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The Tax Anthology is an up-to-date compendium on taxation in Nigeria. The journal carefully curates articles, papers and essays that critically discuss relevant, current, and dated issues on taxation, tax laws, policies, and tax administration, providing insights into these issues and synthesizing meaningful, and practical recommendations. This year's edition is graced, for the first time in the history of the journal, with articles and essays contributions from tier one, corporate and commercial law firms in Nigeria, namely **Olaniwun Ajayi LP** and **Banwo and Ighodalo LP;** and a reputable Professor of Taxation, namely **Professor Teju Somorin.**

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FOREWORD

Five editions ago, a small circle of passionate members of the prestigious Tax Club determined to move taxation discourse forward in Nigeria. Fast forward to now, this vision has birthed a quintessential tradition of excellence and leadership, which defines the very spirit of the Tax Club, University of Lagos.

The Tax Anthology is an annual publication of The Tax Club, University of Lagos, borne from the clear recognition and the pressing need to address the ongoing need for substantive engagement with taxation in Nigeria, especially in view of the current tax reforms. We have carefully sourced contributions from top-tier firms, professionals, academics, and students across various disciplines. This diverse authorship ensures each volume presents a thorough and multifaceted examination of contemporary taxation issues.

I deeply thank all the firms, academics, professionals, and students to whom we sold the vision of this Anthology, and who believed in it and were gracious enough to send in an article. Your passion and commitment towards the tax scene in Nigeria do not go unnoticed. This body of work will not be complete without the support of the Chairman of the Lagos

Inland Revenue Service (LIRS), Mr. Ayodele Subair, and the Chairman of the Federal Inland Revenue Service (FIRS), Mr. Zaach Adedeji, for their continued show of love and support towards the Club's vision of advancing tax engagement amongst the youths. To all our sponsors and partners who have collaborated with us for many years in spreading the gospel of taxation, a thousand adjectives cannot be enough to describe our appreciation.

Special thanks to the coordinator of the club, now the dean of the Faculty of Law, Prof. Abiola Sanni (SAN), and Dr. Philip Folarin, our esteemed staff adviser, who have encouraged, supported, and pushed us and have carved a path for us. To our lovely alumni members, who are always behind the scenes, cheering us on every step of the way, we appreciate you for continually giving your time, energy, and resources to the Club. This remark will not be complete if I fail to highlight the efforts of the co-editors-in-chief of this journal, Michael Adedayo and Fawale Phoebe, who have selflessly given themselves to seeing that the Anthology sees the light of day, to ensuring that every punctuation is in order, that every paragraph is well justified, that every piece is grammatically and technically accurate, and that this Anthology is compiled properly. To all the members of the editorial team, thank you for your labour of love. May God bless you richly.

The Tax Anthology is not merely a journal; it is an engaging and intellectual guide for professionals, practitioners, students, regulators, and every citizen who wonders where duty meets development. Therefore, I urge you to adopt a “palms up” attitude whilst flipping the pages of this journal. And just as the *Holy Book* guides us in reproof, correction, and instruction, this Anthology has been properly curated for your learning and instruction.

Let it serve as your *Holy Grail*, an indispensable source of wisdom in this complex journey of understanding taxation. Read every piece with intention. Because great people who are armed with perspective do more than understand tax; they leverage its power to build nations.

Jesutofunmi Bola-Rotimi,

President (2024/2025 session),

The Tax Club, University of Lagos.

EDITORS' NOTE

Over the years, the Tax Anthology has become an avenue for critical discussions on evolving and relevant tax issues. So, once again, we have collected remarkable pieces relevant to Nigeria and a global audience.

Like the previous volumes, whilst compiling this volume, we were energised by two ideas. First, the words of Albert Einstein who famously remarked that education is not the learning of facts but the training of the mind to think. The Tax Anthology is a platform where thinkers can provide solutions to real-life tax issues through their brilliant recommendations; and the readers also gain insights and train their minds to think about these issues. To materialize these twin objectives, we reviewed each manuscript carefully and ensured a collection of articles and essays that move the tax discourse forward. Second, there was the desire to facilitate productive conversations on burning tax issues and add to the available body of knowledge, especially considering the new Tax Reforms envisioned by the President, Bola Ahmed Tinubu, and executed by the Presidential Committee on Fiscal Policy and Tax Reforms. The passage of the new tax laws raise a number of questions and some of them have been answered in this volume.

The journal features articles that discuss the taxation of the digital economy, digital assets, and LLPs; the challenges with the introduction of certain changes, such as the Rent Relief Allowance by the **Nigeria Tax Act, 2025**; and the effect of the reforms on local government autonomy.

We are confident that this edition will serve as a helpful secondary source on the subject with references to all relevant primary sources. We hope our readers share our enthusiasm and find it truly impactful.

We are thankful to God for the strength and inspiration required in compiling the 6th Edition of the Tax Anthology. We are especially grateful to the hardworking editorial team who pulled through despite a challenging and busy academic year: Obiora Prince, Obeleagu Adaora, Salami Oluwatoyin, Ademeso Oyinkansola, Oshunnuga Meestorat, Olatunji Olasunkanmi, and Obanubi Mathew. Most importantly, our profound gratitude goes to our partners and sponsors for their continuous support to the Tax Club, University of Lagos, which has facilitated the publishing of this year's journal.

Adedayo Michael & Fawale Phoebe

Co-Editors-in Chief, Tax Anthology, 2025.

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THE TAXATION OF LLPS IN NIGERIA: CURRENT LEGAL FRAMEWORK AND THE UNCERTAINTY OF REFORM UNDER THE NIGERIA TAX ACT

Olaniwun Ajayi LP

1.0. INTRODUCTION

The concept of limited liability partnerships (**LLPs**) which was formally introduced into Nigeria's business framework by the **Companies and Allied Matters Act (CAMA) 2020**, marked a dynamic shift in the legal recognition of business structures. This is because an LLP is a unique legal entity that blends the operational flexibility of a partnership with the limited liability protection of a company, making it particularly attractive for professionals and entrepreneurs seeking a less rigid corporate form.

However, while the legal framework governing LLPs appears to be well-established, there remains a regulatory gap in Nigeria's tax laws regarding the taxation of LLPs. Specifically, neither the **Personal Income Tax Act (PITA)** nor the **Companies Income Tax Act (CITA)** provide for the taxation of LLPs. This apparent gap has triggered some measure of uncertainty as to whether LLPs should be taxed either as partnerships (fiscally transparent)—where income is passed through to partners—or as companies (fiscally opaque)—where the entity itself is taxed separately.

This uncertainty poses practical and legal challenges for tax planning, compliance, and enforcement. Stakeholders are left to interpret existing tax laws in light of the unique features of LLPs as defined in relevant regulatory framework, often arriving at different conclusions depending on the interest being considered.

2.0. THE LEGAL AND TAX FRAMEWORK FOR LLPS IN NIGERIA

2.1. CAMA 2020 and LLPs

Part C of CAMA 2020 introduces LLPs as a distinct form of business vehicle. Particularly, **Section 746(1) of CAMA 2020** describes it a body corporate, with a distinct legal entity separate from its partners. A central consequence of this legal construct is the limitation of each partner's liability to the extent of their agreed capital contribution, thereby shielding personal assets from the debts and liabilities of the LLP.

Like a company,[1] the effect of registration implies that an LLP enjoys perpetual succession,[2] as its continued existence is not tied to the lifespan of its partners or any change in the partnership's membership. Additionally, an LLP shall have the power to sue and be sued in its name, acquire, own, hold and develop or dispose of movable or immovable property, have a common seal, and do all such other things as body corporates may do.[3] However, unlike a company,[4] an individual partner in an LLP stands the risk of being personally liable for all the obligations of the LLP where he remained the sole member for a continuous period exceeding six months. This effectively makes it mandatory for an LLP to have at least two partners[5] even if no maximum threshold is required.

Beyond this requirement, every LLP must appoint at least two designated partners who shall be responsible for ensuring complete compliance of the LLP with the provisions of CAMA.[6] The appointment, duties, and removal of the

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* Olaniwun Ajayi LP is one of Nigeria's leading full- service corporate law firms, with offices in Lagos, Abuja, Port Harcourt, and London.
[1] Companies and Allied Matters Act 2020, LFN 2004, Section 42.
[2] CAMA, Section 746(2).
[3] CAMA, Section 756.
[4] Succinctly put, private limited liability companies.
[5] CAMA, Section 748.
[6] CAMA, Section 749.

designated partners as well as internal relations and mutual rights of partners are determined by the partnership agreement.[7] It is worthy to note that the partnership agreement may be structured as an agreement among the partners themselves or between the LLP and its partners. Regardless of its form, the partnership agreement must be filed with the Corporate Affairs Commission, and in the absence of a partnership agreement, the statutory default provisions contained in the Fifteenth Schedule become operative.

It is instructive to note that **CAMA**'s regulatory focus on the establishment of LLPs is not a prescription for the taxation framework for LLPs. Accordingly, any tax related implications arising therefrom are incidental and would require a proper interpretation of existing tax statutes, particularly the **Personal Income Tax Act** and the **Companies Income Tax Act.**

While the **CAMA** contains broader provisions on the governance and operations of LLPs, they fall outside the scope of this article which focuses narrowly on the examination of the tax treatment of LLPs under Nigerian law.

2.2. Lagos State Partnership Law

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[7] CAMA, Section 762

The **Lagos State Partnership Law (LSPL)** governs the regulation of partnerships in Lagos State. It defines a partnership as the relationship which subsists between persons carrying on business with a common view to profit.[8] This definition aligns with the Supreme Court's interpretation which held a partnership to be a voluntary association of two or more persons who jointly own and carry on a business for profit.[9]

Interestingly, **Section 1(2)** expressly excludes companies or any association registered as a company under the **CAMA**, or any other applicable law from the definition of a partnership. On this basis, LLPs, are not regarded as companies and by extension will not be taxed as companies.

On the legal status of LLPs, the LSPL recognises an LLP's right to sue and be sued in its registered name, albeit with triggers for activating the personal liability of the partners in exceptional cases.[10] In effect, the LSPL pierces through the liability shield of the partners in an LLP in cases of fraud, misrepresentation or where public interest justifies maintaining an action against a partner. Although it may be

[8] Lagos State Partnership Law 2015, Section 1.
[9] Alade v. Alic (Nig). Ltd. [2010] 19 (Pt. 1226) SC, p. 111 at 143, para. H.
[10] LSPL, Section 56(4).

argued that the LSPL only recognises the right of action of an LLP, and does not expressly confer separate legal personality, **Section 56(5) of the LSPL** clarifies that the judgment against an LLP is not a judgment against a partner and therefore, will not be satisfied from a partner's personal assets.

Whilst the LSPL includes detailed provisions regarding the registration, management and operation of LLPs, and other relevant provisions, **Section 70** which is relevant to the point on taxation of LLPs provides that the income of partners under an LLP shall be taxed under the **Personal Income Tax Act**.[11] By this provision, there is no conundrum on the tax treatment of LLPs under the LSPL since the income of the partnership passes through to the partners, who are then taxed directly.

2.3. Key Considerations Arising from the Legal Framework of LLPs in Nigeria

It is pertinent to state that there has been significant tension between the LSPL and **CAMA 2020** as to the legislative competence, regulatory overlap and constitutional hierarchy of these laws.

[11] LSPL, Section 70.

On the issue of legislative competence, it is posited on the one hand that the subject of partnerships is neither itemised in the Exclusive nor Concurrent Legislative List under **the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution**). Therefore, it properly falls within the Residual List as a matter within the legislative preserves of the states.[12] On the other hand, it is argued, that **Item 32 of the Exclusive List** which provides for the *incorporation, regulation and winding up of bodies corporate* falls squarely within the purview of the federal government and extends to LLPs since they are body corporates within the context of **CAMA 2020**.

Regarding the issue of regulatory overlap, it is beyond contention that **CAMA 2020** is not a taxing statute and as such, cannot be the sole determinant of the appropriate taxation regime for LLPs in Nigeria. The only relevance of **CAMA 2020** to the taxation of LLPs lies in its clear definition and recognition of LLPs. In contrast, the LSPL by virtue of its **Section 70**, contains explicit provisions on the taxation of LLPs. It may therefore be contended that there is no real regulatory overlap between both statutes. However, if any is

[12] Refer to Section 4 and the Second Schedule of the Constitution; AG Abia State v AG Federation [2006] NWLR (Pt.1005) 265 SC, p. 380 - 381, paras D – C.

assumed, it may be further argued that although **CAMA 2020** is a federal law, it does not sufficiently 'cover the field' with respect to the taxation of LLPs. Consequently, the LSPL's regime on taxation of LLPs, enacted within the constitutional boundaries of the state's legislative powers, may validly apply, albeit within Lagos State.

A conciliatory approach may rest on the well-established constitutional principle that where there is any inconsistency between a federal law and a state law, the federal law prevails.[13] Thus, while **CAMA 2020** is not a taxing statute, its classification of LLPs as body corporates with separate legal entities, must by virtue of federal supremacy be uniformly adopted across all states in Nigeria.

3.0. TAXATION OF PARTNERSHIPS UNDER NIGERIAN TAX LAWS

Having examined the legal framework governing LLPs in Nigeria, this part turns to the central question of the applicable tax regime for such entities.

3.1. Personal Income Tax and LLPs

[13]Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 4(5); Oko v AG Ebonyi State [2021] 14 NWLR (Pt. 1795) 63 SC. *(pp. 113, para F).*

The Personal Income Tax Act (PITA) (as amended) is the principal legal framework for the taxation of individuals, communities, families, trustees and partnerships in Nigeria.[14] However, with respect to partnerships, PITA is remarkably silent on the definition of the term, making no distinction among the various forms of partnerships nor providing clarification regarding the distinct legal status of LLPs. This legislative silence begs the question: whether LLPs can be brought with the provisions of PITA, and if so, on what basis?

Evidently, **Section 108 of PITA** defines a person to include ***an executor, trustee, company, partnership, community, family and individual.*** Without more and in the absence of an explicit regime for LLPs under PITA, one may argue that an LLP could for tax purposes elect to be treated either as a company given its corporate attributes or as a partnership. Whilst there has been no judicial pronouncement on this point, two competing schools of thought have emerged.

The first school contends that LLPs, despite their incorporation and separate legal personality under **CAMA 2020**, should be taxed in the same manner as traditional partnerships, thereby preserving their fiscal transparency and

[14] PITA, Sections 1, 2 and 8.

bringing them within the ambit of PITA. This position is reinforced by the provisions of **Section 868 of CAMA** which defines a LLP as a *"**partnership** formed and registered under this Act".* As such LLPs are partnership without more and should be accordingly taxed in line with the PITA. Further, the regulatory framework for LLPs in **CAMA 2020** is distinctly carved out in Part C, buttressing the distinction between a LLP and a company despite their shared attributes.

Emphatically, the point has been made that all tax incidences of a traditional partnership should similarly apply to LLPs. That is to say, by reference to **Sections 3** and **8 of PITA**, the profits of the partnership, distributable to each partner on the basis of the agreed profit-sharing ratio, will be taxed directly in the hands of each partner. Ostensibly, each partner shall be responsible for declaring their share of the partnership's income (comprising salaries, other direct payments and the partner's share of the total income of the partnership) when filing their personal income tax returns.

3.2. Companies Income Tax Act and LLPs

The second school of thought treats LLPs as entities akin to companies, for tax purposes. Under the **Companies Income Tax Act (CITA)** (as amended) which governs the taxation of corporate bodies in Nigeria, **Section 9 of CITA** imposes companies income tax on all profits of any company accruing in, derived from, brought into or received in Nigeria.

Like the PITA, the CITA contains no express definition of LLPs. However, **Section 105 of CITA** defines a company to mean *any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere.* It has been argued that this definition lends credence to the view that LLPs per their status as body corporates, fall within the scope of CITA. Proponents of this interpretation buttress their position with **Section 746(1) of CAMA 2020** which defines an LLP as ***a body corporate***, ***a legal entity*** *separate from the partners*. Therefore, if LLPs share the same status as companies, being separate legal entities, they would by implication, be subject to tax under CITA.

Whilst state tax authorities have remained silent on the taxation of LLPs, it is worth noting that the above position was endorsed by the Federal Inland Revenue Service (**FIRS**) in its information circular titled, "Clarification on the Taxation of Limited Liability Partnerships" (the **Circular**).[15]

While the validity of the Circular remains subject to debate[16] in the absence of express provisions within the enabling laws, it can be argued that LLPs, viewed as body corporates, would be susceptible to two potential tax regimes: (a) companies income tax applicable to the LLP as a separate entity and (b) personal income tax applicable to the individual partners. Pursuant to **CITA**, an LLP must file its tax returns six months from its accounting year end with the relevant tax authority.[17] It follows that where LLPs are viewed as companies under CITA, all attendant tax obligations imposed on companies under Nigerian law would apply.

3.3. The Nigeria Tax Bill (Act) and the Lingering Uncertainty on the Tax Treatment of LLPs

As part of the broader efforts of this current administration to overhaul Nigeria's tax and fiscal framework, the Presidency

[15] FIRS Information Circular, 'Clarification on Taxation of LLPs' (2023) <https://old.firs.gov.ng/wp-content/uploads/2023/09/Limited-Liability-Partnership-final.pdf> (accessed 31 March 2025).
[16] Information circulars provide administrative guidance; they do not possess the force of law and cannot override substantive legislative provisions. See Accugas Limited v FIRS and Attorney General of the Federation (Unreported) Suit No: FHC/ABJ/CS/1289/2020).
[17] CITA, Section 55(1)

transmitted four bills to the National Assembly for its consideration and passage (the **Tax Reform Bills**).[18] The Bills have passed through the legislative ladders and are now Acts of Parliament. One of the Acts, the **Nigeria Tax Act** (**NTA**) creates a single, comprehensive legal framework for all aspects of taxation in the country, by consolidating all fiscal legislations into one Act.

