TAXING THE DIGITAL SECTOR OF THE NIGERIAN ECONOMY: CHALLENGES AND PROSPECTS

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Abstract

The digital economy is fast becoming the most innovative and widest reaching economy in the world. The growth and development of digital trade facilitate globalization and ensure international development through the establishment of borderless economic relationship inter alia. However, Nigeria may find that it is unable to tax the huge income that the digital economy would generate unless it amends its laws to adapt to changing technological advancement. Consequently, the Finance Act of 2019, 2020 and 2021 were enacted with their innovations regarding digital economy. The provisions of the CITA (Companies Income Tax Act) prior to amendment in 2019 were not sufficient to bring digital companies within the tax net, and the directives by the FIRS (Federal Inland Revenue Service) were surrounded with a lot of ambiguities and many controversies. Notwithstanding, the recent amendments introduced by Finance Act of 2019, 2020 and 2021, the application and enforcement of these provisions remain the persistent challenges to effective taxation and administration of digital economy in Nigeria. This paper examines the nature of digital economy in Nigeria. It also, considers the challenges in taxing the digital economy and the prospects in taxing digital economy. The paper concludes by making recommendations on measures to be adopted by the Government and Revenue authority for effective taxation of the digital sector.

Keywords: Digital, Economy, Taxation, Permanent Establishment, Challenges, Prospects.

1. Introduction

Historically goods were physical: the production and the channel of these goods can be easily traced, making it easier to be taxed.[1] Improvements in Information and Communication technology are helpful to human endeavors. The Nigerian tax regime covers a wide range of taxes payable by taxable persons.[2] The different tiers of the government have their legislative competence to make laws relating to taxation as enshrined in the Constitution of Federal Republic of Nigeria 1999 (CFRN) (as amended).[3]

Before the enactment of the new Finance Act 2019 which captured the collection of VAT on intangible goods, thus referred to as, taxation of the digital economy, the Nigeria tax laws, did not envisage the changing face of taxable items and services as they relate to digital economy and transactions for many years. Virtually all human endeavors are now digitalized. For instance, here

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[1] R Jones, 'Taxation of Electronic Commerce: A Developing Problem' [2002] (16) (1) *International Review of Law Computers &Technology Journal* 3.

[2] O O Adebayo, 'Taxation of Electronic Commerce: Prospects and Challenges for Nigeria' (August 2010) <http://ssrn.com/abstract=1697998> or <http://dx.doi.org/10.2139/ssrn.1697998> accessed 21 March 2022.

[3] The Constitution of Federal Republic of Nigeria 1999.

is digital-government, digital-banking, digital-waste and others. It can, therefore, be said that taxation of digital economy is an evolving phenomenon, with state and international bodies yet to discover a concrete basis for the taxation of this sector of the economy purely on a principle – approach basis to bring it within the tax net.

The invention of the internet poses a challenge on various tax jurisdictions for an effective tax administration of digital commerce globally. The exponential growth of digital economy poses a daunting challenge to taxing authorities' traditional approaches to both direct and indirect taxation.[4] Tax administrations worldwide are faced with the arduous task of protecting their revenue base, without hampering either the development of new technologies or the involvement of the business community in the growing e-market place. Nigeria is no exception. The issue is whether or not, in view of glaring fact that internet eliminates borders between parties to internet transactions, taxes of physically- oriented commercial transactions apply to internet-based commercial transactions.

The taxation of digital economy is a vexatious problem because it is difficult to establish the residence of buyers and sellers or where the transaction took place. The international nature of the internet brings into conflict various issues that used to be treated routinely under domestic law with a level of certainty. The taxable basis of the transaction and the jurisdiction to which it must be submitted will differ according to which domestic law one subject it to.

The European Union (EU) digital economy directive provides that for electronically delivered services, the supply will be treated as being made in EU if the recipient belongs there. Supplies to EU members state recipient will, therefore, be subjected to the state`s VAT regardless of where the supplier belongs.[5]On purely domestic level, UK tax policy seeks to promote the OECD frame work conditions, particularly the principle of neutrality to ensure that UK residents conducting business via the internet in the UK are taxed in the same as persons running a traditional, physical business.

