

TAXATION OF DIGITAL ACTIVITIES AND CROSS BORDER TRANSACTION UNDER THE TAX REFORM ACTS 2025

INTRODUCTION

In an era dominated by rapid technological advancement, the digital economy has emerged as a powerhouse of global growth, reshaping commerce, communication, and finance. Digital activities, encompassing e-commerce, streaming services, cryptocurrency transactions, and online platforms, generate trillions in revenue worldwide, yet they pose significant challenges to traditional tax systems. These challenges stem from the borderless nature of digital transactions, where companies can derive substantial income from a jurisdiction without a physical presence, leading to base erosion and profit shifting (BEPS). For developing economies like Nigeria, which boasts one of Africa's largest digital markets with over 100 million internet users, taxing digital activities and cross-border transactions is crucial for revenue mobilization, economic equity, and sustainable development.

Globally, initiatives like the OECD's Two-Pillar Solution aim to address this, with Pillar One reallocating taxing rights to market jurisdictions and Pillar Two ensuring a minimum 15% effective tax rate. In Nigeria, where the digital economy contributes over 10% to GDP, reforms are essential to capture value from platforms facilitating cross-border trade, such as fintech apps and virtual asset exchanges. Moreover, digital taxation promotes transparency, combats illicit flows, and supports the Sustainable Development Goals by funding public services. However, it must balance revenue goals with innovation incentives to avoid stifling startups. The Nigeria Tax Act (NTA), Nigeria Tax Administration Act (NTAA), Nigeria Revenue Service (Establishment) Act (NRSEA), and Joint Revenue Board Establishment Act (JRBEA) (collectively referred to as "Tax Reform Acts 2025"), which became effective from January 1, 2026, represent Nigeria's bold step toward this balance, modernizing its fiscal framework amid a global shift toward inclusive taxation.

Pre-Tax Reform in Nigeria

Prior to the 2025 reforms, Nigeria's approach to taxing digital activities and cross-border transactions was fragmented and largely inadequate for the digital age. The primary framework was governed by the Companies Income Tax Act (CITA) and Value Added Tax Act (VATA), which dated back to the 1990s and focused on physical presence for tax liability. Non-resident companies (NRCs) were taxed only on profits derived from Nigeria if they had a fixed base or permanent establishment (PE).

This model failed to capture revenue from digital services, where providers like social media platforms or cloud computing firms earned from Nigerian users without any local footprint. A pivotal shift occurred in 2020 with the introduction of the Significant Economic Presence (SEP) rule via the Finance Act 2019 and Companies Income Tax (Significant Economic Presence) Order, 2020 (SEP Order). SEP expanded taxing rights to NRCs deriving ₦25 million or more annually from digital activities in Nigeria, including e-commerce, online advertising, and data services, or those with a Nigerian domain or customized platform.

Additionally, technical, management, consultancy, and professional (TCMP) services provided remotely were taxable if linked to Nigerian entities. This unilateral measure, diverging from the OECD's multilateral approach, aimed to address BEPS but faced enforcement challenges due to limited digital tracking capabilities and disputes over profit attribution. Hence, justifying the need for urgent reforms to align with global standards.

Key Considerations under the New Regime

At its base, the Tax Reform Acts 2025 introduce a comprehensive framework to address digital activities and cross-border transactions, consolidating previous legislations and aligning Nigeria with global standards on the taxation of the digital economy. It provides significant clarity on the following subjects amongst others.

Significant Economic Presence (SEP) Rules

Primarily, Section 17 of the NTA 2025 clears the path for the issuance of a revised SEP Regulation to be issued by the Minister of Finance to capture NRCs which can attribute profit to specific digital activities & services from Nigeria, such as e-commerce platforms, digital content provision, and data transmission services amongst others. Notably, while the NTA does not stipulate a threshold, as applicable under the SEP Order 2020, it refocuses SEP primarily on digital services.

Tax Treatment of Digital and Virtual Asset Gains

Section 4 of the NTA explicitly includes profits or gains from transactions in digital and virtual assets, such as cryptocurrencies and NFTs, as chargeable income, subjecting them to Companies Income Tax (CIT) at 30% for companies and progressive Personal Income Tax (PIT) rates up to 25% for individuals. It is worth noting also that where a gain is made from disposal of digital assets, such gains would also be subject to tax at the rate of 30%.