In the initial draft of the **Nigeria Tax Act** (**NTA**), that is, the initial bill, the definition of a company was expanded to expressly include *LLPs, established by or under any law in force in Nigeria or elsewhere*.[19] This proposed inclusion was significant as it would have settled the current legislative uncertainty, by aligning the tax treatment of LLPs with that of companies.

However, during the legislative review, both the House of Representatives and the Senate, opted to revert to the current position under **CITA**, by removing LLPs from the definition of "company". They introduced a distinct definition of LLPs by reference to the **CAMA**. This revision effectively

[18] The Nigeria Tax Bill, The Nigeria Tax Administration Bill, The Nigeria Revenue Service (Establishment) Bill, the Joint Revenue Service (Establishment) Bill
[19] NTA, Section 202.

eliminates the clarity the original draft sought to provide, returning the legal position to one of uncertainty.

It also bears mentioning that **Section 199 of the NTA** provides that a circular or other subsidiary legislations made or issued under any provision of the repealed or amended enactments by the **NTA**, including the **CITA**, shall remain in force as if they had been made or issued by the relevant authority pursuant to the **NTA** except to the extent of any inconsistency. Consequently, it will appear as though the tax treatment of LLPs as interpreted by the FIRS under the Circular, will continue to be applied by the FIRS, until such interpretation is challenged in Court.

In essence, the **NTA** does not resolve the longstanding uncertainty surrounding the tax treatment of LLPs in Nigeria.

4.0. PASS THROUGH VERSUS ENTITY TAXATION: A GLOBAL PERSPECTIVE

To critically assess the system currently in place in Nigeria, it is essential to gain a broader, global perspective on how LLPs are taxed in other countries. In other words, the Nigerian tax regime on LLPs is best scrutinized when contrasted with the tax framework of these entities in other jurisdictions. Different countries, influenced by varying fiscal considerations adopt distinct approaches to taxing LLPs, either as pass-through or taxable entities. This part provides a cross-jurisdictional analysis of the taxation of LLPs in the United Kingdom, India, and Kenya.

4.1. United Kingdom (UK)

Under the **Limited Liability Partnership Act 2000** (**LLP Act**), LLPs in the UK are regarded as a body corporate with legal personality separate from that of its members.[20] Specifically, **Section 1(3) of the LLP Act** provides that an LLP shall have unlimited capacity. On the tax treatment of LLPs, **Section 10 of the LLP Act** which amends **Section 59 of the Taxation of Chargeable Gains Act 1962**, by inserting a new **Section 59A** provides that,

> "(1) *Where a limited liability partnership carries on a trade or business with a view to profit–*
>
> *(a) assets held by the limited liability partnership are treated for the purposes of tax in respect of chargeable gains as held by its members as partners and*
>
> *(b)any dealings by the limited liability partnership shall be treated for those purposes as dealings by its members in partnership (and not by the limited liability*

[20] LLP Act, Section 1.

> *partnership as such) and tax in respect of chargeable gains accruing to the members of the limited liability partnership on the disposal of any of its assets shall be assessed and charged on them separately.*

From the foregoing provisions, it follows that the activities of an LLP are viewed as being carried out by the partners themselves despite the status of an LLP as a separate legal entity of itself.

This provision also implies that when LLPs are not carrying on a trade or a business with a view to profit, the tax treatment of the LLP will differ. As such, the LLP shall be assessed and charged to tax as if the provisions of **Section 59A (1)** never applied[21] and will be taxed similarly to a company and subject to corporation tax on income and chargeable gains.

It is therefore necessary to understand the meaning of ‘view to profit’ in this context to determine when LLPs will qualify as carrying on trade with a view to profit. The UK Court of Appeal in **Ingenious Games LLP and others v HMRC**[22] ruled that in determining whether an LLP was carrying out trade with a view for profit, the relevant consideration is the genuine intention of the partners. This means that so long as

[21] Taxation of Chargeable Gains Tax Act, Section 59A(2).
[22] [2021] EWCA Civ 1180.

an LLP is established with the intention of generating income in excess of costs, such LLP will be regarded as carrying out trade with a view to make profit and may be taxed as a pass-through entity.

It is worth noting that a key objective of the UK Department of Trade and Industry when LLPs were introduced in the country was to make LLPs transparent so as to make this type of partnership tax attractive.[23] This arrangement enables members of an LLP to apply their personal tax allowances when calculating their individual tax liabilities.

In the UK, partners are obligated to report their shares of partnership profit even if the partnership does not distribute any money or property during the year in question. Consequently, partners are taxable on their "distributive" share of profit and not (usually) on the distributions itself.

The fiscal transparency treatment of LLPs in the UK also allows for partners in an LLP (not the LLP itself) to claim double tax relief if the LLP is taxed by a foreign country that

[23] Mark Blackett-Ord and Sarah Haren, *Partnership Law: The Modern Law of Firms, Limited Partnerships and LLPs* (6th ed, Bloomsbury Professional 2020) 706.

does not recognize the fiscal transparency of the Partnership.[24] In this instance, if a foreign tax authority treats a UK LLP's overseas branch as a body corporate, UK-resident members of the LLP may still claim tax credit relief for their proportionate share of the foreign tax paid on the branch's profits.

In sum, the UK's treatment of LLPs as pass-through entities hinge on whether they carry on a trade or business with a view to profit. This treatment allows members to be taxed individually, access personal allowances, and claim double tax relief where applicable.

4.2. India

LLPs were introduced to India by the **Limited Liability Partnership Act 2008** which came into effect in 2009. India treats its LLPs as a separate legal entity, and the partnership is taxed on an entity level as opposed to being taxed on an individual level. By this arrangement, the LLP's profits as a whole are subject to income tax.

LLPs are subject to a flat tax rate of 30% on their net taxable profit. Unlike companies, LLPs are not subject to dividend

[24] HMRC, *Partnership Manual: PM131540 – Double taxation relief: Foreign tax suffered by the partnership*, available at: <https://www.gov.uk/hmrc-internal-manuals/partnership-manual/pm131540/> (accessed 27 June 2025).

distribution tax (DDT), and the profits shared with partners are exempt from tax in the hands of the partners.[25] This ensures that the profits already taxed at entity level, are not further taxed at the individual or partner level which would occasion double taxation of such profit.

In addition, LLPs are subject to the Alternate Minimum Tax (AMT) regime under **Section 115JC**, which imposes an 18.5% tax (plus surcharge and cess) on adjusted total income where normal tax liability is lower due to deductions and exemptions.[26] This provision ensures that LLPs benefiting from tax incentives still contribute a minimum amount in taxes.

The taxation of LLPs in India stands in contrast with the manner by which the UK taxes its LLPs. While the UK treats its LLPs as transparent by default, India treats its LLPs as opaque.

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[25] Bekal, S. A., & Shivaram, K, *Taxmann's Handbook on Taxation of Partnership Firms & Limited Liability Partnerships: Frequently Asked Questions*(2022) Taxmann Publications Pvt. Ltd.
[26] Jak Soni, Vikram Naik, *Whether AMT under Income Tax Bill 2025 is Googly for LLPs (*03 March, 2025) available at: <https://database.taxsutra.com/articles/1d66cc79bc748b806390dc2d6b3e34/expert_article#:~:text=AMT%20applies%20only%20if%20the,any%20impact%20of%20the%20ITB> (accessed on 30 March 2025).

4.3. Kenya

In Kenya, although LLPs possess a separate legal personality from their members for legal and regulatory purposes, they are generally treated as tax-transparent entities. The LLP itself is not subject to income tax at the entity level.[27] Instead, the income, gains, losses, and deductions of the LLP are attributed directly to the individual partners in accordance with their agreed profit-sharing ratios.[28] LLPs are not obligated to pay corporate tax, but partners are individually subject to personal income tax for income earned from the activities of the LLP.

The Kenya Revenue Authority requires LLPs to file an Income Tax Partnership Return (IT2P), which discloses the income earned, the identities of the partners (including their Personal Identification Numbers), and the basis for distributing the income. Each partner is then taxed according to their personal income tax band, progressively, reaching a maximum of 30%. While LLPs are exempt from corporate tax

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[27] Chaudhry, Sharmendra, 'Limited Liability Partnership in India' (November 10, 2010), available at: <https://ssrn.com/abstract=1708215 or http://dx.doi.org/10.2139/ssrn.1708215> (accessed June 28, 2025).

[28] Dentons, 'Global Tax Guide to Doing Business in Kenya', available at <Dentons - Global tax guide to doing business in Kenya> (accessed June 28, 2025).

obligations, they are still expected to comply with other statutory requirements such as value added tax registration, pay-as-you-earn obligations if they have employees, and withholding tax on certain payments.[29]

5.0. PRACTICAL CONSIDERATIONS FOR LLPS OPERATING IN NIGERIA

5.1. Compliance Challenges under the Current Tax Structure

As highlighted previously, the taxation of LLPs in Nigeria presents some tax uncertainty and invariably, certain tax compliance challenges due to the conflicting provisions between state and federal laws, as well as the lack of explicit guidance in existing tax legislation. These challenges stem from the hybrid nature of LLPs, which combine features of partnerships and companies, creating ambiguity in their tax treatment.

5.2. The Risk of Double Taxation

The current legal ambiguity surrounding the taxation of LLPs in Nigeria presents a significant risk of double taxation. This occurs when the same income is taxed twice under conflicting

[29] Kenyan Revenue Authority. Taxation of Partnerships. <Taxation of Partnerships - KRA> accessed on 30 March 2025

interpretations of federal and state laws or where the same income stream is taxed under the provisions of both **PITA** and **CITA.** This dual application, in the absence of clear legislative coordination, creates a fertile ground for double taxation.

In contrast, jurisdictions such as the United Kingdom provide explicit pass-through treatment under its LLP regime and also permits double tax relief for foreign-sourced income to avoid international double taxation. There are also clear demarcations between transparent (pass-through) and opaque (entity-level) tax regimes, thereby preventing the inconsistent layering of tax obligations.

6.0. CONCLUSION

LLPs occupy a distinctive position in Nigeria's legal and tax landscape, operating at the intersection of corporate and partnership law. While **CAMA 2020** affirms their separate legal personality, existing federal tax statutes and state-level provisions provide inconsistent guidance on their tax treatment. This uncertainty has led to compliance burdens and a real possibility of double taxation. Despite recent tax reform initiatives, including the proposed NTB, there remains no definitive legislative resolution to the ambiguity surrounding the tax treatment of LLPs. The NTB does not currently provide express provisions clarifying whether LLPs should be treated as fiscally transparent or opaque entities. As a result, the uncertainty persists, leaving LLPs and their partners in a precarious position—subject to the varying interpretations of different tax authorities.

Until clear legislative guidance is enacted, stakeholders must navigate this grey area with caution, relying on professional interpretation and administrative guidance while continuing to advocate for coherent tax reforms that align with the legal nature and economic realities of LLPs as demonstrated in other climes. Until express legislative clarification is provided, LLPs may continue to operate within the grey area that is Nigeria's tax terrain.

THE LEGALITY OF GROSS-UP CLAUSES IN LIGHT OF THE WHT REGULATIONS: A CRITICAL ANALYSIS OF TOTAL NIGERIA PLC V. AKINPELU

Banwo & Ighodalo LP

1.0. INTRODUCTION

Tax gross-up and net-of-tax clauses (the "**gross-up clauses**") have become a significant area of concern for legal practitioners, businesses, and policymakers in Nigeria, particularly given their implications in high-stakes contractual agreements and disputes. Gross-up clauses are prevalent in sectors such as oil and gas, where withholding tax ("**WHT**") obligations frequently lead to complex negotiations. The decision in **Total Nigeria Plc v. Akinpelu**[1] (the "***Total Case***") has added another layer of complexity to the discourse. This article critically examines the legal implications of tax gross-up and net-of-tax clauses in light of the **Deduction of Tax at Source (Withholding) Regulations, 2024** ("the **WHT Regulations**"), focusing on the reasoning and implications of the **Total Case.**

2.0. LEGAL FRARMEWORK FOR WHT IN NIGERIA

[1] [2004] 17 NWLR (Pt. 903) 509.

Under Nigerian tax law, withholding tax is an advance payment of income tax.[2] The payer, as an agent of the Federal Inland Revenue Service ("**FIRS**") or a State Internal Revenue Service ("**SIRS**"), is obligated to deduct the prescribed tax at the relevant rate and remit the same to the appropriate tax authority[3]. The statutory basis for WHT includes:

- **Companies Income Tax Act ("CITA") (Sections 78-81)**;
- **Personal Income Tax Act ("PITA") (Sections 69-73)**;
- **Petroleum Profits Tax Act (Section 56).**

The primary objective of WHT is to broaden the tax base by ensuring the capture of transactions that might otherwise evade traditional tax assessment mechanisms.[4] As a preliminary tax collection tool, WHT helps to enhance tax compliance, reduce evasion, and ensure revenue collection at

[2] Federal Inland Revenue Service (FIRS) "Further explanatory comments on withholding tax principle and operation. Information Circular No. 2006/02, February 2006" available at: <https://old.firs.gov.ng/wp-content/uploads/2021/01/FURTHER-EXPLANATORY-COMMENTS-ON-WITHHOLDING-TAX-200602.pdf> (accessed 10 January 2025).
[3] 7up Bottling Plc v LSBIR [2000] 3 NWLR (Pt. 650) 565.
[4] ibid at 2.

the point of payment. WHT is only due on income that is liable to tax.[5]

3.0. UNDERSTANDING TAX GROSS-UP AND NET-OF-TAX CLAUSES

A tax gross-up clause is a contractual provision that shifts the burden of a tax deduction from the payee to the payer. Under such clauses, if a tax is required to be withheld from payment, the payer must increase the amount payable so that the payee receives the full amount it would have received in the absence of the tax deduction.

On the other hand, a net-of-tax clause stipulates that the consideration agreed upon in a contract must be paid in full without any deductions for taxes, levies, or similar charges. Gross-up clauses are designed to safeguard the payee's financial position by ensuring that the agreed consideration remains unaffected by tax obligations. However, their enforceability and legality under Nigerian tax laws have been the subject of significant debate.

4.0. IMPACT OF GROSS-UP CLAUSES UNDER NIGERIAN TAX LAWS

[5] Regulation 5 of the Deduction of Tax at Source (Withholding) Regulations, 2024.

4.1. Statutory provisions WHT and Gross-up Clauses

Section 11 of the Finance Act 2019 amended **Section 27(1)(l) of CITA**, clarifying that *"any tax or penalty borne by a company on behalf of another person"* will not qualify as a deductible expense. This effectively discourages the use of gross-up clauses by preventing companies from claiming such tax payments as deductions.[6] **Paragraph 5 of the WHT Regulations also** states that:

> A deduction made from a payment shall not be — (a) regarded as a separate tax or an additional cost of the contract or transaction; or (b) included in the contract

[6] This provision has been retained under Section 21(m) of the proposed Nigeria Tax Act, 2025. President Bola Ahmed Tinubu (the "**President**") established the Fiscal Policy and Tax Reforms Committee (the "**Committee**") on July 7, 2023, with the purpose of reviewing and redesigning Nigeria's fiscal system. The President, following the recommendations of the Committee, submitted to the National Assembly, four (4) tax reform bills, designed to restructure Nigeria's tax framework. One of the bills was the Nigeria Tax Bill, now the Nigeria Tax Act, which repealed and amended several tax laws, including the Companies Income Tax Act, Capital Gains Tax Act, Value Added Tax Act, Stamp Duties Act, etc., with the object of providing a unified fiscal legislation governing taxation in Nigeria.

> price, but treated as an advance or final tax of the supplier, as the case may be.[7]

This provision implies that WHT deductions should neither be included nor incorporated into the contract price nor treated as a separate tax or an additional contract cost.

While these provisions reflect a legislative preference against gross-up clauses, no explicit penalties are prescribed for contravening **Regulation 5 of the Regulations**. Notwithstanding, it is expected that the FIRS may, during its tax audits, scrutinise contracts to identify the gross-up and disallow the associated tax payments as deductible expenses.

4.2. LEGISLATIVE SILENCE AND CONTRACTUAL AUTONOMY

Tax law is inherently statutory,[8] and had the legislature intended to prohibit gross-up provisions outright, it would

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[7] Regulation 5 of the Deduction of Tax at Source (Withholding) Regulations, 2024

[8] In Federal Board of Inland Revenue v Integrated Data Services Limited (2009) LPELR-8191(CA), the Court of Appeal held that – "In a taxing legislation, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption about a tax. Nothing is to be read in, and nothing is to be implied. One can only look fairly at the language used." (Emphasis supplied.)

have explicitly done so in the **Finance Act 2020**. In this regard, although the **Finance Act 2020** amended several provisions introduced by the **Finance Act 2019**, it did not address gross-up clauses. This omission suggests that the legislature continues to regard the practice as one governed by party autonomy, despite indications of a preference against grossing up, particularly as the law prohibits the party grossing up from making any tax deductions. By preventing such deductions, the law effectively ensures that tax liabilities remain the responsibility of the obligated party, reinforcing the principle that contracting parties retain the freedom to structure their agreements accordingly.

In commercial transactions, parties generally have the autonomy to negotiate the inclusion of gross-up clauses. While this flexibility allows them to allocate tax obligations between themselves, businesses should carefully consider the potential tax implications before agreeing to such clauses.

4.3. COMMERCIAL CONSIDERATIONS

From a commercial standpoint, businesses should evaluate the financial implications of accepting a gross-up clause, particularly in relation to their accounting treatment in their books and tax deductibility. Ensuring a thorough review of such clauses before finalising contracts can help mitigate unexpected tax exposures and optimise overall tax efficiency.