Digital commerce is still relatively unexplored in Nigeria; however, the drive to facilitate its development is evidenced by the Nigerian Economic Policy of 1999 - 2003.[6] Presently, the enactment of the new *Finance Act* is laudable as it brings some new innovation into the regulation of taxation. It is therefore necessary to x-ray the provisions of the new *Finance Act*, to know the adequacy of its contents and to proffer solutions where necessary in other to secure compliance on taxation of digital economy.

[4] W Hellerstein, 'Electronic Commerce and the Challenge for Tax Administration' (Revenue Implications of E-Commerce for Development; the World Trade Organization Committee on Trade and Development Seminar, Geneva, Switzerland, 22 April 2002).

[5] New European E-Commerce VAT Rules<htt://www.fdepa.com/VAT.rules.htm>accessed on 03 March 2022.

[6]'Nigeria Considers the Implications of E-commerce on its Tax System' [2001] (3) *Published in Tax Planning International E-Commerce Journal* 126 or at<.http://www.abrahamandco.com/publications/E-commerce%20Tax.pdf >accessed 18 March 2022.

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For instance, as it relates to the Companies Income Tax,[7] the inclusion of non-resident companies with "significant economic presence" that profits can be attributable to into the tax net is of significant importance in the Government's quest to increase tax revenue. The expansion of taxable activities of these nonresident companies would no doubt serve the end of the objective of increased tax revenue.

The implementation of this provision will no doubt raise conflicts which may be unintended. The first one is that the failure to define what constitutes "significant economic presence" in the *Finance Act* leaves room for ambiguity and as it gives so much so much discretion to the supervising Minister to determining what constitutes significant economic presence and such discretion is open to abuse. Secondly, is this provision really a thinly disguised 'digital tax' targeted at the global tech companies operating in Nigeria and deriving significant revenue in Nigeria without necessarily having a fixed base in Nigeria? Given the opposition of the present American Companies to the digital taxation of the big tech companies which are majorly American Companies, does the Nigerian Government possess the capacity to engage in the political storm that may arise from the imposition of digital tax or would the brunt of this digital tax be borne by small players in the online world hoisting their bases in tax havens? Has the Nigerian Government made enough provisions for double taxation these non-resident companies may face as a result of the provision of the law?

Thus, the purpose of this paper is to evaluate the main issues involved, analyze the legal challenges posed on the taxation of digital economy, and prospects; the new Finance Act, its strengths, weaknesses and impact in taxation of the digital sector of the economy.

2.1. Nature of Digital Economy

The term "digital commerce" means shopping on the part of the Internet called the World Wide Web (the Web). However, digital commerce (or e-commerce) also includes many other activities, such as businesses trading with other businesses and internal processes that companies use to support buying, selling, hiring, planning, and other activities.[8]

Digital commerce today exists in a number of forms and contexts. The commonest forms are Business-to-consumer (B2C), where businesses sell goods or services to individual customers, and Business-to-business (B2B) in which case businesses sell goods or services to other businesses. Other forms include Consumer-to-consumer (C2C) which is simply exchange of goods and services between consumers who are usually participants in an online marketplace, Business-to-government (B2G) digital commerce where businesses sell goods or services to governments and government agencies. Finally, there are Business processes that support buying and selling activities. Businesses and other organizations maintain and use information to identify and evaluate

[7]'Overview of E-Commerce in Nigeria from the Economist intelligence Unit' <http://www.ebusinessforum.com/index.asp?layout=rich-stroy &doc id=8403 && title=overview+of+e-commerce+in+Nigeria & channel id=31> accessed on 18 March 2022.

