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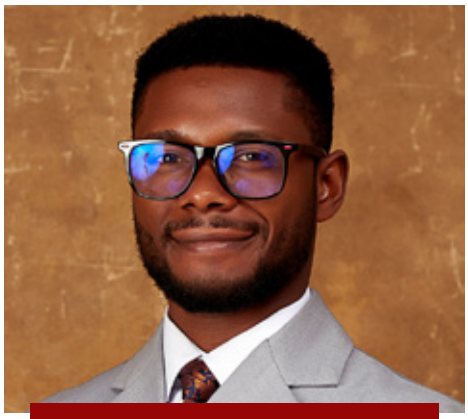
EDITOR-IN-CHIEF'S NOTE



EZEKIEL ARCHIBONG

In recent times, several tax reforms have swept the fiscal landscapes of many African countries. Taxation of virtual assets, tightening of compliance frameworks in high-growth sectors, and renewed efforts to broaden tax base, all point to a continent responding to both urgency and opportunity in equal measure. Yet, beneath these reforms lie pressing questions of corruption in tax administration, the eroding trust of taxpayers in government, and lack of commensurate fiscal exchange for taxes paid. In the No. 2, 2026 edition of The PALM, we discuss these developments, including providing answer to a fundamental question: how can African tax systems evolve into true engines of equity, trust, and transformation for Africa?

The edition begins with Deus Mugabe's "Transfer Pricing and the Fight Against Poverty in Africa". The article reveals how multinational enterprises exploit transfer pricing mechanisms to shift profits away from Africa. The article makes a compelling case for stronger, Africa-centred transfer pricing frameworks and deeper regional cooperation as essential tools for protecting domestic tax bases. Abdulkabir Olode-Ankirun, in "Beyond the Barrel – A Dance of Profit and Purpose: A Fiscal Choreography of Rights and Obligations in Nigeria's Petroleum Tax Regime", traces the evolution of Nigeria's petroleum taxation regime from the Petroleum Profit Tax Act to the Nigeria Tax Act 2025. The piece highlights a shift towards revenue certainty and administrative efficiency through reforms such as cost caps and ring-fencing rules, while balancing this with the need to maintain investor confidence in a strategically sensitive sector.

In the rapidly evolving digital economy, Solomon Ater and Chibuikem Ekeh, through "Tax Treatment of Digital/-Virtual Assets Under Nigerian Tax Laws", examine how Nigeria's 2025 reforms now bring cryptocurrencies, NFTs, and other digital assets within the tax net as recognised taxable property. Yet it also exposes lingering uncertainties around classification, valuation, and cross-border enforcement, urging clearer and more coordinated regulation. Building on this, Olukolade Ehinmosan and Kenechukwu Chibueze, in "A New Regulatory Order for Virtual/Digital Assets in Nigeria", examine the evolving institutional balance between securities regulation and tax administration. Their work reveals a multi-agency framework gradually taking shape to manage the complexity of digital assets within Nigeria's rapidly expanding financial ecosystem.

Extending the continental perspective, Lyndie Sarpong's "Policy and Design of Digital Service Tax in Selected African Countries" evaluates how nations such as Ghana, Nigeria, and Kenya are structuring Digital Service Taxes in response to the challenges of the digital economy. The article argues for balanced, coherent DST frameworks that enhance revenue mobilisation while ensuring fairness in the taxation of multinational digital platforms.

In this edition, we are equally honoured to anchor an exclusive interview with Crystal Kabajwara, Chairperson of the Tax Appeals Tribunal, Uganda. She identifies a growing trust deficit between governments and taxpayers as one of the most pressing challenges confronting tax systems across the continent, urging reforms that strengthen transparency, accountability, and public confidence.

I extend my appreciation to our writers, editors, and everyone whose effort and commitment made this edition a success. As you journey through these pages, may you come to see tax law not merely as a mechanism for revenue generation, but as a vital tool in shaping the Africa we aspire to see.

Thank you.

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TRANSFER PRICING AND THE FIGHT AGAINST POVERTY IN AFRICA

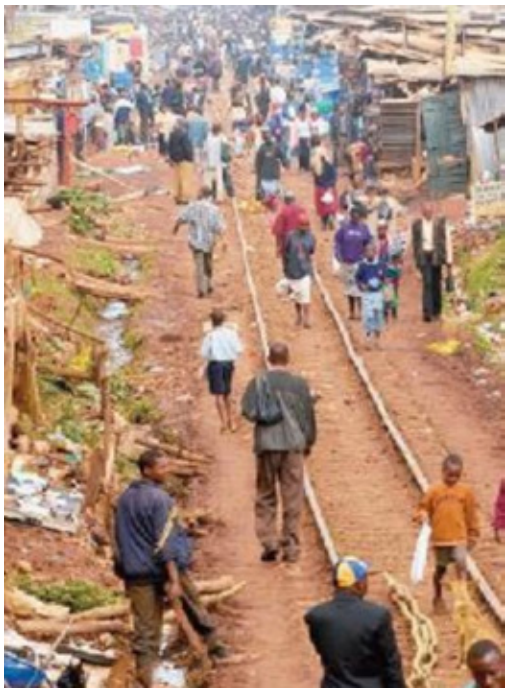
DEUS MUGABE

Poverty remains a significant challenge for African countries, as the continent continues to lag behind other regions of the world in the fight against poverty. Recent studies show that extreme poverty has been decreasing in all regions of the world except in sub-Saharan Africa. According to Durst, "a general duty to alleviate poverty is widely acknowledged; although the duty can usually be the subject of philosophical analysis." Despite sustained global efforts that have produced measurable progress in certain regions, much work is still needed in Africa. Writing in 2019, Durst noted that "the last 20 years have seen a reduction of poverty in many areas of the world. Despite this improvement, however, living conditions for millions of people in the world fall short of minimally acceptable levels of dignity and personal security."

At the international level, all member states of the United Nations (UN) adopted the 2030 Agenda for Sustainable Development in 2015, creating seventeen Sustainable Development Goals (SDGs). Within the African context, African leaders, at the 50th anniversary of the African Union held in Addis Ababa, Ethiopia, adopted a fifty-year solemn declaration, giving birth the Agenda 2063, titled The Africa we want, in which they committed to eradicate poverty on the continent.

An international tax system that functions effectively is necessary for the achievement of the SDGs and Agenda 2063. As stated by the United Nations Economic Commission for Africa (UNECA):

The success in implementing the 2030 Agenda for Sustainable Development and the African Union's Agenda 2063 depends heavily on the ability of African countries to generate and mobilize resources... In the Common African Position on the post-2015 Development Agenda and in preparation for the Addis Ababa Action Agenda, African countries placed domestic revenue mobilisation at the centre of establishing an enabling framework to ensure the successful achievements of the Goals.



To finance the SDGs and Agenda 2063, African countries are required to mobilise significant domestic resources, primarily through taxation. The taxation efforts of African countries must therefore be scrutinised and improved to ensure that they are capable of generating sufficient revenue to finance development and, in particular, to eradicate poverty across the continent.

The tax-to-gross domestic product (GDP) ratio of African countries is lower than that of other continents. This disparity invites careful scrutiny, particularly given evidence that "African countries have recorded robust growth in capital inflows ... [and that] increased global trade and globalisation, along with advanced information

the already limited tax base in developing countries."

The failure of African countries to collect adequate taxes limits their ability to provide essential public goods and services to members of the society. Taxation plays a crucial role in alleviating the impact of poverty since it enables governments to provide public services such as education and health services, as well as to develop public infrastructure. As stated by Kabala and Ndulo, failure to tax MNEs "also implies that poverty reduction efforts in African countries may continue to be hampered because governments are denied resources to fully exploit their financial capacity to implement poverty eradication programmes."

While MNEs represent an ideal source of tax revenue for developing countries in Africa, they are notorious tax avoiders enabled by the current international tax regime which undermines domestic revenue mobilisation by individual states. This regime allows MNEs to exploit inconsistencies between the tax regimes of the various countries in which they operate. Through complex investment structures, MNEs are able to shift taxable income from high-tax jurisdictions to low-tax jurisdictions.

One motivation for MNEs to shift taxable income out of Africa is that corporate tax rates in many African countries are higher than those in developed countries, where the headquarters of these MNEs are located. MNEs, one would expect, acting as rational players in the international tax game would have an incentive to move taxable profits from Africa to low tax jurisdictions.

There are several methods through which MNEs exploit loopholes in the tax regimes of the countries in which they operate. These include treaty shopping, thin capitalisation and transfer pricing. African countries must therefore take deliberate steps to curtail these channels of tax base erosion and profit shifting, lest "the losses of potential tax revenue that could be used for development will continue to rise." Each of these methods must be carefully analysed and confronted directly by African countries.

Although all methods used by MNEs to erode the tax base or shift taxable profits from Africa result in adverse consequences for African countries, transfer pricing stands out as it may be the easiest and most effective of all methods to erode and shift taxable profits by MNEs. The transfer pricing regime, which is based on the arm's length principle (ALP) can be readily used as a tool to undermine state revenues. At the same time, an ALP-based transfer pricing system does not provide an equally effective means for states to defend their tax bases when revenues are eroded by MNEs.

According to the Organisation for Economic Co-operation and Development (OECD), the ALP "follows the approach of treating the members of an MNE group as operating as separate entities rather than as inseparable parts of a single unified business." Under the ALP the prices applied in transactions between related parties, referred to as controlled transactions, should correspond to those that would have been agreed in comparable transactions between unrelated parties, known as uncontrolled transactions.

The OECD states that the ALP is "the international transfer pricing standard that OECD member countries have agreed should be used for tax purposes by MNE groups and tax administrations." To promote the consistent application of the ALP-based transfer pricing system, the OECD issued its Transfer Pricing Guidelines in 1979, following the United States Transfer Pricing Regulations introduced in 1968. These guidelines were subsequently updated and revised in 1995, 2010, 2017 and 2022.

The OECD Transfer Pricing Guidelines, particularly following the 1995 update, have become the bedrock for implementation of the ALP-based transfer pricing regime. Although the OECD Guidelines express the views of OECD member states, "most African countries apply the OECD Guidelines on [transfer pricing]

to determine the appropriate [transfer pricing] policy for MNEs operating in Africa." This raises legitimate concerns, given that the OECD Guidelines are drafted for and approved by OECD member countries. It is important to recognise that the economic realities of OECD economies differ fundamentally from those of African countries, making it unlikely that rules designed for OECD members can be applied in Africa, without substantial revision and in some cases fundamental departure from the principles enshrined therein.

In practice, the ALP-based transfer pricing regime contained in the OECD Guidelines is complex to apply, particularly in resource-constrained developing countries. The fact that developing countries cannot implement the OECD Guidelines is acknowledged by the OECD, International Monetary Fund (IMF), UN and the World Bank. While the challenges associated with implementation of the ALP-based transfer pricing regime are extensive and beyond the scope of this article, the regime also suffers from fundamental and incurable defects. For instance, the underlying assumption that members of an MNE group should be treated as operating as separate entities for tax purposes is inconsistent with reality. This assumption is fundamentally flawed as MNE groups in practice function as unitary firms rather than as independent entities engaging in arm's length transactions.

A combination of the fundamental flaws of the ALP-based system and the complexity associated with its implementation enables MNEs to shift profits from high-tax jurisdictions to low-tax jurisdictions. This is particularly significant in the African context, where many countries maintain relatively high tax rates compared to other jurisdictions. The existing literature supports this conclusion. MNEs trading in Africa have exploited the transfer pricing regime to erode the tax base of African countries with some commentators estimating that "60% of trade transactions into or out of Africa are mispriced by an average exceeding 11%, resulting in a capital flight component of 7% of African trade." Other studies similarly indicate that "African countries suffer more from [transfer pricing] mispricing and manipulation, due to their overreliance on corporate tax." When African countries fail to tax MNEs effectively, they fail to tax the most important taxpayers within their jurisdictions. As a result, the tax burden is unfairly borne by local businesses and individuals operating within the formal sector.