4.4. CONSTITUTIONAL SAFEGUARDS

The current legal framework does not contain an explicit prohibition against gross-up clauses. As provided under **Section 36(12) of the 1999 Constitution of the Federal Republic of Nigeria:**

> Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and <u>the penalty, therefore, is prescribed in a written law</u>; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

Furthermore, judicial precedents have established the fact that an offender can only be penalised under a law that is expressly written and prescribes a corresponding punishment. In the case of **Babatunde v State of Lagos**:[9]

> Further still, it is the law that an offender is punished only under a written law, which must not only plainly

[9] (2023) LPELR-61117(CA).

> stipulate the offence but must clearly state the deserving punishment prescribed thereto.

Accordingly, the absence of a penalty or punishment under **Regulation 5** indicates that the legislature did not intend to expressly prohibit tax gross-up or net-of-taxes provisions.

4.5. COMPARATIVE INSIGHT: GHANA'S APPROACH

The Ghanaian legal system adopts a firmer approach to the prohibition of gross-up clauses, specifically, net-of-tax clauses. **The Income Tax Act, 2015 (Act 896) ("ITA")** limits this right by voiding any agreement that prohibits the deduction or withholding of required taxes unless approved by Parliament. **Section 117(6) of the ITA** provides:

> Subject to this Act and except where an agreement is ratified by Parliament a provision in an agreement which prohibits the deduction or withholding of a tax required to be deducted or withheld under this Act or any other enactment administered by the Commissioner-General is void.

As a result, "net of tax" clauses, which prevent tax withholding, are unenforceable under the ITA. However, tax gross-up provisions, which shift the tax burden to the paying party while still allowing for deductions, remain valid. In practice, parties can agree to a higher fee that accounts for applicable taxes, ensuring compliance and enforceability under Ghanaian law.

4.6. SCHOLARLY VIEWS

Some authors have argued that the absence of explicit penalties for grossing up suggests that it is discouraged but not necessarily prohibited. Notably, Afolabi Elebiju has stated that:

> "While there are penalties for failure to deduct or remit WHT, there are no penalties for grossing-up, notwithstanding the use of the word 'shall' in Regulation 2 [now Regulation 5 under the 2024 Regulations]."[10]

Notwithstanding, it is expected that FIRS may, during its tax audits, scrutinise contracts to identify the gross-up to disallow the associated tax payments as deductible expenses.

5.0. TOTAL NIGERIA PLC V AKINPELU: JUDICIAL INTERPRETATION

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[10] Afolabi Elebiju "Addendum: Withholding Tax – The A-Z of Grossing Up" available at: <https://www.mondaq.com/nigeria/withholding-tax/1056022/addendum-withholding-tax-the-a-z-of-grossing-up (accessed 10 January 2025).

5.1. Facts of the Case

In **Total Nigeria Plc v Akinpelu**, the parties entered into a contract that incorporated a gross-up clause, requiring Total Nigeria Plc ("**Total**") to bear any tax deductions, ensuring that Akinpelu received full payment for services rendered. Total complied with its statutory obligation to deduct WHT from payments to Akinpelu but did not gross up the amounts, resulting in a dispute.

5.2. Judicial Reasoning

The High Court held that Total was obligated to pay the full rent and the applicable WHT, affirming the validity of the gross-up clause.

The matter proceeded to the Court of Appeal, and Total argued that **Section 68(1) of PITA** imposes a legal obligation on Total to withhold 10% of the total rent payable with a criminal sanction for non-compliance, and this **Section 68** has frustrated the provision of Clause 2(2) of the Lease Agreement. In contrast, Akinpelu argued that **Section 68 of PITA** identifies Total's responsibility. He contended that even if the 10% WHT on the rent had been included in the rent amount, Total would still have been required to pay it. In this case, the FIRS would not be concerned with who made the WHT payment.

The Court of Appeal held that Total's obligation to pay the grossed-up amount of N1,485,000.00 (One million, four hundred and eighty-five thousand naira) was not frustrated by **Section 68 of PITA.** The Court also ruled that the tax statute was neutral concerning the source or burden of the WHT payment, stating “It is sufficient to say the statute (**Section 68 of PITA)** did not compel the source of the money paid as tax.”

Furthermore, Justice Omage also appeared to have held that the Statute needed to have stated expressly that the lease would be frustrated if the lessee was liable to a criminal penalty:

> In resolving the issue whether the clause in the covenant in the Deed previously referred to has been frustrated by the provisions of Decree No. 104, Section 68(1), or put in another way, does Decree No.104, which imposes a criminal sanction on the appellant, if he did not pay direct the appellant not to make payment of the 10% withholding tax on behalf of the respondent; the receiver of the rent; in accordance with his obligation under the covenant?

> The sure and reasonable response is that the Decree made no such provision. It really would not matter who made the payment, penalty attaches to the Appellant if it is not paid.

The decisions of both the High Court and the Court of Appeal in **Total v Akinpelu** serve as important reminders of the delicate balance between statutory obligations and contractual agreements. The Court's ruling emphasised that the gross-up clause in the Lease Agreement, which required Total to pay the full rent including withholding tax, remained valid and enforceable. This was a critical affirmation of the principle that parties must adhere to contractual terms unless explicitly overridden by law.

However, recent statutory amendments suggest a legislative preference against gross-up clauses, potentially rendering them unenforceable in future disputes. The case has not yet been overruled, but future courts may take a different approach given the **Finance Act 2019** and **Paragraph 5 of the WHT Regulations**.

6.0. CONCLUSION: THE NEED FOR JUDICIAL CLARITY

Gross-up clauses remain a contentious issue under Nigerian tax law. While the Court of Appeal upheld their validity in **Total v Akinpelu**, subsequent legislative changes have cast doubt on their continued enforceability.

Businesses should carefully structure their contracts to reflect potential tax implications, possibly by specifying the grossed-up amount as the consideration at the outset. It is anticipated that FIRS may issue an information circular to provide further guidance, though such circulars remain subject to change. Ultimately, a definitive legal position will only emerge once the courts revisit the issue, considering the latest statutory amendments. For now, companies should approach gross-up clauses with caution, ensuring they remain compliant with evolving tax regulations and judicial interpretations.

TAXATION OF DIGITAL ASSETS IN NIGERIA: CURRENT DEVELOPMENTS, POTENTIAL ISSUES, AND ADMINISTRATIVE RECOMMENDATIONS

*Chukwu Emmanuel, Azeke Eghonghon, Obiora Prince & Adedayo Michael**

ABSTRACT

The rapid emergence of digital assets - and its income generation capacity - has challenged traditional tax systems across the world, including in Nigeria. This paper critically examines how Nigeria is responding to the taxation of digital assets, focusing on recent legal and regulatory developments. It traces the country's evolving posture from early regulatory prohibition to the formal recognition of digital assets under the Investments and Securities Act 2025. The paper then considers various models of taxing income from digital assets under extant Income Tax rules and Capital Gains Tax rules. Importantly, the paper also considers the role of the recently enacted Nigeria Tax Act 2025, which provides a more structured legal foundation for taxing digital assets. While these reforms represent progress, they also raise practical and legal challenges—ranging from administrative challenges and valuation difficulties to enforcement concerns and *jurisdictional conflicts. Drawing from international experiences—particularly that of the United States—the paper highlights both the potential and the complexities of digital asset taxation. In conclusion, it offers administrative recommendations aimed at strengthening Nigeria's tax framework in a way that encourages compliance, protects revenue, and aligns with global best practices, while remaining adaptable to technological change.*

Keywords: Digital Assets, Income Taxation, Capital Gains, Tax Administration, Enforcement, Challenges

1.0. INTRODUCTION

The term "digital assets" is quite broad and can be used in two senses: off-chain and on-chain. Off-chain digital assets include digital records, digital art files, e-books, and music files. Meanwhile, on-chain digital assets are items that can be found on a blockchain and includes non-fungible tokens (NFT), cryptocurrencies, tokenized assets, and any digital items on a blockchain. The main similarity between on-chain and off-chain digital assets is that they are digitally created and stored. They are also discoverable, trackable, and valuable. However, they are also different in that, while off-chain digital assets are stored on a digital system, on-chain assets rest on a blockchain, an immutable digital ledger. Essentially, digital assets are items of value which can be created and stored digitally.

According to the **US Internal Revenue Code** (IRC), a digital asset for Federal Tax Purposes is defined as:

> "*...any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.*"[1]

This definition, according to the IRS, includes non-fungible tokens,[2] and virtual currencies[3] such as cryptocurrencies and stablecoins. Where any particular asset has the characteristics

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[*] 400 level law students of the Faculty of Law, University of Lagos.

[1] Section 6045(g)(3)(d).

[2] A non-fungible token is a cryptographic asset that represents something unique and is neither interchangeable (i.e., cannot be replaced with another token of the same type) nor divisible. Non-fungible tokens are used to create unique verifiable digital identities and are employed in applications that require unique digital items.

[3] A Virtual Currency is a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is not issued nor guaranteed by any jurisdiction and fulfils the above functions only by agreement within the community of users of the virtual currency

of a digital asset, it will be treated as a digital asset for Federal Income Tax purposes in the United States.

In Nigeria, the SEC's **New Rules on Issuance, Offering Platforms and Custody of Digital Assets** released in 2022 defines digital assets as any:

> *digital token that represents assets such as a debt or equity claim on the issuer*", and also defines virtual assets to mean "*a digital representation of value that can be transferred, digitally traded and can be used for payment or investment purposes*.

However, it excludes from the definition of virtual assets, "*digital representations of fiat currencies, securities and other financial assets*". This, therefore, includes all the various forms of virtual and digital assets such as cryptotokens, NFTs, tokenized real world assets and other forms of on-chain assets apart from digital representations of normal currencies, like CBDCs, and other securities.

According to the Statista Research Department, the global digital assets market is projected to generate over $100 billion in 2025.[4] The implication has always been that digital assets in finance represent a sustainable system of wealth accumulation and transfer. Anybody possessing the required knowledge can, from the comfort of their homes, build wealth on-chain and remain anonymous. This poses certain issues in relation to taxation in technologically backward countries like Nigeria, which lag behind the Western world in terms of adoption of digital assets and full understanding of how transactions involving these assets can be regulated and monitored for tax purposes.

Based on the foregoing, this paper will critically examine the development of digital assets in Nigeria, the models of taxation that apply to them, trace issues around these models and propose a better taxation structure to capture the ever-evolving nature of digital assets.

2.0. REGULATORY DEVELOPMENTS IN NIGERIA

The evolution of digital asset regulation in Nigeria reflects a gradual shift from prohibition to structured adoption and

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[4] See Statista, "Digital Assets", available at: https://www.statista.com/outlook/fmo/digital-assets/worldwide (accessed 20th June 2025).

integration.[5] The legal and regulatory journey has seen key interventions from the Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC), culminating in formal recognition of digital assets under the **Investments and Securities Act (ISA) 2025**.

Digital assets, particularly Bitcoin first began to gain popularity in Nigeria around 2016, as young people in Nigeria began to delve into this new frontier for speculative trading, forex hedging and even cross-border remittances. It was regarded as the next big opportunity and likened to the dot-com boom where several early investors into today's highly profitable tech companies first made their money.

Initially, there was no regulation, which allowed both local and international platforms such as Bitcoin, NairEX, LUNO, and PAXFUL to enter into the Nigerian market. However, in 2017, the CBN issued a circular warning financial institutions against the risks of cryptocurrencies, prohibiting direct engagement with such assets. This stance was reinforced in

[5] Dentons Acas-Law, Regulation, "*Evolution and the Future of Virtual Assets in Nigeria*", (May 2, 2025) available at: <https://www.dentonsacaslaw.com/en/insights/articles/2025/may/2/regulation-evolution-and-the-future-of-virtual-assets-in-nigeria> (accessed 16th of June 2025).

February 2021, when the CBN directed banks to close accounts linked to cryptocurrency transactions. These restrictions effectively pushed digital asset activities into peer-to-peer (P2P) channels, away from formal banking oversight. At this point the regulatory position was highly prohibitive.[6]

On the other hand, the SEC declared its intent to regulate digital assets that qualify as securities, showing a readiness to accept these assets, and provide regulatory clarity. This intention materialized further in May 2022, when the SEC issued its **Rules on Issuance, Offering Platforms and Custody of Digital Assets**, which outlined licensing and compliance requirements for Virtual Asset Service Providers (VASPs), offering platforms, and custodians. It should be noted that this was done at a time when the CBN still adopted a hostile stance to these assets, which largely stalled effective implementation.

In addition to this, the **Money Laundering (Prevention and Prohibition) Act, 2022** (the **AML Act**), which was signed into law on May 12, 2022, introduced significant changes.

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[6] See Okafor, "Digital assets regulatory evolution in Nigeria: Road Ahead", available at: https://www.linkedin.com/pulse/digital-assets-regulatory-evolution-nigeria-road-ahead-okafor- (accessed 10 July 2025).

Notably, it broadened the definition of financial institutions to include Virtual Asset Service Providers (VASPs) and expanded the definition of funds to cover virtual assets, thereby subjecting VASPs to various anti-money laundering compliance obligations.

By 2023 the CBN finally lifted its ban on cryptocurrency transactions, allowing financial institutions to provide banking services to Virtual Asset Service Providers (VASPs) registered with the SEC. This decision was formalized through the issuance of **Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers (VASPs)** on December 22, 2023. Also, the SEC introduced the **Accelerated Regulatory Incubation Program (ARIP)** to provisionally onboard digital investment platforms while detailed frameworks concerning the regulation of these digital asset platforms were being finalized.

The most significant development came with the enactment of the **Investments and Securities Act 2025**, signed into law by President Bola Ahmed Tinubu in March 2025. The Act marks Nigeria's most comprehensive legislative recognition of digital and virtual assets. Notably, **Section 357 of the ISA** defines securities to include digital and virtual assets, and vests regulatory authority over such assets in the SEC. The law mandates registration and licensing for digital asset exchanges, wallet providers, and related platforms before they can operate within Nigeria. Although issues, such as regulatory fragmentation remain a challenge, **the ISA 2025** represents a turning point, which signaled the beginning of a harmonized framework for digital asset regulation in Nigeria. It provides the foundational legal basis upon which other regulations, including those on taxation, can be built.

3.0. CURRENT MODELS OF TAXATION APPLICABLE TO DIGITAL ASSETS IN NIGERIA

In spite of the novelty of cryptocurrencies and all other forms of digital assets, the principles regarding its taxation remain the same as with other forms of financial assets such as stocks, commodities, derivatives and other forms of financial securities. The gains realized from dealings in such assets will generally fall into two (2) broad categories. It will either be classified as ***income*** (either from trading, vocational or investment activities), or else it will be categorized as ***capital gains***. Although there are other forms of taxes which could apply to transactions involving digital assets, such as Value-Added Taxes (VAT), the scope of this work is generally limited to the direct taxes levied on the realization of income/gains on these assets.

3.1. Taxation of Digital Assets through Income Taxes

The imposition of Income Tax in Nigeria is generally governed by the **Personal Income Tax Act**[7] (in the case of individuals), and the **Companies Income Tax Act**[8] (in the case of corporate entities).

Although there is no statutory definition of the word 'income', the landmark United States case of **Commissioner v. Glenshaw Glass Co**[9] defined income as "*undeniable ascensions to wealth, clearly realized, and over which the taxpayer has complete dominion*". Therefore, any monetary or pecuniary gain meeting these criteria is aptly regarded as income for tax purposes.

Clearly, holdings of digital assets, which possess pecuniary value, over which the taxpayer can exercise complete dominion, satisfies the criteria of income for tax purposes. However, for it to become taxable, it must then be further regarded as income falling within the provisions of the statutes which impose the tax.

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[7] Personal Income Tax Act Cap P8, LFN 2004 (as amended).

[8] Companies Income Tax Act Cap C21, LFN 2004 (as amended).

[9] (1955) 348 US 426, 431.

3.1.1. Income under the Personal Income Tax Act

The Personal Income Tax Act applies to income arising to individuals, communities, and families resident in Nigeria.[10] For such income to be taxable under the Act, it must fall within the ambit of chargeable income under **Section 3(1) of the PITA.**The provisions subject gains or profit from trade, business, profession or vacation, salary, wage, fee, allowance, or other gain or profit from employment, gain or profit from the use or occupation of any property taxable to tax.

The omnibus provision in **Section 3(1)(f)** is also to the effect that "*any profit, gain or other payment not falling within paragraphs (a) to (e) inclusive of this subsection"* shall be taxable.

3.1.2. Income under the Companies Income Tax Act

If the 'person' in question is a company, then the provisions of **Section 9 of CITA** apply, with the effect that its profits, regardless of whether they are derived or held as digital assets or not, are made taxable by the statute.

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[10] See Sections 1 and 2 of the Personal Income Tax Act. For rules on residency, see the First Schedule to the Act.

Clearly, the provisions of the **PITA** and **CITA** have several ramifications for individuals and corporate entities that deal in digital assets, particularly for those who engage in it as their daily source of livelihood, since it follows that when any income made through their dealings in digital assets falls squarely within the provisions of the statute, it becomes taxable as income, thus making it an offence where they fail to declare such income and pay taxes on it.

3.1.3. Events which give rise to Taxable Digital Asset Income under the Statute

We will now consider some of the ways in which income from these digital assets arise, and how it ties into the provisions of the statutes.

3.1.3.1. Income from Mining, Staking and Masternode Rewards

Crypto-mining is a process used by several cryptocurrency chains to mint new coins, verify transactions and secure their blockchain. It involves several miners competing to solve complex computational problems which add blocks to a ***proof-of-work*** blockchain. When a new block is successfully added, it validates and records the latest batch of transactions, and simultaneously mints new digital tokens as rewards for successful miners.[11]

Staking is the process used by ***proof-of-stake*** blockchains to verify transactions, secure the blockchain, and earn rewards. Essentially, the participant stakes a portion of his holdings of the digital asset in exchange for the opportunity to validate transactions and create new blocks. This stake is then released after a period of time, with additional tokens as rewards for engaging in the activity.[12]

Similarly, masternodes contribute to the continuous operation of blockchains by acting as decentralized servers (nodes) for the purpose of promoting faster transactions and instant verification. In return they get rewarded with crypto-tokens on the chain. Income received by individuals and corporate entities for engaging in such activities, fulfills the criteria under **Section 3(1)(a) of PITA**, and **Section 9(1)(a) of CITA** as it is income earned from trade, business or vocational activity.