[8]<http://www.juntak.com/bus107/MATERIALS/Instructional_Manual__PDF/ch01.pdf> accessed 18 March 2022.

customers, suppliers, and employees. Increasingly, businesses share this information in carefully managed ways with their customers, suppliers, employees, and business partners.[9]

In essence, contemporary digital commerce is conducted in a variety of different ways, ranging from ordering "digital" content for immediate online consumption, to ordering conventional goods and services, which facilitates to other types of electronic commerce. Though a large percentage of digital commerce is conducted electronically (e.g. online banking and bill payments), many involve the transportation of real, physical items in some way.[10]

2.2 Scope of Digital Economy

The concept of digital commerce is not limited to trades conducted on the internet, but also includes all purchases, orders and payments made with telephone, fax and other electronic communication devices. However, Digital commerce includes many business and commercial activities that can be performed using closed and open networks, which can be categorized under the following[11]:

1. Purchase of goods and services in electronic environment,
2. Implementation of operations such as production planning and production chain,
3. Presentation, advertisement and information,
4. Order creation,
5. Making a contract,
6. To carry out bank transactions and fund transfer electronically,
7. The company's financial and personnel system management,
8. Inventory distribution and supply chain management,
9. Electronic money transactions,
10. Electronic stock market,
11. Direct marketing to the consumer using electronic means,
12. Taxation in electronic environment,
13 Protection and transfer of rights: intellectual, industrial and commercial property.

3. Challenges in the Taxation of the digital Sector of the Economy

Taxation of digital commerce poses a global challenge in securing compliance among the tax payers which Nigeria is not an exception. Despite the entire tax regime in place as seen in other jurisdictions, there are still tax deficits from this sector of the economy. Many countries are still struggling to capture taxation of digital commerce as it involves Non-Resident Companies and individuals, to bring them within the ambit of her tax net. Some countries apply income source rule as against resident rule. The permanent establishment rule has been a herculean task to be determined. It is not always easy to determine the tax regime that has jurisdiction to services given through the internet providence address (IP) in terms of software and other online downloads. This becomes a great concern, hence a need for a universally acceptable approach to be adopted by all countries. The essence of this is to avert the possibility of over flow of legal frame work from different tax systems in the world which may lead to double taxation, as every tax

[9] Ibid.
[10]< http://en.google.org/wiki/Electronic_commerce> accessed on 24 March 2022.
[11] Ibid.

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administration claims tax jurisdiction on the same tax issue. For instance, a global attempt to prevent large, multinational companies from shifting their profits to lower-tax jurisdictions is setting off a fight between United States and Europe, as policy makers on both sides of the Atlantic spar over efforts to impose new taxes on foreign firms.

3.1 Identification of Taxing Jurisdiction

The place of execution of contract and place where a title to the goods or services passes are important in determining where the income accrues or can be deemed to accrue and, therefore taxed.[12]In e-commerce, with offer and acceptance on the networks, the place where the contract is executed will not be known under laws and rules applicable to traditional commerce. This poses a great challenge where the transaction involves e-commerce, digitalized goods. However, is a legal issue? The remedy lies in clarifying the position under the domestic laws. The law is, therefore, in place for determination of place of execution of contract or place of passing of title in digitized goods or services provided through networks.[13]

2.2 Permanent Establishment

The contemporary international tax system developed to allocate taxing jurisdiction over buyers and sellers of tangible, physical goods. Accordingly, the current system is based on the actual geographic location of these buyers and buyers. The Organisation for economic Co-operation and Development (OECD) has incorporated and consistently reaffirmed these physical presence principles in its Model Tax Convention on Income and on Capital (OECD), the predominant world-wide model for bi-and multi-lateral tax treaties.[14] The challenges of applying the permanent establishment principle to e-commerce have gained special attention in the debate on e-commerce taxation and have been discussed extensively. E-commerce enterprises can sell their products or services worldwide with very limited physical presence in any particular consumer's country. They can operate without agents because they can directly, easily and cheaply contact customers worldwide.

Another issue is the question of what constitutes a permanent establishment with regards to electronic commerce. A website does not have a physical presence, and therefore, cannot be designated as a permanent establishment. Even if the business maintains its own server within a taxing jurisdiction, the storage, display or delivery of goods on the internet has been compared to similar mail-order activities, which are not considered a permanent establishment.