Similarly, Virtual Asset Service Providers (VASPs), including crypto exchanges, must register with the Nigeria Revenue Service (NRS) and file periodic returns disclosing relevant transaction and income information relating to Nigerian users or activities. There is a high-risk that this obligation would apply regardless of whether the VASP is resident in Nigeria where it triggers an SEP or Permanent Establishment, reinforcing the shift away from physical presence as the primary basis for tax compliance. Failure to comply attracts ₦10,000,000 (first month), ₦1,000,000 (each subsequent month), with possible license suspension or revocation.

VAT Rules for Digital Services

Under the new regime, VAT at 7.5% is mandated for imported digital services, with foreign providers required to register and remit applicable VAT while complying with electronic-invoicing regimes determined by the tax authority. Businesses must issue electronic fiscal invoices that transmit data directly to tax authorities. This reduces under-reporting, prevents invoice manipulation, and strengthens enforcement.

Furthermore, the NTA tightens Nigeria's VAT framework for non-resident companies by anchoring VAT liability on **place of consumption**, such that VAT is payable in Nigeria whenever a service is consumed locally, regardless of the supplier's location. Where services are supplied to VAT-registered Nigerian businesses, the **reverse charge mechanism** applies, requiring the Nigerian customer to self-account for and remit VAT to the NRS, while Nigerian companies exporting digital products such as software or IP remain **zero-rated (0% VAT)** and retain the right to recover input VAT.

Introduction of Controlled Foreign Company (CFC) & Minimum Top-Up Tax Rules

The NTA introduces Controlled Foreign Company (CFC) rules, targeting undistributed profits of foreign subsidiaries controlled by Nigerian residents. Under these rules, if the effective foreign tax rate on such profits falls below **15%**, the shortfall is taxed in Nigeria, ensuring that income earned offshore does not escape Nigerian taxation. Complementing this, the Act implements a 15% minimum top-up tax for multinational enterprises (MNEs) with global revenues exceeding €750 million or its equivalent, consistent with OECD Pillar Two standards. Together, these measures aim to discourage

profit shifting and related harmful tax practice, particularly in cross-border digital operations, while promoting fairer taxation of global corporate income.

Implications for business entities and stakeholders

Enhanced Tax Obligations for Digital and Non-Resident Businesses

Digital businesses, non-resident service providers, and platforms earning income from Nigeria are now clearly within the tax net, regardless of physical presence, bringing expanded tax exposure. This comes with increased compliance obligations, including mandatory tax registration, periodic filings, and real-time VAT reporting, requiring stronger internal controls, accurate record-keeping, and timely submissions. Consequently, compliance costs are higher, as businesses may need to invest in upgraded accounting systems, invoicing software, and data-tracking infrastructure to meet electronic fiscalization and reporting requirements.

Stronger Oversight and Fairness

The tax laws provide reduced regulatory ambiguity, with clear rules on digital activities, virtual assets, and cross-border transactions that enhance certainty and support more effective tax planning. They also promote greater enforcement and a level playing **field**, as technology-enabled monitoring increases compliance scrutiny, reduces under-reporting, and ensures both local and foreign digital service providers are subject to comparable tax obligations, minimizing competitive distortions.

Increased Compliance Obligations

For small companies and startups, meeting some of the technical and financial obligations can be particularly challenging, straining internal resources, increasing operational costs, and diverting attention from core business activities. Beyond operational pressures, these requirements under the new regime heighten the risk of inadvertent non-compliance, potential penalties, and regulatory scrutiny. Consequently, businesses must invest in upgraded accounting systems, automated reporting tools, staff training, and robust internal controls, making compliance not only a financial commitment but a strategic necessity for sustaining operations and managing regulatory risk in Nigeria's evolving digital economy.

CONCLUSION

The Tax Reform Acts 2025 mark a transformative milestone in Nigeria's approach to taxing the digital economy and cross-border transactions. By expanding the tax net to include digital businesses, virtual asset activities, and non-resident service providers, the reforms address BEPS while promoting fairness and transparency. Enhanced enforcement, electronic fiscalization, and clear regulatory guidance reduce ambiguity, creating a level playing field for local and foreign players.

While compliance demands, especially for startups and SMEs are significant, they also present an opportunity to modernize & formalize internal processes, strengthen governance, and adopt strategic tax planning. Properly implemented, these reforms will not only increase revenue mobilization but also support economic growth, sustainable development, and Nigeria's integration into the global digital economy.

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