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[11] Garnett, Allie Grace, "What is crypto mining and how does it work?" *Encyclopedia Britannica* (June 1, 2025) available at: <https://www.britannica.com/money/what-is-crypto-mining> (accessed 26 June 2025).

[12] ibid.

3.1.3.2. Receiving payment for goods and services in the form of crypto-currency tokens or other forms of Digital Assets

People and businesses now accept digital currencies as tender for payment for goods and services instead of regular fiat currencies. When received in this fashion, it satisfies the criteria for income under **Section 3(1)(b) of the PITA** and is thus taxable.

3.1.3.3. Airdrops

This occurs when users of a particular chain or cryptocurrency are given a particular crypto-token, usually as part of a promotional campaign or network upgrade. This helps such crypto projects gain market awareness and improve market dominance. Income earned in this manner is taxable under the **PITA** and **CITA.**

3.2. Taxation of Digital Assets under the Nigeria Tax Act

The recent tax reform Acts also make provisions for the taxation of income arising from transactions involving digital assets. With an effective implementation date of January 1, 2026, it is important that we understand the effects of the new reforms on the determination of tax liability from digital asset transactions.

With the enactment of the **Nigeria Tax Act 2025**,[13] the taxation of income as it relates to companies and individuals were consolidated into the NTA.[14] According to **Section 3 of the NTA**, income tax shall be imposed on: "*(a) profits or gains of any company or enterprise; (b) income of any individual or family…*" This means that when income accrues to any company, or individual, and such income falls under the category of taxable income specified under the Act, it will become liable to tax.

The **NTA** further provides in **Section 4(1)(j)** that income, profits and gains accruing to a person includes "***profits or gains from transactions in digital or virtual assets***." Clearly, the import of this section is to make income generated by individuals or companies from digital asset transactions, liable to tax under the new Act, thus clarifying any ambiguity as to

[13] The Nigeria Tax Act was signed into law alongside the Nigeria Tax Administration Act, Nigeria Revenue Service Act, Joint Tax Board Act on July 26, 2025 by President Bola Ahmed Tinubu, and they will take effect on January 1, 2026.

[14] Notably, the Personal Income Tax Act, Capital Gains Tax Act, Companies Income Tax Act were repealed by this new Act.

the position of the law in relation to the applicability of income tax on these digital assets.

It further states in **Section 34(1)(a)**, that "*all forms of property shall be chargeable assets for the purpose of this part, **whether situated in Nigeria or not**, including… (a) any form of asset, shares, options… **digital or virtual assets** and incorporeal property generally.*"

These sections indicate that income arising to a Nigerian resident from digital asset transactions, whether by way of income, or by way of chargeable gains are subject to tax in Nigeria under the **Nigeria Tax Act**, regardless of whether the assets are situated in Nigeria or not. Another innovation is contained in **Section 28** which makes total taxable income to be the aggregate income arising from trade, employment, investing activities, and even chargeable gains, which will then be taxed, after making necessary allowable deductions, in accordance with **Section 56 of the NTA** (in relation to companies), and **Section 58 of the NTA** (in relation to individuals).

This means that following the new act, there is no more distinction between the rate of tax for capital gains, and the rate of tax for personal or corporate income tax. Thus, the income from digital assets arising to individuals will be taxable under the new tax table contained in the **Fourth Schedule to the NTA**, whilst companies (excluding small companies) will be taxed at 30%.

This section examined how tax liability arises for income generated from transactions involving digital assets. In order to properly harness the powers of these provisions, it is not enough to make laws, there must be proper administration. The next section considers potential issues which may affect a successful administration of these tax laws in relation to taxation of digital assets.

4.0. POTENTIAL ISSUES ON TAXATION OF DIGITAL ASSETS IN NIGERIA

The administration of taxes levied on digital asset transactions faces several unique challenges. These issues will be considered in greater detail below.

4.1. Collection Mechanisms

Under the Personal Income Tax in Nigeria, the State tax authority, where the individual is resident, is empowered to collect income taxes by law from such individuals. Under this system, each individual is mandated by law to file tax returns on a preceding year basis. However, transactions involving digital assets can occur on daily or hourly intervals. The question then is how the collection of these gains on a preceding year basis should be done.

In relation to collection of these taxes, two sides of a divide exist: the users and the platforms. Mandating each individual user that deals in digital assets to specifically declare such income for tax purposes is a tedious and herculean task which would require a specialized tracking system in order to monitor the activities of each individual dealing in digital assets. This makes this approach less feasible and administratively unworkable. In fact, in the long run, this may result in reduced compliance, as the several state tax authorities may not have the necessary technical know-how to implement user-based tracking.

4.2. Tracking of Transactions

For these digital asset taxes to work, it is also important that the tax authorities be able to track, to a sufficient degree, the activities of taxpayers engaged in the ecosystem.

Already, tax authorities are faced with the problem of *pseudonymity*, where the publicly available information about wallets on exchange platforms is of little assistance to tax authorities, as it does not aid in identifying the person or company behind the wallet, or "the beneficial owner". This generally creates problems as to how transactions involving resident taxpayers will then be tracked.

Tax authorities in Nigeria still struggle to track activities in the informal sector despite the availability of tracking mechanisms through publicly available bank feeds, taxpayer identification, and when the income was largely generated within Nigeria. Tracking activities within digital exchanges will pose a far greater challenge, and if the tax authorities are yet to properly harness the powers of technology to track activities within the informal economy, it begs the question whether they will be able to properly track activities within a more complex and volatile digital world.

The absence of proper tracking mechanisms could also lead to arbitrary assessments, unnecessary tax disputes, and would greatly undermine the efforts of the tax authorities, and erode the trust of taxpayers. These are genuine issues that need to be properly considered in light of their potential consequences.

4.3. Potential Avoidance Mechanisms

These potential measures include (i) using foreign platforms which do not collect any form of withholding tax from these taxpayers, and are not bound to enforce Nigeria's withholding tax regime; (ii) using the roll-over relief under the capital gains tax to their advantage; (iii) a more complex arrangement which would involve using third parties to carry out real world transactions on their behalf so that they do not realize the gains on disposal of such assets; (iv) the adoption of tokenization in relation to real world assets, which would allow these persons purchase rights to real world properties on-chain, without having to leave the digital assets ecosystem.

Next, the roll-over relief under **Section 31 of the Capital Gains Tax Act** allows taxpayers to defer payment of CGT on gains arising from disposal of business assets if such gains are then used in the purchase of assets of a similar class. The idea is that where a taxpayer simply entered into the transaction for the purpose of replacing business assets, they should be relieved from paying these taxes in such a case. Now, consider the fact that taxpayers could very well just exchange one digital asset for another, with the effect that their disposals come under the roll-over relief exception. This would allow taxpayers to realize gains from capital appreciation across various digital asset classes without having to pay tax on them.

Another way would is when taxpayers do not liquidate their holdings but rather make use of third parties to carry out their real-world transactions in exchange for a right, or token on-chain or in exchange for an agreed repayment plan with interest. Without liquidating or fully ‘realizing’ the gains on these assets, these taxpayers would be able to enjoy the benefits of these gains in the real world, thus defeating the attempt of the tax authorities to wait for them to fully realize these gains in real world transactions.

Lastly, the idea of tokenization of real world assets, which seeks to make everyday assets like cars, buildings, IP rights digitally represented and capable of being owned on the block-chain could also prevent tax authorities from being able to tax these digital assets, where they are instead used to purchase the rights of real world properties, which are in this case on-chain, such that they cannot be tracked, nor the proof of their transaction sufficiently be linked back to them, preventing the tax authorities from knowing that such a disposal occurred in any case.

5.0. COMPARATIVE STUDY: DEVELOPMENTS IN THE UNITED STATES

Some jurisdictions have made progress in relation to the taxation of these assets, and it is important to lend credence to foreign jurisdictions with a more sophisticated structure for taxation of digital assets. The focus of this section will be on the crypto capital of the world, the United States.

Just like in Nigeria, the US taxing authority, the IRS, treats cryptocurrency as property.[15] According to the IRS, the taxable events in cryptocurrency include the sale of a digital asset for fiat (normal currency), receipt of a digital asset due to an airdrop, receipt of a digital asset for payment of goods and services, trading of one digital asset for another, exchange of a digital asset for property, goods or services, and receipt of a new digital asset due to mining or staking activities. Events that are not taxable include donating crypto to charity, nonprofit, or a tax-exempt business, transferring crypto between your own wallets, buying crypto with fiat money, and gifting crypto to a third party subject to the exclusions of the law.

To address tax avoidance, the US added an extra layer of security by directing all digital asset brokers like crypto

[s15] Bloomberg Tax, '*Taxation of Cryptocurrencies and Other Digital Assets*', (United States, March 25, 2025). Available at<https://pro.bloombergtax.com/insights/corporate-tax-planning/cryptocurrency-taxation-regulations/#digital-assets> (accessed July 23, 2025).

exchanges to file Form 1099-DA.[16] The essence of the form is to disclose the transaction details for every customer to the IRS. These details include the cost of the asset at point of purchase, the particular assets held within the individual's portfolio, any disposition and sale of these digital assets, and the prices at which those assets were transferred or disposed of. The implication is that even when users fail to file accurate gains from taxes on digital assets, the IRS is already aware by virtue of the regulation which imposes a duty on brokers and exchange platforms.

In addition to this, the US being an OECD member is a party to the OECD's **Crypto-Asset Reporting Framework**, which allows the IRS to receive information about customers from brokers and exchange platforms which are resident in OECD countries outside the US. Under this framework, brokers in the US would also be mandated to report information on customers in other countries which are party to the

[16] See the IRS guidelines on filing for Digital assets, available at <https://www.irs.gov/filing/digital-assets> (accessed July 23, 2025). See also IRS Guidance to Taxpayers to allocate Basis in Digital assets to Wallets or Accounts as of January 1, 2025, available at <https://www.irs.gov/pub/irs-drop/rp-24-28.pdf> (accessed July 23, 2025).

framework.[17] The US, along with other jurisdictions, has committed to making its first exchange by 2027.

Finally, the recently amended *I.R.C.* **Section 6045 NPRM** mandates all brokers, including digital asset trading platforms, digital asset payment processors, and certain digital asset hosted wallets, to file information returns, and furnish returns on dispositions of digital assets effected for customers in certain sale or exchange transactions. These regulations require that persons providing trading services for digital asset transactions are to report digital asset sales when they are in a position to know that the nature of the transaction would give rise to a disposal of the digital assets.[18]

[17] See generally, OECD, Crypto-Asset Reporting Framework and amended Common Reporting Standard: OECD releases IT format for transmitting information and issues interpretative guidance, (October 2, 2024), available at <https://www.oecd.org/en/about/news/announcements/2024/10/crypto-asset-reporting-framework-and-amended-common-reporting-standard-oecd-releases-it-format-for-transmitting-information-and-issues-interpretative-guidance.html> (accessed July 23, 2025). Also see Crypto-Asset Reporting Framework FAQs, available at <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/faqs-crypto-asset-reporting-framework.pdf> (accessed July 23, 2025).

[18] Thomson Reuters Practical Law, '*IRS Releases Final Regulations on Digital Asset Broker Reporting for Certain Decentralized Finance Platform Operators*', United States (Jan 6, 2025).

6.0. RECOMMENDATIONS & CONCLUSIONS

6.1. Establish Clear Framework for Administration of these Taxes through the Exchange Platforms

Nigeria should administer the tax through platforms and exchanges where these digital assets are traded for easy administration. To do that, the role of clear legal and regulatory framework cannot be overstated. Although the **Withholding Tax Regulations 2024** sets out the rules for deduction of tax at source for taxable persons under the **CITA**, **PITA** and **CGTA**, winnings and gains from digital and virtual assets are not included as one of the transactions eligible for the application of the **WHT Regulations**.[19] Therefore, an amendment is suggested.

Also, just as the US established a special department in its IRS called the *Digital Assets Initiative Project Office* (DAIPO), we recommend the establishment of the same in Nigeria to develop the forms, instructions, and guidance; information systems needed to receive, store, and access the new digital asset information reporting returns; as well as conducting other tax education activities.

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[19] See second the First Schedule of the Deduction of Tax at Source (Withholding) Regulations 2024.

6.2. Consider Centralized Collection through the NRS for States without the required Regulatory Capacity

States struggle to administer personal income tax because of their regulatory capacity. Without regulatory capacity, there is no way they can meaningfully tax digital assets, and individual taxpayers can specifically base their operation in states that they know lack the capacity to enforce these digital asset taxes.

To prevent such occurrences, the tax authorities in these states can utilize the provisions of **Section 5 of the Nigeria Revenue Service Act** to request assistance from the NRS in the administration and collection of these taxes, with **Section 5(3*)*** stating that all such taxes shall be remitted directly to such states. Under this arrangement, the NRS will administer these taxes centrally on behalf of these states, whilst the revenues accruing from these taxes would be remitted back to these states. This will help such states by allowing them time to build necessary administrative capacity, without losing out on the revenue accruing to them from such sources due to administrative inefficiencies.

6.3. Harnessing Multi-lateral Action for Information Sharing Arrangements and Taxing Arrangements with other Jurisdictions

Nigeria must harness information exchange arrangements between countries to combat tax avoidance and evasion and avoidance. Nigeria has adopted the Crypto-Asset Reporting Framework (CARF), which provides international standards on reporting crypto-related transactions with the intention of automatically exchanging it among member nations.

As of 2025, Nigeria has committed to implementing the CARF and is set to commence the first exchange of information by 2028.[20] We recommend that Nigeria aggressively use this avenue to track transactions and profits made by taxable persons in Nigeria, which are held on exchanges and platforms in other jurisdictions.

[20] Signatories of the Multilateral Competent Authority Agreement On Automatic Exchange Of Information Pursuant To The Crypto-Asset Reporting Framework (CARF). Available at <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/carf-mcaa-signatories.pdf/_jcr_content/renditions/original./carf-mcaa-signatories.pdf>

7.0. CONCLUSION

Digital assets are here to stay, and so is the need to tax them effectively. Nigeria has made commendable progress, moving from outright prohibition to formal recognition and regulation. But if the goal is to truly harness the billion-dollar potential of the digital assets, more needs to be done in terms of governance and implementation. By learning from global best practices, harnessing the powers of multilateral cooperation, and investing in taxpayer education, Nigeria can go a long way.

EVALUATING NIGERIA'S TAX REFORM EFFORTS: AN ANALYSIS OF THE SHIFT FROM THE CONSOLIDATED RELIEF ALLOWANCE TO THE RENT RELIEF

Obiora Prince & Adedayo Michael

ABSTRACT

This article critically examines the replacement of the Consolidated Relief Allowance (CRA) with a Rent Relief Allowance under the Nigeria Tax Reform Act as part of broader personal income tax (PIT) reforms. The CRA, introduced in 2011, consolidated multiple allowances into a single relief to simplify compliance but eventually faced criticism for disproportionately benefiting high-income earners, lacking inflationary adjustments, and offering untargeted support. In contrast, the proposed Rent Relief is a capped, specific deduction tied to verifiable personal housing expenses. This shift reflects a philosophical move toward targeted tax benefits aligned with actual economic burdens. The paper explores the effects of this transition, including how it affects different income brackets, regional disparities, and housing choices. It also highlights administrative challenges and equity concerns—particularly the exclusion of

homeowners and the complexity of joint household claims. By situating the debate within broader fiscal policy goals, the article argues that while the Rent Relief is a step toward greater efficiency and fairness, it is not a full substitute for the CRA. Instead, a hybrid model combining modest general relief with targeted support may better balance equity, revenue needs, and taxpayer trust. The piece concludes by emphasizing the need for responsive, transparent tax policy in an evolving socio-economic context.

1.0. INTRODUCTION

Nigeria faces mounting economic challenges, with persistent budget deficits (averaging 5.7% of GDP over the last three years), volatile foreign exchange rates that saw the Naira lose over 50% of its value between 2022 and 2024, high public debt nearing 40% of GDP, and dwindling oil revenues exacerbated by fluctuating global prices and domestic production issues. [1] These issues have made it imperative for

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[*] 400 level law students of the Faculty of Law, University of Lagos.

[1] See Ruth Maclean and Ismail Auwal, '*Nigeria Confronts Its Worst Economic Crisis in a Generation*' New York Times (June 11, 2024) available at: <https://www.nytimes.com/2024/06/11/world/africa/nigeria-economy-strike.html> (accessed April 2, 2025); Nkechi Ogbonna, '*Why Nigeria's Economy is in such a mess*' BBC (February 27, 2024)

the government to explore sustainable revenue alternatives. In response, the Presidential Committee on Fiscal Policy and Tax Reform[2] was established to redesign Nigeria's fiscal framework with the goal of reducing reliance on debt and enhancing domestic revenue generation. Central to this effort is tax reform, with emphasis on simplifying and harmonizing tax laws to make them more efficient and effective.

The Personal Income Tax (PIT), a major revenue source in developed economies,[3] remains underutilized in Nigeria due to several factors, including weak enforcement mechanisms, widespread informality in the economy, limited taxpayer education, and a narrow tax net that excludes a large portion of self-employed individuals and small businesses operating outside formal systems.[4] The reform committee thus proposed several changes to improve the administration of the PIT and its eventual impact. One significant recommendation which impacts the eventual liability of taxpayers is the replacement

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<https://www.bbc.com/news/world-africa-68402662 > (accessed April 2, 2025).

[2] The committee was inaugurated by President Bola Ahmed Tinubu on the 8th of August 2023 and is chaired by Mr Taiwo Oyedele.

[3] OECD, Revenue Statistics 2023: Tax Revenue Buoyancy in OECD Countries (Paris, OECD Publishing 2023).