Furthermore, a corporation conducting business on the internet can separate its ordering, delivery and payment functions by delegating them to ancillary sites throughout the world. This fragmentation results in the corporation circumventing the definition of permanent establishment under most tax treaties and thereby being exempted from taxation on income.[15] Therefore, the

[12] D Adeyemi, *Taxation of Electronic Commerce in Nigeria* (Ilorin: University of Ilorin Press 2014).
[13] Ibid.
[14] H Benjamin, 'Permanent Establishment in the Digital Age: Improving and Stimulating Debate through an Access to Markets Proxy Approach' [2011] (6) (1) *Northwestern Journal of Technology and Intellectual Property* 34 0r <http://www.law.northwestern.edu/journals/njtip/v6/nI/6/> accessed 28 June 2022.
[15] P Kathryn, 'Taxation of Electronic Commerce: An Assessment of the Opportunities and Challenges Facing Tax Payers and Tax Authorities' [2002] (1) (2) *Journal of E-Business 3*.

premise of the permanent establishment rule-that is, to conduct business in a country, you need a presence there-does not apply to ecommerce. The concept of 'fixed place' is meaningless in e-commerce business because it can be located anywhere and can conduct business everywhere.

3.3 Residency

E-commerce taxation challenges are not limited to source-based taxation. Residence –based taxation also faces challenges. The main challenge is to determine the residency of e-commerce corporations. [16]These corporations usually lack physical facilities. Their websites are usually their main storefronts and their employees are highly mobile. The physical presence of the corporation in a 'central place of management and control' is limited and the mobility of the corporation is very high. Therefore, it is not easy to determine the 'central place of management control' is limited and the mobility of the corporation is very high, therefore, it is not easy to determine the 'central place of management and control' of such a corporation in order to determine its residency under traditional definitions. In addition, it is easy to abuse the traditional definitions and locate an e-commerce corporation in a low tax jurisdiction to reduce or even escape taxation all together.[17]

E-commerce challenges residence taxation by making it easier for corporations to decide where they want to be located for tax purposes. The residence of corporations is generally determined by the place of incorporation test or 'the place of management and control' test. The 'place of incorporation' test is subject to taxpayer manipulation because E-commerce can be conducted anywhere, as it is inexpensive to establish a company in a tax haven. Therefore, the test of place of incorporation basically allows taxpayers to decide whether or not they want to pay tax on the basis of residence or source of income.[18]

The legal authority to levy tax, also called jurisdiction, resides with national government and is based on the concepts of residence and source. Residence-based taxation implies that a country can tax its residents on worldwide income, whether the source of that income is domestic or foreign. Source-based taxation infers that countries levy taxes on any income earned within its borders, without regard to whether a resident or a non-resident of the country earns it. Thus, the same economic activity may be taxed twice, once by the country where the income is earned and again by the country in which the tax payer is deemed a resident.[19]

3.4 Online Delivery and E-Cash

The real problems for enforcement in an e-commerce situation arise in transactions involving online delivery and payment. [20] Even though, the volume of online commerce is only a fraction of the total e-commerce, it is important enough to be specifically included in the definition of e-

[16] Ibid 52.
[17] Ibid.
[18] L Jinyan and S Jonathan,' Electronic Commerce and International Taxation' <http://osgoode.yorku.ca/osgmedia.nsf/0/04CFE186956B833852571CE0058C4B7/$FILE/ISUMA-Vol-3-no-1-Spr-02.pdf>accessed on 13 June, 2022.
[1919] P Kathryn, 'Taxation of Electronic Commerce: An Assessment of the Opportunities and Challenges Facing Taxpayers and Tax Authorities' [2002] 1 (2) Journal of E-Business 3 or at <http://www.egov.ufsc.br/portal/sites/default/files/annexos/20479-20480-1-PB.pdf>accessed 30 August, 2022.
[20] Ibid.

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commerce to include electronically marketed products like travel and ticketing services, software, entertainment, banking, insurance and brokerage services, legal services, real estate services, health care, education and government services. In these transactions, where the supplier is from a foreign tax jurisdiction, it becomes difficult to charge or collect direct as well as indirect taxes. Withholding of tax through a large number of small consumers for direct tax purposes or realizing indirect taxes from them is administratively impossible. Normal audit in the form of documents like purchase vouchers, transportation documents and intermediaries, such a wholesalers or retailers would be missing in such transactions. The development of e-cash[21] also referred to as 'net cash' or digital cash' is an even more serious challenge for the tax administrations.

