



TAXATION AND REGULATION OF DIGITAL MARKET IN NIGERIA**

Abstract

Before the advent of “The Internet” which include but not limited to the Social Media, (Facebook, WhatsApp, Twitter, Imo, Wechat, 2go, Youtube, Instagram etc.), goods and services were exchanged in the open market, otherwise known as Market Overt. With the Market Overt, buyers and sellers of goods and services see one on one, talk one on one, then, goods and services are exchanged for monetary considerations or by barter. Taxes are imposed on the goods and services subject to some extant tax laws and regulations. With the introduction of the internet globally, brick and well defined locations are presently no longer barriers to business success hence the problem of taxation and regulation of the digital market in Nigeria. Given this issue, this research examined taxation and regulation of digital market in Nigeria, its benefits, challenges and extant laws regulating the Nigerian digital market. The methodology of research adopted in this study is the doctrinal research method with descriptive, narrative and comparative analysis and relevant materials were sourced from both secondary and primary sources that included statutes, books, journals, case laws and the internet. The researcher found out that tax laws in Nigeria are so much; again, tax laws regulating the taxation of goods and services obtained from the market overt are generally not effective. Also, there are no special or definite legislations governing taxation of goods and services obtained from the Digital Market in Nigeria. Discovered also is the fact that Nigerian legislations on taxation do not meet international standard. There is also a serious lacuna in the enforcement of tax laws in Nigeria. People who go against the tax laws are not commensurately punished. Some recommendations were made by the researcher among which were: Legislation on separate laws to guide taxation and regulation of the Digital Market in Nigeria, increasing the penalty imposed under the Value Added Tax Act as corrective measures to tax evaders and avoiders. The agencies saddled with the enforcement of tax laws should also be at their oars to see that the laws are enforced to the letters and tax offenders appropriately brought to book. This is the only way any legislation can thrive.

Keywords: Taxation, Regulation, Digital, Market, Internet

1. Introduction

Digital market also known as e-commerce came into being about five decades ago. Some consumers prefer digital market to traditional market overt. Digital market covers activities on the internet. The internet provides platform through which goods and services are displayed on the digital market. Buyers see them, make enquiries about them and considerations are paid online or at point of delivery, then the goods and services are delivered to their various points of their needs, with the buyers bearing the costs of deliveries. In some cases ideas, software materials, such as ; audio, videos or a combination of both, etc. are purchased with the data of the buyer; in which case the service provider deducts the cost from the buyer’s data and transfers the monetary equivalent to the seller of the idea, software materials, audio or video. E-commerce has continued to grow with new technologies, innovations and thousands of businesses are entering the digital market each year. As a result of this development, business can now be started and consummated on the computer or mobile phone further to which, tangible and intangible goods and services are exchanged daily on the internet superhighway simply with the “ double-click”.¹ Digital marketing is an emerging and viable sector of the Nigerian Economy. Digital market is sometimes interlaced small and medium scale enterprises (SME) and other multinational

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¹ M Ajakpovi ‘ Domain Names and Trademarks’(2001) Modern Practice Journal of Finance and Investment Law,: Nigerian and International, Vol. 5, No. p.202.



companies. This has led to numerous multinational companies to train local businesses on digital marketing as a means of boosting the financial capabilities of local business organizations.

The growth in digital activities introduced a digital economy that has a solid potential of increasing the revenue of the government when efficient taxation is implemented. As a result of technologically nature of this market, effective regulation is pertinent to avoid basic vices peculiar to this market; cybercrimes, effective data protection. Also, the milking of the country's purse by the digital economy without any corresponding economic return by way of taxation would lead to an economic drain as many trades within the Nigerian economy are repatriated to foreign countries.

2. Conceptual Clarification

2.1. Tax and Taxation

Tax is a compulsory contribution towards a country's expenses raised by the government from people's salaries, property and from the sale of goods and services, or a strain, burden or heavy demand.² Black's Law Dictionary³ defines tax as a monetary charge imposed by the government on persons; entities, transactions or property to yield public revenue. The Oxford English Dictionary also defines tax as a compulsory contribution to the support of the government, levied on persons, property, income and commodities, transactions and so on, now at a fixed rate most proportionate to the amount on which the contribution is levied⁴ Tax has also been defined in an Australian case of *Mathews v Chicory Marketing Board*⁵ as follows:

A tax is a compulsory exaction by a public authority for public purposes. Taxation has often been referred to as raising money for the purpose of government use by means of contributions by individual persons.