[4] Mayowa Falohun and Atinuke Babatunde, 'Tax Revenue Generation in Nigeria: A Leap Beyond Corporate Taxes' Mondaq (KPMG Nigeria, August 2024).

of the Consolidated Relief Allowance (CRA) with a Rent Relief Allowance. This article explores the rationale behind the CRA, its shortcomings, and the proposed shift, questioning whether the Rent Relief should be viewed as a distinct relief rather than a direct replacement.

The issue is particularly significant in light of Nigeria's urgent need to expand its tax base without worsening inequality. As a result, the need to understand trade-offs between universal reliefs and targeted relief becomes critical. The article also situates this reform within broader debates about equity, simplicity, and efficiency in tax administration.

2.0. THE CONSOLIDATED RELIEF ALLOWANCE

The Consolidated Relief Allowance is contained in **Section 33 of the Personal Income Tax Act**[5] (PITA) and provides for an allowance of N200,000 subject to a minimum of 1 *per cent* of gross income (whichever is higher), plus 20 *per cent* of the gross income. This allowance is then deducted from gross income in order to arrive at the final chargeable income which is then subjected to tax in accordance with the rates contained in the Sixth Schedule of the Act.

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[5] Personal Income Tax Act Cap P8 LFN 2004.

The CRA was introduced to ease the burden of personal expenses borne by taxpayers—expenses not deductible for tax purposes due to administrative inefficiencies and potential for abuse. This allowance reduces the eventual tax liability of taxpayers, offering relief for expenses borne by the individual in fulfilling his/her personal obligations such as maintaining the household, and providing support to children and other dependents.

To properly understand the reason for the CRA, we would consider the historical experiences that led to the present provisions of the CRA under **Section 33 of PITA.**

2.1. Historical Background

Before the introduction of CRA in 2011, the PIT regime in Nigeria was characterized by numerous narrow allowances that corresponded to specific categories of personal expenses. These included housing, transport, leave, utility, meals, and dependent-related allowances. Although well-intentioned, this system largely suffered from administrative complexity and loopholes that allowed for manipulation by sophisticated taxpayers. The volume of claims and the administrative effort required to verify them strained the capacity of tax authorities.

The consolidation into a single relief allowance was meant to simplify compliance and enforcement, reduce disputes, and create a predictable system for both taxpayers and administrators. This shift was also influenced by international best practices that emphasize simplification and broadening of the overall tax base.

The legislative intent behind the grant of these allowances show that they were made to provide relief to individual taxpayers on the various expenses incurred in the course of maintaining and supporting their households, and carrying on their personal lives. This can be justified on three (3) key grounds: (i) most individual income earners necessarily incur these expenses as part of their personal lives; (ii) such expenses are not 'wholly, reasonably, exclusively and necessarily' spent in realizing the income and as a result are not allowable deductions for tax purposes;[6] (iii) it would be administratively inefficient to make such expenses deductible (as it would be costly and onerous to properly verify individual claims), while also creating a huge loophole for inventive taxpayers to exploit. Hence, the legislature preferred

[6] See generally, the requirements for expenses to be deductible under s.20 & 21 of the Personal Income Tax Act.

to grant an allowance which grant relief to taxpayers in respect of these expenses.

2.2. Critical Analysis of the Problems of the CRA

The Consolidated Relief Allowance is based on solid, well-intentioned ideals of welfarism and protection of the lower and middle-income earners in society. However, several factors have greatly reduced the effectiveness of the CRA as a relief, and these factors need to be properly examined to give us an understanding of the reasons for its eventual removal.

2.2.1. Its reduction of the Effective Tax Rates of Wealthier Taxpayers

As a result of the amendment of **Section 33(2) of PITA** by the **Finance Act 2020**, the definition of Gross Income was changed to mean "*income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the Sixth Schedule, and all allowable business expenses and capital allowance*."

Basically, this equated gross income for the purposes of the CRA with the final calculation of the income on which tax was eventually to be imposed. Effectively, this allowed taxpayers to take at least 21 *per cent* of their gross income as tax free, and since the CRA operates as a deduction and not as a tax offset,[7] taxpayers subject to the highest marginal tax rate of 24% benefitted the most from the imposition of the CRA, since it helped set their effective tax rate at around 19%.

2.2.2. Fiscal Drag, and the Effect of the Tax Table

The effect of the CRA on the tax table must also be examined. The table is set out in **Paragraph (3) of the Sixth Schedule of PITA**, and is reproduced below:

1. First N300,000 @ 7 *per cent*
2. Next N300,000 @ 11 *per cent*
3. Next N500,000 @ 15 *per cent*
4. Next N500,000 @ 19 *per cent*
5. Next N1,600,000 @ 21 *per cent*
6. Above N3,200,000 @ 24 *per cent*

Generally, the tax table was expected to reflect the progressivity of the personal income tax, by targeting higher income earners with higher marginal tax rates. However, due

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[7] While deductions reduce the income which is eventually subjected to tax, offsets reduce only the tax liability itself. This means that tax liability is first calculated based on the full amount of the income, before the liability is offset by the relevant amount. The distinction between the two is more evident in progressive tax systems, where a reduction in taxable income can result in different marginal tax rates being applied.

to hyper-inflation, which pushed the nominal value of household expenditures,[8] and also led to a general increase in wages (although not at the same rate at which expenses have generally increased),[9] it led to what is known as '*Fiscal Drag'*- a situation where low and middle-income earners have been dragged into higher income tax brackets as a result of inflation.[10] This further reduced the purchasing power of these individuals as a greater portion of their income was paid as taxes.

Although the CRA seems to cushion the effect of this fiscal drag by potentially reducing the taxable income of individuals by around 21 *per cent*, the CRA is definitely not the ideal way to deal with such an issue, and should not be seen as an alternative to proper adjustment of the tax table in line with inflationary realities.

[8] Using an average inflation rate of 14.20% YoY, prices of goods and services have increased around 6 times their value in 2011.
[9] The minimum wage on the other hand has only increased from N18,000 in 2011, to N70,000 in 2025. An increase of approximately 4 times its value in 2011.
[10] Investopedia, Fiscal Drag: Meaning in Government Spending, available at: <https://www.investopedia.com/terms/f/fiscal-drag.asp> (accessed February 12, 2025).

2.2.3. Improper targeting of the relief

Another issue with the CRA is that it leads to the ‘upside down’ effects of deductions, where taxpayers with higher gross incomes benefit more from the allowance than those with lower incomes which the allowance was ostensibly set up to support. Essentially, the wealthier taxpayer who is in a much better capacity to meet his/her household expenses still gets the maximum relief on his income, thus taking around 21 *per cent* tax free, a situation which does not accord well with the idea of progressivity in income taxation.

As a result, this raises broader questions about the targeting of the relief. Whereas the original aim of the allowance was targeted at providing needed support to individuals who incur expenses in order to meet household and other personal responsibilities, the general grant of the relief allowed taxpayers who did not require such assistance to benefit from it, while failing to reach some other taxpayers who are in dire need of such assistance. This trend has been particularly noticed in practice, despite the fact that taxpayers are generally required to produce documentations before any allowance is granted to them.[11]

[11] Sections 34 & 35 of PITA.

2.2.4. Negative effects on revenue generation

Finally, the grant effectively deprives the government of much needed revenue to carry out its activities, and it remains to be seen whether the benefits which the government could potentially provide to taxpayers through a pooled and concentrated use of such funds in areas like low-cost housing, affordable mass transit, health care and other related services are outweighed by the grant of these tax relief to individual taxpayers.

As the analysis reveals, though the legislature possessed the noble intention of providing relief to taxpayers in support of their personal expenses, the CRA in its operation was faced with several drawbacks which actually reduced its effectiveness, and made the changes necessary.

3.0. THE PROPOSED TAX REFORM: RENT RELIEF ALLOWANCE

Amidst the backdrop of a huge revenue crisis in Nigeria, with budget deficit at around six *per cent* of total GDP in 2023 alone,[12] the Presidential Committee on Fiscal Policy and Tax

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[12] See Nigeria's budget, available at:
<https://tradingeconomics.com/nigeria/government-budget>
(accessed February 19, 2025).

Reform offered several recommendations on the improvement of revenue collection and tax administration in Nigeria, with some of its proposals touching on the substantive tax laws in Nigeria.

While the bills have largely been received with widespread support, one of the areas which has however generated a lot of controversy is the replacement of the Consolidated Relief Allowance with a newly formulated Rent Relief Allowance. Critics argue that this change sacrifices taxpayer reliefs for revenue generation, saying that it amounts to ‘granting relief with one hand, and taking it with the other hand’. On the other hand, supporters of the change justify it on the basis that the reforms integrate the reliefs into the tax brackets to simplify the administration of the PIT and also ensure its fairness.

To what extent can we say that this proposed change overcomes the shortcomings of the CRA? Does the change take into account the original intentions of the legislature? Does the adjustment to the tax table and rates truly justify the total removal of the CRA? These are questions which this section tries to answer.

3.1. Structure of the Rent Relief Allowance

In the new **Nigeria Tax Act**, Part VII deals with Ascertainment of Total Income of Individuals. In **Section 30(1)**, it states that the chargeable income of an individual is the Total Income ascertained under the provisions of **Section 28 of the Act**, less all eligible deductions.

In **Section 30(2)(a)**, the eligible deductions are listed, and in sub-paragraph (vi), one of such deductions is a rent relief of **N500,000 or 20% of annual rent paid, whichever is lower**. It then adds a caveat – 'provided that the individual accurately declares the actual amount of rent paid and other relevant information as may be prescribed by the relevant tax authority'. This caveat in the hands of the tax authorities would mean that applications to benefit from the rent relief allowance may be subjected to a strict burden of proof which might make the deduction less accessible to taxpayers. This relief applies only to rent for personal residences, not to business premises (which remain deductible under normal income tax rules).

3.2. Critical Analysis of the Rent Relief Allowance

Just like the CRA, the rent relief cannot be analyzed in isolation. As a result, it is necessary for us to look at the implications and effect of the rent relief allowance in light of the various developments which have largely accompanied its imposition.

3.2.1. The New Tax Table

One of the justifications for the removal of the CRA was that its effect was largely integrated into the newly revised tax table, and its recommended exemptions. In **Section 58 of the NTA**, the income tax payable by an individual shall be as specified in the **Fourth Schedule of the Act**.

After the ascertainment of chargeable income in line with **Section 30 of the NTA**, the taxable income ascertained will be taxed at the rates reproduced below:

(a) First N800,000 at 0%;
(b) Next N2,200,000 at 15%;
(c) Next N9,000,000 at 18%;
(d) Next N13,000,000 at 21%;
(e) Next N25,000,000 at 23%; and,
(f) Above N50,000,000 at 25%.

This represents a massive improvement from the previous tax table contained in the Personal Income Tax Act, and addresses the concerns raised as a result of fiscal drag. The exemption of the first N800,000 as tax free, and the widening of the gaps between the marginal tax rates prevents most middle and low-income earners from being caught up by the higher marginal tax rates.

This new structure significantly reduces tax burdens on low-income earners. For instance, someone earning N70,000/month will pay under N6,000 in taxes annually—a marked improvement. Even middle-income and high-income earners see marginal reductions or similar tax liabilities under the new structure, without the presence of the CRA. This alleviation contributes to improved disposable income among the working class, which could potentially stimulate consumption and economic growth.

3.2.2. Targeted relief at Rent costs

According to a report by PaidHR,[13] over 50% of respondents said that the bulk of their savings was usually spent on rent alone, thus constituting a major financial burden for householders. In major cities like Lagos and Abuja, rent costs an average of N720k per annum,[14] and could easily exceed

[13] PaidHR, '*State of the Employed*' Report published in 2024, available https://26055346.fs1.hubspotusercontent-eu1.net/hubfs/26055346/The%20State%20Of%20The%20Employed%20Report%20by%20PaidHR.pdf.pdf

[14] See Josephine Ogundeji, '*Median rent hits N720,000 in Lagos, 10 States*' Punch Newspaper (September 11, 2023) available at

N1.5 million depending on the area. By capping it at N500k, this allows for relief on rent expenses of up to N2.5m to be sufficiently claimed.

In targeting this relief at this particular expense, the government supports the efforts of taxpayers in providing shelter for their families.

3.2.3. Requirement of Documentation

The relief requires that the taxpayer submit proof of payment of rent. This introduces a direct link between tax relief and a specific verifiable expense. While this could promote better compliance, as taxpayers must provide rent agreements or receipts to qualify, it also introduces a new layer of administrative burden on both taxpayers and tax authorities.

These are some of the novel additions made by the rent relief allowance, and they reflect a deeper philosophical shift in the approach to personal taxation in Nigeria—moving from broad-based reliefs to more targeted support mechanisms aligned with actual living costs, such as housing. The shift is also informed by the desire to formalize Nigeria's real estate

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https://punchng.com/median-rent-hits-n720000-in-lagos-10-states/; generally, the cost of renting apartments will vary from city to city, based on factors such as level of infrastructural development, nearness to the business districts, population size etc.

and rental markets, in order to encourage proper documentation and increased transparency.

3.3. The Controversy: Benefits and Drawbacks of the Reform

Clearly the present configuration reduces the tax burden on the low-class and middle class, whilst placing a higher burden on the high income earners, reflecting the idea of progressivity. Also, as the calculations show, the average taxpayer is not in any way disadvantaged by the removal of the CRA. Perhaps, it can be said that the outcry stems from a general misunderstanding of the full effect of the broad reforms of the PIT on the effective tax rates of the common man.

While some argue that the CRA should have been retained alongside the proposed reforms, it is also important to recall that the fundamental role of taxes is to generate revenue for the state. At a time when Nigeria faces acute fiscal constraints, duplicative reliefs would undermine efforts in revenue mobilisation. Granting both the CRA and the Rent Relief in addition to the various changes and exemptions made to the Personal Income Tax would amount to providing double relief, thereby weakening the tax base at a moment when public resources are critically needed for national development.

Moreover, international data lends support to Nigeria's current direction: the OECD average personal income tax rate stands at approximately 34.9%,[15] significantly higher than Nigeria's, suggesting that Nigerian taxpayers still enjoy relatively light tax burdens in comparison. Therefore, while tax policy aim to balance equity and economic realities, reforms must also reflect the country's pressing fiscal needs and the imperative of building the personal income tax into a more sustainable source of revenue.

That being said, the rent relief as it stands is not without its peculiar challenges, some of which I will endeavor to discuss in the paragraphs below.

Firstly, the relief seems to discriminate between home owners, and rent payers. Whilst the rent payers arguably bear a greater financial burden than those who live in rent-free houses, it is arguable whether this basis of discrimination is justifiable, particularly since the PIT is supposed to be based solely on the personal income earned by taxpayers, and not their ownership or occupation of property. When this is coupled with the fact that most home-owners achieved the status by

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[15] OECD (2025), "*Taxing Wages 2025: Decomposition of Personal Income Taxes*", OECD Publishing, Paris, available at: <https://doi.org/10.1787/b3a95829-en> (accessed 12 July 2025).

sacrificially saving their net-income after tax, it begs the question of whether they are not unfairly treated. The rent relief seems to indirectly impose additional tax liability on home-owning taxpayers simply because they own or occupy property rent-free.

Secondly, there is no clarification as to how spousal income would be adjusted to account for a single rent expense paid by the spouses jointly. Would only one spouse be eligible for the deduction? Or would both spouses income be adjusted for this reality? Does this not raise some complexity for taxpayers that run counter to the idea of simplicity advocated by the reform committee?

In addition, the fact that the tax authority is given the discretion to grant the relief only after the taxpayer has made complete and accurate disclosure of the actual amount paid as rent raises questions as to whether the revenue authorities will not frustrate taxpayer's efforts to enjoy the relief, just as they have notoriously done in relation to several other tax reliefs and rebates. Does the tax authority possess the administrative capacity to timeously verify taxpayer claims for rent relief, or would taxpayers be left to suffer the drawbacks of this administrative bottleneck?

Finally, by capping the relief at N500,000 (which caps it at a rent expense of N2,500,000), this seems to overlook the high rent expense faced by taxpayers in urban areas and cities like Lagos, Abuja and Port Harcourt, where average rent costs for a decent 3-Bedroom housing unit could easily exceed this figure, especially since these cities are more expensive to live in, and as a result taxpayers would generally spend more on personal and household expenses in such areas than in other cities. Thus, placing such taxpayers at an unjustifiable disadvantage compared to their counterparts in other states, whereas as the statistics show, they are the greatest contributors to PIT revenue in the country.

Moreover, critics argue that replacing a general relief with a narrowly defined allowance may naturally distort taxpayer behavior. For example, individuals might be incentivized to rent rather than own, simply to gain tax benefits. This could have unintended effects on the housing market, including inflated rental prices or reduced investments in home ownership. Policymakers must also consider whether other essential costs e.g. education, healthcare, or transportation should receive similar targeted relief. Otherwise, the rent relief may be viewed as arbitrary and will be insufficient in addressing broader household financial burdens.

Despite these issues, the shift reflects a growing recognition of the need to align tax relief with real economic pressures. And since housing constitutes a major cost for many Nigerians, providing rent-based relief could improve vertical equity. If properly administered, it could serve as a template for future targeted reliefs.

4.0. CONCLUSION

Tax reform is a continuous process, shaped by evolving socio-economic realities. To ensure that such reforms truly serve the public interest, policymakers must not only focus on generating revenue, but also prioritize equity, transparency, and inclusiveness. As Nigeria navigates this new phase of tax reforms, there is an urgent need for a citizen-centric approach that incorporates regular stakeholder feedback, builds taxpayer trust through consistency and clarity, and adapts dynamically to the country's socio-economic shifts. Without these deliberate actions, even the best-designed reforms risk being undermined by poor implementation or public resistance.

While the CRA aimed to provide general relief, its inefficiencies and inequities prompted the introduction of Rent Relief under the broader reform of the PIT. The Rent

Relief however serves a narrower purpose, addressing housing costs, leaving the revised tax brackets to play the redistributive role formerly held by the CRA.

