

TAXATION OF CROSS-BORDER DIGITAL SERVICES IN NIGERIA: CHALLENGES AND GLOBAL BEST PRACTICES*

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Abstract

Traditional tax systems that are based on physical presence and territorial nexus have been seriously challenged by the digital economy's explosive growth. Multinational digital companies in Nigeria make a significant amount of money from Nigerian users without having a physical presence, which highlights flaws in the country's tax system. This study examines how cross-border digital services are taxed in Nigeria, emphasizing new changes that are in line with international best practices. Using a doctrinal research technique, the study examines primary sources such as the Nigeria Tax Act 2025, the Companies Income Tax Act, the Finance Acts 2019 and 2020, and subsidiary laws like the Significant Economic Presence Order 2020 as well as secondary sources. The paper found that while Nigeria has made significant progress through the introduction of Significant Economic Presence rules and expanded VAT obligations, challenges persist in profit attribution, definitional clarity, treaty compatibility, and enforcement against non-resident entities. It recommends the development of a dedicated digital tax framework, strengthened intermediary-based enforcement mechanisms, simplified VAT compliance procedures for non-residents, and enhanced

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technological capacity within tax authorities to ensure effective and sustainable digital taxation.

Keywords: Cross border digital services, Finance Act, Taxation

1. INTRODUCTION

The rapid growth of digital commerce and the predominance of technology-driven business models are increasingly defining characteristics of the modern global economy. The delivery, consumption, and monetization of goods and services have all been completely transformed by digital platforms, opening up new business options and altering established market structures. But this digital revolution has also revealed basic flaws in traditional tax structures, especially those based on the concepts of physical presence, territorial nexus, and permanent establishment. Like many developing nations, Nigeria has had to face the pressing necessity to change its tax system¹ in order to guarantee that global digital businesses that make significant profits from Nigerian customers fairly contribute to the country's tax base.²

Nigeria's tax system was originally intended to tax business profits based on a company's physical presence or fixed basis within the country, especially under the Companies Income Tax Act (CITA). This system's reasoning stemmed from the traditional view that business operations are inextricably linked to physical assets like offices, factories, agents, or operational infrastructure. A Nigerian company's profits are considered to accrue in Nigeria regardless of where they originate, according to the Companies Income Tax Act. In contrast, a non-resident company is only subject to taxation in cases where it can

¹ Nigeria Tax Act 2025

² OECD, *Addressing the Tax Challenges of the Digital Economy* (OECD Publishing 2020).

be demonstrated that it has a significant business presence and profits that can be linked to its operations in Nigeria.³ For digital businesses, many of which are able to provide services internationally without having a physical presence in Nigeria, this conventional method opened up serious gaps. As a result, even though foreign digital platforms profited financially from the Nigerian market and customer base, Nigeria's revenue authorities were unable to successfully collect money earned from Nigerian users by these platforms.⁴

Nigeria started enacting legislative changes to expand the tax net to the digital sector after seeing the inequality and revenue loss that came with this arrangement. The Finance Act of 2019, which established the notion of Significant Economic Presence (SEP) under section 13(2)(c) of the Companies Income Tax Act, was a significant turning point.⁵ By changing the physical presence condition to an economic involvement test, this law gave Nigeria the ability to impose taxes on foreign businesses that make money off of Nigerian users online. The Companies Income Tax (Significant Economic Presence) Order 2020 further operationalized the SEP reform by stating that non-resident digital service providers will be considered to have a taxable presence in Nigeria if their gross turnover or income from digital activities surpasses ₦25 million or its equivalent annually.⁶ Digital material streaming or downloads, online advertising, electronic commerce platforms, and participatory network platforms are among the taxable digital activities included in the Order.⁷ Nigeria has made a gradual transition from the traditional physical presence rule to a contemporary framework for economic nexus. Under the Nigeria Tax Act (NTA)

³ Companies Income Tax Act, Cap C21 LFN 2004, ss 9, 13(1).

⁴ *ibid*, s 13

⁵ Finance Act 2019, s 13(2)(c) amending Companies Income Tax Act, Cap C21 LFN 2004

⁶ Companies Income Tax (Significant Economic Presence) Order 2020.

⁷ *ibid* (threshold provisions).

2025, this change is now consolidated and strengthened, especially by provisions that acknowledge that non-resident businesses may be subject to taxes if they receive revenue from Nigeria through digital platforms, electronic commerce, and remote service delivery even if they do not have a physical location in Nigeria.