An American case *United States v Butler*⁶ equally defined tax in these words, "A tax in the general understanding of the term and as used in the constitution signifies an exaction for the support of the government"

Black's Law Dictionary further describes tax as a ratable portion of the produce and labour of the individual citizen, taken by the nation in the exercise of its sovereign rights, for the support of government, for the administration of the laws and as the means for continuing in operating the various legitimate functions of the state.⁷

Former United States president, Franklin D. Roosevelt defined Taxes as "the dues that we pay for the privileges of membership in an organized society."⁸

Taxation is compulsory levy imposed on a subject or upon his property by the government having authority over him.

² M Robinson, *Chambers 21st Century Dictionary*, (New Delhi India Allied Chambers Ltd. 1999), p 32

³BA Garner, *Blacks Law Dictionary*, (Ninth Edition, West Publishing Company, USA.2009), p1930

⁴ Oxford Advanced Learners' Dictionary, Ninth Edition.

⁵ [1938] 60 CLR(1899) 279

⁶ *Ibid* p.1398.

⁷ *Ibid*

⁸ C Morgan, *What Tax Can Do* (USA, Summerset House,1990) p.10



2.2 Digital

The term digital comes from Digitalization or Digitization which is defined by Wikipedia as;

A process of converting information into a computer-readable format, in which the information is organized into bits. The result is the representation of object, image, sound, document or signal (usually an analogue signal) by generating a series of numbers that describe a discreet set of its points.⁹

From the foregoing definition, digitizing can be referred to as a system for converting information from an analogue source to a digital or computer readable material using a format of numbers consisting of one and zero. Efficient digitization being electro-based evidences the availability or non-availability of that electronic signal.¹⁰

It is also defined as electronic technology that generates, stores, and processes data in terms of two states: positive and non-positive, Positive is expressed or represented by the number 1 and non-positive is represented by the number 0. Thus, data transmitted or stored with digital technology is expressed as a string of 0's and 1's. Each of these state digits is referred to as a bit (and a string of bits that a computer can address individually as a group is a byte).¹¹

2.3 Market

A market simply refers to the open area, or building where people meet to buy and sell goods.¹² The market for a particular item is made up of existing suppliers and potential customers who need the item and have the ability and willingness to pay for it.¹³ Again, it is defined as a place of commercial activity in which goods or services are bought and sold¹⁴

2.3.1 Market Overt

The Market Overt or Overt Market is an open or public market; that is, a place appointed by law or custom for the sale of goods and chattels at stated times in public¹⁵. It is an open, legally regulated public market where buyers, with some exceptions acquire good title to products¹⁶

It is generally a fundamental principle of law that one cannot give what one does not have. This is often expressed in the Latin maxim thus: *nemo dat quod non habet*. This principle is statutorily provided for in section 21 of Sale of Goods Act¹⁷ thus:

Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof and who does not see them under the authority or with the consent of the owner, the buyer acquires no better

⁹ <https://en.m.wikipedia.org/wiki/Digitization>

¹⁰ Ibid, p 407

¹¹ <http://www.whatis.techtarget.com> (Accessed on 5 June 2018)

¹² Opcit, p 909

¹³ <http://www.businessdictionary.com> (Accessed on 5 June 2018)

¹⁴ B A Garner, *Black's Law Dictionary*, (Ninth Edition, West Publishing Company, USA, 2009), p

¹⁵ http://en.m.wikipedia.org/wiki/Market_overt

¹⁶ <http://definitions.uslegal.com/market-overt>

¹⁷ Cap 71, Laws of the Federation of Nigeria, 1893



title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Thus, the provision of section 22 of the Act¹⁸ “where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods provided he buys them in good faith and without notice of any defect or want of title on the part of the seller”

Going by the definitions above, market overt has a defined location; time is of essence in the market overt; that is, the time to start and the time to close. Despite the existence of digital, Market Overt cannot go into extinction because of obvious advantages to wit: Physical interactions of the buyers and sellers, better customer attention, customers can view the products in flesh and consider quality, fitness durability and instant delivery of goods bought. Despite the so many advantages evident in shopping from market overt, disadvantages of market overt abound; they are: Tiring movements from shop to shop. Long lines, irate customers or cashiers, heavy pushcarts, or baskets can be unappealing in physical retail stores. Special occasions like holidays can jam pack customers in retail shops all at once and this can lead to quarrels and in extreme cases fighting.

