



Legal Issues in Taxation of Electronic Commerce in Nigeria

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ABSTRACT

The taxation of electronic commerce (e-commerce) has become a pressing concern in Nigeria, as the country seeks to harness the potential of digital trade while ensuring fiscal sustainability. This article examines the legal issues arising from the taxation of e-commerce in Nigeria, with a focus on the challenges posed by the digital economy. The article begins by surveying the current state of e-commerce in Nigeria, highlighting the growth of online transactions and the increasing importance of digital trade to the national economy. It then examines the legal framework governing taxation in Nigeria. The article identifies several key challenges in taxing e-commerce in Nigeria, including the difficulty of attributing profits to a specific jurisdiction, the lack of clear guidelines on tax obligations for digital businesses, and the need for cooperation between tax authorities and digital platforms. It argues that these challenges can be addressed through a combination of legislative reforms, administrative guidance, and international cooperation. Ultimately, this article aims to contribute to the development of a more effective and equitable tax regime for e-commerce in Nigeria, one that balances the need for revenue with the need to promote digital trade and economic growth.

Keywords: Electronic commerce, Taxation, Nigeria, Digital economy, Value Added Tax (VAT)

1.0 Introduction

E-commerce poses various challenges to existing Tax systems.¹ At sub-national, national and international levels.² The difficulties in identifying and identifying the taxation jurisdiction of e-commerce taxpayers, making sure that the proper documentation of e-commerce transactions is made, and obtaining taxes in an e-commerce environment have all been well-documented.

As with almost everything else, the advent of the Internet age has significant ramifications for tax administration. The traditional methods used by taxing authorities for both direct and indirect taxation are facing a formidable challenge from the exponential rise of electronic commerce. Fiscal authorities worldwide are concerned about the possibility of large-scale economic activity via electronic commerce carried out by remote service providers involved in untraceable transactions from unidentifiable places. Traditional goods and services can now be directly marketed to consumers through new channels made possible by electronic commerce. It generates comparable chances for business-to-business (B2B) exchanges of non-digital and digital goods and services. The following headings will cover the difficulties in taxing electronic commerce.

2.0 Challenges of E-Commerce³

a). Internet and Computer Age

The concept of e-commerce/internet transaction is relatively new and fast developing in the world commerce and has affected the role of communication in reducing the world into a global village. There are yet to be put in place new rules for the treatment of the income from e-commerce/transactions done via the internet. It would appear that the well established old concept of Permanent Establishment (PE) in Double Taxation Agreements (DTA) parlance, that the jurisdiction of a source country to tax profits from foreign trade carried on by non-resident company of one country must have sufficient presence in another country to be liable to tax in respect of its profits from business operations in the other country would not be applicable to e-commerce. This is because access to internet has nothing to do with physical location.

b). Lack of Physical Location

¹ A study in the United States of America identified four major economic issues related to state taxation of internet transactions: efficiency, equity, differential effect among states and revenue loss estimates.

² Ronald Paris, "The globalization of Taxation? Electronic Commerce and the transformation of the State" *International Studies Quarterly*, 2003 47, 154

³ Dr. Obayemi, O., 'E-Commerce in Nigeria: Benefits and Challenges' <<http://doi.org/10.22364/hssl.28.2.05>> accessed on 10 July 2024.

The problem posed by the inapplicability of PE to e-commerce is that it is a transaction done via the internet website. A website cannot qualify in terms of spatial and temporal location because of its intangible nature, since it is a combination of software and electronic data. Thus, the operations of e-commerce are clearly exempted from the scope of source taxation, since source cannot be determined in terms of place

E-commerce technology “epitomizes borderlessness, and irrelevance of being in a particular physical location.” The problem posed by this is the possible impact e-commerce may have on the revenue-base especially as the e-trader would only be taxable on PE threshold which is impossible as earlier stated. This in turn “will allow unwilling taxpayers to hide more easily”, especially in the areas of products like music, retail and book industries. In other words, tax system relies on knowing where a particular economic activity is located. But the internet may enable individual workers to operate in many different countries while sitting at the same desk. The advancement in technology such as e-commerce has been a challenge to tax administrators in the area of combating tax evasion and cross border transactions.

c). **Software Conversion**

The problem posed by the tax treatment of the year 2000 Computer Software Conversion gained prominence in early 2000 among financial institutions in Nigeria and other companies. The software conversion was borne out of the need for the private and public sectors at the time to reluctantly incur the additional costs of updating computer software so that it properly functions after 1999. It was believed that computer systems and software’s were programmed to start with the digit 1 and not 2 and therefore might not function properly after December 31, 1999. Furthermore was its failure to recognize a year input as “00”. There was the rumor that systems not having been configured to work in the new millennium might crash. The general fear was that the computer would crash as it would, instead of 2000, revert to 1900 when computer was not recognized.

In the United Kingdom, Software acquired under a license is normally treated as belonging to the trader as long as he is entitled to the right, while computer software is treated as being machinery or plant; even though, the meaning of “computer software” is yet to be determined by the Court.

In the United States case of *United Stationers v. United States*, a U.S District Court for the Northern District of Illinois-982 F. Supp. 1279 (N.D. Ill. 1997) the Court disallowed the taxpayer’s internal-use software development research tax credits on the basis that the activities

- (1) were not technological in nature nor were they to expand or refine existing principles of computer science?
- (2) Not for experimentation and as such did not meet the requirements of qualified research so as to qualify as deductible tax allowance.

In Nigeria, there is no judicial pronouncement on this issue, but the Courts are likely to follow the decisions from the other jurisdictions cited above if faced with a similar situation. In view of the foregoing, and due to the non-responsiveness of FIRS to taxpayers as per 2000 software conversion costs, it would appear that this matter was not resolved and that each taxpayer was at a liberty to treat same as allowable expenses, exempted from tax.