The profitability of MNEs operating in Africa is extraordinarily high, and there is therefore little justification for the comparatively low levels of tax revenue collected from them.

This observation challenges the oft-cited argument that stricter enforcement of tax rules discourages foreign direct investment. While this argument remains contested, the fact that many MNEs operating in Africa are highly profitable suggests that they are unlikely to exit African markets solely because of increased taxation. It may be the case, that the reason why they are very profitable is simply because they are not paying appropriate taxes. If this is the reason, such practices stand in direct contradiction to the principle that taxes should be paid where value is created. Where value is created in African countries, those countries should ensure that they exercise their full taxing rights. Kabala and Ndulo summarise the effects of transfer pricing manipulation in Africa:

The loss of revenue from TP practices by MNEs has various implications for African countries striving to improve the quality of life and eradicate poverty. These include the erosion of the tax base through profit shifting, loss of revenue for public expenditure programmes, reduced investment in social capital, switching of tax burden between factors of production and increased tax administration costs. It is, therefore, urgent for policy makers in African countries to address the TP issues at both the individual country level and regionally. It is also important for African countries to participate in the global TP rule-making process.

African countries are therefore under an urgent obligation not only to ensure that their tax regimes contain effective transfer pricing rules, but also to enforce those rules in creative ways that adequately safeguard their tax bases from the transfer pricing practices of MNEs.

This situation raises a pertinent question: why should African countries implement transfer pricing rules if MNEs are able, and willing, to exploit them? One response, among many answers, is that African countries cannot afford to be indifferent to the problem of base erosion and profit shifting facilitated by the current ALP-based transfer pricing regime. They must therefore adopt defensive measures to counter the conduct of MNEs. Faced with the colossal loss of revenue attributable to transfer pricing practices of MNEs, African countries cannot simply sit back and watch their tax base continue being eroded without response.

There is evidence that the enforcement of transfer pricing regulations provides African countries "with means of reducing fiscal deficits through the collection of [transfer pricing] adjustments and taxes." From this perspective, it is important for African countries to introduce specific transfer pricing rules capable of denying MNEs the opportunity to shift business profits from Africa. However, the current ALP-based transfer pricing regime, particularly as reflected in the OECD Guidelines, is complex and overly cumbersome for many African countries to implement effectively. Even well-intentioned efforts to apply the ALP-based transfer pricing regime often fail short in practice.

As some commentators have observed '"African countries' transfer pricing regimes are based principally on the arm's length principle and loosely on OECD rules. The OECD rules express the values of OECD member states. Africa must therefore evaluate whether these guidelines serve their purpose within the African context." It is also important to note that the OECD, alongside the other members of the Platform for Collaboration on Tax (PCT), acknowledge that developing countries face significant challenges in implementing a purely ALP-based transfer pricing regime as set out in the OECD Guidelines, and has sought to develop alternative approaches to support implementation. Notwithstanding this, many African countries do not make use of the PCT's toolkit, despite the fact that it was designed specifically to address the needs of developing countries.

However, transfer pricing, even in its current outdated and defective form, remains an important tool for defending a

country's tax base, particularly where it prevents MNEs from claiming excessive deductions. As Arnold notes, "transfer pricing rules apply with regard to deductible payments to connected persons to ensure that the payments are not excessive." It is crucial that any transfer pricing regime adopted by the country must be tailored to the circumstances of a particular country. Given the difficulty of implementing the current transfer pricing rules as spelt out in the OECD Guidelines, African countries should not consider themselves obligated to adopt or apply them in full. Instead, they should consider themselves free to introduce tailored safe harbours, advance pricing agreements, fixed margins, and other mechanisms capable of supporting the effective application of the ALP-based transfer pricing regime pending an overhaul of the current system.

African countries must recognise that the key problems associated with administering the ALP-based transfer pricing regime are not easy-fix as they stem from the foundational assumptions of the separate accounting system itself.

Moreover, transfer pricing is not a country-specific problem and requires an international approach. As such, "African countries must actively seek inclusion and participation in these global policy making processes on [transfer pricing] issues." If African countries want to see developments in the allocation of taxable business profits of MNEs that are favourable to everyone and Africa in particular, they must cooperate. Developed countries have a habit of cooperating with, and trusting, each other. Such cooperation is important because alternatives to the ALP-based transfer pricing regime such as formulary apportionment, would involve establishing globally agreed allocation keys. African countries cannot afford to allow these allocation rules to be negotiated in their absence. The current framework for allocating business profits was established in the 1920s without African participation, and that history should not be allowed to repeat itself.

It is submitted that curtailing the transfer pricing practices of MNEs that erode the tax bases of African countries and shift profits to low tax jurisdictions would strengthen domestic revenue mobilisation efforts across the continent. Enhanced revenue mobilisation would, in turn, improve the capacity of African countries to fund development priorities and contribute meaningfully to the broader fight against poverty. In fighting against transfer pricing behaviours of MNEs, African countries must not feel obligated to follow the OECD approach if they do not serve African interests. There is an urgent need to Africanise the ALP-based transfer pricing regime by African countries.

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BEYOND THE BARREL- A DANCE OF PROFIT AND PURPOSE: A FISCAL CHOREOGRAPHY OF RIGHTS AND OBLIGATIONS IN NIGERIA'S PETROLEUM TAX REGIME

ABDULKABIR OLORUNTOBI OLODE-ANKIRUN

ABSTRACT

Petroleum taxation in Nigeria balances the State's right to maximize value from its natural resources with investor's need for fiscal certainty and capital recovery. This objective is pursued through an evolving legislative framework, moving from the Petroleum Profit Tax Act to the Petroleum Industry Act 2021, and most recently the Nigeria Tax Act ("NTA") 2025. Historical frameworks were marked by administrative complexity and overlapping regimes, which undermined predictable cost recovery. This paper investigates whether the consolidation of petroleum fiscal logic into the NTA strengthens revenue certainty while preserving investor rights.

Using legislative and comparative analysis, the study reviews the Tax Reform Acts, specifically examining cost recovery mechanisms and gas incentives. It finds that the NTA centralizes authority under the Nigeria Revenue Service hence reducing administrative discretion. The 65% cost price ratio acts as a fiscal anchor, ensuring the State receives revenue "from the first barrel" by capping deductible costs while US dollar-denominated payments and escalating penalties strengthen enforcement. In contrast to the field-level flexibility of the UK and Norway, Nigeria employs "Behavioural Engineering" approach Although this framework enhances stability, it limits project-specific flexibility, forcing a choice of predictability over negotiated relief.

Key Words: Petroleum taxation, Nigeria Tax Act, Cost Price Ratio, Capital recovery, Petroleum Industry Act.

OPENING MOVEMENT: SETTING THE RHYTHM OF REFORM

The taxation of petroleum in Nigeria balances the State's right to maximize value from its natural resources with investors' need for fiscal certainty and capital recovery. While the objective itself has remained constant; what has changed over time is the rhythm through which that balance is pursued.

That dynamic is not unfamiliar. In Bàtá, a dance defined by intensity, dialogue, and externally imposed rhythm, expression is permitted only within a strict percussive structure. Movement does not resist the drum; it aligns with it. The evolution of Nigeria's petroleum tax framework reflects a similar logic. The purpose has endured, but the tempo and discipline of its execution have been recalibrated. This objective is reflected across the evolution of the fiscal framework on petroleum from the Petroleum Profit Tax Act ("PPT") to the Petroleum Industry Act 2021 ("PIA"), and most recently the Tax Reform Acts.

The PPT was tunnel visioned, imposing single high tax rates on winning petroleum While this approach provided clarity on crude oil taxation, it limited flexibility for varying investment structures. When imposing tax duties, it did not account for specific risks, expenses, or terrains.
In contrast, the PIA introduced a dual tax system, comprising hydrocarbon tax ("HT") and company income tax ("CIT") while also reducing rates to enhance investment competitiveness and sector-wide progressivity. It distinguished between the different economic realities of onshore, deep offshore, or frontier exploration and provided specialized fiscal paths for the natural gas sector which was largely treated as a secondary byproduct of oil by the PPT.

On the other hand, the Nigeria Tax Act 2025 ("NTA") has integrated specialized levies like the Hydrocarbon Tax and royalties into a single legal document, combining the essential components already established under the PIA into a single tax framework. Clearer guidelines for compliance and enforcement are provided, administrative complexity is reduced, and overlaps are eliminated thanks to this single framework.

THE SCORE AND THE STAGE: LEGAL ARCHITECTURE OF PETROLEUM TAXATION

The petroleum taxation framework is multi-layered. Substantive tax rules, administrative processes, sectoral regulation and legacy regimes interact seamlessly. At its core is the NTA, which unifies the country's taxation regime depicting the substantive provisions that govern petroleum taxation defining what is taxed, at what rate, how profits are determined, covering both the modern HT and the legacy PPT regimes.

The administrative processes are depicted under the Nigeria Tax Administration Act, 2025 ("NTAA") which govern how and when taxes are assessed and collected. It vests the Nigeria Revenue Service ("NRS") with exclusive authority for assessment and collection of taxes. Before any fiscal movement occurs, the legal framework sets the score, defines the space, rhythm, and expectations within which all actors must operate.

Sector regulation under the PIA sets out governance provisions such as licensing requirements, technical standards etc., while fiscal obligations are depicted through the NTA and NTAA framework. The Nigerian Upstream Regulatory Commission ("Commission") is responsible for the technical and commercial regulation of upstream petroleum operations while the Nigerian Midstream and Downstream Petroleum Regulatory Authority ("Authority") is responsible for the technical and commercial regulation of midstream and downstream petroleum operations in the petroleum industry.

The NTA consolidated petroleum taxation into chapter three by integrating the fiscal provisions of the PIA. This ensures petroleum-specific rules are administered consistently with general corporate taxes rather than being buried in sectoral legislation. Although the standalone PPT Act has been repealed, its provisions persist under transitional arrangements. Unconverted oil prospecting licences ("OPLs"), and oil mining lease ("OMLs") remain subject to legacy PPT rates, while converted or new licenses i.e. petroleum prospecting licences ("PPLs") and Petroleum Mining Leases ("PMLs") fall under the HT and CIT system. Royalties, determined by the Commission, are collected by the NRS in accordance with NTAA procedures.

HEAVY STEPS: FISCAL AND ADMINISTRATIVE OBLIGATIONS IMPOSED ON OPERATORS

A) LAYERED FISCAL BURDENS

There are three primary fiscal burdens that are imposed on petroleum operations in Nigeria: royalties, HT and CIT. Together, they secure government revenue at different points in the value chain and with varying sensitivity to profitability.

Royalties are non-profit sensitive obligations. They result from the production process itself and are paid in cash according to chargeable volumes and the commission-determined applicable fiscal oil or gas price. Regardless of an operator's cost recovery position, the State receives cash from the first barrel produced because royalties are tied to production rather than profit. This production-based architecture was firmly established under the PIA (ss. 260–267), and was retained, albeit within a restructured administrative framework under the NTA. Under the PIA, royalties were calculated and collected within a sector-specific system. The NTA modifies this system by transferring responsibility for administration and collection to the NRS while leaving technical volume and pricing determinations to the Commission. The profit-based HT tax applies to all upstream crude oil operations, including field condensates and LNG produced from associated gas.