2.4 Digital Market (e-commerce)

The Inter-Agency Task Force on International Trade Statistics¹⁹ defines digital trade as “*all trade that is ‘digitally ordered’ and/or ‘digitally delivered’.*” Digitally ordered trade is “the international sale or purchase of a good or service, conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders.” Digitally delivered trade is “international transactions that are delivered remotely in an electronic format, using computer networks specifically designed for the purpose.” By definition, digital market, e-commerce or electronic commerce, is the buying and selling of products or services via the Internet. For many persons in the western world, young persons and tech savvy persons, e-commerce is almost indispensable, something that involve daily participation, like online bill payment or purchasing from an e-tailer. Nowadays, the thought of living without e-commerce seems unfathomable, complicated and an inconvenience to many. It was not until only a few decades ago that the idea of ecommerce had even appeared. E-commerce was introduced about 50 years ago and to this day, continues to grow with new technologies, innovations, and thousands of businesses entering the digital markets each year. The convenience, safety, and user experience of e-commerce has improved exponentially since its inception in the 1970's.

Some of the activities conducted on the digital markets include; e-mail, web activities, chat services, discussions and live meeting forums like WhatsApp and zoom, business advertisements, marketing, payments, file transfers, content creations, sale of software, etc.

¹⁸ Ibid, p. 8

¹⁹ OECD, WTO, and IMF (2020).



2.5 Regulation

Regulation has been defined as the act or process of controlling by rule or restriction.²⁰ Regulation unlike a decision applies to more than an identifiable or defined limited number of persons. It is binding in its entirety, unlike a directive which simply sets out the aim to be achieved; it is directly applicable and does not require to be subsequently enacted in another jurisdiction or even the member state of an international organization such as the European Union.²¹

Oxford Dictionary²² defined regulation thus; an official rule made by a government or some other authority. It is a principle or rule (with or without coercive power of law) employed in controlling, directing, or managing an activity, organization or system.²³

3. Legal Framework for Taxation of Digital Market in Nigeria

Various laws regulate tax matters in Nigeria. They can be found in various volumes of the Laws of the Federation of Nigeria which at the moment are in fourteen volumes. The laws are so much that laws regulating taxation are reduced into a compendium by the officials of Federal Inland Revenue Service (FIRS) supervised by the then Acting Executive Chairman of FIRS; Kabir M. Mashi in 2012. These laws enumerated below are relevant;

3.1 Value Added Tax Act (VATA)²⁴

The idea of introducing VAT in Nigeria came from the study group set up by the Federal government in 1991 to review the entire tax system. VAT was proposed and a committee was set up to carry out feasibility studies on its implementation. The actual implementation however did not commence until January, 1994, after the promulgation of Value Added Tax Decree No. 102 of 1993²⁵

3.2 Companies Income Tax Act (CITA)²⁶

Companies Income Tax (CIT) is a tax on the profits of incorporated entities in Nigeria. It also includes the tax on the profit of non- resident companies carrying on business in Nigeria. The tax is paid by limited liability companies inclusive of public limited liability companies. It is therefore commonly referred to as CORPORATE TAX. CIT was created by Companies Income Tax Act of 1979. It has its root from the Income Tax Management Act of 1961. Subsequently over the years, the Act has undergone so many consolidations and amendments giving birth to the Companies Income Tax Act²⁷. In 2012, the president of the Federal Republic of Nigeria made an Order²⁸. The Order was made by the President in the exercise of the powers under section 23(2) of the Act.