However, it has been observed generally that tax avoidance is on the increase by large business firms, who adopt sophisticated strategies for circumventing tax laws. In other words, tax avoidance is on the increase than tax evasion.

d). **Difficulty of Fund Audit Trail**

It would appear that the scourge of Internet Banking poses the challenge of making tax audit trail very difficult. Also, the e-payment technology which assists in easy movement of funds without trail also occasions another challenge to tax administration.

It is also important to note the issue of Scratch Cards introduced recently by almost all organizations for recruitment, University admissions, checking Joint Admissions and Matriculation Board JAMB and School Leaving Certificates Examination results in the country is deplorable. Huge amounts of money are realized through the sale of these scratch cards without tax being paid on these transactions thereby occasioning huge revenue loss to government. A lot of recharge cards are sold daily for use by customers of various GSM providers like MTN, Globacom, Etisalat, etc. There is no evidence of tax payments by such customers.

These big taxpayers/avoiders have the means to employ sophisticated accounting firms to engineer new derivative products for their clients that would not be apparent to tax authorities or that would not run foul of the existing tax laws. For instance, if a Nigerian Subsidiary of a transaction company wishes to buy components from another subsidiary of the same corporation based in South Africa, there exists computer software to show exactly how to route the purchase through a chain of subsidiaries to minimize tax liability.

Thus, the emergence of e-commerce and other technological development has enhanced capabilities of the big players in the economic world to engage in financial engineering geared towards threatening the companies’ tax base.

e). **Corruption**

There is a huge loss in tax revenue accruable to government, as tax authorities face enormous challenges in collecting taxes from those who owe them. For example, lawyers who take cash for a Saturday office visit; waiters who receive most of their income as tips; landlords who collect rent in cash; small business people who conceal part of their profits or hire people off-the books.

The combined effects of information technology on the ever increasing e-commerce transaction would not allow those who have been able to hide in the cash based or shadow economy to evade paying their taxes or disappear altogether. Many eligible taxpayers cannot be identified within a single national jurisdiction so that sometimes their foreign incomes cannot be traced for tax purposes as they are hidden in foreign bank accounts. Property is becoming increasingly intangible and consumption difficult to locate can be shifted relatively easily between jurisdictions. In view of the foregoing,

one can then ask the question, where lies governments' continued ability to levy taxes in a world in which companies, assets, people are infinitely mobile, and information technology and e-commerce transactions are increasing?

There is a need to devise strategies for curbing or reducing loss in tax revenue occasioned mainly by tax evasion and corruption. One of the ways is to fight against corruption. The Federal Inland Revenue Service has declared a war on corruption by employing the role of "whistle blowers" who would raise alarm by reporting to FIRS management on any perceived act of corruption.

Tax Administrators should devise means of tackling the following sharp practices which occasion huge revenue loss to government:

- (a) Failure to charge correct rates of Withholding Tax WHT and Value Added Tax VAT on transactions
- (b) Misclassification of transactions resulting in under-remittance
- (c) Illegal retention of WHT, VAT and Pay As You Earn PAYE funds after deduction have been duly made and ploughing back such funds to execute contracts.
- (d) Failure to charge the correct rates of PIT on resultant chargeable incomes of employees and
- (e) Practical or non-remittance of PAYE deductions made from employees' Salaries/Emoluments.

Total compliance with the relevant provisions of the tax laws were meant to safeguard against the above leakages. For instance, Section 40 of the FIRS Act imposes a general obligation on agents to deduct and remit taxes in accordance with specific provisions of the various tax laws. While it is an offence to deduct and fail to remit to the service within 30 days, such an offender is to pay the tax withheld or not remitted in addition to a penalty of 10 percent per annum and interest at the prevailing Central Bank of Nigeria rate or to a jail term of 3 years. Section 13 (1) of the VAT Act, imposes an obligation on Ministries, Departments Agencies of government to withhold VAT at source on all payments and remit to the FIRS.

It is worthy to note that the provisions of these tax laws are not complied with, thus, tax administrators should ensure that the full sanctions and penalties ranging from imprisonment to payment of penalties and interest under the relevant tax laws are employed to fight loss of tax revenue due to government and also to serve as a means of deterrence to tax defaulters. The adequate sensitization, enlightenment and education of the tax payers and the general public would help reduce the loss of revenue due to government. The FIRS has devised many forms of enlightenment through the media, workshops and adverts.

f). **Alternative Payment Methods**

Tax authorities are often faced with diverse problems ranging from delay, diversion and non-remittance of funds collected on its behalf by government agencies and this sometimes occasions great loss of revenue to government. The problems were due largely to errors in the manual payment process, lack of unified and easily manipulated system employed by collecting banks. In order to combat this surge, FIRS introduced Project Fact in 2007 to herald the introduction of automated payment system at any of the FIRS designated Collecting Banks such as First Bank, Zenith Bank, Oceanic Bank and Union Bank, so that collections could be tracked on-line from all the FIRS offices. Daily, Interswitch sweeps collected funds from the collecting banks to the FIRS Account at the Central Bank before it hits the Federation Account and other designated accounts as the case may be eg VAT Pool Account is designated for VAT Collections. Tuesday May 19, 2009 marked the birth of a new tax payment regime in Nigeria with the introduction of FIRS online payment of all types of tax. On that day, First Bank Plc recorded the first online payment by ITECO Nig. Ltd on the FIRS portal (www.firsonline.com.) Under the new online payment all a taxpayer is required to do is to obtain a taxpayer Identification Number, an FIRS e-tax card from the bank of his choice, log on the FIRS website www.firs.gov.ng, then click on make online tax payment and follow the prompt, until payment is made using the FIRS tax card only.