Another consideration is that the anonymity revocation does not motivate crimes more serious than those it protects against. E-cash is intended to emulate the perceived anonymity of regular cash transactions for protection of use privacy and prevention of the compilation of personal data. But it can also facilitate frauds and criminal acts, such as money laundering, anonymous blackmailing and illegal purchases. The attempt is, therefore, to develop 'anonymity controlled e-cash' with either 'owner tracing'[22] or 'coin tracing'[23] models. Although, the development of e-cash is not likely being significant in near future, there is a need for monitoring the developments in areas of e-cash on a regular basis in co-operation with other enforcement agencies.[24]

2.5 Cyber attack

According to a research by Newman[25] and Eghosa, cyber tax crimes or electronic tax frauds are any criminal infraction in the process of registration for tax purposes, tax assessment, and filing of returns and payment of taxes through the use of electronic computer systems or the internet. In Nigeria, cyber tax crimes will include making false statements and income declaration while e-filing tax returns or making e-payments. It will also include any act capable of obstructing the effective operations of the electronic tax systems and networks. [26]With the digitalisation of government activities and the preference for deploying technology in tax assessment, filing of tax returns and payment of taxes globally, taxation has become exposed to the activities of cyber criminals who try to compromise websites and manipulate data in the sites of tax authorities, by exploiting the loopholes in the cyber security system. Also, there is an increase in fraudulent tax refund claims[27] and the filing of false tax returns and data leaks, both from private and public sources, owing to the activities of hackers and rogue employees. It is estimated that, globally, over 700 million personal data records were compromised in 2015. The US Internal Revenue Service Consumer

[21] In its simplest form, e-cash system consists of three parties (a bank, a user and a shop) and four main procedures (account establishment, withdrawal, payment, deposit).

[22] This model is useful for tracing legal and regulatory requirements of large money exchanges.

[23] This second model's main purpose is to track fraud and other criminal activities in a manner similar to tracking based on serial numbers on the notes.

[24] 'Enforcement Issues in Electronic Commerce' <http://www.rashminsanghvi.com/chapter 3.pdf> accessed June 2022.

[25]N Richards and O Eghosa, 'Electronic Taxation in Nigeria: Challenges and Prospects' (2019) www.Research Gate.com>accessed June 2022.

[26] Ibid.

[27] KPMG, "How Vulnerable is Governments to Cybercrime?" (2 May 2016) available at: <https://home.kpmg.com/xx/en/home/insights/2016/05/how-vulnerable-are-governments-to-cyber-crime.html>accessed 31 August, 2022.

Alert (IR-2016-28 (18 February 2016)) confirms that tax scams are increasing and that tax-related phishing emails and malware have surged 400% in one tax season. The emails are designed to deceive taxpayers into thinking they are official communications from tax authorities or bodies linked to them.[28] In 2015 alone, over 2,748 phishing emails and malware were reported to the IRS[29].Generally, in the US, cyber tax crimes will include tax refund fraud, corporate account takeover (the hacking of the website of a corporate body), personal identity theft and sensitive data theft.[30] Similarly, the Indian Income Tax Department recently warned that "cybercriminals are now targeting people filing income tax returns online by sending malicious bulk emails to trick them to provide their net banking credentials. These emails are camouflaged in a manner that one feels that it has come from an authentic e-mail id".[31]In India, electronic tax offences include sending a request to change passwords of a taxpayer without authority, quoting a false address or email while creating a tax ID online, hacking passwords with false digital signatures, quoting a bogus online bank entry in the self-assessment paid tax column, failure to remit tax deposits deducted from employees but making deductions from employees with fake online entries, or filing false income tax returns to claim false deductions for tax saving: these will occur where false claims are made to enable a taxpayer enjoy relief, such as allowable deductions.[32] From the contemporaneous illustrations above, it is certain that the introduction of electronic taxation in Nigeria has given rise to a new set of tax offences which are cyber tax crimes. This new set of tax crimes, which are the attendant consequences of the introduction of computer systems and technology in tax administration, are beyond the contemplation of the existing tax laws. Thus, there is a need to look elsewhere for legislative instruments that can complement the tax laws in the protection and sustaining of the electronic tax system. This is where cybercrime laws become relevant in the administration of electronic taxation in Nigeria.