²⁰ Ibid, 1398

²¹ W J Stewart, *Collins Dictionary of Law* (London: , Harper Collins Publishers, 2006) p 370-371

²² A S Hornby, *Oxford Advanced Learner's Dictionary* (8th edition, London: Oxford University Press 2015) p 1239-1240

²³ <http://www.businessdictionary.com> (Accessed on 5 June 2018)

²⁴ Value Added Tax Act, Cap V1, LFN 20034

²⁵ <https://www.vanguardngr.com> (Accessed 20 June 2018)

²⁶ Companies income Tax Act, Cap C21, LFN 2004

²⁷ Cap C 21, LFN, 2004

²⁸ The Companies Income Tax (Exemption of Profit) Order, 2012



3.3 Personal Income Tax Act (PITA)²⁹

Personal Income Tax is a direct tax charged on the income of a person, in the context of personal income tax, a person means an individual, sole proprietor (non-juristic person) communities and families and on executors and trustees (of an undivided estate). The rate of Personal Income Tax payable is dependent on the amount of taxable income which the person is liable for. Taxable income refers to the base upon which the income tax system imposes and decides how much a person is to pay as tax in a given calendar year.³⁰ The Taxable income also is any kind of reward or compensation that attracts tax liability. There are two kinds of taxable income; Earned Income which includes salaries; wages, bonuses, entitlements, etc. and unearned income which covers dividends, interests, rents, alimonies, winnings, royalties, etc.³¹

3.4 Nigeria Finance Act (FA) 2023

The Finance Act (FA) 2023 is the fourth in the series of Finance Acts in Nigeria. We have Finance Acts of 2019, 2020, 2021 and 2023. The previous government adopted this fiscal policy model after its re-election in 2019 to support the implementation of annual budget. The FA 2023 was signed by the former president Muhammadu Buhari on the eve of his last day in office (i.e 28th May 2023) but the effective date is stated as 1st May, 2023. The FA 2023 centers on 5 key focus areas: Tax equity reforms, Climate change/green growth, Reforming tax incentives and Revenue generation/tax administration.³²

3.5 The Federal Inland Revenue Service Establishment Act (FIRSA)³³

This law was enacted to provide for the establishment of the Federal Inland Revenue Service charged with powers of assessment, collection of and accounting for revenues accruable to the Government of the Federation inclusive of tax revenues.

3.6 Companies Income Tax (Significant Economic Presence Order) 2020

The Honorable Minister of Finance, Budget and National Planning issued the Companies Income Tax (Significant Economic Presence) Order 2020 (The Order) effective on the 3rd day of February, 2020 defines the concept of economic presence as it relates to taxation of non-resident Companies under the companies Income Tax Act as amended by Finance Act, 2019. The Finance Act, 2019 had amended the CITA in relation to the determination of the profits of non-resident companies derived from Nigeria and introduced the Concept of Significant Economic Presence (SEP) as a basis of determining the profits of non-resident companies providing digital services and technical, management, consultancy or professional services in Nigeria. The Finance Act of 2019 empowered the Finance Minister to determine what constitutes SEP in Nigeria as provided under section 13(2) (c) of CITA. This section provides that transmit, emit or receive signal, sounds, messages, images or data of any kind by any electronic or wireless apparatus to Nigeria in respect of any activity are liable to pay tax in Nigeria to the extent that the company has SEP and profit is attributable.

²⁹ Personal Income Tax Act, Cap P8, LFN 2004

³⁰ <http://lawpdi.com> (Accessed 23 June 2018)

³¹ <http://taxprof.com.ng> (Accessed 23 June 2018)

³² <http://pwc.com> Accessed 17 October 2023)

³³ FIRS ACT 2007



The Order has clarified that “electronic and wireless apparatus” include digital or related activities carried on through satellites and that foreign companies involved in these activities have SEP in Nigeria if they fall under any of these three categories:

If the company derives gross turnover or income of more than N25 million or its equivalent in any currency, from

1. Streaming or downloading services of digital contents;
2. Transmission of data collected about Nigerian users generated from users digital activity;
3. Provision of goods or services other than technical, management , consultancy or professional services; or
4. Provision of intermediaries services through digital platform tjat links suppliers and customers in Nigeria;
5. If the foreign company uses a Nigerian domain name (“ng”) or registers a website address in Nigeria
6. If the foreign company has a purposeful and sustained interaction with persons in Nigeria by customizing its digital page or platform to target persons in Nigeria, including reflecting prices, billing and payments options in Nigerian currency.³⁴

4. Institutional Framework for Taxation and Regulation of Digital Market in Nigeria

4.1. Courts

Section 251(1) of the Constitution³⁵ provides in section 251(1) thus;

Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal high Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.

- (a) Relating to the revenue of the government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party.
- (b) Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation.

By section 272 of the Constitution³⁶. State High Courts have jurisdiction wide jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue. From the combine reading of the two sections of the Constitution mentioned above, only the State High Courts with the Federal High Courts and the Courts of Appeal have civil jurisdictions over tax matters in Nigeria.