HT is profit-sensitive, however its impact is limited by the cost price ratio ("CPR") which limits deductible costs to 65% of gross revenue. This preserves cost recovery in principle while guaranteeing a minimum taxable margin, ensuring that the State captures value even where operational expenditure is high.

CIT is a general corporate tax levied in addition to HT. Upstream petroleum enterprises are still subject to CIT on chargeable profits under both

regimes, but the NTA combines this duty into a single tax code rather than making cross-references to other corporate tax regulations. It is important to note that HT is non-deductible for CIT purposes. Thus, upstream profits are subjected to both HT and CIT reinforcing the layered structure of fiscal take.

This cumulative design collects value at multiple stages throughout the petroleum value chain. Upstream operations carry the entire burden of royalties, HT, and CIT. Midstream and downstream activities are typically exempt from HT and fall under the usual CIT system. Natural gas operations continue to benefit from a unique fiscal path: while royalties and CIT are levied, gas is exempt from HT.

B) ADMINISTRATIVE DISCIPLINE AND STRUCTURAL COMPLIANCE

The central pillars of anti-abuse and revenue protection mechanisms are ring-fencing, mandatory segregation, and strict reporting requirements. They ensure that the layered fiscal burdens are not eroded through cost shifting, timing manipulation, or structural arbitrage.

The NTA provides that petroleum activities across the upstream, midstream, and downstream segments must be carried on through separate legal entities. This prevents operators from offsetting taxable profits from the upstream sector against losses and/or capital expenditure incurred elsewhere in the value chain. In simplified terms, it makes sure that HT is assessed on upstream profits without dilution by the inclusion of midstream or downstream costs.

The ring-fencing logic extends beyond the different streams and resides within upstream operations themselves. For the purpose of calculating HT, cost and revenue consolidation must be restricted to assets subject to the same applicable tax rate. This prevents costs being transferred from lower-tax or frontier assets into higher-tax producing fields. This control is further reinforced by the CPR under the sixth schedule to the NTA, which caps deductible costs for HT at 65% of the gross revenue.

According to the NTAA, upstream petroleum tax computations and payments must be computed in US dollars. This provision protects against currency risk and prevents enterprises from postponing tax payments in expectation of local currency depreciation.

The reporting architecture supplements these controls through estimated and periodic returns. Operators must provide early estimates of tax liability and amend such estimates if major changes occur. This system restricts the deferral of tax payments and prohibits the use of potential State revenue as an interest-free funding source. Failure to comply results in interest and penalties under the NTAA, which reinforces the system's legitimacy.

ENFORCEMENT AS CHOREOGRAPHIC CONTROL

Under the NTAA, penalties and sanctions are not regarded as corrective responses to default, but as instruments directed at engineering the behaviour of operators. The logic is straightforward; non-compliance must be economically irrational. Scale, rapid escalation, and certainty of application are used to ensure that delay or evasion consistently cost more than timely compliance. Static penalties are abandoned in favour of time-sensitive escalation. Failure to file or pay triggers an immediate sanction on the first day of default, followed by substantial daily penalties for each day the failure persists. The addition of compound interest at secured overnight financing rate (SOFR) plus 10% for foreign-currency liabilities removes any incentive to treat unpaid taxes as temporary liquidity. Compliance is now regarded as a daily operational priority instead of a year-end reconciliation exercise.

Under the PIA, sanctions were primarily regarded as regulatory and were aimed at ensuring orderly sector conduct. They were also administered by industry regulators with a measure of discretion. The NTAA reconstitutes this enforcement mechanism as a fiscal function, which is centralised within the NRS. Penalties are triggered automatically by established defaults hence reducing the scope for negotiation, delay, or selective enforcement.

This shift is further consolidated by aligning fiscal default with the inherent existential risks of operating a business. Persistent non-payment triggers enforcement mechanisms that directly tie tax compliance to the continued validity of petroleum licences and leases, thereby elevating fiscal obligations from a regulatory requirement to a condition essential for operational survival.. The possibility of revocation, combined with the NRS' powers of administrative distraint and best-of-judgement assessment, elevates non-compliance from a balance-sheet concern to a threat to the right to operate.

Lastly, the requirement that upstream tax liabilities should be assessed and settled in US Dollars preserves the real value of sanctions. It insulates penalties from depreciation of domestic currency. The NTAA ensures that escalation retains its economic force over time preventing the need for frequent update of the penalty provisions.

While ring-fencing, segregation, and reporting requirements operate as ex ante proactively preventing cost leakage and mitigating the risk of timing manipulation, the penalties regime functions as their enforcement backstop. Together, they ensure that the cumulative fiscal burdens on petroleum operations are not merely well designed in theory, but unavoidable in practice. The credibility of this architecture depends not on discretionary oversight, but on predictable and escalating consequences for default.

COUNTERBALANCE: STATUTORY RIGHTS AND CAPITAL PRESERVATION MECHANISMS

COST RECOVERY AND CAPITAL ALLOWANCES

Although the tax provisions impose substantial fiscal burdens on the petroleum sector and activities conducted thereunder, they provide limited reprieve through "Cost Recovery" and "Capital Allowances." These mechanisms are better understood as instruments of capital preservation rather than fiscal generosity. Their purpose is to ensure that capital invested in petroleum operations is recovered in an orderly and prioritized manner before the State's entitlement crystallizes. These allowances do not reward risk; they regulate its repayment, setting recovery to the rhythm of statutory schedules that favour balance over speed (Nigeria Tax Act, 2025, s. 74; First Schedule, Part II, para. 2(b)).

These mechanisms were initially introduced under the PIA to stabilize investor expectations during the transition from the PPT regime. That underlying rationale endures, but its pace and application have since evolved. The NTA absorbs these rights into a unified tax code and subjects them to fixed timelines, explicit ceilings, and sequenced deductions. Recovery is no longer

elastic or discretionary but paced.

Under the NTA, the cost of acquiring petroleum rights and upstream assets is written down at a uniform 20% per annum, which spreads recovery over a period of five years (Nigeria Tax Act, 2025, Sixth Schedule, s. 2(1)). Pre-production expenditure is treated as qualifying capital expenditure and amortised on the same schedule once commercial production begins. The system ensures predictability while preventing front-loaded erosion of the tax base. Revenue is reduced in statutory order, operational costs, royalties, carried-forward losses, then capital and production allowances.

The effect is a deliberate counter movement within a heavy fiscal sequence. After the weight of cumulative charges, these allowances restore balance. Capital recovers, but at a measured pace, and within boundaries that preserve the State's revenue rhythm.

PRODUCTION AND INVESTMENT ALLOWANCES

Production and investment allowances are best understood not as devices for lessening fiscal severity, but as instruments for rebalancing project economics across the production lifecycle. The effect is to provide a cushion for projects during the capital recovery cycle of the business. At progressive thresholds, the allowances lessen till fiscal measures come back into full effect.

Under the NTA, production allowance operates as an early-stage counterweight to the cumulative burdens of royalties, HT and CIT. By linking relief to cumulative production thresholds and terrain, the statute recognizes the reality of the financial strain undertaken by projects at the outset.

At the interim stages, higher allowances apply tapering as volumes increase and operational uncertainty declines. The tapering signals a deliberate shift in rhythm. Once capital has largely been recovered and production stabilized, the fiscal load increases. The linkage to a percentage of the fiscal oil price further reinforces price reflexivity, providing limited downside cushioning without insulating operators from exposure to market upside. The allowance does not suspend taxation; it moderates its early tempo.

Investment tax allowances under production sharing contract ("PSC") type structures, retained from the PIA framework and preserved in the NTA for qualifying arrangements, perform a similar function to the above. In high-risk deep offshore and frontier basin projects, where capital commitments precede revenue by years, the allowance accelerates cost recovery at the point where assets are first deployed. This materially improves early cash flow and net present project value, without altering the long-term revenue trajectory. Once the initial imbalance passes, the allowance falls away, and the standard fiscal sequence resumes.

What emerges is not fiscal indulgence but controlled counter movement. The allowances restore balance after the heavy opening steps of capital deployment, preventing economic strain from becoming structural injury. They do not eliminate rigidity but make it survivable.

In this sense, allowances improve project economics precisely because they are limited. Like a restrained Bàtá counter-step, they restore equilibrium without changing the direction of the performance.

GAS AND TRANSITION INCENTIVES

Under the PIA, natural gas was excluded from the HT base. Gas was framed as a developmental priority rather than a principal revenue stream. To encourage utilisation, the PIA allowed upstream gas costs before the measurement point to be charged to crude oil for HT purposes and treated investments in gas separation or delivery infrastructure as part of oil field development.
The NTA retains the fundamental exclusion of natural gas from HT but re-engineers the PIA's expansive framework into a quantified, time-bound system of incentives. It introduces gas production tax credits for new non-associated gas projects commencing production by 1 January 2029. These credits last ten years and are supplemented by five-year pipeline tax holidays following the expiry of economic development certificates.

Yet the NTA's approach is not a concessionary indulgence but actuarial fine-tuning within a disciplined fiscal rhythm. Credits cannot exceed the tax payable on the field's income in any year, maybe carried forward for only three years, and automatically convert into a "gas production allowance" after their initial period. The structure ensures incentives remain transitional and revenue leakage is contained.

In effect, the NTA transforms the PIA's open improvisation into a measured cadence i.e. encouragement balanced by restraint. Gas remains a developmental catalyst, but its fiscal treatment now follows a controlled tempo that keeps the State's revenue line steady.

cents of every dollar earned, leaving the remaining 35% automatically taxable.

Excess costs beyond the 65% cap can be carried forward but stay subject to the same limit. Any unrecovered amounts at the end of operations are permanently non-deductible. In practice, the NTA maintains cost legitimacy on paper while limiting actual recovery. This forces operators to plan around a fixed financial schedule instead of tailoring spending to specific projects.

The CPR marks a distinct change from the PIA. While the PIA allowed operators to time cost recovery based on project cycles, the NTA imposes a set rhythm, emphasizing guaranteed revenue over flexibility. The limit reflects a deep-seated distrust. It operates on the belief that, without oversight, operators might escape profits through overspending.

Now, operators cannot improvise. Every fiscal decision must adhere to the 65/35 beat. Costs

in excess of the cap are deferred, like steps that must wait for the next measure, and may be lost entirely if the performance ends prematurely. The rhythm is fixed, and operators are compelled to follow the State's tempo, balancing cost recovery with mandated profit contribution.

PROCEDURAL SAFEGUARDS: CHALLENGING THE CONDUCTOR

The NTAA shifts investor protection from broad regulatory oversight to a focused, tax-related dispute architecture. Central to this system is the Tax Appeal Tribunal (TAT). The TAT ensures the resolution of tax disputes by experts instead of general courts. The Office of the Tax Ombudsman assesses complaints and is intended to ensure the prevention of arbitrary actions.
Advance rulings provide a way for taxpayers to get a binding legal interpretation of the tax implications of a transaction before they carry it out. This helps promote clarity in advance.

Importantly, the process itself acts as a pause. If the Revenue Service does not respond to an objection within 90 days, the objection is automatically upheld. These pauses reflect the fixed rhythm established by the 65/35 Cost Price Ratio. They moderate administrative power without interrupting the overall process. By structuring appeals, objections, and rulings into a regularized sequence, the NTAA enhances predictability and safeguards investor rights. This ensures that tax enforcement proceeds in a clear and orderly manner, reducing uncertainty and preventing arbitrariness.