Hence, the payment of taxes to Federal Inland Revenue Service is now easier as taxpayer completes the requisite tax form or prepares the beneficiary schedule for WHT tax payments. This can be a physical form, or completed online on the FIRS web portal. Thus, payments are now user-friendly, convenient, efficient and without encumbrances.

It is recommended that all States and Local Government tax revenue bodies should take a cue from the automated system/e-payment tax collection so as to enhance quality of governance and to support tax payment compliance.

g). **Adequate Sensitization and Education by Tax Authorities**

There is lack of education of taxpayers by the various tax authorities especially by the Local Government Revenue Committees. In fact there is total absence of tax education and public enlightenment for taxpayers at the grass root level. In Nigeria where the total population is over one hundred and fifty million, it is sad to note that only over 50 million Nigerians are literate. Out of this literate portion, only a minute number can operate the computer. Due to the high level of illiteracy, there is the prevailing ignorance about taxes, rates and levies imposed by the various Local Governments. Often times, the procedure for assessment, and objection to assessments, appeals and tax payers' rights are unknown to taxpayers at the local government level.

In the ongoing reform at the FIRS, tax payers' education and enlightenment is a priority as noted by the Executive Chairman FIRS, Mrs. Ifeuko Omoigwe-Okauro. She stated that "FIRS has unveiled new tax payment system through the use of Tax Payer Identification Number (TIN), electronic cards, issuance of e-tickets and on-line payment aimed at improving tax administration in Nigeria".

In other words, lack of public enlightenment and education on tax would create an in-effective administration of taxes and would occasion a loss in revenue to government. Where a tax payer does not understand his tax liability easily and correctly his chances of complying would be very low. Lagos State seems to have taken a cue from this and has gone into massive tax awareness campaigns showing clearly what tax can do for the masses. This has brought about the popular slogan 'Eko o ni ba je o' meaning Lagos will not be destroyed which is chanted by all Lagosians as a motivation for payment of taxes.

h). **GSM Regime**

In Nigeria, General Olusegun Obasanjo's Administration marked the advent of Global System of Mobile Communication (GSM) and therefore, tax holiday was granted GSM operators by that administration to encourage their pioneer industry. However, there are recent calls and clamours from the National Assembly and the Nigerian populace that this tax holiday amounts to huge loss of revenue to government, against the backdrop of poor services currently rendered, high tariff rates, and huge profit. To this end, the House of Representatives in 2010 initiated through Dirro Melaye a probe of the Nigerian Communications Commission (NCC) over the loss of revenue on tax holiday granted GSM operator providers in Nigeria by the last administration. Their argument was that a tax holiday in addition to the excessive profit was an unnecessary leakage as those operators will continue to operate with or without the tax holiday.

Also worthy of mention, is the issue of the remittance of the Value Added Tax included in the cost of air time vouchers/cards sold by GSM Providers. There is no proper accountability and effective remittance structure in place for the collection and remittance of VAT charged on airtime vouchers/cards in total disregard of the VAT Act and thereby occasioning huge revenue loss to government. The National Communication Commission (NCC) announced plans to register all SIM Cards of mobile telephone users on or before 31st December 2010. This is aimed at curbing criminality. Currently there are over 40 Million subscribers to the MTN lines in Nigeria. The proposed registration should be able to capture the entire detail of the subscribers to all providers with information ranging from name, address, age, occupation and other information relating to finger prints, photograph and the person's biometrics generally.

This data would serve as a good working tool in the hands of tax administrators in monitoring VAT charged on airtime vouchers so as to put a proper structure in place for collection of VAT charged on airtime voucher and the tax treatment of other GSM transactions. It is interesting to note that the deadline for registration has come and gone but nothing has yet happened to the lines of those who have failed to register.

3.0 Implementation Challenges

A fair distribution of the tax base from international electronic commerce will be achieved, fiscal sovereignty of nations will be preserved, and the risk of double taxation and nontaxation will be reduced with an internationally consistent implementation of the taxation principles. For tax authorities, applying these principles in the context of electronic trade will provide new difficulties. Consumption Taxes is one of the four macroeconomic areas where implementation issues occur. Tax administration, transfer pricing, and tax treaties.⁴

3.1 Consumption Taxes

In general, the basis for supply rules falls into two categories: those that depend on identifying a relevant establishment (the supplier in some cases, the customer in others) and those that are based on the place of performance or enjoyment. The concept of the place of supply is important in consumption tax systems like Value Added Tax (VAT) systems and Goods and Services Taxes (GST).⁵ The Internet creates significant compliance challenges for consumption tax authorities since electronic commerce greatly obfuscates the connections between the location of the firm, the place of supply, and the location where the service is utilised or consumed.⁶

The conventional ideas that underpin VAT regimes are under threat from the communications revolution. The methods in which supply of computer software and related computer services, internet services, satellite broadcasts, and telecommunications services will be handled under VAT are of significance to tax administrations and others.⁷

In order to incorporate the 'place of consumption' principle into a workable policy, consensus must be reached over the definition of the place of consumption and the operation of the associated place of taxation regulations. A number of questions also concern the definition of services and intangible property for the purposes of consumption taxation, as well as the kinds of tax collecting systems that must be established in order for the principles of taxation to be implemented successfully. Sales taxes, often known as consumption taxes, are levied against customers and are collected by shops. But if they're not built well, sales taxes could hurt businesses financially. The cost of figuring out the applicable tax rate—which might vary depending on the kind of goods, the customer's location, and other factors—as well as creating invoices in compliance with tax laws, collecting taxes, submitting and

⁴ Jeffrey Owens, 'Electronic Commerce Answering the Emerging Taxation Challenges' <<http://lobby.la.p5u.edu/080-Internet-Sales-Tax/Agency-Activities/ACEC/Challenges.d-c>> accessed on 06 August 2020.

⁵ Ibid.

⁶ Ibid.