Going forward, a hybrid approach may be appropriate—maintaining a modest general relief while offering targeted support for essential costs. This will aid the general populace, whilst also targeting key areas that require government support. Also, the use of carve-outs can be implemented to place such reliefs out of the reach of high-income earners who do not need it as much as other taxpayers. This development represents a shift in the right direction, but the reality is that much work remains to be done.

TAXING THE DIGITAL ECONOMY IN NIGERIA: PROS, CONS AND NUANCES

Emmanuel Faith (GPHR, ACIPM) & Faith Ambode

ABSTRACT

The Digital Economy is experiencing a meteoric growth; thus, it is pertinent to examine Nigeria's position in its digitalization era - the pros, cons and nuances. This article seeks to evaluate Nigeria's taxation process across different phases of the digital economy while seeking to understand the opportunities that could contribute to Nigeria's economic growth. It further elucidates on the challenges faced in attaining a taxing position that ensures a smooth operation during digital transactions, considering the rise of e-commerce and digital services. This article also reviews the frameworks enacted in the course of developing taxation policies that enable taxing of the digital economy in Nigeria - how feasible and applicable these frameworks have been towards Nigeria's digital economy, and the challenges being faced. Important questions are addressed to understand the prospects of taxing the digital economy in Nigeria, whether or not this aspect of revenue generation is deserving and the

limitations the present frameworks might pose to furthering the taxation process.

1.0. INTRODUCTION

When Meta announced that creators in Nigeria and Ghana will be able to earn from their videos, the country went agog. It was finally the time for some income to trickle down. The announcement made in July 2024, positioned creators to earn from things like streaming, in-house videos, and other digital related platforms, and while civilians rejoiced, the questions that lingered amongst tax authorities is - How do we tax the digital economy?

The digital economy is growing at a rapid rate and Nigeria is not left out of this internet renaissance. As of 2016, the digital economy was worth an estimated 11.5 trillion dollars worldwide, equivalent to 15.5 per cent of the global gross domestic product (GDP).[16] According to the United Nations Development Programme (UNDP) Digital Economy report 2024, annual smartphone shipments have more than doubled

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[16] Joshua Akhator, Linda Ugochinyere, Omoerere Erhuen "Taxation of the Digital Economy: Evaluating the Nigerian and Global Approach", available at https://www.mondaq.com/nigeria/tax-authorities/1419370/taxation-of-the-digital-economy-evaluating-the-nigerian-and-global-approach (accessed 3 February, 2025).

since 2010, hitting 1.2 billion in 2023 and Internet of things (IoT) devices are projected to surge 2.5 times from 2023 to 39 billion by 2029.[17]

Newly minted data from selected 43 countries, representing about three quarters of global GDP, show business e-commerce sales grew nearly 60% from 2016 to 2022, to reach $27 trillion[18] and The Forrester has predicted that the digital economy will see 6.9% compound annual growth rate (CAGR) from 2023 to 2028, growing faster than global GDP.[19] Simply put, it is the digitalization era where the government needs to get their share of this growing revenue that can spread to other sectors with the aim of enhancing national economic growth.

This article reviews the proportional revenue to be allotted to the continent, and Nigeria, the beneficial prospects - which

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[17] Digital Economy Report 2024, available at: <https://unctad.org/publication/digital-economy-report-2024> (accessed 2 February, 2025).

[18] ibid.

[19] Michael O'Grady, "The Global Digital Economy Will Reach $16.5 Trillion and Capture 17% of Global GDP by 2028" available at: <https://www.forrester.com/blogs/the-global-digital-economy-will-reach-16-5-trillion-and-capture-17-of-global-gdp-by-2028/#:~:text=The%20digital%20economy%20will%20see,from%202023%20to%202028%2C%20respectively>.

currently exists in thin air, and whether or not these prospects could be materialized and enjoyed through effective tax administration.

1.1. Definition of Key Terms

1.1.1. What is the Digital Economy?

The Organization for Economic Co-operation and Development (OECD) refers to the digital economy as "an economy that incorporates all economic activity reliant on, or significantly enhanced by the use of digital inputs, including digital technologies, digital infrastructure, digital services and data. It refers to all producers and consumers, including the government, that are utilizing these digital inputs in their economic activities."

In a simpler explanation, the digital economy is the collective term used to describe all the economic transactions that occur on the internet. It covers a vast spectrum of multinationals and foreign enterprises like Meta, X (formerly twitter), Spotify, Google, Netflix, YouTube. The distinguishing element about the digital economy is the fact that these companies are able to generate significant revenue without necessarily having a physical presence in the countries of the world.

Hence, when income is being generated from different parts of the world, it becomes vital to review the legal manner in which these revenues can be directed towards the fulfilment of financing government activities and public services, and Nigeria's progress towards achieving this goal thus far.

2.0. SIGNIFICANT ECONOMIC PRESENCE (SEP) IN NIGERIA: PRESENT STANCE AND CHALLENGES

2.1. Its Arrival and the Journey So Far

The Significant Economic Presence (SEP) was coherently codified for the first time during the final report of Base Erosion Profit Shifting (BEPS) of the Organization for Economic Co-operation and Development (OECD) in October 2015. However, it did not become explicitly present in Nigeria until the **Finance Act of 2019**, four years later where it was realised that the SEP is still a perpetually evolving concept whose definition keeps expanding.

The SEP sets out to address the cases where companies or persons outside the shores of the selected country and for Nigeria, the goal is to capture these multinationals who carry out transactions continuously, without having a fixed base in Nigeria. Nigeria transact businesses with organizations domiciled in Nigeria without a fixed base in Nigeria, which results in an exemption from being taxed. Prior to the amendment of **Section 13 of the Companies Income Tax Act (CITA)**, Non-Resident Companies (NRC) were subjected to tax in Nigeria where such NRC had a fixed base in Nigeria and/or the taxable profit was attributable to profits from the fixed base.[20]

However, the challenge with this definition is that businesses like movie streaming, music streaming, online gaming, and other aspects of e-commerce were beyond the horizon. This is one of the many reasons why this section was visited and re-defined. With the introduction of SEP, there is a focal point for taxing profits derived by NRCs and Technical, Professional, Management or Consultancy Services (TMPCs) with respect to digital operation in Nigeria.

This has reflected in the updated version of **Section 13 of the CITA** as the federal Inland Revenue Services (FIRS)

[20] Digital Taxes, Significant Economic Presence and Tax Implications in Nigeria, available at: <https://tnp.com.ng/assets/images/uploads/TNP-Insights-Digital-Taxes-Significant-Economic-Presence-and-Tax-Implications-in-Nigeria.pdf> (accessed 30 January, 2025).

introduced a new subsection 2 (c), renumbering the old (c) as (d), and introducing a new addition (e) as reads below:

> *"(c) if it transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity.*
>
> *(e) If the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria*

For a foreign revenue-deriving entity to be classified as an NRC with SEP, it must meet the following requirements:

1. It derives 25-million-naira annual gross turnover or its equivalent in foreign currencies through the following digital activities:

- Streaming or downloading services of digital contents spanning videos, music, applications and so on;
- Provision of goods and services excluding those under sub-paragraph 5 of the Order, directly or indirectly through a digital interface which includes website or mobile applications;
- Provision of services such as intermediation via digital platforms, websites et al which seeks to link suppliers with customers in Nigeria; or
- Transmission of data collected with Nigerian users as the target sample which has been generated from the activities of such users on a digital interface such as websites or applications.

2. It uses a Nigerian domain name (for example.ng) or has a website registered in Nigeria;
3. It has a sustained interaction with persons resident in Nigeria by customizing its digital platform to target persons in Nigeria. This could either be by reflecting prices in Nigerian naira or providing billing/payment options in Nigerian naira.

2.2. Nigeria's Stance

A lot of progress has been made in terms of definitions and documentations; however, Nigeria still has a long way to go in terms of interpretation and implementation, and the recent tax-dispute case with Binance[21] is an indication of the long distance between Nigeria's reality and SEP implementation. There are also rising concerns about the interaction between the Nigerians and the countries with whom we have double taxation treaties (DTT). The biggest conundrum presently is determining the extent in which the amendment to the definition has yielded and how impactful this amendment of tax remittances has been to Nigeria.

2.2.1. Case Studies of Digital Services Taxes (DSTs)

European Union (EU): Several EU countries have implemented DSTs, which are taxes on revenues generated from specific digital activities, such as online advertising and digital marketplace services. For instance, France introduced a 3% DST on revenues from digital services provided to French

[21] Reuters - Nigerian Judge Sets Binance Tax Evasion Trial for October, available at https://www.reuters.com/technology/nigerian-judge-sets-binance-tax-evasion-trial-october-2024-07-12/ (accessed 2 February, 2025)

users. These DSTs are generally seen as interim measures until a global consensus is reached.[22]

United Kingdom: The UK implemented a 2% DST on the revenues of search engines, social media services, and online marketplaces that derive value from UK users.[23]

India: India introduced an Equalization Levy, initially at 6% on online advertisement services in 2016, and later expanded it in 2020 to a 2% levy on e-commerce operators facilitating the sale of goods and services to Indian residents.[24]

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[22] Digital Services Taxes in Europe, 2024, available at https://taxfoundation.org/data/all/eu/digital-tax-europe-2024/ (accessed 3 February, 2025).

[23] DLA Piper - Announced, proposed and implemented: Key Features of the United Kingdom's DST, available at https://www.dlapiper.com/es-pr/insights/publications/2021/02/announced-proposed-and-implemented-key-features-of-the-united-kingdoms-dst#:~:text=The%20DST%20is%20calculated%20as,to%20the%20group's%20operating%20margin. (accessed 3 February, 2025).

[24] VatCalc - India scraps 2% Equalisation Levy on Foreign Digital Services, available at https://www.vatcalc.com/india/india-2-equalisation-levy-extension-to-e-commerce-sellers-and-facilitating-marketplaces-apr-2020/ (accessed 3 February, 2025).

Australia: Implemented a 10% Goods and Services Tax (GST) on digital products and services supplied by non-resident companies to Australian consumers.[25]

South Africa: Requires foreign suppliers of electronic services to register for and charge VAT at 15% on supplies to South African consumers.[26]

2.3. Challenges and Considerations

Nigeria has made significant strides in taxing the digital economy, however, challenges persist, and there are certain considerations to be reviewed, including;

2.3.1. Defining Taxable Presence

Traditional tax systems rely on a company's physical presence to establish tax obligations. Digital businesses, however, can operate extensively within Nigeria without any physical infrastructure, thereby complicating the determination of a

[25] Other Taxes - Australia, Corporate, available at: <https://taxsummaries.pwc.com/australia/corporate/other-taxes> (accessed 3 February, 2025).

[26] Guide to Supply of Electronic Services by Foreign Suppliers and Foreign Intermediaries, available at : <https://www.sars.gov.za/guide-to-supply-of-electronic-services-by-foreign-suppliers-and-foreign-intermediaries>/ (accessed 2 February, 2025).

"taxable presence."[27] Nigeria's adoption of the Significant Economic Presence (SEP) concept aims to address this by taxing non-resident companies that meet certain economic thresholds and great progress has been made on paper. The real question is, how much of this translates to reality? Implementing SEP is a complex process especially when it comes to identifying and assessing the relevant identities.

2.3.2. Profit Attribution and Transfer Pricing

Allocating profits for digital services is challenging due to the intangible nature of digital transactions and assets. Determining the value creation point in digital supply chains is complex, leading to potential profit shifting to low-tax jurisdictions. This practice can make the idea of Nigeria's tax base ambiguous, while blurring the line of fairness when it comes to digital activities.[28] For instance, when YouTube pays

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[27] Taxation of the Digital Economy: An Evaluation of the Nigerian Approach in the Global Context, available at: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4504730> (accessed 28 January, 2025).

[28] Georgetown law - Opportunities in Nigeria, The Denny center for Democratic Capitalism, available at : <https://www.law.georgetown.edu/denny-center/blog/digital-economy-taxation-challenges-and-opportunities-in-nigeria/> (accessed 30 January, 2025).

its creators in Nigeria - is that a personal income tax or company income? Especially when the YouTube channel belongs to a registered business owner?

2.3.3. Administrative and Enforcement Challenges

The enforcement of tax compliance among non-resident digital companies is difficult as many companies lack a physical presence in Nigeria which complicates the enforcement of tax obligations. Additionally, the Federal Inland Revenue Service (FIRS) faces challenges in monitoring and collecting taxes from these entities, often due to limited access to relevant data and the global nature of digital transactions.[29]

2.3.4. International Coordination and Unilateral Measures

While global initiatives like the OECD's Inclusive Framework propose solutions such as a global minimum tax, Nigeria has not fully endorsed these measures, opting instead for unilateral approaches like the SEP. Nigeria was also one of the

[29] Tax Laws in Nigeria - Tax Compliance: Legal Obligations For Non-resident Corporations in Nigeria, available at: <https://www.mondaq.com/nigeria/withholding-tax/1575836/tax-compliance-legal-obligations-for-non-resident-corporations-in-nigeria-%7C-tax-laws-in-nigeria> (accessed 30 January, 2025).

last set of countries to adopt the BEPS framework designed and proposed by OECD in 2019.[30] This divergence can lead to double taxation or conflicts with other jurisdictions, complicating international trade relations and potentially deterring foreign investment.

2.3.5. Data Privacy and Protection Concerns

The implementation of digital tax measures necessitates the collection and analysis of vast amounts of data, raising concerns about data privacy and protection. This ensures compliance with data protection regulations while effectively administering digital taxes as a delicate balance that Nigeria must maintain.[31] From the sections of **General Data Protection Regulation (GDPR)** that guides against personal data to **Nigeria Data Protection Act (NDPA)** that talks about personal breaches; meandering across the delicate lines of data privacy and revenue disclosure is a crossroad tax

[30] Lexology, "Taxation of the Digital Economy: Evaluating the Nigerian and Global Approach", available at : <https://www.lexology.com/library/detail.aspx?g=be893d7d-a941-40bb-9a6d-bc9ff0a4df36> (accessed 1 February, 2025).

[31] Supra note, 13.

authorities have to be accurately careful about while attempting to traverse.[32]

In furtherance, the **National Digital Economy and E-Governance Act, 2024** which creates a comprehensive legal framework for the digital economy that covers aspects like electronic transactions, data protection, cybersecurity and data infrastructure.[33] The prospect of this Act lies in its all-encompassing attempt to bring Nigeria into the digitalization era, including Nigeria's taxation system.

3.0. CONCLUSION

As the internet evolves, and revenue generation continues, tax authorities will continue to proactively innovate new ways to expand their tax base, and at the core of this act is the need to consider the implementation and practicality of different policies beyond their documentation. **The Finance Act of 2021**, alongside the new definition of SEP for NRCs is a step

[32]GDPR v. Nigeria Data Protection Regulation, available at https://www.dataguidance.com/sites/default/files/gdpr_v._nigeria.pdf (accessed 1 February, 2025).

[33]An Assessment of the Benefits and Drawbacks of the National Digital Economy Bill, available at <https://oal.law/an-assessment-of-the-benefits-and-drawbacks-of-the-national-digital-economy-bill/> (accessed 28 January, 2025).

in the right direction, however the tax authorities must proactively consider the ease of implementation of these taxes if they hope to get a portion of profit being shared on the internet's street.

The potential implementation of the “The National Digital Economy and E-Governance Act” is a new development we are looking forward to as it will be intriguing to see how this propels the more transparent implementation of the **Finance Act of 2021.**

EVALUATING THE IMPACTS OF LOCAL GOVERNMENT AUTONOMY ON TAX REFORMS AND GRASSROOTS DEVELOPMENT

Oluwafeyikemi Alawode & Opeyemi Amodu

ABSTRACT

Since 1976, Nigeria's local government system has undergone significant transformations, evolving into a constitutionally recognised third tier of governance. These reforms aimed to bring government closer to the people and foster development at the grassroots. However, an enduring umbilical cord continues to tie local governments to state authorities, raising critical questions about their operational independence and effectiveness. This inherent dependency casts a long shadow over their potential, in crucial areas like independent financial management and development initiatives. This paper delves into the multifaceted impacts of local government autonomy on tax reform and grassroots development in Nigeria. We explore the existing legal and practical frameworks governing local governments, highlighting the areas where state control significantly impedes their ability to generate revenue, manage resources, and implement community-specific projects effectively. The central argument *posits that a truly autonomous local government system is not merely a constitutional ideal but a pragmatic necessity for achieving sustainable national development. When local governments possess the freedom to innovate in tax collection methods and directly allocate resources, they can better address the unique needs of their communities, fostering a sense of ownership and participation that is essential for long-term progress. Ultimately, this research aims to illuminate pathways towards a more empowered and effective local government system, one that can truly serve as the engine of Nigeria's development from the ground up.*

Keywords: Local Government, Autonomy of Local Governments, Tax Reforms, Grassroots Development.

1.0. INTRODUCTION

All over the world, the closest level of government to the people is the local government. In Nigeria's case, the style of government practised is federalism, such that power is shared among the federal, state and local governments. The **Guidelines for Local Government Reform of 1976** defines LG as government at the local level exercised through representative councils established by law to exercise specific powers within defined areas. In Nigeria, the local governments are created by **Section 7 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999**.[1] The local government structure in Nigeria is such that it is created, funded and sustained by the state through a law which also confers the duties in the fourth Schedule to the constitution on the local governments. This binds the local governments to the state governments perpetually.

In recent years, there has been an outcry from state governments for autonomy,[2] however, local governments are not left out. There have been recent efforts by the courts to protect their independence; however, it is important to evaluate whether autonomy is truly achievable in practice or just a mere fiction. This essay evaluates the multifaceted impacts of local government autonomy on conceived tax reform and grassroots development, arguing that while it presents significant opportunities for increased revenue generation and localised service delivery, its effectiveness is

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[1] The 1999 Constitution was promulgated into force by Decree No. 24 of 1999 by the administration of Major Gen. Abdulsalami Abubakar.