COMPARATIVE INTERLUDE- VARIATION ON A SHARED FISCAL RYTHM

Under the NTA, Nigeria's petroleum tax system consolidates royalties, HT, and related levies into a single framework. The CPR caps deductions at 65% of gross income. This limits excessive cost recovery while guaranteeing the State a minimal share. With centralized control by the Nigeria Revenue Service and all calculations done in US dollars, operators uphold stringent stream segregation across upstream, midstream, and downstream operations. The rapid escalation of penalties renders non-compliance economically unrea sonable. The rhythm is rigid and predictable: the same 65/35 beat governs every operator, every field.

By contrast, the UK assesses petroleum revenue at the field level, tying capital recovery and fiscal charges to individual field characteristics. Norway consolidates offshore areas into "shelf districts" and applies uplift allowances to reflect capital expenditure, spreading revenue collection across broader units. Malaysia calculates taxable income per petroleum agreement, enforcing contractual segregation rather than national unification.

The administrative structures adopted by the countries differ as well. While Nigeria centralizes authority under the NRS, Norway relies on a specialized Oil Assessment Board, Malaysia uses Special Commissioners and a Price Review Committee for technical disputes. In all cases, the goal is the same, reliable revenue capture and transparent allocation of cost recovery.

The principle is consistent across board where each system coordinates fiscal take with operational realities, balancing cost recovery, profit sensitivity, and enforceability. Nigeria's approach is distinctive in its behavioral engineering, where hard caps, rapid penalty escalation, and mandatory US dollar denomination enforce a metronomic fiscal tempo. Other jurisdictions achieve comparable balance through field-level discretion, geographic averaging, or negotiated determinations, rather than codified ceilings.

Viewed through the lens of a dance, each system appears as a performer interpreting a shared rhythm. Nigeria moves in disciplined, predictable steps; the UK adjusts fluidly across fiscal contexts; Norway stretches its cadence across the continental shelf; and Malaysia negotiates rhythm through contractual arrangement. The underlying beat, the coordination of revenue certainty with cost recovery, remains constant, while style, emphasis, and tempo vary. This underscores that, although execution diverges, the fiscal choreography across jurisdictions ultimately moves in step to a common pulse..

FINAL MOVEMENT: STABILITY, PREDICTABILITY AND THE PRICE OF DISCIPLINE

The consolidation of the fiscal provisions in the PIA by the NTA integrates the tax system giving it a predictable rhythm. This strengthens stability. Centralization under the Nigeria Revenue Service is balanced by safeguards, advance rulings give binding clarity before transactions, and the Office of the Tax Ombudsman curbs arbitrary enforcement.

Furthermore, are clearly depicted and enforcement, penalties, and anti-abuse provisions such as daily escalating penalties, stream segregation, and the CPR cap guarantee the State's share from the first barrel.

Operator rights are preserved, but they progress at a measured pace. Capital allowances and gas production credits are quantified and time-bound, enabling a sequenced and predictable recovery. Costs are recovered in accordance with a statutory rhythm rather than project-specific discretion or timing. The system enforces rhythm over improvisation. By consolidating authority, the NTA removes uncertainty and holds the balance between State' take and capital preservation. The success of this fiscal framework depends on its ability to maintain this tension; the performance succeeds not because it is effortless, but because the balance between state take, and capital preservation is held without collapse. This is a dance of restraint. However, whether this architecture attracts long-term capital depends on whether investors prioritize the predictability of a fixed ceiling over the potential for negotiated relief.

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TAX TREATMENT OF DIGITAL/VIRTUAL ASSETS UNDER NIGERIAN TAX LAWS

SOLOMON VENDAGA ATER & CHIBUIKEM PRECIOUS EKEH

ABSTRACT

This paper examined the tax treatment of digital/virtual assets under Nigerian tax laws. The particular emphasis was on the landmark 2025 tax reform Acts and the Investment and Securities Act 2025. Collectively, these laws provide a comprehensive fiscal and regulatory architecture that formally recognises digital assets as taxable property, securities, and chargeable assets, thereby embedding them within Nigeria's tax system. The analysis evaluated the application of capital gains tax, personal and companies income tax, value added tax, and ancillary levies on digital assets while scrutinising compliance and enforcement mechanisms such as SEC registration of Virtual Asset Service Providers (VASPs), Central Bank guidelines, and AML/CFT frameworks. The paper found that despite these developments, persistent challenges remain in asset classification, valuation and cross-border compliance. To this end, the paper concluded by recommending greater statutory clarity, harmonised regulatory oversight, and enhanced institutional capacity through blockchain analytics and inter-agency coordination, positioning Nigeria's 2025 reforms as an essential model for digital asset taxation in emerging economies.

Keywords: Capital Gains Tax; Cryptocurrency taxation; Digital assets; Nigeria; VASPs.

INTRODUCTION

The global adoption of cryptocurrencies, Non-Fungible Tokens ("NFTs") and other digital assets has transformed the way businesses operate, invest, and transact. As these digital assets gain prominence, understanding how they are taxed and what implications these holds becomes crucial for businesses and individuals navigating the evolving tax ecosystem in Nigeria. Digital assets have seen remarkable growth over the past decade in Nigeria. As one of Africa's largest economies and a hub for blockchain innovation, the country has experienced a significant surge in digital asset usage, with approximately 32% of Nigerians using cryptocurrency as of 2024.

This rapid adoption has forced Nigeria's policymakers to confront the fiscal, regulatory, and economic implications of digital assets. Earlier approaches, such as the Finance Act 2020 and Finance Act 2023,

brought digital assets into the scope of capital gains tax ("CGT") and created a framework for taxing non-resident digital transactions through the significant economic presence ("SEP") rule. The Central Bank of Nigeria ("CBN")'s 2023 Guidelines and the Securities and Exchange Commission ("SEC")'s digital asset rules further signalled a shift from prohibition towards a more structured regulation.

Building on this trajectory, on June 26, 2025, President Bola Ahmed Tinubu signed four tax reform bills into law. These are the Nigeria Tax Act, 2025 ("NTA"); the Nigeria Tax Administration Act, 2025 ("NTAA"); the Nigeria Revenue Service (Establishment) Act, 2025 ("NRSEA"); and the Joint Revenue Board (Establishment) Act, 2025 ("JRBEA"), (collectively, the "Reform Acts").

The objective of the Reform Acts is to boost economic growth, increase revenue, create a better business environment, and improve how taxes are managed at all levels of government. Interestingly, the Reform Acts comprehensively redefined the legal and tax treatment of virtual assets. This marks a critical moment in the regulation and taxation of virtual assets. Thus, shifting from restrictive circulars to targeted regulatory frameworks that provides certainty on the taxation of virtual assets. Previously, Nigeria's approach to digital asset was often criticised for its opacity, inefficiency, and outdated orientation relative to the realities of the digital ecosystem, and also made it easy to avoid taxes. But these reforms make the tax system easier to understand, more consistent, and better suited for the digital age and ecosystem.

2.0 DEFINITION AND SCOPE OF DIGITAL ASSETS

The term digital or virtual assets refer broadly to any asset that exists in a digital or electronic form, capable of being created, transferred, and stored using distributed ledger technology ("DLT") or similar systems. They derive value from cryptographic proof, utility in decentralised applications, or recognition within digital ecosystems. Think of digital assets as money or valuables that exist only on the internet. They are not physical, you cannot touch them, but they have real value and can be owned, bought, sold or traded.

Under the Finance Act 2023, for the first time in Nigeria's legislative history, digital assets were explicitly included as "chargeable assets" for the purposes of CGT, albeit without a comprehensive definition. The Investment and Securities Act 2025 and the Reforms Acts subsequently provide a more comprehensive framework for virtual assets.

The fifth schedule of the NTAA defined "virtual assets" as

> "...a digital representation of value that can be digitally traded or transferred and used for payment, investment, or other financial purposes which include cryptocurrencies, tokens and digital collectibles but virtual assets shall not include certain types of digital currencies and assets, which are;
>
> (a) national currencies and foreign national currencies;
>
> (b) electronic money licensed by the Central Bank of Nigeria;
>
> (c) instruments that provide the holder with access to products, services or benefits, such as loyalty programs and other reward systems; and
>
> (d) digital representations of other assets whose issuance, bookkeeping, trading or settlement is provided for under the Investments and Securities Act"

The NTA defines "digital asset" to mean:

> "digital representation of value that can be digitally exchanged, including crypto assets, utility tokens, security tokens, non-fungible tokens (NFT), such other similar digital representation or derivatives of any of the listed or similar assets and any other asset as may be defined by the relevant regulatory authority"

The Investment and Securities Act, 2025 ("ISA"), and NTA both view digital assets as digital representations of value, exchangeable electronically. These encompass cryptocurrencies (e.g., Bitcoin, Ethereum, Solana), NFTs, tokenised securities, stable coins, digital collectibles, and other intangible, blockchain-based or electronically transferable assets. The ISA further classifies such assets as "securities," thereby bringing them transparently under the regulatory purview of SEC.

3.0 CATEGORIES OF VIRTUAL ASSETS

Digital assets take different forms, each serving distinct purposes within the evolving financial and technological ecosystem. Cryptocurrencies, such as Bitcoin and Ethereum, are decentralised currencies that operate on blockchain networks without reliance on central banks or traditional intermediaries, and are primarily used as a medium of exchange or store of value. Stablecoins are designed to address the volatility of cryptocurrencies by being pegged to fiat assets like the US dollar, thereby providing greater price stability for transactions and remittances. Tokenised securities represent digital forms of traditional financial instruments, such as shares or bonds, and allow investors to hold and trade equity or debt in a more transparent and efficient manner. Utility tokens function as access keys, granting holders the right to use specific services, products, or platforms within a blockchain ecosystem, rather than serving as investment assets. Finally, NFTs are unique, indivisible digital assets that certify ownership of distinct digital or physical items, ranging from artwork and collectibles to real estate deeds, thereby enabling verifiable digital ownership and provenance.

The definitions by these laws, while broad, is intended to ensure that all forms of value exchange conducted electronically whether as means of payment, investment, or access to goods and services, fall within regulatory and tax oversight. As such, both resident and non-resident persons deriving profit from the disposal or utilisation of digital assets are subject to taxation in Nigeria.

4.0 LEGISLATIVE AND REGULATORY FOUNDATIONS FOR THE TAXATION OF VIRTUAL/DIGITAL ASSETS

The taxation of virtual and digital assets in Nigeria is anchored on recent legislative reforms and regulatory pronouncements that seek to bring these emerging instruments within the formal tax net. Historically, Nigeria's tax statutes did not expressly contemplate cryptocurrencies, tokens, or other digital assets, creating ambiguity in their classification and treatment. However, with the Finance Act 2023 and subsequent tax reform measures, digital assets were formally recognised as subject of taxation, thereby providing a statutory basis for their taxation. The 2025 reforms harmonised, consolidated, and modernised Nigeria's tax administration in ways that have far-reaching implications for all asset classes, including virtual assets. The central legal instruments are discussed below.

4.1 FINANCE ACT, 2023

The Finance Act 2023 preceded and set the stage for the Reform Acts by formally recognising digital assets as "chargeable assets" under the Capital Gains Tax Act ("CGTA"). The Finance Act clarifies that capital gains on the disposal of digital assets, including cryptocurrency, are subject to CGT at a rate of 10%. This establishes the legal basis for taxing gains from these assets. The Finance Act further clarified the rule on deductibility and carrying-forward of capital losses in respect of such assets, and codified anti-avoidance and compliance rules, particularly for cross-border, and remote transactions. Section 5 of the CGTA was substituted with a new section that allows for the deduction of capital losses from the disposal of an asset against gains from the disposal of the same type of asset. It also allows for the carry-forward of unutilised losses for up to five years. This is specifically relevant to virtual assets.

