

TAX CHALLENGES OF E-COMMERCE IN NIGERIA: THE PANACEA FOR LEGAL JURISPRUDENCE

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ABSTRACT: *The strides in information and communication technology (ICT) makes e-commerce a critical and inexorable feature of the global economy. In modern trend, significant numbers of transactions are consummated online. In Nigeria, it is no longer news that Central Bank of Nigeria (CBN) is promoting a 'cash-less policy' to drive development and modernation of our payment system in line with Nigeria's version 2020 goal of being amongst the top 20 economies of the year 2020. This paper seeks to examine the tax framework to reflect the realities of modern transactions, establish a basis of taxation that arrests leakages and enables tax authorities to capture revenue that would otherwise have continued to leak. The researcher recommends the legal frame work of e-commerce taxation which has to be amended to reflect the global taxation principles of e-tax in our tax laws as a sovereign state so that investors and business carried on online should be taxed. Also that our tax policy and compliances to the regulatory authorities such as FIRS(Federal Inland Revenue Services)should be enforced on defaulting businesses, individuals and corporate entities as wells government agencies and departments to minimize tax evasion and avoidance.*

KEYWORDS: E-Commerce, Taxation, Legal Framework, Internet, ICT, Leakages, Assessment and E-Payment, Cybercrime.

INTRODUCTION

A tax is a financial charge or other levy imposed upon a taxpayer (an individual or legal entity) by a state or the functional equivalent of a state such that failure to pay, or evasion of or resistance to collection, is punishable by law. Taxes are also imposed by many administrative divisions. Taxes consist of direct or indirect taxes and may be paid in money or as its labour equivalent. The taxation of any economy and growth of the economic policy of the government depends on the revenue generated by the tax authorities. In Nigeria, the Federal Inland Revenue services have the legal mandate to impose tax to its citizenry and corporate entity both in the public and private sector of the economy. The tax authority now has autonomy to assess, collect and record tax. This enabling environment which came into being on the basis of (Section 8(q) of FIRS Establishment Act 2007) has led to an improvement in tax administration in the country.

E-commerce refers to the use of communications technology particularly the Internet to buy, sell and market goods and services to customers or end-users. The Internet has brought about a fundamental shift in national economies that are isolated from each other by barriers to cross-border trade and investment; isolated by distance, time zones and language; and isolated by national difference in government regulations, culture and business ethnic systems. E-commerce offers a level playing ground for large businesses, as well as small and medium-scale enterprises (SMEs) to operate in the global market-place; and for regional businesses and

communities to participate in social, economic and cultural networks seamlessly across international boundaries (Mary-Anne, 1998).

All large businesses incur administrative costs in the process of delivering revenue collected from customers to the suppliers of the goods or services being purchased. Taxation is no different; the resource collected from the public through taxation is always greater than the amount which can be used by the government. The Nigeria National Tax Policy (NTP) sets as one of the main objectives, the elimination of bottlenecks and leakages in Nigeria's tax system. Thus, it imposes a duty on the tax authorities (state, federal and local) to identify all such avenues for leakages in the Nigeria tax system and to minimize or eradicate these leakages. Revenue leakages are recognised to occur at three stages namely, assessment, collection and utilization.

The use of point of sales (POS) devices, internet banking, mobile banking and associated related product options are routine experience for not only the upwardly mobile Nigeria but also the rural-urban migrant. In Nigeria, the online services are used to access payments through the available e-payment options. Most of these transactions are consummated without the relevant transaction and income taxes accounted for either of the parties.

GENERAL OVERVIEW:

The trend with technology, new models of commercial interaction are developing as business and consumers participate in an increasingly virtual or electronic market place and reap its attendant benefits. New technology has made it possible to pay for goods and services over the internet and in many instances, displace the need to handle physical cash. However, the advent of electronic commerce as a result of the development of the internet has brought with it a number of legal and socio-economic issues. Despite its promise, the problem is that the internet lacks the clear and fixed geographic lines of transit that traditionally characterize the physical trade in goods and services. It is against this background that we must attempt here to provide an overview of the regulatory legal frame-work, legal issues and prospects in the development of electronic commerce in Nigeria. Nigeria is transforming itself in the information and computer technology, its laws are yet to march apace with this transition. Not only should the laws be applicable to innovations in e-commerce, they should also be on par with and sensitive to the legal development in electronic transactions and consumer protection. In view of the above issues where trade and commerce exist online or through the internet, the profits derived from this e-commerce are not captured in our income tax less its taxation.