⁷ 'Electronic Commerce: The Challenges to Tax Authorities and Taxpayers' <http://cryptome.info/turku18.htm> accessed on 13 August 2020.

sending payments, and keeping accurate records of taxes are all borne by the sellers. In the event that the tax is assessed improperly, any shortfall will normally be borne by the seller (or its third-party agent) and cannot be recovered from the client.⁸

The collection of consumption taxes is becoming more and more difficult for governments and suppliers due to constantly evolving technologies. These challenges include figuring out which jurisdictions should apply for taxation, confirming the location of consumption, figuring out how to properly tax bundled products, bad debts, and tax credits, keeping data, and adhering to audit requirements.⁹

3.2 Redefining Tax Treaties

Although there are few examples of multilateral tax treaties and treaties pertaining to other taxes, tax treaties are primarily bilateral and include capital and income taxes. The preamble of most bilateral tax treaties states that the goals are to "avoid double taxation and the prevention of fiscal evasion."¹⁰ As a result, the internet will present tax treaty negotiators with challenging interpretation issues. Can the current ideas—like royalties and permanent establishment—be modified to include activities conducted online? Or ought the tax authorities to be conducting a more thorough examination? The presence of a business is a key factor in tax treaty determinations of taxation rights, as it is used to determine the existence of a permanent establishment. It is mostly a matter of fact as to whether an establishment's operations in a nation increase to the point where they qualify as permanent establishments. Is a jurisdiction entitled to tax revenue attributable to an enterprise just because it hosts a website or server there? Does this constitute a permanent establishment? Treaty negotiators will need to look into these issues as well as more broadly, how treaty ideas may be used to new business models.¹¹

3.3 Implications for Transfer Pricing

Electronic commerce does not, in theory, provide new challenges or radically distinct aspects related to transfer pricing.¹² It might, however, make transfer pricing analysis more intricate.

The conventional application of the arm's length concept is under assault from the growth of private intranets within multinational corporations (MNEs),¹³ by stimulating the fuller integration of multinational operations, particularly in the provision of services. According to the OHCD's Guidelines on Transfer Pricing, a functional analysis might be necessary to prove comparability, although it might be challenging to determine who is doing what in the age of electronic commerce and private intranets. Synergies from the deeper integration could be advantageous in addition to the members' immediately quantifiable contributions. This presents the challenging issue of how these advantages need to be distributed across the associated businesses. It is obvious that transfer pricing will become more complicated.¹⁴ It is recommended that the government take into account the possible effects that e-commerce may have on the economy before passing any laws or formulating any regulations that would have an impact on e-commerce.¹⁵

In light of the fact that e-commerce has significantly altered the way in which business flows are distributed and intermediated, it will be challenging to determine which business functions should be given more weight when considering the entirety of the current market. It is understandable, then, that both tax payers and tax collectors find it difficult to identify which corporate operations are important and to decide how best to divide the earnings accordingly. Even if e-commerce did not originate transfer pricing issues, the Internet will make them more complicated.

This is because networks make it possible to pool together resources from diverse locations to deliver a service or product to a customer. Setting prices for these services is already challenging, and e-commerce will make it even more so. Similarly, it would be difficult to assign revenues to the several associated companies that went into making the final product. If unrestricted growth in e-commerce is to be ensured, these difficulties must be given careful thought.

3.4 Tax Administration

Tax authorities will have a tough time levying earnings linked to server software operations. Tax authorities would need to review hundreds of lines of computer code and case by case calculations in order to determine the income attributed to the server or website. Administratively, this is not possible since tax authorities would need to figure out how much value was added by the server functions.¹⁶

⁸ Richard Jones and Subhjit Basu, 'Taxation of Electronic Commerce: A Developing Problem.'

⁹ Implementation Issues for Taxation of Electronic Commerce' < www.oecd.org/dataoecd/38/42/5594899.pdf Accessed on 13 July 2020.

¹⁰ 'Electronic Commerce: The Challenges to Tax Authorities and Taxpayers' <<http://crvptome.info/turku18.htm>> accessed on 13 August 2020.

¹¹ Jeffrey Owens, 'Electronic Commerce Answering the Emerging taxation Challenges' <<http://lobbv.la.psu.edu/080-Internet-Sales-Tax/Agency-Activities/ACEC/Challenges.c1-c>> accessed on 06 August 2020

¹² The prices are charged for transactions that take place between the different parts of a multinational enterprise

¹³ This is the idea that business dealings within a multinational company (MNE) should be handled similarly to those between independent businesses.

¹⁴ Jeffrey Owens, 'Electronic Commerce Answering the Emerging taxation Challenges' <<http://lobbv.la.psu.edu/080-Internet-Sales-Tax/Agency-Activities/ACEC/Challenges.d-c>> accessed on 06/05/2020

¹⁵ Eugene R. Qulnn, 'Tax Implications for Electronic Commerce' (1999) 4 (3) Journal of Technology Law & Policy.

The tax authorities need to be able to pinpoint a taxable event in order to tax an economic activity. Tax administrators have faced challenges because of the factual nature of tax determinations and potential issues in electronic commerce and telecommunications contexts. The arm length principle cannot be implemented without a factual study of the enterprise's activities and the location of the activities. For example, the volume of activity in the country determines whether a business has a permanent establishment. Within the traditional business setting, tax administrations depend on their ability to accurately identify the taxpayer, get substantiated data regarding the taxpayer's tax situation, and possess effective systems for obtaining the outstanding taxes. A company that conducts electronic commerce on the Internet might only be recognised by its domain name, but there isn't always a direct correlation between a domain name and the location of the activity. The increasing involvement of Small and Medium Enterprises (SMEs) in international electronic commerce may exacerbate the issue of non-identifiability. Moreover, there are situations in which an Internet domain name may suggest a connection to a well-known company even while none actually exists, which might result in trademark-related problems. It is hard for tax administrators to collect taxes if taxpayers are not accurately identified. Tax authorities will argue over jurisdiction in the event that they are able to identify the taxpayer but not its precise location in the globe, raising the possibility of double taxation. Businesses that are ethical and participate in internet commerce understand that collaborating with the government to guarantee proper identity makes sense from a business standpoint. Businesses have advocated for steps like registering business names, mailing addresses, phone numbers, and fax numbers on their websites as a means of boosting consumer trust in online shopping. These steps will also help with some of the difficulties tax officials have in locating taxpayers. In the virtual world, tax officials might likewise have trouble physically collecting taxes.