4. Prospects in Taxation of Digital Sector of the Economy

Having discussed the challenges and ways in which taxation of digital sector of the economy to be more efficient, it becomes pertinent to throw a poser as to what would be the potential prospects realizable from an effective taxation of digital sector of the economy. A good tax regime can help in securing e-commerce within the tax net, hence an increase in the revenue as a result of an adequate tax system. The prospects among others are;

[28]IRS, 'Consumers Warned of New Surge in IRS E-Mail Schemes during 2016 Tax Season' (18 February, 2016, 2022)<https://www.irs.gov/newsroom/consumers-warned-of-new-surge-in-irs-e-mail-schemes-during-2016-tax-season-tax-industry-also-targeted >accessed 31 August, 2022.

[29]IRS, "Consumers Warned of New Surge in IRS E-Mail Schemes during 2016 Tax Season" (18 February, 2016)<https://www.irs.gov/newsroom/consumers-warned-of-new-surge-in-irs-e-mail-schemes-during-2016-tax-season-tax-industry-also-targeted >accessed 31 August, 2022.

[30]Center for Agricultural Law and Taxation, 'Don't let Disaster Destroy Your Office: Disaster Proof from Cybercrime' (2017)<https://www.calt.iastate.edu/system/files/premium_video_files/Cybercrime%20Webinar%20on%20May%204%202017.pdf>accessed 31 August, 2022.

[31]"Filing Income Tax Returns not exempt from Fraud avoid Unknown Sources asking your Banking Details" (3 August2017) Business https://www.businesstoday.in/current/economy-politics/filing-income-returns-not-exempt-from-fraud/story/257675.html>accessed 31 August, 2022.

[32]Indian Information Technology Act 2000 ss.65, 66, 71–72.

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4.1 Redefining Tax Treaties

Tax treaties are bilateral and cover income and capital taxes, though there are some examples of multilateral tax treaties and treaties concerning other taxes. [33]The purpose of bilateral tax treaties is typically expressed in their preamble to be 'the avoidance of double taxation and the prevention of fiscal evasion'[34]. Consequently, the internet will cause tricky problems of interpretation for the negotiators of tax treaties. Can existing concepts such as that of permanent establishment and royalties be adapted to cover activities on the internet or should tax authorities be undertaking a more fundamental review?[35]

A central element in determining taxation rights in tax treaties is that of business presence employed to establish whether or not a permanent establishment exists. Whether or not the operation of an establishment in a country rises to the volume that makes it a permanent establishment is primarily a question of fact. Does the existence of a website or a server in a jurisdiction create a permanent establishment and therefore give that jurisdiction the right to tax the income attributed to that enterprise? [36]Treaty negotiators will have to examine these questions and more generally to see how treaty concepts can be applied to new ways of doing business.[37]

4.2 Tax Policy Reform

It is now axiomatic that a paradigm shift is occurring in the way business is conducted in the present economy. Tax policy is a major factor in the growth and development of any economy. However, with the recent global emergence of e-commerce, serious global challenges to tax policy and tax administration are inevitable. If new taxes are imposed and regulations increased, the benefits and potential of e-commerce may be curtailed. The area of taxing virtual economy is ambiguous and unsettled.[38]

The Present tax regime did not envisage the sudden and exponential developments in informational Communications Technology (ICT). The tax authorities, whose administrative powers are largely restricted to their local jurisdictions, are now faced with the challenges of the borderless world. While it is, of course, expedient for the Nigeria government to decide on the necessary public expenditure and to decide how to raise required revenue through the appropriate tax policies, it is necessary as well to keep in close contact with the global best tax practices that will address tax implications of electronic commerce which the present tax regime did not envisaged.