2. CONCEPTUAL CLARIFICATIONS

2.1 Taxation

Taxation is how a government raises money from citizens to fund programs like health, education, and defense.⁸ The Nigerian tax system is a means of raising money. Taxation is an exaction method used to fund the government.⁹ In addition to being a useful instrument for raising money, taxes also help the government achieve other goals, such promoting social justice by redistributing wealth among the populace.¹⁰

2.2 Digital Services

According to the OECD, digital economy encompasses all economic activities facilitated by digital inputs, including platforms, e-commerce, and digital services.¹¹ Digital services in essence are services delivered electronically through digital networks, often characterised by automation, remote access, and cross-border scalability. Unlike conventional service models that require physical delivery, digital services are typically provided through online platforms, applications, or electronic interfaces, enabling suppliers to reach consumers across

⁸ A O Adefolake, 'Tax System in Nigeria – Challenges and the Way Forward' (2010) 2(3) APL 30.

⁹ *United States v Butler* (1936) 2276 US 161.

¹⁰ J Kagan, 'Taxation Defined, With Justifications and Types of Taxes' (*Investopedia*, 28 February 2024) <[https://www.investopedia.com/terms/t/taxation.asp#:~:text=Error%20Code%3A%20100013\)-,What%20Is%20Taxation%3F,of%20civilization%20since%20ancient%20times](https://www.investopedia.com/terms/t/taxation.asp#:~:text=Error%20Code%3A%20100013)-,What%20Is%20Taxation%3F,of%20civilization%20since%20ancient%20times)> accessed 15 February 2026.

¹¹ OECD, *Addressing the Tax Challenges of the Digital Economy* (OECD 2020) 15.

multiple jurisdictions simultaneously. In Nigeria, the conceptual challenge lies in the fact that existing tax laws historically developed around physical commerce do not provide an exhaustive definition of “digital services”. This definitional uncertainty creates a major regulatory gap. As highlighted in the attached document, ambiguity persists as to whether digital services cover emerging platforms such as cryptocurrency exchanges, peer-to-peer platforms, artificial intelligence services, and social media advertising.¹²

2.3 Cross-Border Digital Services

Digital services provided to customers or enterprises within a taxable jurisdiction by a provider situated outside of that jurisdiction are referred to as cross-border digital services.¹³ Such transactions are distinguished by the fact that the supplier may profit significantly from a foreign market without having a physical presence there.¹⁴ The tax problem in Nigeria is mostly caused by this trait. According to the traditional norm of international taxation, a nation can only tax a foreign company's corporate revenue if the company has a fixed base or permanent establishment in the nation of origin. This conventional method was mirrored in Nigeria's Companies Income Tax Act, which in the past needed evidence of a non-resident company's existence before its profits could be considered taxable. However, intangible assets like algorithms, data infrastructure, cloud servers, and intellectual property are frequently used by digital enterprises to operate, which enables them to enter markets without fixed bases. For instance, while having their headquarters overseas and maintaining content infrastructure outside of Nigeria, organizations such as Netflix may provide streaming services

¹² Ibid.

¹³ K J Bielu, ‘A Legal Appraisal of Taxation of Electronic Commerce in Nigeria’ (2021) 12 Nnamdi Azikiwe U J Int'l L & Juris 86.

¹⁴ Podia, ‘What is a Digital Product?’ <<https://www.podia.com/digital-downloads#:~:text=This%20category%20includes%20ebooks%2C%20online,like%20Etsy%20%2C%20and%20social%20media>> accessed 15 February 2026.

to Nigerian users. Similarly, even if Google does not have a physical taxable basis in Nigeria, it may nonetheless make money from advertising from Nigerian companies and customers. These facts show that physical nexus rules and digital business models are structurally incompatible.

3. METHODOLOGY

The doctrinal technique of legal study is used in this paper. The Companies Income Tax Act, the Finance Act of 2019 and 2020, regulatory directives, and, when appropriate, judicial authority are examples of primary sources. We also look at secondary sources, such as journal articles and OECD policy documents.

4. NIGERIA'S LEGAL FRAMEWORK FOR TAXING CROSS-BORDER DIGITAL SERVICES

Nigeria has a dynamic and reform-driven legal framework for taxing cross-border digital services. It is best viewed as a tiered framework that includes subsidiary legislative instruments like the Companies Income Tax (Significant Economic Presence) Order 2020, amendments made by subsequent Finance Acts, the new Nigeria Tax Act 2025, and pre-existing tax statutes (especially the Companies Income Tax Act and the Value Added Tax Act).