Electronic commerce generally refers to commercial activities based upon the processing and transacting of digitized data, including text, sound and visual images, which ultimately results to an exchange of value across telecommunications networks. It is commonly perceived as the buying and selling of products or services over electronic systems such as the internet and other computer networks; products are marketed, advertised, sold, paid for and delivered through services of a website via the internet. In appraising its relevance, e-commerce reduces cost associated with marketing, customer care and burden of an infrastructure to conduct business, thus raising the amount of funds available for profit investment. E-commerce has reshaped the foundations of trade and has brought many advantages to individuals and corporate entities. More goods and services are being bought and sold online on a daily basis. In fact some goods and services are bought and sold virtually online without any physical or tangible equivalent.

Presently, there are a number of well-known Nigerian internet retailing companies who appear to be thriving in the new cyber market.

Basically, the cash-less economy policy was designed to promote financial intermediation, financial inclusion, minimise revenue leakages and thus increase internally generated revenue, reduce incidences of robbery and also reduce the amount of cash payment while encouraging electronic payments. If not checked, the increasing rate of cybercrime and other forms of e-fraud activities in financial institutions operating in the country may rubbish the gains of the Central Bank of Nigeria, CBN's transformation, especially the cashless project.

It also raised unsettling implications for tax, conflict of law, etc. In spite of the wide difference between online and offline transactions, the basic idea of contracts apply equally to both. What is needed is an adaption of laws governing commerce to accommodate electronic/internet infrastructure, so that all e-commerce should be taxed. The paper will look at the role of Nigerian Communication Commission (NCC) if they will assist the FIRS in providing vital information and technology to the challenges faced in taxing e-commerce and online trading.

Cybercrime is a term for any illegal activity that uses a computer as its primary source or means of commission. Common types of cybercrime include online bank information theft, identity theft, online predatory crimes and unauthorised computer access. Furthermore, more serious crimes like cyber terrorism are also of significant concern. In view of the introduction of cashless economy and the increasing acceptance of e-banking, e-commerce it is natural that there would be increase incidences of tax evasion and fraud especially through the internet and payment cards and other e-channels. It is in this light that the inability of the National Assembly to pass the Nigeria Cybercrime Act into law is a major drawback in curtailing cybercrime and the challenges of e-tax system in the country.

SOURCES OF REVENUE LEAKAGES:

The e-commerce is a significant way of revenue leakages. This leakages is from e-commerce at the assessment stage where the tax payers are either not assessed at all or they are improperly assessed. The challenges are not peculiar to Nigeria alone but other developing economies faces such issues like;

- a. How effective and efficient is our tax laws for digital economy and the volume of transactions that are consummated within that e-commerce or platform?
- b. If the tax authorities or agencies have the capacity to address this challenges.

THE LEGAL FRAMEWORK FOR TAX:

Under current Nigerian law, taxation is enforced by the three (3) tiers of government, i.e. federal, state, and local governments, with each having its sphere clearly spelt out in the Taxes and Levies (approved list for Collection) Decree, 1998. Our tax laws have gone series of amendments but we are largely dependent on the physical approach to transacting business. Therefore, unless the origin and or destination of a transaction is Nigeria, there is usually a challenge in ascertaining when to tax and how much to tax the individual or the companies in relation to the transaction made under the e-trade or e-commerce. For instance, employees of labour can now work, participate in global meetings and sometimes discharge their duties and

obligations from anywhere in the globe. This would mean that a PAYE tax system that is based on physical approach or the residency rule can potentially be short-changed by a claim that the employee never stepped into Nigeria. Furthermore, the fact that e-commerce businesses do not necessarily require a fixed place of business or address to carry out transactions in any country enables foreign companies to do business and earn income in Nigeria without declaring or paying any part for tax in Nigeria.