³⁴ <http://ng.anderson.com> (Accessed 17 October 2023)

³⁵ Constitution of Federal Republic of Nigeria 1999 (as amended)

³⁶ Op.cit



4.2. Tax Appeal Tribunal.

Tax Appeal Tribunal (TAT) is established in accordance to section 59(1) of the Federal Inland Revenue Service (Establishment) Act 2007. TAT formerly took off pursuant to the Tax Appeal Tribunal Establishment Order 2009 issued by the Minister of Finance Federal Republic of Nigeria as published in the Federal Government Official Gazette No 296, Vol. 96 of the 2nd December, 2009. By this enactment, TAT replaces the former body of Appeal Commission (BAC) and Value Added Tax (VAT) Tribunals.

As part of the ongoing reforms of tax system in Nigeria, TAT is set up by the Federal Government to adjudicate on all tax disputes arising from operations of various Tax Laws as spelt out in the Fifth Schedule to the Federal Inland Revenue (Establishment) Act 2007. Specifically, the Fifth Schedule states that TAT has jurisdiction over disputes arising from the following Tax laws

1. Companies Income Tax Act
2. Petroleum Income Tax Act
3. Value added Tax Act
4. Capital gains Tax Act
5. And any other law as contained in or specified in the First Schedule to this Act or any other laws made or to be made from time to time by the National Assembly³⁷.

4.3. The Federal Inland Revenue Service (FIRS)³⁸

The Federal Inland Revenue Service is the agency established by the Nigerian Federal Legislature pursuant to the FIRS Establishment Act of 2007 and is responsible for accessing, collecting and accounting for tax and other revenue accruing to the Federal Government of Nigeria, the agency was founded in 1943, it has an executive Chairman and it has its headquarters in Abuja. FIRS collects all compulsory taxes and levies imposed on the income of individuals, corporate bodies and government agencies for the financing of government expenditures.

These levies include Company income Tax, Withholding Tax, Value Added Tax, Education Tax, Stamp Duty and others.

Taxes payable and collectible by the FIRS include;

- (a) Withholding taxes on individuals who are non-resident in Nigeria
- (b) Residents of Federal Capital Territory
- (c) Members of Police
- (d) Armed Forces
- (e) Foreign Affairs Officers³⁹

³⁷ <http://tat.gov.ng> (Accessed 24 October 2023)

³⁸ FIRS ACT 2007

³⁹ <https://firs.gov.ng> (Accessed 20 July 2023)



5. Challenges for Taxation and Regulation of Digital Market in Nigeria

5.1 Multiplicity of Tax Laws:

The researcher discovered that there are so many tax laws regulating tax matters in Nigeria. They can be found in various volumes of the Laws of the Federation of Nigeria which at the moment are in fourteen volumes. The laws are so much that laws regulating taxation are reduced into a compendium by the officials of Federal Inland Revenue Service (FIRS) supervised by the then Acting Executive Chairman of FIRS; Kabir M. Mashi in 2012. They are in a compendium for ease of reference and portability. Despite this multiplicity of laws compiled in a compendium, they are still not capturing the realities of the digital market and consequent upon this, government loses revenue.

5.2 The major extant legislation on tax did not expressly provide for taxation of digital market but did not exclude it:

The laws like Value Added Tax Act, Personal Income Act, and Value Added Act did not expressly provide for how Nigerian digital market should be taxed, however, they implied it. Example, Ordering and delivering of a carton of biscuits from the digital market does not remove the payment of VAT by the final consumer. The Companies Income Tax (Significant Economic Presence) Order 2020 provides that a company other than a Nigerian company shall have significant economic presence in Nigeria where it derives gross turnover or income of N25 million or its equivalent in the other currencies from any or combination of the following digital activities like streaming or downloading services of digital contents including movies, videos, music, applications, games, e-books to any person in Nigeria⁴⁰. This Order is the only legislation in Nigeria that made specific provisions on how Nigerian digital market is to be taxed in relationship to non-resident companies. There is another challenge this provision may encounter, the identification and calculating of the N25million from the transactions mentioned.

5.3 Absence of Requisite Information of the Digital Market Taxpayer:

Lack of accurate data of these non-resident companies is a great concern to Federal Inland Revenue Service in taxation of digital market. If these non-resident companies cannot be identified, how can they be taxed? It means that huge revenue loss for the government and its citizenry is the order of the day.

