running a start-up or enterprise. Greater digital literacy further enhances the adoption and use of digital products and services among the larger population. Despite the various efforts of government and non-governmental organization to bridge the digital literacy gap, the Nigerian education system is characterized by low basic education enrollment, the gender gap in education and labour and weak digital skills in the curriculum. Consequently, employability in the digital economy is very low.

5. CONCLUSION AND RECOMMENDATIONS

Given the continuous changes in business structures and the vast population of digitally connected businesses and individuals, the potential for revenue from taxation of digital services is huge. On account of the provisions of the Finance Act, 2020 and the SEP Order made conforming to the Finance Act, NRCs operating in the Nigerian digital economy will now be captured within the income tax bracket thereby reducing the level of tax leakages due to the nonexistence of applicable legislation. Nonetheless, the extant laws do not properly cover transactions with or between individuals which led to some leakages in taxing digital transactions. Moreover, most digital transactions are conducted with non-resident companies, which makes efficient tracking of such transactions difficult because of the absence of a sufficient database to capture these transactions. Despite its entrepreneurial potentials, Nigeria remains an insignificant player in the global digital economy in terms of exports of digital goods and services. Additionally, digital financial services are growing rapidly in Nigeria, which makes it difficult for the government to supervise and checkmate their activities. Given the foregoing conclusions, three recommendations are made.

First, to harness potentials for revenue generation through taxing digital transactions, necessary measures that will ensure the seamless implementation of relevant laws needs to be put in place. It is equally important to amend laws for taxing digital transactions to capture more transactions (more especially related to individuals) that are not covered by the existing laws.

Second, it is also necessary to have a dependable database and information gathering system that will help the government in capturing and taxing digital businesses conducted in the country. This can be achieved through adequate provision of digital infrastructure, digital platforms, digital financial services, digital skills and digital entrepreneurship which are critical to the success of taxing digital transactions.

Finally, regulatory bodies should ensure the adequate supervisory capacity of digital financial services in tandem with the growth in the industry.

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