4.1 Companies Income Tax Act (CITA) and the Traditional Nexus Rule

Nigeria's Companies Income Tax Act (CITA) served as the primary law governing company taxation prior to the implementation of digital tax reforms. The idea of residence and source serves as a major foundation for the taxation of business earnings under CITA. According to the legislation, the profits of foreign or non-resident corporations are only subject to taxation in cases where the company is judged to have a sufficient link with Nigeria, whereas the profits of Nigerian companies

are subject to taxation regardless of where they originate. Section 9 of CITA establishes that profits accruing in, derived from, brought into, or received in Nigeria are taxable. Furthermore, Section 13 stipulates that a Nigerian company's profits are considered to have accrued in Nigeria, regardless of their location, making resident corporations liable to international taxation.¹⁵ Taxation is more stringent for non-resident corporations (NRCs), though. According to the conventional method, an NRC is only subject to taxation in cases where it can be demonstrated that the business has a taxable presence in Nigeria and that its profits are related to that presence.¹⁶ In the past, the existence of such a presence was viewed through the prism of norms similar to permanent establishments or established bases.

Maintaining a fixed base, using dependent agents, carrying out contracts like turnkey projects, or participating in fictitious transactions involving connected parties are some of the conventional markers of taxable presence under section 13.¹⁷ The traditional international tax theory that corporate income tax jurisdiction is linked to actual business activity in the source state is reflected in this. This strategy's primary flaw in the digital economy, however, is that it permits online companies to set up their activities to circumvent physical presence and avoid paying taxes, even in cases where they bring in a sizable amount of money from Nigeria. This leads to a significant legislative inconsistency: international digital businesses that generate income from Nigerian consumers are exempt from taxes, whereas conventional Nigerian businesses that provide comparable services locally are subject to taxes. Foreign platforms have a tax advantage over domestic businesses, which results in both revenue loss and competition distortion.

¹⁵ Companies Income Tax Act, Cap C21 LFN 2004, s 13(1)

¹⁶ Companies Income Tax Act, Cap C21 LFN 2004, s 13(1)

¹⁷ *ibid*

4.2 The Finance Act 2019 and the Introduction of Significant Economic Presence (SEP)

The Finance Act 2019 brought Nigeria's most significant law reform to address the difficulties of digital taxation. This Act extended Nigeria's taxing rights beyond physical presence to include economic participation by amending section 13 of the CITA and introducing the idea of Significant Economic Presence (SEP). A non-resident company will be considered to have profits derived from Nigeria if it transmits, emits, or receives signals, sounds, messages, images, or data of any kind to Nigeria via cable, radio, electromagnetic systems, or any electronic or wireless apparatus for any activity, including electronic commerce and digital platforms, according to the Finance Act 2019 amendment to section 13(2)(c) of the CITA. This is true as long as the company has a significant economic presence and profits can be linked to such activity.¹⁸

This change is significant because it acknowledges that physical presence is no longer necessary for value generation in the modern era, reflecting Nigeria's acceptance of the economic nexus concept. According to this strategy, digital businesses that interact economically with Nigerian customers, including as streaming services, online advertising platforms, cloud storage providers, and online marketplaces, may be subject to taxes. To the extent that the business has SEP, the Finance Act of 2019 further broadened the taxable scope of NRCs to include technical, managerial, consulting, and professional services rendered to Nigerian citizens outside of Nigeria.¹⁹ Despite being progressive, this reform creates ambiguity in its meaning. The Finance Act gave the Minister of Finance the authority to specify what SEP is, but it did not provide a precise definition.²⁰ This implies that SEP's

¹⁸ Finance Act 2019, s 4(a)(ii).

¹⁹ Finance Act 2019, s 4(b).

²⁰ *ibid*, s 4(c).

practical meaning was left up to subsidiary legislation, which calls into question the constitutionality and legislative clarity of tax lawmaking.