Nigerian government should raise awareness and promote Nigerian Information Technology capabilities and competencies in the international market. However, taxing e-commerce, would

[33] D Adeyemi, Taxation of Electronic Commerce in Nigeria (Ilorin: University of Ilorin Press 2014) p.14.

[34] 'Electronic Commerce: The Challenges to Tax Authorities and Taxpayers' <http://cryptome.info/turku18.htm>accessed 13 August 2022.

[35]Ibid.

[36] Ibid 61.

[37] O Jeffrey, 'Electronic Commerce Answering the Emerging Taxation Challenges' <http://lobby.la.psu.edu/080-internet-Sales-Tax/Agency-Activities/ACEC/Challenges.doc> accessed August 2022.

[38]K Jac etal , 'The lnternational Handbook of Electronic Commerce, (USA: The Glenlake Publishing Company Ltd 2000)235.

require a separate legal and regulatory frame work; otherwise, amendment of the existing tax laws to accommodate taxation of virtual business would be of urgent necessity.

In Nigeria, cyber tax crimes were not contemplated by the existing tax laws, and thus reliance must be placed on the provisions of the Cybercrimes Act to protect electronic tax systems and networks.[39]Experience from other countries indicates that the enforcement of cybercrime laws and the strengthening of relevant institutions are effective strategies to fight electronic tax fraud. Thus, it is important for tax authorities to collaborate with the office of the National Security Adviser to form the necessary synergy to protect electronic tax systems in Nigeria.[40]This will help tax authorities to benefit from the efforts of relevant cybercrime protection and prevention agencies in combating cybercrime, considering that these agencies are saddled with the responsibility to evolve strategies to prevent and combat cybercrime in Nigeria.[41]

4.3 Information Communication Technology and Strategy Management

It is suggested that Nigeria government should improve in the Information Communication. Technology (ICT) since the hall mark of e-commerce is all about a digitalized service. Since e-commerce is carried on through the internet by the use of Computer, the government should ensure a reliable steady power supply system. A total or partly blackout in the entire system can cause a great deficit in taxing this sector of the economy. Federal Inland Revenue Service Act along Side with Cyber Crime Act should be amended to bring it into conformity with the global trend. Also the Finance Act 2019 needs be amended to include items like, what constitutes a significance economic presence? Issues like Permanent Establishment, Source and Resident rules with respect to e-commerce to be considered. These calls for a public scrutiny, and consideration while creating any regulation that will affect e-commerce, government must consider the potential impact that e-commerce will have on the economy.

It follows from the forgoing that this research has shown the difficulties posed in taxation of the digital sector of the economy which Nigeria is not an exception, taxation of digital commerce poses a global challenge in securing compliance among the taxpayers. Despite the entire tax regime in place as seen in other jurisdictions, there are still tax deficits from this sector of the economy. Many Countries are still struggling to capture taxation of digital commerce as it involves Non-Resident Companies and individuals, to bring them within the ambit of her tax net. There is a need for a universally acceptable approach to be adopted by all countries as a guide. The essence of this is to avert the possibility of over flow of legal frame work from different tax systems in the world which may lead to double taxation, as every tax administration claims tax jurisdiction on the same tax issue.

5. Conclusion

The Finance Act 2019 captured the taxation of the digital economy, introducing the principle of significant economic presence (SEP) to expand the scope of Nigerian tax on foreign companies

[39]N Richards and O Eghosa, 'Electronic taxation in Nigeria: Challenges and Prospects' (2019)< www.Researchgate.com>accessed on June 2022.
[40]Ibid.
[41] Cybercrimes Act 2015, ss 41–42.