It should be noted that Finance Act 2023 does not provide a detailed distinction between types of digital assets, nor does it address valuation challenges or comprehensively delineate

between capital and income instances, leaving much to be clarified by the reforms of 2025.

4.2 NIGERIA TAX ACT, 2025

The NTA marks a pivotal step in the country's journey toward a more robust, efficient and transparent tax system. The NTA is a consolidation statute, repealing and integrating over twenty prior tax laws into a single, modern framework. It provides the statutory basis for imposing tax on all taxable persons, defines tax residency, outlines the scope of chargeable gains and income (now expressly including virtual assets). It also impose tax on disposal of virtual assets. Under section 34(1)(a) of the NTA, virtual assets are treated as property.

4.3 NIGERIA TAX ADMINISTRATION ACT, 2025

The NTAA provides the administrative and procedural requirements for the taxation of virtual assets. A key provision of the NTAA is the requirement for Virtual Asset Service Providers ("VASPs) - such as crypto exchanges and financial institutions - to report significant transactions. This is a crucial step towards creating transparency in the digital economy and giving tax authorities the data they need to track and assess taxes on virtual assets. The NTAA mandates the use of a Tax Identification Number for every taxable person, linking it to all tax and financial activities. This applies to both residents and non-resident businesses and digital service providers deriving income from Nigeria.

4.4 NIGERIA REVENUE SERVICE ACT, 2025

The NRSEA establishes the Nigeria Revenue Service ("NRS") as the sole body responsible for the administration, assessment, and enforcement of tax rules. The NRSEA vests NRS with powers covering all persons, companies, and digital asset service providers operating in or targeting Nigeria.

4.5 INVESTMENT AND SECURITIES ACT, 2025

The ISA revolutionises asset classification by designating virtual and digital assets as "securities," thereby extending SEC oversight to all associated activities, issuance, exchange, custody, and offering platforms. It mandates the registration of VASPs, Digital Asset Operators, and Exchanges doing business in Nigeria, creating transparency and accountability in the sector.

5.0 TAX REGIMES APPLICABLE TO DIGITAL ASSETS IN NIGERIA

5.1 CAPITAL GAINS TAX

Gains on disposals of digital assets are subject to tax. Section 4(1)(i) of NTA impose tax on 'profits or gains from transactions in digital or virtual assets'. This was the same thing under Finance Act 2023 which amends section 3(a) of the CGTA by including "digital assets" in the list of chargeable assets. Thus, gains from their disposal are subject to CGT. Since the NTA increases the CGT rate from 10% to 30% for companies, it then means in so far as the VASP meets the threshold under section 57 of NTA, it will pay the required tax. For individuals, capital gains will be taxed at the applicable income tax rate based on the progressive tax band of the individual as provided under section 58 and the fourth schedule to the NTA.

5.2 PERSONAL AND CORPORATE INCOME TAX (PIT / CIT)

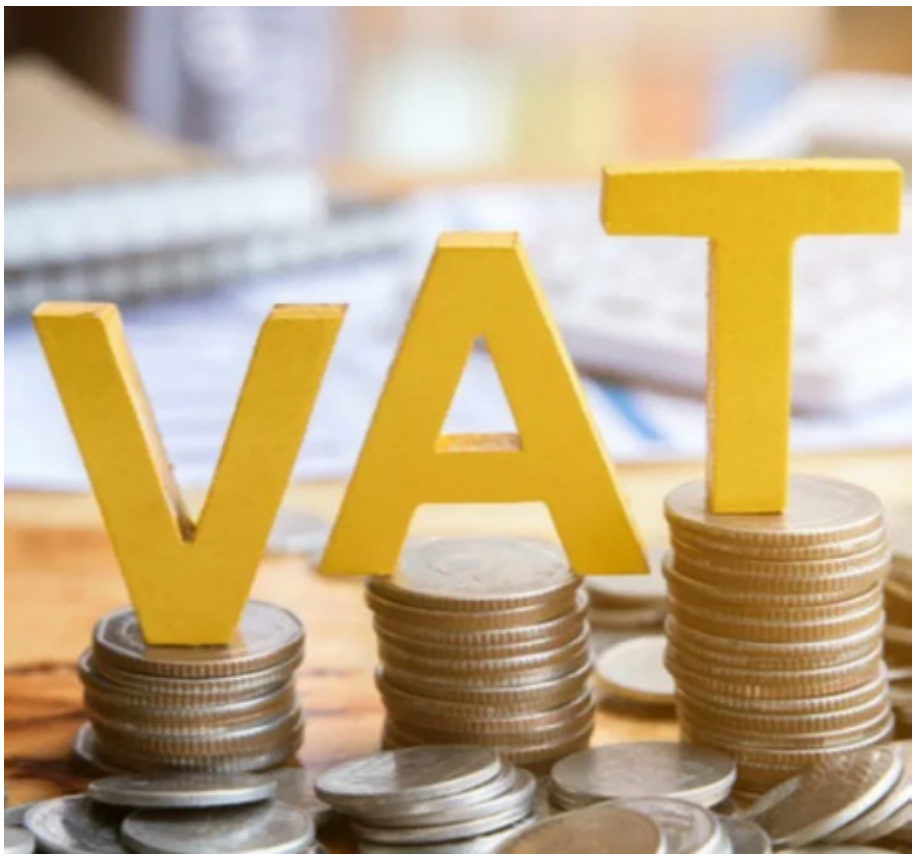
Where a person (individual or company) deals in digital assets as a trade or business (e.g., market-making, frequent trading as

a business, mining/staking-as-a-service, exchange/brokerage operations), the profits are taxable under the Personal Income Tax Act (PIT) for individuals and the Companies Income Tax Act (CITA) for companies. In charging this, the NTA has introduced a progressive personal income tax regime for individuals, with rates ranging from 0% to 25%. Thus, individuals who earn income in virtual currencies can be taxed under personal income regime in so far as they are not exempted. Again, for individuals, capital gains from the disposal of digital assets will now be taxed at their applicable personal income tax rate, aligning it with their income tax band. Again, non-resident platforms with a SEP in Nigeria, or appointed as tax agents are required to register and account for Nigerian taxes on income attributable to Nigeria.

5.3 VALUE-ADDED TAX (VAT) / OTHER LEVIES

While VAT does not specifically apply to the transaction amount of the virtual assets, where they are used for payment of taxable services, VAT applies at 7.5% only to transaction fees. For cryptocurrencies, this principally captures platform/transaction fees, brokerage/consultancy fees, wallet/custody fees, and other service charges by exchanges or intermediaries to Nigerian users. For instance, in July 2024, KuCoin implemented a 7.5% VAT on transaction fees for Nigerian users, in compliance with the Federal Inland Revenue Service (now NRS) directives.

Non-resident suppliers of digital services consumed in Nigeria are required by the law to register, charge and remit VAT. NRS/-FIRS can also appoint these platforms as VAT collection agents.



Other levies such as the Electronic Money Transfer Levy ("EMTL") which is now subsumed into Stamp Duty also applies. The levy/duty for instance applies to qualifying bank electronic transfers; pure on-chain transfers outside the banking system are generally out of scope, but fiat on-/off-ramp movements via banks may trigger the duty. VASPs should also consider Stamp Duties on instrumented transactions, where applicable.

6.0 COMPLIANCE AND ENFORCEMENT MECHANISMS

6.1 REGULATORY PERIMETER/ MARKET CONDUCT

The rapid growth of virtual assets in Nigeria has necessitated a regulatory framework that ensures market integrity, investor protection, financial stability, and compliance with global standards on Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT"). In recognition of both the risks and opportunities presented by virtual assets, Nigerian regulators principally, SEC, CBN and other allied agencies have adopted a multi-layered compliance and enforcement regime. These mechanisms seek to balance innovation with regulation by providing clear obligations for VASPs, while also prescribing sanctions for non-compliance. Some of these mechanisms are considered below:

SEC Rules on the Issuance, Offering Platforms and Custody of Digital Assets, 2022

The SEC Rules are structured into parts covering issuance of digital assets as securities, registration requirements for digital asset offering platforms, digital asset custodians, VASPs. This set of rules governs the activities of digital assets, including the obligations of VASPs. It defines digital assets and provide that no person or entity shall provide any virtual assets service unless registered with SEC. A VASP is mandated to have an office in Nigeria and its CEO a resident in Nigeria. Digital Asset Offering Platforms must comply with registration requirements.

CBN's Guidelines on the Operations of Bank Accounts for VASPs, 2023

In 2023, CBN reviewed earlier banking restrictions and issued guidelines on the operations of bank accounts for VASPs, allowing banks to open/operate accounts for licensed VASPs under strict KYC/AML/CFT controls. This Guidelines, provides a regulatory framework for financial institutions to open and operate bank accounts for VASPs. VASPs are permitted to operate a designated bank account solely for virtual/digital asset transactions. An account opened in accordance with these guidelines shall only be used for transactions on virtual/digital assets and not for any other. An application to open such an account must be supported by, among other things, evidence of a valid licence issued by the SEC for the entity to carry on business as a VASP, Digital Assets Exchange (DAX) or Digital Assets Offering Platform (DAOP).

Money Laundering Act, 2022

The Money Laundering Act, 2022 incorporates VASPs into the definition of "financial institutions," thereby subjecting them to the same Anti-Money Laundering (AML) and Counter-Financing of Terrorism (CFT) obligations as traditional financial institutions. VASPS are obligated to preserve records and report suspicious transactions .

6.2 TAX ADMINISTRATION OF VIRTUAL ASSETS IN NIGERIA

Under section 79 (3) of the NTAA any taxable person engaged in virtual asset activities whether through exchange, trading, custody, or issuance is required to register with the relevant tax authority as a VASP. In addition, a VASP must obtain a licence from SEC before commencing operations.

The regulatory oversight of SEC, however, is limited to virtual assets that qualify as securities. A virtual asset will be deemed a security if it involves the investment of money or assets in a common enterprise, with an expectation of profit derived from the efforts of promoters or third parties. This classification aligns with the "Howey Test" principle familiar in securities regulation.

On taxable transactions, the framework specifies that activities such as the sale, exchange, transfer, mining, staking, airdrops, bounties, or any receipt of virtual assets as compensation constitute taxable events. Where virtual assets are used to pay for goods and services, such transactions are to be treated in the same manner as those conducted in fiat currency, with valuation determined at the prevailing market rate at the time of the transaction. The recipient of virtual assets is therefore obliged to report the income and pay tax accordingly. Thus, VAT applies on the supply of goods and services, calculated based on the market value of the crypto at the time of transaction. This closes a potential loophole where traders might otherwise evade VAT by transacting in digital assets.

For valuation, tax authorities will rely on market prices from recognised and approved virtual asset exchanges. Taxpayers must also maintain proper books and records of virtual asset transactions, in line with the record-keeping obligations already prescribed under section 31 of NTAA.

VASPs have further obligations beyond taxation. They must report large or suspicious transactions to the NRS and the Nigerian Financial Intelligence Unit (NFIU), in line with existing AML requirements. They are also required to obtain a SCUML certificate, maintain KYC compliance, preserve customer transaction data for at least seven years, and implement robust cybersecurity measures. With this comprehensive regime, Nigerian users, resident and non-resident operators must register with NRS/Relevant Tax Authorities (RTAs), file

CIT/PIT, CGT returns on disposals of digital assets, and VAT where making taxable supplies. NRS may appoint operators as tax agents.