4.3 Companies Income Tax (Significant Economic Presence) Order 2020

The Nigerian Minister of Finance released the Companies Income Tax (Significant Economic Presence) Order 2020 in order to operationalize the SEP provisions that were enacted by the Finance Act 2019. A subsidiary legislative document known as the Order lays out the precise threshold requirements for figuring out whether a non-resident firm in Nigeria has SEP. According to the Order, an NRC in Nigeria will have SEP if its gross turnover or income from specific digital activities exceeds ₦25 million (or its equivalent in foreign currency) in a given year.²¹ The Order also states that these kinds of actions consist of:

1. Downloading or streaming digital content, including e-books, apps, games, music, movies, and videos;
2. Transfer of information gathered from user activity on a digital interface concerning Nigerian users;
3. Direct or indirect delivery of products or services via a digital platform connecting Nigerian vendors and consumers.²²

Additionally, the Order expands SEP to include situations in which the NRC registers a website address in Nigeria or utilizes a Nigerian domain name (.ng).²³ This clause is important because it aims to link access to digital markets to trackable and observable territorial factors. The Order also makes it clear that digital and associated operations conducted via satellites are included in the definition of "electronic and wireless

²¹ Companies Income Tax (Significant Economic Presence) Order 2020.

²² *ibid*

²³ *ibid* (domain name provision).

apparatus."²⁴ This demonstrates legislative awareness that digital communication infrastructures are diverse and may not always be routed through conventional telecommunications networks. The SEP Order is important because it establishes measurable thresholds that reduce arbitrariness in enforcement. Without the ₦25 million turnover threshold, SEP could become overly vague and subject to administrative discretion. However, the threshold-based approach also raises issues regarding tax equity and coverage. For instance, smaller but high-growth digital service providers may remain untaxed, while large multinational corporations may restructure revenue streams to fall below the threshold. More critically, the Order, while defining SEP thresholds, does not provide a clear profit attribution mechanism. This gap has been identified as one of the central weaknesses of Nigeria's digital corporate tax regime.

4.4 VAT on Digital Services under the Value Added Tax Act and Finance Act Reforms

Reforms to corporate income tax are necessary to tax profits, but since VAT focuses on consumption rather than corporate domicile, it has emerged as one of the most feasible methods for taxation cross-border digital services. The legal basis for VAT collection in Nigeria is provided by the Value Added Tax Act (VATA). However, in the past, there has been debate over the application of VAT to cross-border services offered by NRCs. In the past, taxpayers contended that services provided outside of Nigeria should not be subject to VAT, while the Federal Inland Revenue Service (FIRS) contended that services provided by foreign businesses to Nigerian citizens should be subject to VAT. Nigeria's stance was greatly clarified by the Finance Act 2020, which extended VAT responsibility to non-resident suppliers of goods

²⁴ Companies Income Tax (Significant Economic Presence) Order 2020 (satellite clarification).

and services. Even if they do not physically exist in Nigeria, the Act mandates that these suppliers register with FIRS and pay VAT.²⁵ Additionally, it mandates that these suppliers acquire a Tax Identification Number (TIN).

This change is in line with global best practices, especially the VAT destination principle. It acknowledges that regardless of the supplier's location, Nigeria should bear the tax burden when Nigerian consumers utilize digital services. VAT is applicable to a number of digital services, including software subscription services (Microsoft Office 365), online advertising platforms (Google Ads), and streaming services (Netflix).²⁶ VAT still necessitates cross-border compliance cooperation, efficient monitoring systems, and enforcement measures, while being simpler to manage in the digital world than corporate income tax.

The Nigerian legal framework for taxing cross-border digital services is not only statutory; it is also reinforced by judicial decisions. A notable example is *Vodacom Business Nigeria Limited v FIRS*,²⁷ where the Federal High Court reinforced the obligation of Nigerian entities to withhold VAT on cross-border transactions where non-resident suppliers fail to comply with registration requirements. This decision is significant because it effectively shifts the enforcement burden from foreign suppliers to Nigerian recipients, ensuring that VAT is captured through domestic intermediaries. However, while this judicial approach strengthens VAT collection, it also raises questions about fairness, administrative burden, and whether Nigerian consumers and businesses should bear the compliance responsibility for foreign entities' tax obligations.

²⁵ Finance Act 2020, s 43

²⁶ S Adebayo, 'Challenges of taxing digital services: Case study of Nigeria' (2022) 15(3) *Journal of Taxation* 45.

²⁷ [2020] FHC/ABJ/TA/1/2020.