5.4 Identification of the Activities/Profits/Persons of these Non-Resident Companies:

Non identification of the activities, profits and activities of the non-resident companies is a big challenge, what is the essence of having a robust legislation where what is provided is very difficult to identify; it means that the legislation is almost non-existent.

5.5 Lack of specialized Courts.

There are no special courts to see to taxation matters/issues in Nigeria. The Tax Appeal Tribunal Established by Federal Inland Revenue (Establishment) Act 2011⁴¹ is just administrative in nature because they only determine compliance with the provisions of the

⁴⁰ Companies Income Tax (Significant Economic Presence) Order 2020 s. 1(1)

⁴¹ Federal Inland revenue Service (Establishment) Act) 2007 s. 59



tax laws and appeal from Tax Appeal tribunal go to Federal High Court instead of Court of Appeal like other Tribunals, meaning that Tax Appeal Tribunal is not a Superior Court of Record.

5.6 Lack of Experienced ICT Personnel:

Our professionals are all running out of Nigeria because they believe that abroad jobs pay better and there is better living abroad. These runaway professionals from Nigeria include ICT professionals. Most workers at the Federal Inland Revenue Service are mere accountants.

6. Conclusion

Generally, governments of different countries and states around the globe depend on revenue generated from their natural resources and, or taxes to run the government and to provide the necessary amenities for their citizens. This means that the success of any government to meet the needs of its citizenry largely depends on its ability to maintain a high level of financial independence and autonomy. To maintain this financial autonomy, many countries are faced with difficulties in the management of their tax systems. These challenges stem from setting up adequate and workable systems of taxation; that is; the assessment, collection, remittal and application of taxes. Third world countries have been at the lower section of the ladder in the area of successful tax systems due to a lot of reasons including lack of very suitable models. The advent of the Digital Economy (otherwise known as the Digital Market); which according to the OECD is fast becoming the economy has thrown up fresh challenges in taxation, especially for the goods and services exchanged on the digital market. These challenges are not just multiple but global in nature owing largely to the boundless and borderless nature of the Digital Market. This global nature of the taxation problems created by the Digital Market has prompted committee of nations to aggregate for the purpose of proffering a global solution to the problem. These solutions as lofty as they appear are still not the perfect and fitting model for third world countries, inclusive of Nigeria owing to the fact that they were still grappling with the basic issues of taxation. This then means that countries like Nigeria will still rely on their existing tax systems and laws to tackle the challenge of taxing the Digital Market.

There is a great need for a deep re-engineering of our tax laws to meet the new realities. This is because of the internet's vastness. Online commerce involves virtual anything the human mind can conceive and the trade can be initiated from one end of the earth and concluded in the other end at the speed of light. Therefore taxation becomes a big problem, since all the aspects of the deal may be taxable. For instance; the manufacturer of a shirt in China should pay tax for exporting the shirt, the shipper should pay tax and the purchaser of the shirt in Nigeria should equally pay tax, likewise the banker who transfers money online from the Nigerian buyer to the Chinese seller and the online communications for the transaction should be equally taxed. The online nature of most part of the transaction narrated above is such that the manufacturer, seller, shipper, the communication company and the transporter will most likely receive their money online with only the little tax from vat going to the Nigerian Government.

The use of virtual currencies (bitcoins) as accepted digital legal tender even complicates issues the more. It is therefore with the foregoing issues in mind that the re-



engineering of our tax laws becomes very paramount. The Digital Market is peopled by humans who manage online/offline companies. The humans and companies are ordinarily taxed via the Personal Income Tax Act (PITA) and the Companies' Income Tax Act (CITA). The goods and services are also taxed through other taxes such as VAT. The Companies Income Tax Act (Significant Economic Presence) Order, 2020 has been made by the Minister of Finance to tax intangible goods. There also an avalanche of tax laws such as; Petroleum Profit Tax Act, Capital Gains Tax, Withholding Tax, all made to recoup revenue for the government from citizens whether on the Digital Market or not. It is therefore clear that there are laws to tax the Digital Market. However the problem remains the effectiveness and adequacy of the laws.