7.0 CHALLENGES OF TAXATION OF VIRTUAL/DIGITAL ASSETS IN NIGERIA

The taxation of digital assets in Nigeria is confronted with several challenges that complicate both compliance and enforcement. A key difficulty lies in distinguishing between disposals that should be subject to CGT and those that constitute trading income taxable under PIT or CIT. This boundary is often blurred in cases of high-frequency or organised trading activity, creating uncertainties for both taxpayers and tax authorities. Closely related is the issue of valuation, as the extreme price volatility of digital assets makes it difficult to establish fair market value at the exact time of each transaction, thereby complicating accurate tax computations.

Cross-border compliance further compounds these issues. Offshore exchanges providing services to Nigerians face obligations under the tax laws and may be appointed as VAT collection agents. However, enforcing these requirements raises practical difficulties, including jurisdictional limits, service-of-process constraints, and collection challenges where the entities lack a physical presence in Nigeria. This is particularly problematic given the prevalence of peer-to-peer (P2P) informal transactions, which largely occur outside the regulatory perimeter of licensed VASPs, making enforcement and revenue tracking extremely difficult.

8.0 CONCLUSION AND RECOMMENDATIONS

Nigeria has brought virtual assets firmly into the tax net. CGT clearly applies to gains on digital assets, income taxes apply to business profits, and VAT applies to platform and other service fees connected to supplies consumed in Nigeria including those by non-resident digital providers under the simplified regime. At the same time, SEC rules, CBN banking guidelines, and AML/SCUML frameworks provide clearer operating guard-rails for VASPs. What is left is administrative clarity, coordinated supervision, and predictable enforcement that lowers compliance costs while expanding the formal tax base. To address these and the challenges noted in the seventh part of this paper, the following are recommended:

a) NRS and other RTAs should issue a crypto-specific circular clarifying the tax treatment of token transfers, staking/liquidity rewards, and the CGT and trading boundary for retail and institutional actors. This circular should be tailored to crypto platforms, covering nexus, record-keeping, and data requests.

b) The agency which the President under section 79 (1) of the NTAA will designate with the primary responsibility for the regulation of all forms of virtual assets should consider aligning SEC authorisa tion, CBN bank-account eligibility, and SCUML/AML onboarding into a single window to reduce friction and boost compliance.

c) The designated agency should prioritise platform-level compliance (where data/collection is centralised) and introduce safe-harbour disclosures for retail taxpayers to regularise historic posi tions. This should be complemented by inter-agency information sharing between SEC, NRS, NFIU, CBN and international bodies.

d) Tax/AML examiners should be trained on blockchain analytics and inter-agency protocols for on-chain evidence, reducing disputes and speeding audits.

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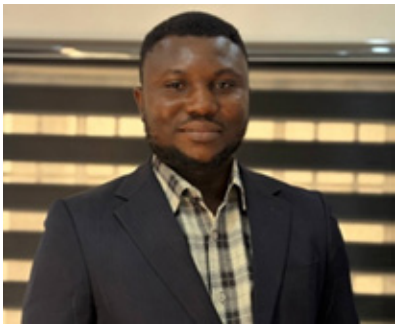
AUTHORS



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INTERVIEW WITH

CRYSTAL KABAJWARA

Chairperson, Tax Appeals Tribunal, Uganda.

Q Please tell us about yourself and your professional journey.

Answer: My professional journey began in my teenage years. My mum worked in the Uganda Revenue Authority as a Secretary, where I was exposed to tax at an early age. While pursuing my law degree at Makerere University, Uganda, I selected revenue law and taxation as o ne of my course units simply because the lecturer at the time made the subject seem relatable. Even then, I was not thinking about a career in tax.

After studying for the bar course, I applied for a Master of Laws (LLM) at The London school of Economics and Political Science (LSE), United Kingdom. My choice of specialisation was International Human Rights Law. I arrived late for the international human rights law at the LSE, and in that confusion, I stumbled into the taxation class; the rest is history. I graduated in 2007 with an LLM in Taxation, achieving a distinction. Thereafter, 1 joined PwC Uganda and worked my way through the ranks to become a Director. I never left PwC Uganda, save for the two-year stint in PwC London, where I was seconded to learn transfer pricing. In 2024, after 17 years at PwC, I left to join the Tax Appeals Tribunal, Uganda, where I currently serve as Chairperson.

Q What motivated you to pursue a career in law and specialise in tax?

Answer: I did not set out to pursue a career in law and tax. From my personal experience, unless you are the kind of person who was handed a career at birth, I believe careers are built, one choice at a time rather than in a single event. While completing my secondary school studies, I really wanted to become an economist. However, at the time I was completing my university application, my headmistress insisted that I select law as my first choice.

It was only after I got into law school that I became more intentional about certain things, such as, whether to go to the library or the club; whether to choose an easier course unit or a more challenging one. For example, the decision to offer revenue law and taxation as a course unit while at the university was not made in anticipation of pursuing a career in tax, but rather to seek a challenge. Another example is the guidance from my mentors to specialise in transfer pricing in 2010, even before Uganda and most African countries had transfer pricing regulations. This was foresight on their part and not mine.

Therefore, my career has been shaped by a series of choices and decisions, some made for me by others, and no single decision has been more defining than the others.

Q You've served and still serving on various high-level institutions, including as Director, International Tax and Transfer Pricing and the Chairperson of The Tax Appeals Tribunal of Uganda. What would you say prepared you for this level of engagement, and how would you describe your experiences so far?

Answer: Nothing singularly ever prepares one for leadership at this level. I like to use the analogy of adulthood. We are born and raised by parents, relatives or friends who, along the way, shelter us, teach us, guide us, show us, discipline us, challenge us, and test us. A time comes when we

must leave the familiar behind and step into the real world, where, as adults, we begin to apply all the lessons we learned, growing up.

Therefore, as with adulthood, preparation for leadership has been a continuous process of mentorship, training, learning, unlearning, relearning, self-reflection, and evaluation, all shaped by my experiences. However, I began thinking deeply about leadership while at the University. I was selected to participate in a Pan-African leadership programme offered by the Uongozi Institute in Dar es Salaam, Tanzania to outstanding students from leading universities in East Africa. The eight-week programme challenged us to think of our place in Africa and the personal contribution we could each make to our continent's development. That experience sowed the seeds of leadership and the desire to make something of myself that would transcend the individual.

I have definitely enjoyed my experiences, although I must admit that this enjoyment is viewed through the rear-view mirror. Leadership is a constant battle between self and others, and you win the battle when you put aside your personal interests for the greater good. That is not easy and it comes with several challenges. However, the challenges can never obscure the good such as growth, learning, impact and influence.

Q Most African countries are currently aiming and positioning themselves for a higher tax-to-GDP ratio. What are some untapped tax revenue bases you think African countries can leverage and expand on?

Answer: This is an interesting question because I recently had this conversation with a colleague. We have a huge untapped base in the informal sector – and when I refer to the informal sector, I do not mean small shop owners, "mama mbogas" or hawkers. I mean the real informal sector, which is comprised primarily of professionals such as lawyers, doctors, engineers, surveyors, project managers, and researchers, many of whom do not pay their taxes.

Often, tax authorities tend to go after the low-hanging fruit, forgetting that more effort = more risk = more reward. Therefore, rather than go after the usual large corporations, I would like to see them go after these persons who are hiding in plain sight.

Take, for example, all the construction we see around cities in Africa – for each construction project, there is an architect, a lawyer, an engineer, an interior designer, a quantity surveyor, a project manager, etc. Rather than wait for the project owner to file their annual income tax return, why not proactively engage the project owner to furnish details of all suppliers and bring them into the tax net? These are real professionals, earning real income. I like to call this the "real" informal sector. Therefore, there is a need for continuous exploration of linkages with the formal economy in real time.

Q What do you see as the most urgent challenges facing Uganda's tax laws and policy? And what kinds of reforms would you recommend to address them?

Answer: The most urgent challenge not just on Uganda's tax system but sub-Saharan Africa in general is not the laws or policies, but the trust deficit. Trust is a foundational component of tax systems, particularly in developing economies, and it is built when taxpayers see their money used effectively, experience fair treatment, and feel that the system is not arbitrary. The trust deficit is driven by administrative behaviour, perceived fairness, and accountability rather than just the tax rules themselves. Trust deficits hinder voluntary compliance and bridging the deficit requires transparency, fairness, and accountability.

A country may have the best policies and laws, but if they are not implemented fairly and transparently, uniformly and consistently, this erodes public trust.

Reforms should centre on enhancing transparency and accountability, e.g., by demonstrating how tax revenue directly funds public services—such as schools, roads, or healthcare —and by reducing wasteful expenditure and being tough on corruption.

Effective dispute resolution, which resolves disputes quickly without costly, lengthy court cases, also plays a critical role in building trust.

Q You've made significant contributions through your work and career. If you hadn't pursued a career in tax, what other field do you believe you would have thrived in and what draws you to it?

Answer: I would most likely have ventured into entrepreneurship because I love solving problems. Business is about solving other people's problems and meeting their needs; it is about the desire to create, innovate and improve.

Q Having received many accolades and recognition over the years, how do you personally measure success and has that definition evolved as your career progressed?

Answer: I like to measure success not by tangible things, such as material wealth, or by outcomes, such as a promotion, but by the intangibles and the progress I have made over time. Therefore, I prefer to measure my success by looking at my journey and growth over time. For example, my ability to stay the course, empathise, discern, and think strategically. These attributes are not built in one go; they take time. Even the simple act of being invited to a seat at certain tables, or even better, this interview that we are now having, is a measure of success rather than accolades. It is important to recognise that not all the work that we do will earn us accolades and recognition. Todd Henry, the author of one of my favourite books, "Die Empty", makes a statement in the book. He says:

You do not always know the full impact of your work. In fact, you may not even get to experience the full effect of your work in your lifetime...whether or not your body of work is recognised for its true value is beyond your control

Therefore, who knows how far this interview will go? Perhaps, one day, when I am long gone, your children will read it, pick a few things from it that change the trajectory of their lives; that, too, will be success.

Q In your view, what systemic changes are needed to enable more women and girls to rise into leadership, and how are you personally contributing to that transformation?

Answer: Enabling women to rise into leadership requires changes to organisational, cultural, and policy structures that inhibit their advancement. First, it must begin with women understanding that they must make important choices for themselves. This requires mentorship to connect them with female role models, enhance their confidence, and share career strategies.

It is also important to recognise the additional responsibilities that working women bear as caregivers. This requires flexibility in the workplace. For example, women may not be able to report to work at 8 AM if they first have to drop their children off at school. Organisations must build in a certain level of flexibility to accommodate that; otherwise, they will lose talent and frustrate careers. However, it is important that such flexibility is not abused.