Intermediaries collect an enormous portion of tax revenue. Wage taxes are collected by employers; consumption taxes are collected by enterprises; interest and royalties taxes are collected by financial institutions. Electronic commerce may occasionally eliminate these middlemen, making it necessary for tax authorities to collect modest sums from a large number of taxpayers. Tax authorities may incur excessive administrative expenditures and taxpayers may incur unreasonably high compliance costs as a result. It is recommended that tax administrators promote business practices that enable the identification of e-commerce enterprises and investigate methods for making it easier to track down websites and other electronic company locations that are not properly identified.

4.0 Enforcement Challenges

Concerns have been raised about governments' potential inability to fulfil the rightful requests of their citizens for public service due to the impact of the Internet on tax law enforcement. With the emergence of e-commerce, tax administrators will need to be well prepared to handle the numerous enforcement issues that this quickly developing business model is expected to provide. The enforcement challenges of taxation of e-commerce include, in this regard, the identity and location of parties, anonymity of transactions and accounts, dis-intermediation, transfer pricing issues, online delivery and net cash, easy access to tax havens and low-tax jurisdictions, identification of taxing jurisdiction, opportunities for new tax evasion, recovery of taxes, exchange of information, and tax payer services.

The anonymity provided by the Internet is one of the major perceived risks linked to its introduction. The client is unaware of the server's location, and the server is unable to pinpoint the client's location. It may be challenging to determine who is doing what in the context of e-commerce and the usage of private intranets, and it may be challenging to tax a taxpayer in the absence of precise identification.

There can be issues identifying the tax jurisdiction or double taxation. It is anticipated that transfer pricing issues, which now exist, would get far more complex as a result of the Internet. Disintermediation is also encouraged by the internet. This eliminates the need to obtain information from third parties and recover taxes, which must be obtained directly from a sizable number of taxpayers. Additionally, there is concern that workplace mobility will rise as a result of the Internet. Businesses can relocate to areas with lower tax rates. Even for small businesses, tax havens are becoming more accessible, which has a negative impact on tax collections. Some people believe that because there is no physical place for the Internet, it is hard to monitor and stop the movement of data or electronic money. The issues of detection, ownership determination, and taxation arise from electronic delivery. The volume of transactions involving online delivery will increase as bandwidth increases. Online shopping allows consumers to avoid paying indirect taxes. Since no audit trail is left, transactions involving digital delivery are challenging to track or tax. There can be no surveillance or detection if the payment is made using electronic cash as well. It was observed that strangers do not transact substantial amounts of commerce. It is imperative for transactions involving significant amounts of money that the parties involved know one another and are comfortable with the other party's qualifications due to sound business reasons. Both parties need to have certain safeguards in place, even in business-to-consumer (B2C) transactions. Typically, this would include customer prepayment and the retailer's reputation.

Additionally, the means of delivery and payment are still conventional in the vast majority of e-commerce transactions. Only in cases where delivery and payment are made via the Internet or another network does enforcement truly face a difficulty. The digital form of the deliver) makes it more difficult for tax agencies to execute the legislation. However, complete anonymity is only possible when e-cash is used for both the delivery and the payment process. Online commerce will expand rapidly after the technological issues with delivery and payment are resolved, therefore tax administrators must be prepared to handle any genuine challenges before they arise. Tax administrators must also take advantage of the Internet's potential to enhance taxpayer services.

4.1 Identity and location of parties

Among the most important issues in an e-commerce scenario are the parties' ability to remain anonymous during the transaction, the possibility of hiding the transaction through the use of encryption, and the possibility of keeping records on a server situated in a different tax jurisdiction. It's concerning that the domain name can suggest a connection to a reputable company even while there isn't one. However, in practice, an audit trail will be left by the

address provided when registering with network service providers and the method used to pay access fees. Technically speaking (as evidenced by the speedy detection of hackers breaking into the systems of certain large corporations!), it is feasible to identify and locate Internet users accurately. The right identity and location can be found with the help of current technologies and cooperation across various tax jurisdictions. The seamless and unimpeded expansion of e-commerce necessitates the implementation of certain fraud prevention measures. It would consequently be necessary for responsible business organisations to implement the necessary systems. These will support the application of tax legislation.

The tax implications of current tax systems are typically determined by the taxpayer's geographical location. Businesses can function with very few physical locations thanks to the e-commerce paradigm. From one physical location, an internet dealer can effortlessly sell to people all over the world.⁸⁸⁸ Responsible businesses have advocated for measures like registering names, mailing addresses, phone numbers, and facsimile numbers on websites. They believe there are good business reasons for them to collaborate with governments to guarantee proper identity. However, involvement by Revenue authorities in these kinds of activities will be required. Even the OECD emphasises how important it is for revenue agencies to be involved in the development of electronic trading, payment, certification, etc. Therefore, it is advised that tax administrators collaborate with commercial groups to establish appropriate systems for Internet and other network user identification. Governments and other enforcement agencies should implement measures that would reduce the risks associated with tax compliance. These measures should include developing uniform or compatible systems for limiting Internet and network users' anonymity and preventing illegal activities that might otherwise be encouraged by the anonymity provided. To avoid placing an undue compliance burden on intermediaries like as banks and network service providers, a uniform methodology is needed.