4.5 The Nigeria Tax Act 2025 and the Taxation of Digital Services in Nigeria

The Nigeria Tax Act 2025's passage is a significant legislative change to the country's changing tax structure. Nigeria's present VAT policy baseline is maintained by Section 148 of the NTA, which confirms that value added tax (VAT) will be applied at a rate of 7.5% to the value of all taxable supplies.²⁸ This clause applies to digital suppliers once they are classified as taxable transactions under the VAT system, which makes it relevant even though it is not specifically related to digital. More significantly, the Nigeria Tax Act 2025's valuation rules broaden the theoretical basis for levying taxes on international digital services. According to Section 149, the consideration for the supply will often determine the value of taxable supplies; if the supply is not for monetary consideration, the market value will be used instead.²⁹ In the digital economy, where supply may be packaged, subsidized, or indirectly monetized (e.g., digital platforms offering "free" services financed by targeted advertising revenue), this becomes especially pertinent. Section 149 and other valuation requirements help create the statutory basis for evaluating digital transactions with complicated pricing structures, even though VAT normally applies to paid supplies.

Section 151 of the Nigeria Tax Act 2025, however, provides the most important legal foundation for taxing cross-border digital services. This clause makes it clear that Nigeria has the authority to charge VAT on goods brought into the country by non-residents. A non-resident individual who delivers taxable goods to Nigeria must register for taxes and include VAT on all of its invoices, according to section 151(1).³⁰ This is a historic clause in Nigeria's digital taxation policy since it

²⁸ Nigeria Tax Act 2025, s 148.

²⁹ *ibid*, s 149

³⁰ NTA 2025, s 151(1)

embraces the destination principle, which taxes transactions according to the location of consumption, and outright rejects the conventional physical presence requirement. According to section 151(1), foreign digital service providers that offer their services in Nigeria, including Netflix, Spotify, Meta, Google, Microsoft, Amazon Web Services, and other multinational digital enterprises, are legally required to register and charge Nigerian VAT.

However, section 151 acknowledges that it is difficult to enforce laws against non-resident suppliers, especially when those suppliers choose not to register or comply voluntarily. Therefore, section 151(2) establishes an alternative mechanism by stating that the taxable person to whom the supply is made in Nigeria must withhold the VAT owed and send it to the Service in cases when a non-resident person makes taxable supplies from outside Nigeria to individuals in Nigeria.³¹ The "reverse charge mechanism," which is a commonly used system in worldwide VAT practice, is reflected in this. In business-to-business (B2B) digital service transactions, where Nigerian corporate entities may subscribe to overseas cloud services, advertising platforms, or software licenses, the reverse charge technique is very pertinent. In these situations, the Nigerian recipient assumes responsibility for VAT withholding and remittance, avoiding the challenge of directly enforcing compliance against overseas suppliers. Although the reverse charge mechanism has legal significance, structural equity issues are also brought up by it. Nigerian companies, many of which may lack administrative competence, are burdened with compliance requirements. Additionally, it raises the risk of unequal compliance because larger Nigerian enterprises are more likely to comply because of audit exposure, while smaller firms may fail to return VAT accurately. Consequently, while section 151(2) increases enforceability,

³¹ *ibid*, s 151(2).

it also places the onus of compliance on the local customer rather than the foreign digital supplier.

Beyond section 151, the VAT compliance system is further reinforced by provisions on invoicing and remittance. Section 153 provides for VAT invoicing requirements, including sequential invoice numbering and the inclusion of supplier tax identification and transaction details.³² This becomes relevant for digital suppliers and intermediaries who must ensure proper invoicing for cross-border digital supplies. Similarly, section 154 mandates the collection of VAT by taxable persons, confirming the obligation to collect VAT at the point of taxable supply. The revised framework for figuring out whether a non-resident business (NRC) is considered to have generated earnings from Nigeria and is thus subject to tax is a significant legal innovation under the NTA. Section 17, which unifies and broadens the nexus criteria for the taxation of company earnings originating from Nigeria, encapsulates this reform. Since section 17 deals with the attribution of business profits to Nigeria, it directly addresses the long-standing restriction of traditional international tax laws that require physical presence before taxation rights can arise, in contrast to the VAT provisions (such as section 151) that concentrate on consumption-based taxation of imported digital supplies. The NTA's Section 17 lists the four main types of NRCs that are subject to taxation in Nigeria: Foreign Insurers, Permanent Establishments (PE), Remote Service Providers, and Significant Economic Presence (SEP).