Furthermore, goods and services are also consumed with e-commerce in Nigeria with little or no Valued add tax (VAT) in place collected on such transactions. This is not unconnected with the difficulty of tracking the volume of transactions that happen over the internet. Also, how do you track a transaction that has taken place between the Nigeria youth and a non-resident retailer of application software? Thus, some of these transactions occur and income earned by the parties involved but the tax authorities and its agencies are oblivious that the transactions are taking place. The way the tax provisions are drafted could equally be improved upon to eliminate the technicalities in certain areas. The tax legal framework therefore needs to be amended or revised to reflect the realities of modern transactions establish a basis of taxation that arrests leakages and enable the tax authorities and its personnel to capture revenue that would otherwise have continued to leak. If the leakages or loopholes are covered the government will generate more revenue from the e-commerce unlike the much dependent on oil and gas, hence ICT is the order in the global world.

The new Evidence Act, 2011 defines documents to include any device by means of which information is recorded, stored or retrievable including computer output. Thus, e-commerce or trade transactions which are subject of taxation can now be used in our jurisdiction and admissible in evidence. In an electronic environment with the aim of promoting electronic businesses in Nigeria the primary vehicle for e-commerce is the internet and information technology, the Nigeria legal framework should be adapted to address both the commercial aspect of the transaction and its corollary technological issues. It is important to state that electronic signatures or marks in emails as sufficient to satisfy the traditional requirements of writing and execution. According to section 93(2)(3), Evidence Act 2011, an electronic signature in relation to a data message conveniently satisfies any requirement for a handwritten signature in so far as it sufficiently identifies an electronic record to the individual. The provision of Article 7 of the UNCITRAL model law on E-commerce 1996 is equally trite Law. Thus, for the purpose of establishing proof of electronic signature, the use of passwords, identification, user-names etc. may suffice. Hence, one may safely posit that electronic signatures for the purpose of execution are admissible in evidence provided it is certified and incorporated in an electronic communication in the course of an e-transaction.

From the foregoing any dispute or litigation on e-commerce taxation that goes to tax tribunal or the regular courts on tax matters shall adopted electronic evidence as provided under the Act. It is important to state that as part of its efforts to make payment easier for taxpayers, the federal inland service (FIRS) is progressively collaborating with banks to provide more payment channels to taxpayers. The e-payment channel is one of the several tax payment channels now available to taxpayers. The new channel offers convenient self-service to taxpayers, thereby reducing the risk of errors in their identity and transaction details while promoting transparency and payment reconciliation whenever the need arises.

CHALLENGES

The cashless policy and e-commerce has its own challenges. The issue of security as the electronic banking and online trading convinces to gain popularity on the back of the cashless policy, electronic fraud has also increased. The personnel of the FIRS are adequately trained and knowledgeable to track down the fraudsters into banking platform and e-commerce to dupe the customers or individuals. This also applies to the POs terminals as many times the customer is forced to pay cash when network is down and the account is debited. In e-payment of e-commerce and taxation of e-commerce, the POS and its agent's network should be held liable for the leakages and loopholes in adequate assessment and taxation on such trade and businesses carried through the various POS and internet. Indeed, the banks and other corporate entities should therefore continue to strengthening of the compliance function as an integral part of business operation that focuses on safety and soundness of financial system. Thus, its positive impact on both financial and non-financial institutions that deals with e-commerce.

CONCLUSION

In conclusion, if the transformation agenda of making Nigeria one of the top 20 economies by 2020 must be achieved, the issue of multiple taxation requires national interest and should be addressed to improve the confidence of an investor and businesses in Nigeria. The international community may be grappling with effective way of addressing the challenges of e-commerce to the principles and practice of taxation, the Nigeria tax authorities such as federal inland revenue services (FIRS) and State inland revenue services (SIRS) should propose bills to the National Assembly to amend the existing tax laws as well as initiate moves to block the huge loophole in our tax system. It is recommended that government and private initiatives be encouraged to improve this sector of the economy. There is need for improved national image on the international arena and an appropriate legislation put in place to guide the operations of e-commerce within the context our legal system.

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