Since the intermediaries would be responsible for the burden of compliance, they should be consulted in the design of the tax systems that impact e-commerce. Similar to this, specialised units within the tax administration might be established with the knowledge to address issues such as locating and identifying the parties involved in e-commerce taxation. The mechanisms that are to be developed must outline the conditions that will lead to an order for identification, the rank of the officers who will carry out this power, the consequences for not complying, and the amount of time that individuals who must comply must keep their records on file.

4.2 Anonymity of transactions

Systems that allow for the revocation of anonymity in certain situations must be implemented. Such systems would mandate that parties disclose their encryption key and transaction details, and that intermediaries like network service providers also provide transaction details. The systems should also outline the degree of officers who will need to have the requisite authority, the penalty for noncompliance, and the ability for designated certifying authorities to disclose digital signatures. Similar access to information would be required for other law enforcement organisations that deal with financial crimes, drug trafficking, and terrorism. Following the relaxation of regulations concerning currency convertibility, the Central Bank of Nigeria would have to keep an eye on the movement of funds. Information access will be necessary even for the audit agencies. It would be best if all relevant agencies worked together to develop the aforementioned systems, to avoid burdening network service providers with unwarranted compliance requirements as a result of individual efforts in this area. Involving the information suppliers in this effort is also essential. This will guarantee that network service providers are not subjected to unfeasible demands by systems.

Additionally, e-commerce necessitates transaction surveillance by the tax authorities. This is because, once digital delivery and payment mechanisms are widely used, an examination of previous transactions may result in a significant loss of income due to the ease with which tax evasion can occur and the challenges associated with collecting unpaid taxes from virtual businesses. The tax authorities should establish a surveillance system for these transactions after consulting with enforcement agencies that are involved in criminal operations, as these agencies will also need to keep an eye on transactions on the networks.

In general, it may be sufficient to disclose all transactions made through networks. But the choice of the system should be made after consulting with business associations and pertinent organisations like the Institute of Chartered Accountants of Nigeria and the Chartered Institute of Taxation of Nigeria.

4.3 Disintermediation

The process of disintermediation and the rise in cross-border trade, which are essential components of e-commerce and the new economy, are significant issues for tax administrators. since they drastically alter the methods used to collect some taxes. This is because tax administrators are being forced to collect taxes from a larger number of less sophisticated taxpayers in smaller amounts due to the gradual removal of traditional intermediaries and withholding agents, such as brokers and financial institutions, from the information reporting and withholding of taxes activities. It is reasonable to worry that e-commerce will cause disintermediation. There are no middlemen involved in the transaction between the buyer and vendor.

Because even small businesses can reach clients anywhere in the world for a very low price, the wholesaler and retailer will disappear. It is anticipated that disintermediation will make it more difficult to recover taxes and obtain information from other parties. Along with the controller and certifying authorities authorised by the tax regulations, network service providers will be the new intermediaries. There will need to be systems in place that demand information from network service providers. After that is finished, information about assets and other third parties will be accessible.

4.4 Online Delivery and E-Cash

When it comes to online delivery and payment, the true issues for enforcement in an e-commerce setting occur. The definition of e-commerce includes electronically marketed products such as banking, software, entertainment, real estate, insurance and brokerage services, travel and ticketing services,

legal services, health care, education, and government services, even though the volume of online commerce is only a small portion of overall e-commerce. In certain transactions, it becomes challenging to charge or collect both direct and indirect taxes because the provider is located in a foreign tax jurisdiction. It is administratively impracticable to withhold tax for direct tax reasons from a significant number of small consumers or to realise indirect taxes from them. In these kinds of transactions, the customary audit trail consisting of purchase vouchers, transportation records, and intermediaries like wholesalers or merchants would be absent. An even greater challenge for tax administrations is the development of e-cash, also known as "net cash" or "digital cash." In its most basic form, an e-cash system consists of four main procedures (account establishment, withdrawal, payment, and deposit) and three parties (a bank, a user, and a shop). Another thing to keep in mind is that the loss of anonymity does not encourage crimes more serious than those it guards against; e-cash is meant to mimic the appearance of anonymity in ordinary cash transactions in order to preserve user privacy and avoid the accumulation of personal information. However, it can also make fraud and criminal activities easier, like money laundering, cyberstalking, and unauthorised sales. Consequently, an effort is being made to create "anonymity controlled e-cash" using either "owner tracing" or "com tracing" strategies. While e-cash development is unlikely to have a major impact in the near future, it is nevertheless necessary to regularly monitor e-cash developments in conjunction with other law enforcement organisations.

4.5 Use of Tax Havens

The impact of tax havens and low-tax jurisdictions being easily accessible in an e-commerce scenario is the next concern. Because capital is mobile, less mobile labour is sacrificed in order for capital to ride for "free." More people who want to avoid paying taxes can now access low-tax areas thanks to e-commerce. This leads to distortion when people keep using the services offered by high-tax nations without paying their fair share of taxes. Additionally, wealthy people are more likely to be mobile, which increases their likelihood of using tax havens. Usually, money laundering and tax evasion are carried out in tax havens. There is a research being conducted by the OECD on "harmful tax practices." The OECD has therefore already taken action to stop what are known as "harmful tax practices." These are countries that impose restrictions on the transmission of information or charge international businesses a different tax than their people. Several emerging nations are likewise competing with one another to cut their tax rates. Because of operations being domiciled in tax havens, there is concern that a point may be reached when the governments are unable to even raise the funds needed for public service provision.