[2] Olusegun Obasun, "Reimagining Nigerian Governance: A Case for Tribal Federalism" (5 December 2024) 8 *International Journal of Research and Innovation in Social Science* <https://rsisinternational.org/journals/ijriss/articles/reimagining-nigerian-governance-a-case-for-tribal-federalism/> (accessed 27 May, 2025)

contingent upon robust accountability mechanisms and capacity building.

2.0 THE STATUS QUO OF LOCAL GOVERNMENT AREAS IN NIGERIA

Local governments are constitutionally guaranteed a certain level of autonomy. **Section 7(1)** of the **1999 Nigerian Constitution** guarantees a system of democratically elected local government councils, and their distinct functions are stipulated in the **Fourth Schedule** of the same. It also empowers them to generate revenue through taxes, rates[3], fines, and fees within their jurisdictions. However, in practice, their taxing powers are significantly constrained as state governments often take over these collection responsibilities, depriving local councils of direct access to these funds. The struggle for the recognition and autonomy of local government has been age-long, evident in the numerous reforms that local governments have undergone in Nigeria, such as the 1950s, the 1976 and the 1988 reforms.[4]

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[3] Section 1(b), Fourth Schedule to the 1999 Constitution.
[4] Oluchi Chukwu, "The Evolution of Local Governments in Nigeria", Government, Nigerian Queries, available at <https://nigerianqueries.com/the-evolution-of-local-government-in-nigeria/> (accessed on June 5, 2025).

Currently, there are 774 LGAs recognised in Nigeria, which is supposed to be the third level of government, but has been converted into mere appendages of the state governments with the local governments dancing rigorously to their tune.

Although granted constitutional status, the local governments are completely reliant on a life support system controlled by the state governments, and any local government trying to be independent will have its plug pulled. This and the concomitant act of replacing “recalcitrant” councils with caretaker committees, or sole administrators, are the practices that have become the order of the day in the local government scenery in Nigeria. For example, local governments are constitutionally empowered to collect land-based charges, such as tenement rates.[5] However, **Lagos State's Land Use Charge Law** vests collection of property taxes in the state government, depriving Lagos local governments of a significant revenue.[6]

[5] Section 1(j) Fourth Schedule to the 1999 Constitution.
[6] Oni Olawande, ‘The Lagos State Land Use Charge Law (2001) and Vision 20:2020 Housing Theme’ (Covenant University, Nigeria) available at: <http://eprints.covenantuniversity.edu.ng/380/1/The_Lagos_State_Land_Use_Charge_LawFINAL%5B1%5D.pdf> (accessed 27 May, 2025).

Other constitutional provisions also significantly undermine this intended autonomy. **Sections 7** and **8** of the 1999 Constitution stipulate that the finance and functions of local councils are subject to laws passed by the state. Furthermore, **Section 162(6) and (7) of the 1999 Constitution** establish the State Joint Local Government Account, mandating that federal allocations to local governments are first deposited with state governments before disbursement. This provision grants state governors discretionary power, leading to financial dependence, delays and diversion of funds.[7] However, on July 11, 2024, the Supreme Court made a pronouncement in **AG Federation v AG Abia State**[8] that local governments can now directly receive their allocations from the federation account, affirming their financial autonomy.[9]

Also, recently, the President of the country, Bola Ahmed Tinubu paid the state governments back in their own coin by suspending the Governor of Rivers with his deputy and the

[7] Ali Yakubu and Ali Attai, "Challenges of Financial Autonomy in Nigerian Local Governments and their Implications for Rural Development in Kogi State, Nigeria: A Focus on Idah Local Government" (2024) 1 *International Journal of Public Management and Social Science Research,* 18.
[8] SC/CV/343/2024.
[9] Chima Azubuike, Laolu Afolabi and Patrick Odey, 'FG, Govs Reach Three-Month Agreement on LG Allocations' (Punch, 13 August 2024) https://punchng.com/fg-govs-reach-three-month-agreement-on-lg-allocations/ (accessed 29 May, 2025).

entire state House of Assembly for six months, adding insult to injury by replacing them with a sole administrator, Ibok-Ete Ibas, all after declaring a state of emergency. This led to an utter state of disarray and agitation not only in the state but also in the entire country and its socio-political kaleidoscope, aptly capturing the same effect of replacing a democratically elected local government council with a caretaker committee.

The failure of the local governments to reach their maximum potential in autonomy has had several effects on the development of the country as a whole.

3.0. EFFECT OF LOCAL GOVERNMENT AUTONOMY ON TAX REFORM AND GRASSROOTS DEVELOPMENT

Taxation remains the single most reliable and sustainable means of funding government expenditure, which is always growing year by year, primarily centred on citizens' welfare. However, the problem arises when the government cannot generate enough revenue to fund its own activities and the accompanying expenses. The factors responsible for this are examined next.

3.1. Political Arrangements

The developmental plans of parties for the country, state or wards are usually made along party lines, which may not necessarily have the best interests of the citizens at heart and hence, an individual without similar plans would have no future in the party. A good example is the Ambode-Tinubu saga in Lagos state that led to Ambode losing his second tenure in office. This leads to the next problem.[10]

3.2. Jurisdictional Boundaries

States are in the habit of performing many local government duties by themselves, which is according to their developmental plan and an example that readily comes to mind is the tenement rates clearly meant for the local governments, which state governments always want to levy and collect themselves,[11] forgetting that the former are in the best position to collect it due to accessibility.

3.3. Godfatherism

This is another offshoot of the first problem, and it has become a stronghold in Nigerian politics as anyone without a political godfather will most likely not succeed in their

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[10] Chinedu Asadu, “Timeline: Tinubu finally opens up on Ambode — here’s how they fell out”, The Cable. (accessed on June 5, 2025).
[11] This was the gravamen in the case of Knight Frank & Rutley v A-G Kano State (1998) All N.L.R. 488.

political career. God-fatherism is responsible for the death of so many novel, innovative and creative solutions that people have proffered to solve Nigeria's labyrinth array of problems. This links to the next problem.

3.4. Corrosive Selection Process

The local governments have been declared to be the headquarters of mediocrity in the country, because they house those who are on the lowest rung of the ladder in the civil service, not because of good appointment but because of a corrosive recruitment process.[12] Most times, local government workers are handpicked by unseen powers with little or zero input from those democratically elected by the people. The ability of such people to do what they are employed for is always in question, negatively affecting service delivery and the overall productivity of the local governments, explaining the zero maintenance culture for executed projects.

There are numerous other factors[13] militating against the ability of the local governments to contribute their quota to

[12] Muiz Banire, "Local Governments in Nigeria and the Latest Apex Court Decision", The Nigeria Lawyer (June 5, 2025).
[13] Such as financial recklessness of the council including extra-budgetary expenditures, payment of fictitious claims, engagement in ghost or white elephant projects, etc; fiscal dependence; supervisory roles of state governments, to mention but a few.

the government‘s revenue and national growth and development.[14] All of these problems put together have the effect of undermining the autonomy of the local governments, greatly hampering the efficiency and effectiveness expected of them in the dischar ge of their duties and killing any plans of growth that they have. It thus requires urgent attention and action to improve the status quo.

4.0. THE RECENT TAX REFORMS AND LOCAL GOVERNMENT AUTONOMY

The Nigerian Senate recently passed four major tax reform bills into law: the **Nigeria Revenue Service Establishment Act**, **the Nigerian Tax Administration Act, the Nigeria Tax Act 2024**, and **the Joint Revenue Board Establishment Act**.[15] A notable provision was the revision of the VAT sharing formula: the federal government's share drops from 15% to 10%, states' share rises from 50% to 55%, while local

[14] Onyemaechi Eke, “Local Government Autonomy and Grassroots Development In Nigeria: Fact Or Farce?”, available at: https://www.unjpe.com/index.php/UNJPE/article/view/169 (accessed 20 June 2025).

[15] The State House Abuja, “President Tinubu: New Tax Laws, the way Forward for Nigeria’s Prosperity”, available at: <https://statehouse.gov.ng/news/president-tinubu-new-tax-laws-the-way-forward-for-nigerias-prosperity/#:~:text=President%20Bola%20Tinubu%20on%20Thursday,navigate%20every%20turn%20and%20twist> (accessed 26 June, 2025).

governments retain their 35% allocation.[16] The unchanged 35% VAT allocation for local governments suggests a continued reliance on states, rather than a fundamental shift towards enhancing their independent revenue generation.

Generally, the reforms are primarily geared towards improving the efficiency of federally collected taxes and their distribution, rather than empowering local governments to generate more from their own sources. This creates a challenge for achieving true fiscal autonomy, as dependence on external allocations, even if direct, can still be subject to broader economic fluctuations and political decisions at higher tiers of government. True fiscal independence would imply a greater ability to generate substantial revenue from their own sources.

5.0. IMPACT OF LOCAL GOVERNMENT AUTONOMY ON GRASSROOTS DEVELOPMENT

Local government autonomy is anchored on the principle that governance functions should be performed at the lowest

[16] Nume Ekeghe, 'Analysts: Tax Reform Bills Win for States, Step Toward Revenue Autonomy' (ThisDay, 14 May 2025) available at: <https://www.thisdaylive.com/2025/05/14/analysts-tax-reform-bills-win-for-states-step-toward-revenue-autonomy/> (accessed 29 May, 2025).

possible level, closest to the people.[17] This decentralisation empowers local authorities to make decisions, implement policies, and allocate resources according to the specific needs of their communities, enhancing responsiveness and accountability in addressing grassroots issues.[18] The proximity to citizens allows for tailored service delivery and increased accountability.[19]

This implies that genuine autonomy could unlock significant potential for localised solutions to development challenges, moving away from a one-size-fits-all approach imposed by higher tiers of government. Local governments are expected to be engines of local development, providing essential public services such as education, healthcare, rural electrification,

[17] Supra note 7.
[18] ibid.
[19] Akintunde Emmanuel, Iwuozor Odili Markanthony and Oloruntoba Elizabeth Oluwatosin, 'Local Government Autonomy: A Deep Analysis of Management and Community Leadership in Grassroots Development in the Local Government Area of Lagos, Nigeria' (2025) 1 *Journal of Institutional Research, Big Data Analytics and Innovation* 40, available at: <https://universityjournals.com.ng/index.php/jirbdai/article/download/101/46> (accessed 30 May, 2025)

road construction, market facilities, public conveniences, sewage, and refuse disposal.[20]

The Supreme Court's ruling, ensuring direct allocation of federal funds to local governments, is expected to significantly enhance their financial independence.[21] This direct access to funds means local governments can now directly utilise these resources to address local needs and implement community projects without state interference. For instance, the 774 local governments received over N2 trillion from the federation's account between January and July 2024, with monthly allocations increasing.[22] This increased financial capacity can improve service delivery, fostering trust and participation.

5.1. BARRIERS TO EFFECTIVE GRASSROOTS DEVELOPMENT

[20] NES Group, 'Financial Autonomy: Examining the Functions of Local Government Councils Under the Constitution of the Federal Republic of Nigeria, 1999 (as amended)' (NESG Blog, 5 August 2024) https://nesgroup.org/blog/FINANCIAL-AUTONOMY:-EXAMINING-THE-FUNCTIONS-OF-LOCAL-GOVERNMENT-COUNCILS-UNDER-THE-CONSTITUTION-OF-THE-FEDERAL-REPUBLIC-OF-NIGERIA,-1999-%28AS-AMENDED%29 (accessed 30 May, 2025)
[21] Chima Azubuike, Supra note 9.
[22] Supra note 7.

Despite constitutional provisions guaranteeing autonomy, political interference from state governments remains a significant barrier. Although the Supreme Court ruling in **AG Federation v AG Abia State*[23]*** aims to curb financial dependence, delays, and diversions of funds, some states continue to devise strategies to circumvent it, such as introducing laws requiring local governments to repay federal allocations to the state[24] or imposing herculean conditions like a two-year audited account requirement for direct payments causing LGs to lose billions[25] The unconstitutional dissolution

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[23] Supra note 8.

[24] For example, section 13 of the Anambra State Local Government Law 2024 requires that federal government allocations to local governments be placed first in the state's joint local government account, meaning the state will handle the disbursement to LGs, violating the recent Supreme Court decision. See Opatola Victor, 'The Legal Flaws of Anambra Local Government Law' (The Cable, 13 October 2024) https://www.thecable.ng/the-legal-flaws-of-anambra-local-government-law/ (accessed 31 May, 2025).

[25] In January 2025, the Central Bank of Nigeria (CBN) did not transfer funds directly to Local Government Area (LGA) accounts. Instead, it rerouted ₦361.754 billion of the ₦1.424 trillion distributable revenue through state governments. According to the CBN, LGAs must submit audited financial statements covering the past two years to qualify for direct disbursements. This condition opens the door for state governors to interfere, potentially undermining the financial independence of local governments. See Charles Asiegbu, 'Nigeria's Move to Autonomous Local Governance: Progress or Illusion?' (Veriv Africa, 4 April 2025 https://www.verivafrica.com/insights/nigerias-move-to-autonomous-local-governance-progress-or-illusion (accessed 31 May, 2025).

of democratically elected local government councils and appointment of caretaker committees by governors also undermines democratic governance and effective functioning.[26] This highlights a persistent gap between legal pronouncements and practical political realities.

Grassroots development often faces significant resource constraints beyond just funding, including a lack of technical support and skilled personnel.[27] Local communities may lack access to the financial resources needed for large-scale projects, and the success of grassroots development is often hindered by this lack. With these, local governments may struggle to achieve their goals despite having a form of autonomy.

6.0 THE WAY FORWARD

Achieving the full potential of local government autonomy for tax reforms and grassroots development requires a multi-faceted approach that transcends legal pronouncements. The solutions proffered directly touch on the autonomy of the LGs,

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[26] Oyeyemi Oke et. al, "The Supreme Court Decision in AGF v AG Abia State" , available at: <https://ao2law.com/wp-content/uploads/2024/08/THE-SUPREME-COURT-DECISION-IN-AGF-V-AG-ABIA-STATE-36-OTHERS-14-8-2024.pdf#page=4.53> (accessed 1 June, 2025).

[27] Supra note 7.

which invariably increases their ability to skyrocket government revenue through taxes and aid grassroots development.

6.1. Patriotism

Citizens who love their country and are willing to sacrifice selfish gains for it would record landmark victories and would surmount any problems they encounter. This was what led to Nigeria's independence in 1960 and the country's best days are not behind it, they are yet to come. Political plans of godfathers prejudicial to the nations' interest should be jettisoned and the consequences damned since they are both criminal and cause long-term problems for the country. It is high time Nigerians stood their ground for what is just, right and fair.

6.2. Power Autonomy

One factor for the success of the country in the past was the decentralised system where the then legislative lists (under the 1960 and 1963 constitutions) had few items allowing the regions more autonomy, which in turn allowed the local government to perform their functions properly without disturbance and intermittent incursions because they had enough to do. Professor Oyewo commenting on the current legislative lists called Nigeria a pseudo-unitary state masquerading as a federation.[28] The National Assembly will have to balance the mismatch between states' responsibilities and their powers through a constitutional amendment so that the SGs will give room for the LGs to execute their constitutionally given responsibilities. A national dialogue is needed to re-evaluate the division of taxing powers, assigning more buoyant and administrable taxes to LGs, and ensuring that their respective state governments do not bully them out of them, like the land use charge in Lagos. This links to the next solution.

6.3. Fiscal Autonomy

The Supreme Court's decision[29] on the obviation of the need for states to administer the funds given to local governments by the federal government will go a long way in severing the umbilical cord that has long held the local governments bound to the states, as the decision ensures their financial autonomy, which is one of the major problems of local governments. However, financial autonomy, while foundational, must be complemented by robust governance structures and

[28] Oyelowo Oyewo, "Nigeria: What Manner of Federation is This?" An Inaugural Lecture Delivered at the JF Ade Ajayi Auditorium, University of Lagos, on Wednesday 20th March 2019.
[29] Supra note 8.

accountability mechanisms at the local level. Without strong internal oversight, active citizen participation, and effective anti-corruption measures[30], as in the past, funds could be mismanaged or diverted, negating the benefits of autonomy for grassroots development.[31] Institutionalising town hall meetings and expanding public education initiatives on local government responsibilities can increase awareness of civic participation, enabling citizens to track local government projects and expenditures, therefore enhancing grassroots accountability.[32] The National Assembly should amend constitutional restrictions on local government jurisdiction to create more administrative and regulatory independence from state governments. Also, state authorities that meddle with local government administration should face stiffer penalties.

6.4. Strengthening Monitoring Mechanisms and Tax Collection

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[30] Supra note 7.

[31] During President Obasanjo's tenure, direct funding to local governments enabled chairpersons to spend extravagantly - including purchasing 1,000 SUVs for federal and security agencies. Remi Aiyede, 'Beyond Financial Autonomy: The Imperative of Moving from Local Government to Local Governance in Nigeria' (Agora Policy, 9 August 2024) available at: <https://agorapolicy.org/research/policy-note/169-beyond-financial-autonomy-the-imperative-of-moving-from-local-government-to-local-governance-in-nigeria.html> (accessed 3 June, 2025)

[32] Supra note 25.