For the Laws to be effective they should be implemented with diligence and professionalism. The intricacy, vastness and high-tech nature of the internet makes the taxation of the Digital Market a very serious business that should not be an all comers' affair. The Tax Model proposed by the OECD in October, 2021 is being applied by many countries of the world, including some African countries. A highbred of the OECD model and our local legislation may not be out of place.

7. Recommendations

7.1. Reduction and Specialization of Tax Laws:

There is a need to reduce the many tax laws regulating tax matters in Nigeria. This is important as many of the laws are obsolete and a lot of them repetitions of existing laws. For example Sales Tax should be scrapped since CITA, PITA and VAP have covered whatever field the Sales Tax was meant to cover. Again, the multiplicity makes it confusing and cumbersome for tax payers to understand which tax they have to pay and which should not be paid and at what time to pay what. Ordinarily, online transactions are meant to be a do-it-yourself kind of thing and as such it is expected that any knowledgeable Digital Market player should not encounter any hitches in his/her efforts to access any tax system for the Digital Market.

7.2 Need for a Specialised Law for the Taxation of the Digital Market:

The fact of the all encompassing influence of the Digital Market in our everyday life and activities makes the need for a specialized Tax law for the Digital Economy very paramount. This need is made more pronounced in view of the lack of clarity of the existing laws on how the Digital Market should be taxed. The Digital Service Tax (DST) of Kenya comes to is a good example of a specialized law on the taxation of the Digital Market. The Nigerian taxing authorities may also wish to dedicate some section of existing laws to the taxation of the Digital Market. Such laws as VAT Act may be tinkered with in order to apply to intangible goods just as the CITA Significant Economic Presence Order, 2020 made efforts to tax companies operating on the Digital Market so long as they realize a turnover of N25 Million from Nigeria.

7.3 Improvement in the Information gathering techniques about the Taxpayer:

The means of identifying taxpayers (private and corporate) on the Digital Market should not just be improved but made to be as near-foolproof as possible. Online market players are not bound by geography and as such identification should be a high-tech stuff. The existing laws



have addressed this adequately. The requirement of the CITA (SEP) Order, 2020 that to determine the threshold (*N25M*), the activities of “Connected Persons” in that financial year should be “aggregated”; these “connected persons” is defined as “associates” as defined in CAMA or associates “in any form”. With respect it is submitted that this is not a good guideline for internet purposes. This is because more than 20 persons may qualify to be associates as described by the CITA (SEP) Order. It is therefore recommended that there should be very specific means of identification of Digital Market Taxpayers; most probably an electronically. A proper and accurate data collection system particularly of non-resident companies should be developed and so should a means of monitoring their finances be developed to avoid reliance on their declarations or of the so called “connected person.”

7.4 Improvement in the Monitoring of the Activities/Profits of Non-Resident Companies:

Laws should be developed or fine-tuned to monitor the activities of Digital Market players; particularly non-resident companies. Apart from laws the taxing authorities should leverage on technology to monitor all the activities of the non-resident companies engaged in online transactions in Nigeria or with Nigerians. The inflow and outflow of cash, placement of orders, etc. should be strictly monitored in order to ensure that all relevant taxes are recovered.

7.5 Establishment of Specialized Courts:

There is a need to set up Superior Courts of Record that are specialised in tax matters. On the other hand the existing Tax Appeal Tribunal Established by Federal Inland Revenue (Establishment) Act 2011⁴² should be upgraded to a full-fledged court of Record that is not just an administrative body. This will open the tax arena to rigours, tests and development that accrues from serious litigation. By then tax appeals will move directly from Special Tax Court (Tax Appeal Tribunal) to the Court of Appeal like other Tribunals and courts.

7.6 Improvement in the ICT Sector:

There is a need for the authorities in charge of taxation; particularly the FIRS to develop a crack ICT unit to match the new trends in the Digital Market. The Digital Market is a high-tech zone and as such there should be experts in ICT running the show there. All the previous recommendations are dependent on good heads managing the ICT of the taxing bodies. To track the inflow and outflow of funds from and to the Digital Market taxpayer; to monitor the movement of tangible/intangible goods and services, to compile data relating to the taxpayers (corporate and private) all require expertise in information and communication technology. It is there expedient that the personnel recruitment policy of the FIRS should shift from just simple accountability to high-tech data based monitoring, tracking and accounting.

⁴² Federal Inland revenue Service (Establishment) Act) 2007 s. 59