Despite the potential for tax havens to deplete revenue, it is important to remember that these places have been around for a while and are not a result of the Internet. It is important to remember, though, that people often do not enjoy moving to a new nation, and tax rates are not the only factor in location selection. The solution is to keep a close eye on developments, work with other nations to combat abusive tax practices, introduce legislation for controlled foreign corporations when it is appropriate, and amend double taxation agreements when they are discovered to seriously reduce a nation's tax base. Regular data monitoring, action to amend DTAs when they significantly reduce the tax base, and complete support for international information sharing to stop abusive tax practices are all necessary to combat damaging tax practices.

4.6 Identification of Taxing Jurisdiction

Where income accrues or can be presumed to accrue and, thus, be taxed depends on the location of the contract's execution and the transfer of ownership of the goods or services. The location of the contract's execution in e-commerce, where offers and acceptances take place over networks, is not disclosed to the public under laws and regulations that govern traditional commerce. In a similar vein, it can be challenging to pinpoint the precise location where ownership of digital goods or services flows when they are delivered. Therefore, it becomes difficult to determine which jurisdiction applies to a given e-commerce transaction in terms of taxation. But this is a legal matter. Making the situation clearer in accordance with domestic legislation is the solution. Therefore, the legislation is in place to determine the location of contract execution or the transfer of ownership for digital products or services that are offered over networks.

4.7 New Evasion Opportunities

E-commerce has a wide range of effects on tax systems. From the standpoint of the tax administrator, new communications technologies like computers and the internet present opportunities to enhance tax system administration while also creating new opportunities for tax avoidance and evasion. At the moment, when the physical products are shipped, foreign exchange remittances related to export realisation are checked and potentially discovered. Software exports and other digital product exports are not subject to this kind of examination. It has been demonstrated that inflated prices encourage the transfer of money through dubious means and their influx as foreign exchange remittances with both direct and indirect tax breaks. The issue is serious and, if left unattended, could greatly reduce the tax base by making it simple to launder untaxed income, which could then have a connection to crime. The Customs and Excise Department's appraisal system has to be technologically upgraded, and specific inflows should be investigated. To put this plan into action, international information-sharing cooperation is also required. Removing the preferential tax status for export income is the long-term solution. It's also advised to use enhanced procedures for valuation and to carefully confirm the funding source. Additionally, support should be given to international information sharing collaboration.

4.8 Recovery of Taxes

Another issue that concerns governments is the ability of tax authorities to collect taxes from virtual entities. The assets could be kept secret and in different tax countries. Because the funds are plundered and retained in accounts with false names or in the names of people without any financial

resources of their own, some businesses lack any assets from which taxes may be recovered. The situation might get worse as e-commerce expands since small businesses might now have access to these prospects. The only way to address this issue is to make use of the current system for tracking the source of funds and to have more access to data from other tax jurisdictions, particularly data from banks. This emphasises once more how crucial it is for nations to cooperate in the exchange of information and to modify free trade agreements in order to include provisions for mutual aid in tax recovery. DTAs must include provisions for the more effective sharing of information and reciprocal aid in the collection of tax obligations, and international collaboration in this field needs to be actively encouraged.

4.9 Exchange of Information

A crucial element in the context of e-commerce is the requirement for international cooperation in both helping to administer regulations and in the development of new concepts. The tax base will be severely eroded by e-commerce unless such cooperation is available. It will be required to establish distinct units for information exchange within each tax authority in order to guarantee such cooperation. Maintaining the integrity of the financial secrecy rules and reaching a broad consensus on the kind of information that should be shared will help stop the tax base from shrinking. In this regard, the Nigerian government ought to align itself with global endeavours.

4.10 Tax Payer Service Opportunities

Incentives for online transactions may be necessary since encouraging individuals to go online is not always easy. With computerization, using the Internet to enhance taxpayer services is both feasible and essential. Government websites are already available. Taxpayers should have the option to file their returns online and to deduct taxes at the source. This can be done by setting up distinct cells to deal with various situations. Online grievance resolution ought to begin right away. Three categories are listed in the OECD's "Taxation Framework Conditions" for enhancing taxpayer service opportunities:

- i. improving communication facilities and access to information.
- ii. minimizing compliance costs by simplifying registration and filing requirements and acceptance of electronic material; and
- iii. enhancing voluntary tax compliance through electronic assessment and collection and easier, quicker and more secure ways of paying taxes and securing refunds.

The potential presented by the new technologies are just beginning to materialise, even while the challenges are already here. New communications infrastructure will enable tax administrations to enhance their operations.

5.0 Feasibility Challenges

Applying the current international tax structure will be difficult because of its incompatibility with the characteristics of e-commerce. It's unclear if e-commerce could be subject to the current regulations. There are differences between the two in terms of conceptions, views, and principles. The following list outlines the five primary barriers to feasibility.

5.1 Income-Classification Rules

The revolution in information technology has given rise to a never-ending stream of new goods, services, and business models that do not fit within the traditional transaction categories. In the era of e-commerce, these new techniques are being used to trade a wide range of intangible goods and services. A book, for instance, can be purchased in a startling variety of ways.⁹⁰⁴ The book is also available for online updates. It is challenging to place this transaction under the traditional categories of "trade income" or "services income" because of these possibilities. Products, services, and enterprises that predate e-commerce were foreseen by the standard categories. However, the modern era is distinct. It is difficult to categorise e-commerce using the traditional transactional categories.

5.2 Source Rules

Since e-commerce is not heavily reliant on geography and the present source rules are, there is an initial issue with applying them to it. Two tenets form the foundation of the present source rules:

- i. that national boundaries establish a nation's legal domain and serve as a means of separation; and
- ii. that each income is produced in a territory of a single country.

Because of this, source criteria are made to determine the income's territorial country based on the economic ties that bind it to that nation. Source rules in this process are based on and make use of physical notions of place and territory. However, in non-territorial e-commerce, all of this is undermined. The international nature of e-commerce gives national borders very little, if any, significance. Similarly, the placement of e-commerce income in a geographical place has very little, if any, significance due to its virtual character. E-commerce, therefore, challenges the very fundamental notions and arguments behind the source rules. This problem touches on the foundations of source rules and is theoretical as well as conceptual. More action and modifications to the current legislation are required to meet this problem.