The federal government must establish a practical monitoring framework to ensure direct allocations to LGs without interference from state governments.[33] The Inter-Ministerial Committee should liaise with agencies like the Central Bank of Nigeria to eliminate bureaucratic loopholes, such as the two-year audit requirement, that delay direct payments.[34] LGs need support to improve revenue collection, including streamlining processes, adopting modern tax technology, and developing taxpayer databases.[35]

To further preserve fiscal autonomy, indebted local governments should negotiate clear debt repayment plans with their state governments. Options include authorising the RMAFC to make deductions from monthly allocations, or direct remittance of a percentage of local taxes until debts are cleared.[36]

6.5. Capacity Building and Human Capital Development

There is a critical need to invest in training and professional development for local government officials, particularly in areas such as financial management, project implementation,

[33] ibid.
[34] ibid.
[35] Ololade Abraham, 'Problems of Tax Collection System in Nigeria (Case Study of Lagos State)' (MBA thesis, July 2020).
[36] Supra note 26.

public service delivery, and modern tax administration techniques.[37] Even with perfect legal frameworks and financial resources, the lack of adequately trained and motivated human capital at the local government level will remain a significant limiting factor for effective tax collection and grassroots development. Efforts should be made to attract and retain qualified and motivated personnel, addressing the inadequacy of tax professionals and improving remuneration to foster a positive attitude among collectors.[38]

7.0. CONCLUSION

It is crucial to acknowledge the pivotal role local governments play in tax collection and grassroots development if we aim for widespread success in tax reforms. This is not just because local governments can effectively tax individuals who might otherwise evade the system, but also because they bring governance closer to the populace. This proximity fosters active participation and a sense of inclusivity, both of which are vital for overall compliance with new legislation. Nigeria's future vision must be viewed through the lens of its local governments. Only by empowering them can the nation truly come together, working in unison to build a country that, like

[37] Supra note 35.
[38] ibid.

the Phoenix, rises from its challenges more beautiful and glorious than before.

For local government autonomy to evolve from a mere constitutional promise to a concrete reality, state governments must abandon their perception of being overlords to their local governments. A comprehensive, multi-pronged approach, requiring the collaboration of all stakeholders, is essential. This is the only way local governments can genuinely become the driving forces of sustainable development at the grassroots level.

TAXATION AND THE LEVEL OF TERRORISM IN NIGERIA

Somorin Olateju Abiola & Audu Ibrahim**

ABSTRACT

The objective of this study is to examine the effect of the total tax collection by the Federal Inland Revenue Service on the level of terrorism in Nigeria. In order to enhance empirical testing, the study is based on secondary data comprising official documents and data gathered from field work. A regression model was developed to assess the effect of taxes collected on the level of terrorism in Nigeria. The findings of the analysis show a moderate relationship between the total tax revenue collected and the level or terrorism in Nigeria. It was also discovered that tax revenue generated had a low positive relationship with the level of terrorism which is not significant. It is thus recommended from the study that the Federal government should ensure that the taxes collected by the Federal Inland Revenue Service are judiciously utilized and also prioritize the fight against insecurity which poses as a threat to national development.

Keywords: Tax, Development, Accountability, Tax evasion, Terrorism

1.0. INTRODUCTION

The origin of taxes can be relatively traced to some countries in a bid to defend their territories during hostile attacks. Examples of such countries are Greece during the time of the war Athenians imposed tax called 'eisphora' in order to finance the cost of their defending their territory. Also in England, taxes were imposed on its citizens as far back as 1377 to finance its war against France. Similarly, Post-revolution America had record of its first income tax during its civil war of 1812. In Nigeria, levies were also collected during the precolonial era in the south west to maintain the administration of the traditional ruler who maintained law and order and had the responsibility for defending the territories occupied by the Yoruba tribe. The same was found in the northern region where a centralized ruler was to overseer the emirates. Levies were collected from residents of the land to maintain the emirate also and to defend the land from external aggression. Therefore, it is right to say that terrorism (external aggression) is as old as taxation and share history together in some instances as cited above.

Terrorism, on the other hand, according to the Oxford dictionary is the illegitimate use of violence and tyrannization especially against civilians in the pursuit of political aims. The connection between taxation and terrorism gained recognition after the terrorist attack on September 11, 2001.[1] The identification of this connection was as a result of the global response to terrorism and how terrorist thrived. This, when further probed, shows that terrorists also require finances to carry out their heinous activities. Terrorism brings fear of loss and which ultimately translates also to loss of income.[2] Studies have shown that similar moves used in evading taxes is same with the moves used in funding terrorist accounts. On another note, tax havens have drawn attention as routes for terrorist financing. In view of the above, the aim of this study is to ascertain the effect of tax collection on the level of terrorism in Nigeria.

2.0. REVIEW OF EXTANT LITERATURES

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[1] M.M. Gallant, “Tax and terrorism: a new partnership?” (2007) *Journal of Financial Crime*, XIV (4), 453-459.

[2] ibid.

A study carried out in Canada adopted a qualitative approach to understand how terrorism can be curbed.[3] The study found that tax havens play a role in financing terrorists, and they do so by evading income taxes in other countries. To address this issue, the study that tax laws be tightened and also international tax laws. Similarly, relying on the qualitative approach, a study was conducted on France and the United States to identify the best tax system to be employed to avoid tax being lost to evasion.[4] The study discovered that there is no one best system but that countries adopts method of taxation based on their history.

A similar study was conducted in Spain, though adopting a quantitative approach, to examine the negative effect of terrorism.[5] The study found that tax administration can be used to cushion the effect of terrorism on the economy.

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[3] ibid.

[4] K.J. Morgan, & M. Prasad, "Origins of tax systems", (2009) 5 *American Journal of Sociology*, CXIX, 1350-1394.

[5] L. Salvadori, "Does tax enforcement counteract the negative effect of terrorism? A case study of the Basque country", (2015) *Documents de Treball de l'IEB*, 1-40.

Maris[6] conducted a similar study by examining the 28 member countries of the European union (EU). A qualitative approach was employed to examine the problem of tax evasion and the magnitude of tax evasion, otherwise called tax terrorism. It was, however, discovered from the study that tax evasion creates losses to government revenue and such monies can be used for criminal activities. The study emphasised the need to raise awareness about tax evasion and its connection to tax terrorism.

Chuku, Abang and Isip[7] also carried out a study in Nigeria adopting a quantitative approach to measure the consequence of terrorism on fiscal activities in Nigeria. It was discovered that terrorism has a negative effect on the fiscal and even the economic activities. It was however recommended that the government should make provision for terrorism when planning and encourage international trade that won't undermine the national security of the country.

[6] Maris, J., "Criteria for defining tax evasion as tax terrorism", (2017) *Economics and Business XXX*, 102-112.

[7] C. Chuku, D. Abang, & I. Isip, "Growth and fiscal consequences of terrorism in Nigeria", (2017) Cote d' Ivoire: African Development Bank.

FATF developed standards, commonly known as the Recommendations on Anti-Money Laundering and Counter-Terrorist Financing. The Standards include that Designated Non-Financial Businesses and Professions (DNFBPs) be subject to AML/CTF regulations in order to prevent criminal activity. In February 2012, the FATF published revised recommendations which deal with risks relating to money laundering, terrorist financing, the financing of the proliferation of weapons of mass destruction and others. The FATF Recommendations are recognized as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

Therefore, quite a number of legislative frameworks to combat Money Laundering (ML) and Terrorist Financing (TF) have been developed in several countries around the world. Nigeria is not left out. Other countries include Canada, France, Spain, Mexico and Sweden even though their level of compliance as discovered, is still not comforting.[8] From the above review, it reveals that there is a gap in assessing the effect of taxation on terrorism through the quantitative technique approach because existing studies simply examine

[8] ibid.

terrorism and its effects on other variables. However, in this study, the effect of taxation on terrorism is sought to be examined quantitatively, in an attempt to design recommendations and workable mechanisms that can be used to effectively curb the menace of terrorist activities in Nigeria.

3.0. CONCEPTUAL REVIEW

3.1. Taxation and Security

Taxation is a system of collecting taxes which is built on a tripartite arrangement which consists of the tax laws, tax administration and the tax policies. While security, on the other hand, can be simply be explained as keeping the lives of people and properties safe. Suffice it to say that it is the responsibility of the government to keep people safe, thus, they have a duty to prevent any form of aggression against its citizenry. Terrorism is a level of insecurity which can be carried out internally by individuals within a country or externally by other individuals or entities that are not citizens of the country.

It is important to note that, for the government to be able to keep its citizenry safe, it needs revenue to design, operate, and maintain a coordinated and effective security architecture. Taxation, on the other hand, which is a major source of government revenue, is also administered by persons who need to be kept safe to ensure high level of productivity and continuous revenue generation. However, these persons not only need to be protected while carrying out their jobs, the properties that aid them in performing their jobs also need to be protected against theft and unlawful destruction.[9]

In Nigeria, there have been instances where buildings which are properties of the Federal Inland Revenue Service (FIRS), the federal taxing authority, were razed down in flames. Also, staffs of the agency, while performing their duties, have been threatened with death threats and some physically assaulted.[10] In order for the government to function optimally by generating the required funds needed to enable it perform it function, revenue generation is a principal factor that must be addressed. As shown from above, the revenue service needs to be protected. Some of the ways this is being done is by ensuring security of staff and properties, ensuring the revenue service is empowered to enforce and recover tax, enabling the service access to special task force such as cooperation with the economic and financial crimes commission (EFCC), the

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[9] O.A. Somorin, *Taxpayer: Voices, Disconnect and Tax Compliance*, (2019) Caleb University 4th Inaugural Lecture. Lagos: Caleb University.

[10] ibid.

Nigerian police etc., granting the revenue service also the power of distrain etc.[11]

4.0. Theoretical Review

4.1. Benefit Theory

Benefit theory states that taxes are to be paid in proportion to the benefits derived and based on their ability to pay. The most prominent contribution to this theory was made by Lindahl. This theory promotes the efficiency of public goods and services availability and justifies the payment of taxes. However, critics of this theory argue how effectively the utilization of public goods by individuals will be measured to give an appropriate proportion to the taxes being paid.

Thus, the below null hypothesis is formulated for this study:

H_0: There is no significant effect of tax collection on the level of terrorism in Nigeria.

4.2. Methodology

The expost-factor research design is used for this study which also utilized a quantitative approach while secondary data was

[11] ibid.

used for analysis. The data which comprises of the total taxes collected by the Federal Inland Revenue Service (FIRS) for 2009 to 2017 was retrieved from the FIRS website. In addition, the terrorism index for Nigeria within the same period was retrieved from an online source. ANOVA was used to test the significance of the model. To derive useful meaning from the data generated, the linear regression model was used to test for the relationship and also the degree of association between the independent variable (Tax Collected) and the dependent variable i.e. the level of terrorism. This is represented in the model:

$$TER = \beta_0 + TAXCx + e$$

Where

TER = Terrorism Index

TAXCx = Total Tax Collected by FIRS

β_0 = Intercept where TER is zero

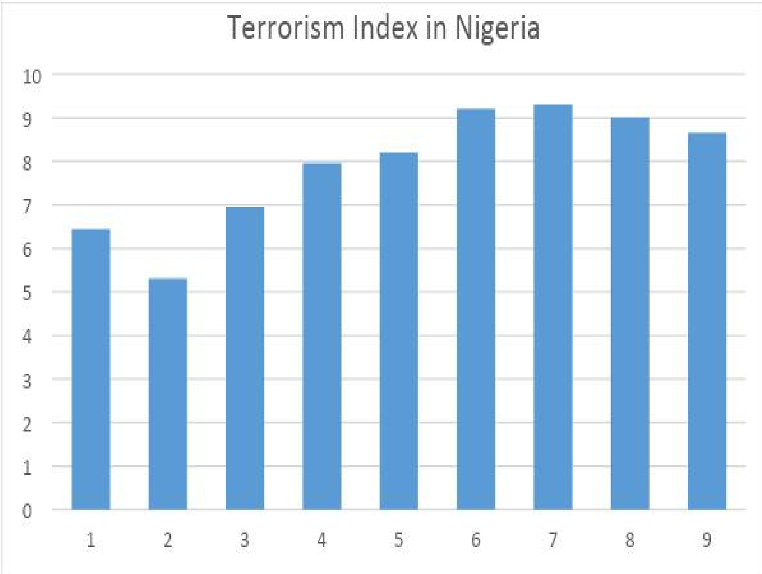
e = Error Term

4.3. Data Analysis and Discussion of Findings

4.4. Data Presentation

The below diagram shows the terrorism level in Nigeria between 2009 and 2017

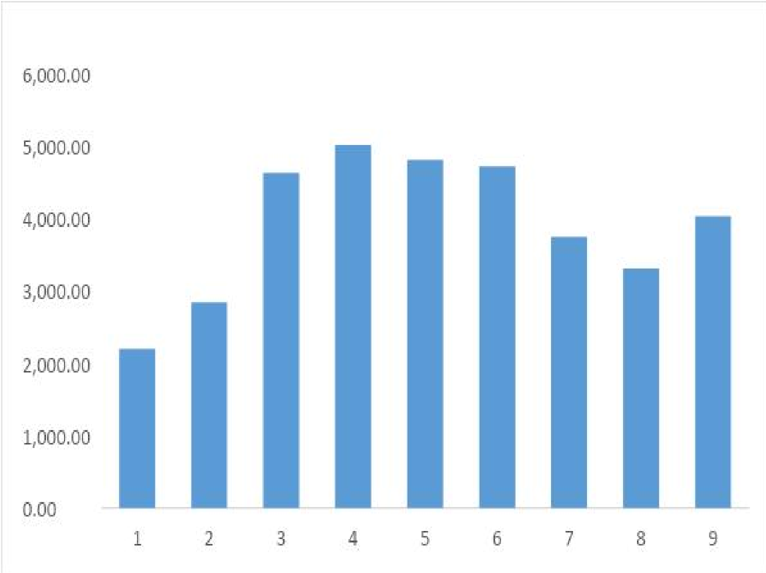
Diagram 1. Terrorism index in Nigeria



Source: tradingeconomics.com

Diagram 1, shows that there has been an upward trend in terrorist activities in Nigeria between the years 2009 and 2017.

Diagram 2: Taxes Collected by FIRS between 2009 and 2017



Source: FIRS Website

Diagram 2, shows that the trend of taxes collected is not smooth as the highest collection was made in 2012 after which there have been up and down movements in the trend.

4.5. Test of hypothesis

H_0: There is no significant effect of tax collection on the level of terrorism in Nigeria.

The stated hypothesis is tested below:

Table 1. Model Summary

Model	R	R Square	Adjusted R-kSquare	Std. Error of the Estimate
1	.476[a]	.227	.116	1.30199

a. Predictors: (Constant), Tax

From table 1, it shows that there is a moderate relationship between tax collected and the level of terrorism in Nigeria. This is shown as approximately forty-eight percent (47.6%). However, the regression table shows a shocking minute positive impact of approximately twelve percent (11.6%). When interpreted, it means that the higher the taxes collected, the higher the level of terrorism in Nigeria.

Table 2. ANOVA[a]

Model	Sum of Squares	df	Mean Square	F	Sig.

Regression	3.483	1	3.483	2.055	.195[b]
1 Residual	11.866	7	1.695		
Total	15.349	8			

a. Dependent Variable: Terrorism

b. Predictors: (Constant), Tax

From table 2, it shows that the p value is 0.195 which is higher than the alpha value set at 0.05. Thus we retain the null hypothesis which states that 'there is no significant effect of tax collection on the level of terrorism in Nigeria'.

Table 3. Coefficients[a]

Model	Unstandardized Coefficients	Standardized Coefficients	t	Sig.

		B	Std. Error	Beta		
1	(Constant)	5.251	1.895		2.771	.028
	Tax	.001	.000	.476	1.433	.195

a. Dependent Variable: Terrorism

Table 3 shows that the intercept value is 0.01 while the beta figure used to represent tax is 0.476 on the regression model. From the table, the model can be written as TER= 0.01 + 0.476x. This confirms table figures which shows that tax is positively related to terrorism.

5.0. DISCUSSION OF FINDINGS

From the result of the analysis, it shows that taxation is moderately positively related to the level of terrorism in Nigeria and that there is a minimal impact of the level of taxation on the level of terrorism which is insignificant though. From this result, it is shocking that the higher the level of taxes collected, the higher the level of terrorism in Nigeria.

This is contrary to expectation as it was expected that the higher the taxes collected, the lower the level of terrorism.[12] This can be further explained as the funds gotten from taxes should reduce the level of excess funds in the hands of individuals available to fund terrorist activities.

Also, the more taxes collected should also mean that the government have more funds to procure lethal weapons to repel terrorist activities within the nation. However, from the result gotten from this study, it can be inferred that the funds collected as taxes are not used to buy weapons or that the funds collected are somehow diverted within government coffers to sponsor the terrorist activities and that some individuals are not brought into the tax net thus allowing for excess funds in the hands of such individuals to support terrorist activities. It can also be further deduced that individuals who pay taxes are loyal to their country and, thus, will not engage in anti-country activities.

6.0. CONCLUSION AND RECOMMENDATIONS

SCUML issued the AML/CFT regulation referred to as Regulations 2013 to guide DNFBP's in the implementation of the Know Your Customer (KYC) and Customer Due

[12] Supra note 3.

Diligence (CDD) requirements for the DNFBP sector. The Regulation would not only minimize the risk faced by DNFBP's on laundering the proceeds of crime but will also provide protection against fraud, reputational and institutional market risks. SCUML has the mandate to monitor, supervise and regulate the activities of all Designated Non-Financial Institutions (DNFIs) in Nigeria in consonance with the Country's Anti Money Laundering and Combating of the Financing of Terrorism (AML/CFT) regime. SCUML also ensures its members comply with the Regulations and the **Terrorism (Prevention) Act, 2011** (as amended) and apply relevant administrative sanctions on its members, including revocation, withdrawal and suspension of license of such members.

In conclusion, tax collected should be properly accounted for and measures should be employed to ensure that the tax net captures more individuals and not overburden the current persons within the tax net.

Based on the result and the conclusion deduced, the following recommendations are hereby made:

1. There should be proper system implementation to ensure that the taxes collected are judiciously utilized and properly accounted for;

2. The tax net in Nigeria should be widened to ensure that more individuals in Nigeria are captured by the tax net.

3. Amongst the many issues that require the government utilization of funds, the government should focus its attention on combating terrorism in order to boost economic activities and revenue generation to the Federal government