The NTA continues to tax NRCs under the conventional Permanent Establishment (PE) model under section 17. The Act, however, broadens the definition of PE to include more indirect kinds of presence through subcontractors as well as more extensive forms of physical and

³² NTA 2025 s 153(1).

quasi-physical presence.³³ The implication is that a foreign digital service provider may be subject to section 17 taxation if it uses third-party service agents, contractors, or subcontractors in Nigeria, such as technical installers, customer service facilitators, or local logistics support. Although this strengthens Nigeria's defenses against base erosion, it could also lead to legal issues because Nigeria's Double Taxation Agreements (DTAs) have more stringent PE criteria that are in line with the OECD Model Convention.

The second major taxable category under section 17 is Significant Economic Presence (SEP).³⁴ Because it targets NRCs that engage in remote digital activities targeted at Nigerian clients, this has a direct bearing on cross-border digital services. One significant change brought about by the NTA is that, unlike under the previous framework, where SEP may also be triggered by Technical, Professional, Management, or Consulting (TPMC) services, it is now only focused on digital operations aimed toward Nigeria. By stating that NRCs that receive payments for remote services from Nigerian residents (or Nigerian PEs of non-residents) are subject to Nigerian taxes, Section 17 significantly expands the group of remote service providers. This is especially important as the NTA broadens Nigeria's taxable base by including all types of remote services in addition to TPMC services. The exclusion that a PE will not apply in cases when an NRC hires a Nigerian resident whose operations are largely performed for non-Nigerian clients is a noteworthy precaution in section 17.

³³ *ibid*, s 17(3)(b)

³⁴ *ibid*, s 17(3)(a).

5. LEGAL CHALLENGES IN TAXING CROSS-BORDER DIGITAL SERVICES IN NIGERIA

The taxation of cross-border digital services in Nigeria is still beset by a number of interconnected legal and administrative obstacles, even with the progressive revisions brought about by the Nigeria Tax Act 2025. Determining when a foreign company has developed a sufficient taxable nexus with Nigeria is a major challenge in Nigeria's digital taxes framework. Nexus was mostly established by physical presence under traditional international tax standards, which were usually articulated through the idea of permanent establishment.³⁵ However, the need for a physical presence is no longer necessary because digital businesses can generate significant profits from Nigeria without having a physical presence. Although the Act establishes a more expansive linkage test, it does not completely resolve interpretational conflicts, which is still a legal difficulty. Digital businesses may argue that their activities don't qualify as having a significant economic presence, particularly if their business strategy depends on automated platforms, outside service providers, and indirect customer interaction. Therefore, the issue of whether digital engagement alone qualifies as sufficient "presence" may become contentious and call for regulatory explanation as well as judicial interpretation.

Intangible assets including user data, algorithms, and intellectual property are the main sources of value for digital firms, which usually function through highly linked company structures. While revenue is produced concurrently in several market jurisdictions, these intangibles are frequently owned in offshore jurisdictions. As a result, it becomes quite difficult to determine the earnings that may be attributed to Nigeria. In reality, disagreements over profit attribution may also lead

³⁵ M O Afolabi, 'Nigeria's Digital Economy: Opportunities and Challenges' (2020) 10 *Journal of Business and Economic Studies* 15.

to double taxation. Nigeria wants to tax the same revenues based on market participation, although a foreign firm may be taxed on international profits in its home jurisdiction. There is a considerable chance of overlapping tax claims in the absence of standardized allocation standards.

Definitional ambiguity presents another significant legal obstacle. A wide range of services are included in the digital economy, such as online marketplaces, streaming, cloud computing, software-as-a-service (SaaS), fintech payment systems, digital advertising, and data monetization.³⁶ Many of these services include aspects of intangible rights, products, and services, making them hybrid in nature. In a similar vein, section 146's VAT rules impose tax duty on imported services used in Nigeria; however, disagreements may arise over how to practically classify digital services. For example, it may be questioned whether cloud subscriptions are taxable services, whether digital downloads are considered commodities or services, and whether platform commissions are considered taxable consideration.

Even where statutory liability exists, enforcement remains a central challenge. Digital service providers operating offshore often have no physical assets in Nigeria, making it difficult for FIRS to enforce tax obligations through conventional mechanisms such as distraint, seizure or physical audits. Nigeria may attempt to enforce compliance through Nigerian recipients of services, as supported by judicial precedent such as *Vodacom Business Nigeria Ltd v FIRS*,³⁷ which affirmed VAT liability on imported services consumed in Nigeria. Nonetheless, this approach places compliance burdens on local consumers and

³⁶ F F Adegbe, 'Digital Taxation in Nigeria: Challenges and Prospects' (2020) 5 *Journal of Taxation and Economic Development* 8.