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deriving income from their activities in the country which were not captured in the tax net. However, the Act failed to define what constitutes 'Significant Economic Presence' (SEP), leaving the Minister with discretion to determine so. There is an ambiguity on what constitutes significant economic presence between nonresident countries. The confusion can be traced to the criticised case of *Vodacom v FIRS*, [42]where the supreme court held that the transaction qualified as a VATable supply under the VAT Act because Vodacom had received the bandwidth capacities with equipment located in Nigeria without having regards to the distinction between the location of supply of a service and the location of the receipt of the such service. It was in this regard that the Minister made a fresh 'order' as part of 'finance regulation' to expand the scope of Nigerian tax on foreign companies deriving income from their activities in the country which were not captured in the tax net. [43]

6. Recommendations

Having looked at the challenges posed in taxing the digital sector of the economy, there is no clear cut solution towards securing an effective taxation of the digital commerce; however there is a myriad of solutions which might be country specific and are attuned to the prevailing local circumstances:

Administrative Reforms

In order to secure an effective taxation of the digital commerce, there is a need to take cognizance of the fact that tax administration matters a lot, for the best tax policy ineffectively administered amounts to nothing; this has been captured in the phrase "tax administration is tax policy".

Reorganising Tax Administration

The most straightforward strategy for improving taxation of the digital commerce is to reorganize tax administrators, so as to strengthen monitoring, services and incentives for administrators. Privatization of tax administration with respect to digital commerce through auctioning of tax collection right with individual firms bidding for collection rights, and retaining any additional revenue collected. By this means, expertise can be promoted, thereby reducing the tax evasion encountered in the digital commerce globally, bringing them within the tax net.

Tax Policy Reforms

It is now axiomatic that a paradigm shift is occurring in the way business is conducted in the present economy. Tax policy is a major factor in the growth and development of any economy. However, with the recent global emergence of e-commerce, serious global challenges to tax policy and tax administration are inevitable. If new taxes are imposed and regulations increased, the benefits and potential of e-commerce may be curtailed. The area of taxing virtual economy is ambiguous and unsettled.

The Present tax regime did not envisage the sudden and exponential developments in informational Communications Technology (ICT). The tax authorities, whose administrative

[42] *Vodacom v FIRS* [2019] 345 (AC).
[43] Finance Regulation (Significant Economic Presence) 2020 Order 1 V 107.

powers are largely restricted to their local jurisdictions, are now faced with the challenges of the borderless world. While it is, of course, expedient for the Nigeria government to decide on the necessary public expenditure and to decide how to raise required revenue through the appropriate tax policies, it is necessary as well to keep in close contact with the global best tax practices that will address tax implications of electronic commerce which the present tax regime did not envisaged.

Nigerian government should raise awareness and promote Nigerian Information Technology capabilities and competencies in the international market. However, taxing e-commerce, would require a separate legal and regulatory frame work; otherwise, amendment of the existing tax laws to accommodate taxation of virtual business would be of urgent necessity.

In Nigeria, cyber tax crimes were not contemplated by the existing tax laws, and thus reliance must be placed on the provisions of the Cybercrimes Act to protect electronic tax systems and networks. Experience from other countries indicates that the enforcement of cybercrime laws and the strengthening of relevant institutions are effective strategies to fight electronic tax fraud. Thus, it is important for tax authorities to collaborate with the office of the National Security Adviser to form the necessary synergy to protect electronic tax systems in Nigeria. This will help tax authorities to benefit from the efforts of relevant cybercrime protection and prevention agencies in combating cybercrime, considering that these agencies are saddled with the responsibility to evolve strategies to prevent and combat cybercrime in Nigeria. Until there is new international agreements on e-commerce taxation have been defined, an increasing number of goods and services will be traded on-line, largely tax-free. This will have an effect on government revenue, especially if the goods and services have been subject to import duties in the past.

Double Taxation Treaties

One of the simplest ways to curb tax evasion with reference to digital commerce is by encouraging state parties to enter into bilateral or multilateral tax agreements. This will help to reduce multi legal frame works on taxation of digital commerce of the same subject matter.

Administration Incentives

It is suggested that Nigerian government should improve in the Information Communication. Technology (ICT) since the hall mark of e-commerce is all about a digitalized service. Since e-commerce is carried on through the internet by the use of Computer, the government should ensure a reliable steady power supply system. A total or partly blackout in the entire system can cause a great deficit in taxing this sector of the economy.

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