I've been privileged to have been mentored and given immense opportunities by men and women alike. I pay this forward by being personally invested in mentoring others, especially younger women. I have always participated in coaching

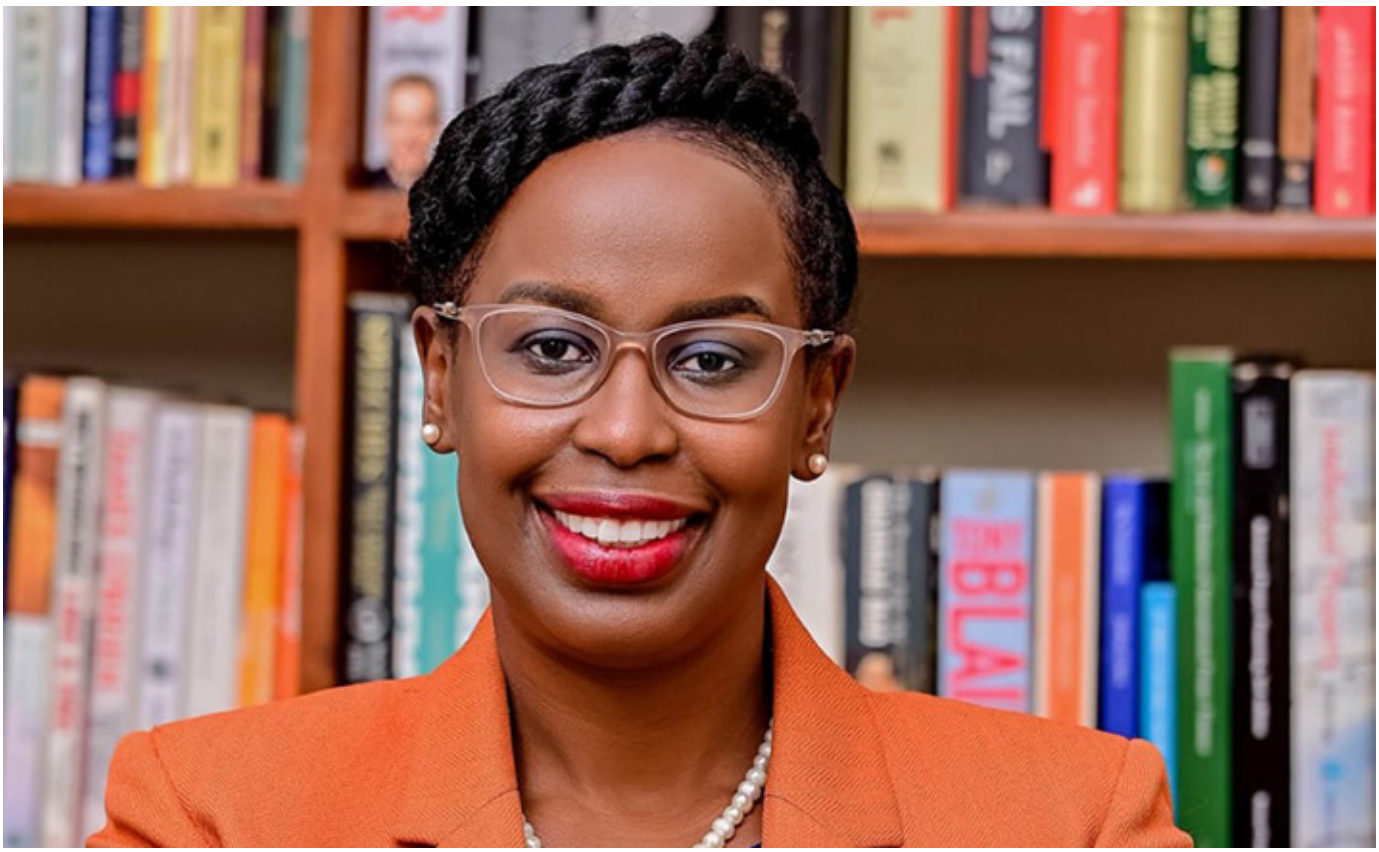
and mentoring programmes in the workplace and for various organisations. However, in 2025, I decided to consolidate them int a ngle coaching programme for young professionals aged 23 to 35. I offer this free of charge, first because what I freely received, I must freely give. Secondly, as young workers struggle to make ends meet, cost should not be a barrier to mentorship. Each cohort has a maximum of 15 participants, 80% of whom should be female.

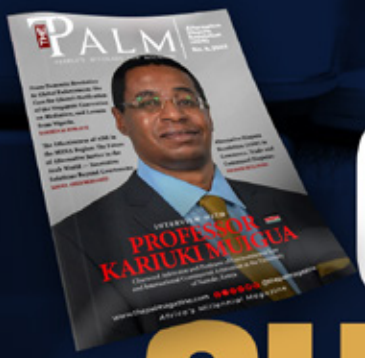
Q What advice would you give to young professionals who are navigating the early stages of their legal career and aspiring to work in tax generally?

Answer: There are huge opportunities for tax professionals, and I would encourage younger people to take them up. Taxation will never be out of fashion.

Young professionals seeking opportunities in tax should focus on building technical competence. This is the foundation – tax is a dynamic field, and one must invest in understanding and appreciating its principles. Tax does not operate in a vacuum. A good tax practitioner must also have a good appreciation of economics, business, commerce and trade. What drives the key sectors of the national, regional and global economy? What challenges do they face? What are the government's key priorities? What is the government policy? One must appreciate all these things. This requires one to pursue knowledge, read widely and be well-informed.

Finally, I encourage young professionals to identify mentors and coaches who could help them navigate their professional journey.





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A NEW REGULATORY ORDER FOR VIRTUAL/DIGITAL ASSETS IN NIGERIA: UNDERSTANDING THE IMPLICATIONS OF THE TAX REFORM ACTS.

OLUKOLADE EHINMOSAN & KENECHUKWU CHIBUEZE

INTRODUCTION

The new tax reform Acts and the Investment and Securities Act, 2025 ("ISA") have each introduced transformative reforms within Nigeria's fiscal and investment sectors. Yet, their most consequential impact arguably lies in their collective effect on the nation's virtual/digital assets industry.

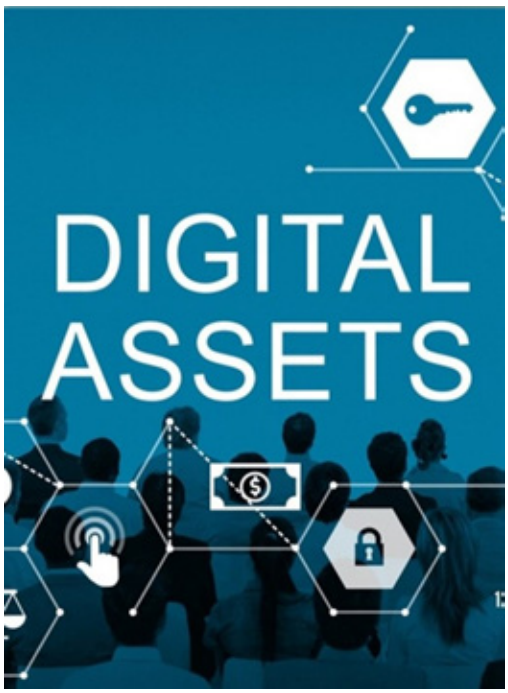
By expressly including virtual/digital assets within the definition of "securities" under section 357 of ISA, the Securities and Exchange Commission (SEC) seemed to assume exclusive regulatory authority over all such assets in Nigeria. However, a closer examination grounded in established rules of statutory interpretation and the distinct classifications of virtual/digital assets recognized by both the SEC and judicial precedent reveal that ISA's treatment of these assets may not be as straightforward as it appears.

This interpretative tension has now been amplified by a little-noticed innovation in the Nigeria Tax Administration Act 2025 ("NTAA"). The NTAA introduces a framework that may significantly curtail the SEC's exclusive regulatory powers and redistribute oversight of virtual/digital assets amongst other federal agencies.

This article examines that innovation in detail and explores its broader implications for Nigeria's emerging virtual/digital asset regulatory ecosystem. To lay the necessary foundation for this analysis, it is essential to understand the commonly accepted categorization of virtual/digital assets.

THE COMMONLY ACCEPTED CATEGORIZATION OF VIRTUAL/DIGITAL ASSETS

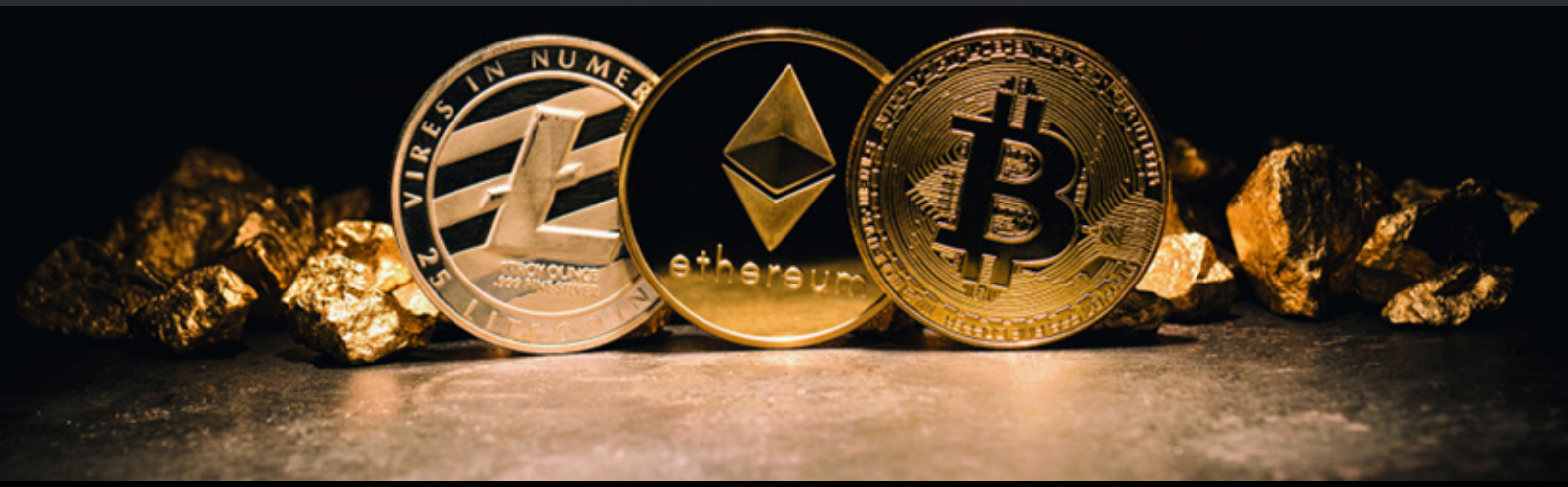
Broadly speaking, virtual/digital assets are digitally stored representations of value that can be transferred using cryptographically secured technologies such as distributed ledgers or blockchain technology. This general description aligns closely with the descriptions found in both the NTAA and the ISA. While the NTAA uses the term "virtual assets" and the ISA refers to "virtual and digital assets", the two are substantively consistent, with each describing digital representations of value whose nature depends on the type of value they embody.



Therefore, the categorization of a virtual/digital asset relies largely on its functional character. For instance:

a) Assets used primarily as a medium of exchange are commonly referred to as cryptocurrencies.
b) Those that enable participation in a common activity or network are called utility tokens.
c) Digital collectibles, such as non-fungible tokens (NFTs), represent artistic or creative expressions.

The above categories are distinguishable from digital assets which function as or constitute securities, that is, digital assets which represent ownership interests or investments in an enterprise, commonly referred to as security tokens. Globally, the metric employed to draw this distinction was



established in the famous United States of America case of *Securities and Exchange Commission v. W. J. Howey Co*. The metric has been popularly christened as the "Howey Test".

The test provides that an asset or investment qualifies as a security if it involves:

a. an investment of money,
b. in a common enterprise,
c. with an expectation of profits,
d. derived solely from the efforts of others.

Applying this test, it becomes apparent that digital collectibles, cryptocurrencies, and utility tokens do not ordinarily qualify as securities. For instance, an investor in digital collectibles profits only if the asset appreciates or takes on a higher value. This outcome is determined primarily by the owner's own efforts, which may include valuation and marketing – proper valuation of the digital collectible by the owner, and the owner's ability to convince a third party to purchase the digital collectibles. Similarly, cryptocurrencies are a medium of exchange rather than an investment in a common enterprise.
Despite these distinctions, the SEC has continued to assert exclusive regulatory authority over all forms of virtual/digital assets in Nigeria. This position has now come under intense scrutiny in light of recent legislative developments, chief of which are the new tax reform Acts. This has brought about mixed reactions, requiring a clearer restatement of applicable laws.