³⁷ [2020] FHC/ABJ/TA/1/2020.

businesses, potentially increasing transaction costs and discouraging foreign service utilisation.

6. GLOBAL BEST PRACTICES FOR DIGITAL SERVICES TAXATION

The understanding that the digital economy presents particular difficulties that cannot be successfully resolved with conventional nexus and profit allocation principles is a basic best practice in digital taxation. The OECD/G20 BEPS Action Plan, namely BEPS Action 1, which addressed "Addressing the Tax Challenges of the Digital Economy," provided a formal expression of this realization.³⁸ According to the OECD's research under Action 1, digitalization enables businesses to have a sizable economic presence in a jurisdiction without having a physical presence. This allows multinational corporations to take advantage of loopholes in profit allocation guidelines and permanent establishment regulations.³⁹ Three key aspects of the digital economy that make taxing more difficult were identified by the OECD:

- i. **Scale without mass** (ability to generate large market revenues without physical infrastructure);
- ii. **Reliance on intangible assets** (Including data, algorithms, and intellectual property); and
- iii. **User participation and data value creation**, where users contribute to value creation through engagement and data generation.⁴⁰

The scenario in Nigeria, where large digital companies have operational bases outside of Nigeria but generate substantial revenue from Nigerian

³⁸ OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report* (OECD Publishing 2015).

³⁹ *ibid*

⁴⁰ *ibid*

consumers, is directly related to these observations. However, the OECD also pointed out that if domestic solutions are not in line with multilateral consensus, they may result in serious dangers of double taxation and international disputes. Given that Nigeria's double taxation treaties are still mostly based on the permanent establishment framework, unilateral SEP-style taxing may be in conflict with them, making this warning pertinent to Nigeria.

6.2 OECD Inclusive Framework and the Two-Pillar Solution

The OECD/G20 Two-Pillar Solution, created under the OECD Inclusive Framework, is the most important worldwide best practice in digital services taxes. Through the reallocation of taxation rights and the reduction of profit-shifting opportunities, the Two-Pillar Solution is a multilateral endeavor to modernize international tax laws.⁴¹ The Two-Pillar strategy was enhanced through comprehensive model rules after being publicly accepted as a political agreement in 2021.⁴² This framework's global significance stems from its efforts to prevent fragmented unilateral taxation and offer a coordinated worldwide answer to the economy's digitalization.

Pillar One: Reallocation of Taxing Rights to Market Jurisdictions

By redistributing a percentage of the largest multinational corporations' remaining revenues to jurisdictions where users and consumers reside, regardless of their physical presence, Pillar One creates a new taxing authority for market jurisdictions.⁴³ Given that Nigeria is primarily a

⁴¹ OECD, *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint* (OECD Publishing 2020).

⁴² OECD, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (OECD 2021).

⁴³ OECD, 'Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy: Frequently Asked Questions' (OECD, 18 July 2022) <<https://www.oecd.org/tax/beps/faqs-two-pillar-solution-to-address-the-tax->

market jurisdiction in the digital economy, this is extremely pertinent to the country. By acknowledging that substantial value is produced through consumer involvement, market engagement, and digital user networks, Pillar One aims to overcome the shortcomings of the permanent establishment principle. With this method, taxing rights are now based on ongoing economic interactions with a jurisdiction as well as physical presence.

Amount A, a new profit allocation mechanism suggested by the OECD's Pillar One design, would distribute a portion of the residual profits of extremely successful multinational corporations to market jurisdictions in accordance with revenue benchmarks.⁴⁴ This makes it possible for nations like Nigeria to tax a percentage of the revenues made by international corporations from Nigerian users, even in cases when the corporations do not maintain a permanent presence in Nigeria.⁴⁵ From the standpoint of best practices, Pillar One offers Nigeria three crucial lessons: First, it attests to the fact that market involvement and economic presence are now accepted globally as valid grounds for taxation. Second, it offers a profit-allocation model that Nigeria might use at home to increase the Nigeria Tax Act 2025's efficacy. Third, because unilateral assessments might lead to international tax disputes, it illustrates the need for dispute settlement procedures in digital taxes. Although Nigeria has not yet embraced the comprehensive allocation framework required for successful implementation, the country's existing SEP model, as established by the Nigeria Tax Act 2025, is in line with Pillar One's goal. This suggests that when compared to OECD best practices, Nigeria's legal changes are still lacking.

challenges-arising-from-the-digitalisation-of-the-economy-july-2022.pdf> accessed 16 February 2026.