5.3 Permanent Establishment

In order to establish taxation authority over purchasers and sellers of actual, physical items, the modern international tax system was created. As a result, the location of these buyers and sellers provides the basis for the current system. These physical presence criteria have been integrated and repeatedly reinforced by the Organisation for Economic Cooperation and Development (OECD) in its Model Tax Convention on Income and on Capital (OECD Convention), which is the most widely used model for bilateral and multilateral tax treaties worldwide. In the discourse surrounding e-commerce taxation, the difficulties associated with implementing the permanent establishment concept have garnered significant focus and have been thoroughly deliberated. With very little physical presence in the country of any given customer, e-commerce businesses can offer their goods and services anywhere in the world. They can reach clients anywhere in the world directly, quickly, and affordably, so they can function without the need for agents. What defines a permanent establishment in the context of electronic commerce is another problem. A website cannot be categorised as a permanent enterprise since it lacks a physical presence. The storage, presentation, or delivery of goods via the internet has been likened to other mail-order businesses, which are not classified as permanent establishments—even if the business keeps its own server within a taxation jurisdiction.

Additionally, a company that operates online can divide its ordering, delivery, and payment operations by assigning them to affiliate websites across the globe. Because of this fragmentation, the corporation is able to avoid being considered a permanent establishment for the purposes of most tax treaties, which exempts it from income tax. Therefore, e-commerce is exempt from the permanent establishment rule's premise that you must have a presence in a country in order to conduct business there. Since an e-commerce business can be located anywhere and conduct business anywhere, the idea of a "fixed place" is irrelevant.

5.4 Residency

Source-based taxation is not the only issue with e-commerce taxes. There are issues with residence-based taxation as well. Determining the residence of e-commerce businesses is the primary difficulty. These companies typically don't have any permanent physical locations. Their personnel are highly mobile, and their websites serve as their primary stores most of the time. The company has relatively little physical presence in a "central place of management and control" and a high degree of mobility. As a result, according to conventional definitions, it is difficult to identify the "central place of management and control" of a corporation of this type. Furthermore, it is simple to take advantage of the outdated definitions and set up an online store in a low-tax jurisdiction in order to minimise or even completely avoid paying taxes.

E-commerce makes it simpler for firms to choose their preferred location for tax purposes, which puts residency taxation to the test. The place of incorporation test, often known as "the place of management and control" test, is typically used to determine the residence of corporations. Since it is cheap to form a company in a tax haven, e-commerce can be conducted anywhere, making the "place of incorporation" test susceptible to manipulation by taxpayers. As a result, taxpayers can essentially choose whether to pay taxes based on their place of residence or their source of income by using the test of place of incorporation.

The national governments have jurisdiction, or the legal right to impose taxes, which is founded on the ideas of residence and source. Residence-based taxation suggests that a nation has the authority to tax its citizens' worldwide income, regardless of where it comes from. According to the theory of "source-based taxation," a nation should tax any income that is made inside its boundaries, regardless of whether the earner is a citizen or a foreigner. As a result, an economic activity may be subject to two taxes: one from the nation in which the revenue is made and another from the nation where the taxpayer is considered a resident.

5.5 Enforcement

There are numerous obstacles in the way of the current international tax regime's enforcement on e-commerce. Because e-commerce is international in nature, it is challenging for a single nation to keep track of and tax e-commerce revenue. To manage e-commerce taxes, international cooperation is required, but given the competing interests of several nations, this cooperation is difficult. Furthermore, even in cases where nations collaborate, it can be challenging to oversee and regulate e-commerce due to its virtual character. It is challenging to disclose a business's transactions and income due to its limited physical presence online and its limited physical assets. This makes it challenging to enforce the business's tax obligations, even in cases where they have been explicitly established. Moreover, the confidentiality of online transactions poses a challenge for tax authorities in terms of identifying the parties involved, the nature of the transactions, and their specifics. Tax authorities frequently are unable to impose taxes on e-commerce transactions because they do not have access to such fundamental data.

6.0 Normative Challenges

The normative difficulties deal with whether the current international tax regime is the right one to tax e-commerce income, whereas the feasibility challenges deal with whether the regime can tax e-commerce income at all. E-commerce poses a challenge to all of the policy issues upon which the system is built. Since the primary premise of ability to pay holds that all taxpayers are equal, the problem lies in treating e-commerce and non-e-commerce taxpayers similarly. In an attempt to achieve a fair allocation of the international tax pie among the participating countries, the current regime attempts to assign tax jurisdiction in accordance with the economic allegiance concept. However, the rationale for the current economic alliances and the assumption underlying each nation's commitment to the generation of income do not apply to modern e-commerce. For instance, it is not sufficient to apply the

reasoning that states that the residency country should tax passive income while the source country should tax active income when discussing e-commerce income. Lastly, the question of whether applying the current international tax regime to income from e-commerce achieves economic efficiency should be taken into consideration. This issue has generated a lot of discussion in the literature and was a major factor in the creation of the current international tax regime.

6.1 Acceptability Challenges

Any international tax system must be based on international agreement. When the current international tax system was being constructed in the 1920s, a protracted sequence of talks led to the achievement of this consensus. However, a lot has transpired since that agreement. The 1920s consensus is disrupted by e-commerce because different nations have conflicting and inconsistent ideas about how to tax money from international e-commerce. Renewing or reconstructing the global agreement on taxing income from international e-commerce presents a difficulty. Companies should be ready for the enactment of new laws that will specifically require them to collect and remit consumer-based taxes from their clients, even if those clients don't live in the same jurisdiction as the firm.