⁴⁴ *ibid*

⁴⁵ T Olalere, 'Nigeria and the OECD's Two-Pillar Approach: Issues and Implications' (2021) 2 *African Tax Review* 98, 103.

Pillar Two: Global Minimum Tax and Anti-Profit Shifting Rules

Pillar Two introduces a global minimum corporate tax regime aimed at preventing multinational enterprises from shifting profits to low-tax jurisdictions. The framework is designed to ensure that multinational groups pay at least a minimum effective tax rate regardless of where profits are booked.⁴⁶ Pillar Two is implemented through model rules such as:

- i. The **Income Inclusion Rule (IIR)**, It permits top-up taxation by a parent jurisdiction in cases where subsidiaries pay less than the minimum tax; and
- ii. The **Undertaxed Payments Rule (UTPR)**, which, in cases where low-taxed income is detected, either refuses deductions or levies additional taxes.⁴⁷

Nigeria has long struggled with profit shifting, particularly through transfer pricing structures and agreements involving intangible assets, hence Pillar Two is pertinent to the country. revenues made in Nigeria may be fabricated and declared in low-tax jurisdictions because digital businesses frequently transfer revenues through intra-group transfers and intellectual property licensing.⁴⁸ Therefore, the OECD Pillar Two framework is a global best practice for preventing BEPS. However, it also highlights a policy challenge for Nigeria: other jurisdictions may collect the top-up tax that Nigeria could have collected if it does not adopt compatible rules, which would reduce Nigeria's fiscal benefit.

⁴⁶ OECD, 'OECD Releases Pillar Two Model Rules for Domestic Implementation of 15% Global Minimum' (*OECD*, 20 December 2021) <<https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html>> accessed 16 February 2026.

⁴⁷ *ibid*

⁴⁸ M Singh, 'Tax Havens: All You Need to Know' (*Investopedia*, 23 January 2024) <<https://www.investopedia.com/articles/tax/09/tax-havens.asp>> accessed 17 February 2026.

7. CONCLUSION

One of Nigeria's biggest financial and regulatory issues of the twenty-first century is the taxation of cross-border digital services. The conventional presumptions that underpinned corporate income taxation have been upended by the digital economy, especially the notion that physical presence is a necessary condition for taxable nexus. Without having a physical presence in Nigeria, digital businesses can profit from Nigerian consumer markets through subscription-based business models, online advertising, cloud computing, and platform intermediation. Nigeria's fiscal sovereignty and capacity to mobilize revenue have been undermined by this development, which has raised serious dangers of base erosion and profit shifting.

8. RECOMMENDATIONS

1. The National Assembly should consider developing a dedicated Digital Services Tax (DST) framework or a consolidated digital tax code that clearly regulates cross-border digital services taxation. While the Nigeria Tax Act 2025 provides a foundation for economic nexus taxation, such a framework should provide explicit categories of taxable digital activities, including digital advertising, streaming services, cloud computing, online marketplaces, and user data monetisation.
2. Given the difficulty of enforcing tax liabilities against non-resident digital enterprises with no assets in Nigeria, Nigeria should strengthen enforcement through intermediary-based mechanisms. Banks, payment processors, telecommunications providers, and digital payment gateways represent practical compliance points because they facilitate the flow of digital transaction payments. Nigeria should enact regulations mandating payment intermediaries to report cross-border digital transactions and, where appropriate, deduct VAT or other applicable levies at the point of payment. This approach would

significantly reduce reliance on voluntary compliance and improve the enforceability of Nigeria’s digital tax regime.

3. VAT remains one of the most enforceable tools for capturing revenue from cross-border digital services because it targets consumption. Nigeria should therefore strengthen its VAT framework by introducing simplified registration and filing procedures for non-resident suppliers. A simplified VAT compliance system should include a streamlined online registration portal, simplified periodic filing procedures, and payment mechanisms that allow foreign digital suppliers to remit VAT without unnecessary administrative burdens.
4. The Federal Inland Revenue Service must be equipped with modern technological tools capable of tracking digital commerce, analysing payment flows, and auditing multinational digital enterprises. Digital taxation is inherently technology-driven, and effective enforcement requires data analytics systems, digital audit infrastructure, and skilled personnel trained in cross-border digital tax compliance. The Nigerian government should invest in the integration of tax administration systems with telecommunications companies, fintech platforms, and payment processors in order to improve transparency and revenue tracking.