SECURITIES AND EXCHANGE COMMISSION'S POWERS OVER VIRTUAL/DIGITAL ASSETS

Until 2020, when the SEC issued its Statement on Digital Assets and their Classification and Treatment ("SEC Statement"), Nigeria's virtual/digital asset landscape remained largely unregulated. The SEC Statement marked the first regulatory intervention and initiated a series of subsequent SEC regulations. From the issuance of one regulation to another, the SEC gradually accumulated a great deal of regulatory powers over virtual/digital assets.

This steady expansion culminated in section 357 of ISA, which expressly includes virtual and digital assets within the statutory definition of "securities". From a layman's lens, the generic nature of the inclusion appears to place all categories of digital assets under SEC's jurisdiction, an interpretation that SEC itself has largely adopted.

For instance, the Director-General of SEC, Emomotimi Agama, has boasted that the inclusion of virtual/digital assets in the definition of securities under ISA has accorded SEC exclusive regulatory powers over all virtual/digital assets which qualify as securities or investment products. The latter term "investment products" has been interpreted expansively to encompass all investments made for profit, there

by covering nearly, if not all, forms of virtual/digital assets, except those expressly recognised as legal tender.

However, we are of the view that this interpretation is questionable. As the NTAA now indicates, the legislature appears to have recognized the need for a more nuanced and segmented regulatory framework for digital assets, hence the NTAA introduced a subtle but significant innovation which effectively qualifies and limits the previously assumed exclusive powers arrogated by SEC.

THE NIGERIAN TAX ADMINISTRATION ACT 2025

Amid the wide-ranging reforms and innovative provisions introduced by the new tax reform laws, including incentives, rates, and exemptions, there lies an easily ignorable provision with profound implications for digital/virtual assets regulation.
Section 79(1) of the NTAA appears to depart from the thematic preoccupation of the Act. It empowers the President of the Federal Republic of Nigeria to:

> ...by an order published in the Federal Government Gazette, [to] designate a relevant agency of the Federal Government with the primary responsibility for the regulation of all forms of virtual assets and the relevant tax authority shall administer the taxation of digital and virtual transactions and assets in accordance with the provisions of the Fifth Schedule to this Act.

The import of this provision is far-reaching; it authorizes the President to allocate regulatory responsibility for each class of virtual/digital assets to different specialized agencies. On virtual asset classes, the Fifth Schedule to the NTAA itself lists the following as cognizable under virtual/digital assets:

a. Digital currencies
b. Tokens
c. Digital collectibles
d. digital assets representing investments (i.e., securities).

In the same vein, Paragraph 2 of the Fifth Schedule to the NTAA explicitly restricts SEC's jurisdiction to only those virtual/digital assets that meet the characteristics of securities, providing that an asset qualifies as such if:

(a) it is an investment of money or other assets;
(b) the investment of money or other assets is in a common enterprise;
(c) there is an expectation of profits from the investment;
(d) any profit comes from the efforts of a promoter or third-party.

This statutory definition closely mirrors the Howey Test, thereby aligning Nigeria's approach with global best practices. It also distinguishes digital assets which qualify as securities from other forms of virtual assets, such as cryptocurrencies and digital collectibles.

The implication is that SEC's authority now extends only to virtual/digital assets which exhibit the traditional characteristics of securities. Other types of virtual/digital assets are to be regulated by separate specialised agencies to be designated by the President. This development directly contradicts the prevailing assumption rooted in SEC's interpretation of ISA, that SEC retains overarching control over the entire digital/virtual asset ecosystem.
Given the delicacy and complexity of the virtual/digital assets industry, we submit that the tax reform laws recognise the paramountcy of realigning Nigeria's legislative posture on these matters.

RECONCILING SEC'S POWERS AND THE NTAA INNOVATIONS

As earlier noted, the inclusion of virtual/digital assets in the definition of securities under ISA did not occur abruptly. Rather, it erupted from concerted and gradual efforts which began with the 2020 SEC Statement. Interestingly, that statement itself reflected a nuanced and informed appreciation of the nature of digital/virtual assets. This is evident in the excerpt below culled from the introductory part:

Section 13 of the Investments and Securities Act, 2007 conferred powers on the Commission as the apex regulator of the Nigerian capital market to regulate investments and securities business in Nigeria. In line with these powers...*the SEC will regulate crypto-token or crypto-coin investments when the*

character of the investments qualifies as securities transactions. (Emphasis supplied)

The language of the introduction as excerpted above demonstrates that SEC originally intended to regulate only those digital assets whose characteristics make them securities, consistent with international best practices. The SEC Statement also categorized digital assets into: Crypto assets, Utility tokens, Security tokens, and Derivatives and Collective Investment Funds relating to the three earlier categories.

Apart from this classification's close alignment with global best practices of classification, it underscores the fact that not all virtual/digital assets are securities. Notably, the SEC Statement has not been revised, even though its underlying approach has since been overshadowed by ISA's expansive language.

A careful reading of ISA, however, suggests that its inclusion of "virtual and digital assets" was not meant to confer blanket regulatory powers upon SEC. The provision which lists traditional securities such as debentures, stocks, shares, and bonds, includes virtual and digital assets; and concludes with investment contracts, commodities, futures, options, and other derivatives.

This conclusion is formed on the application of the elementary ejusdem generis canon of interpretation. According to the Supreme Court of Nigeria in Okotie-Eboh v. Manager, this canon entails that 'interpreting the provisions of a statute's general words which follow particular and specific words of the same nature as themselves take their meaning from those specific words'. In other words, general words following specific terms should be interpreted in the context of those specific terms.

In that case, section 66(1) of the Constitution of the Federal Republic of Nigeria 1999, was up for interpretation. The section contains a list of specific tribunals and general tribunals that can disqualify a political party primaries' candidate on the basis of their character. In line with the ejusdem generis rule, the Court held that only general tribunals of the same kind as the specific tribunals listed in the section can wield the powers provided for in the section.

By this principle, "virtual and digital assets" in section 357 of ISA should be read in the context of other items listed as securities, implying that only digital assets of a similar nature, that is, those qualifying as investment instruments, fall under SEC's jurisdiction.

Any lingering ambiguity has now been dispelled by section 79 and the Fifth Schedule to the NTAA, which expressly limit SEC's regulatory oversight to securities-type digital/virtual assets whilst empowering the President to assign other categories of digital assets to relevant specialist agencies.

For instance, similar to SEC's powers over virtual/digital assets which qualify as securities, the President may in the future empower the Central Bank of Nigeria to oversee virtual/digital assets which qualify as digital currencies, and the Nigerian Copyright Commission might oversee virtual/digital assets that

qualify as art or creative expressions, such as digital collectibles and art-based tokens. The National Information Technology Development Agency (NITDA) could manage oversight of utility tokens or blockchain-based services.

CONCLUSION

Whilst ISA extends SEC's authority to virtual/digital assets that qualify as securities, it leaves unaddressed the regulation of other digital/virtual asset categories such as cryptocurrencies, digital collectibles, and utility tokens. This legislative silence has enabled SEC to act as though it wields exclusive jurisdiction over all digital/virtual assets. We have submitted above that this is an overreach, one that NTAA rightly seeks to correct.

Through section 79 and paragraph 2 of the Fifth Schedule, the NTAA empowers the President of Nigeria to designate appropriate federal agencies to regulate the various forms of virtual/digital assets, thereby establishing a multi-agency regulatory structure.

In essence, whilst SEC remains the competent authority for digital assets which function as securities, other specialized regulators will likely assume oversight of virtual/digital asset types within their domain of expertise. This realignment represents not only a correction of interpretative excesses under ISA but also a progressive step toward a balanced, specialized, and coherent regulatory framework for Nigeria's fast-evolving digital asset industry.

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- See, Financial Industry Regulatory Authority, available at <https://www.finra.org/investors/investing/investment-products> last accessed 26th October 2025; and section 8 of the Fifth Schedule to the NTA 2025.
- See, Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1946).
- See, Okotie-Eboh v. Manager (SC) (2004) 18 NWLR (Pt. 905), 282, paras. C-D.
- NITDA spearheaded the National Blockchain Policy (2023), approved by the Federal Executive Council, which expressly identifies NITDA as the lead implementing agency for Nigeria's blockchain ecosystem. Utility tokens and blockchain-based services are primarily technological enablers (digital utilities built on distributed ledger systems). Their regulation concerns issues like platform security, interoperability, data standards, user protection, and innovation policy, rather than investment protection or monetary

stability. These fall squarely within NITDA's technology governance mandate, not SEC's financial regulatory mandate or the CBN's monetary jurisdiction.

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POLICY AND DESIGN OF DIGITAL SERVICE TAX IN SELECTED AFRICAN COUNTRIES

LYNDIE SARPONG

ABSTRACT

This paper focuses on the policy and design of Digital Service Tax (DST) in Ghana, Nigeria, and Kenya. It analyses the legislative framework, statutory basis, rates, collection mechanism, and compliance of DST. It explains the comparative overview of DST in these countries in line with the OECD Pillar One proposal. The role of the African Tax Administrative Forum (ATAF) in implementing the Digital Service Tax in African Countries would be examined alongside domestic revenue mobilisation to achieve the same.

Keywords: Armed Conflict, Human Rights Violations, Legal Dimension, Legal Frameworks

INTRODUCTION

Every country generates revenue through taxes from local industries and multinational enterprises. In the process, challenges arise in achieving an environment conducive to economic growth and recovery. This calls for proper tax policies to ensure continuous revenue generation. These policies must form an integral unity of the main interconnected and interrelated elements, a regulatory legal basis for taxation, fees, and taxpayers, which must be in accordance with established procedures, such as the DST laws meant to tax MNEs.

A well-designed tax policy is instrumental to creating inclusive growth and economic competitiveness (Aronov et al., 2018). It spells out the issues regarding tax legislation, the legislative provisions of taxes, and is prescribed by a written law to ensure clarity, predictability, and certainty (Mayburov & Kireenko, 2018).

The rise in digitalisation has encouraged most Multi-National Enterprises ("MNEs") to conduct business in various jurisdictions worldwide without physical presence, including Africa. This results in the issue of establishing taxing rights over the revenue generated by these MNE's in the jurisdictions in which they find themselves (Rogers & Oats, 2022). Developing countries are encouraged to implement DST to broaden their tax base. This is computed directly as a percentage of revenue (Mpofu & Moloi, 2022). The OECD recommends a DST rate of 3% of turnover (Latif, 2020). Conversely, nonetheless, tax avoidance activities like high-profile profitable firms transferring ownership of income-generating assets to affiliated companies in low-tax jurisdictions result in the under-taxation of MNEs and defeat the purpose of DST. The primary challenge in taxing highly digitalised businesses, including MNE's within Africa, is not limited to the absence of taxable presence but in the attribution of profits. They prefer levying taxes on digitalised transactions through value-added tax ("VAT") as opposed to direct taxes (Sebele-Mpofu et al., 2021).

The undefined classification of digital companies within the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting ("BEPS") inclusive framework has led to delays and disagreements among its members. One of the key areas of concern about the ineffectiveness of international DST rules is the lack of consensus-based rules to govern MNE's in jurisdictions. African countries, as of 2026, have not acceded to membership of the OECD, but they adopt some of it guidelines through ATAF. This indirectly results in active participation in international efforts by African countries to develop a multilateral framework and encourage collaboration (Obia, 2025).

OVERVIEW OF DIGITALISATION AND ITS TAX IMPLICATIONS

The rife with global digitalisation has advanced the way businesses operate and the generation of revenue. Currently, businesses do not require physical presence in a jurisdiction to generate revenue. (Becker & Englisch, 2021). The digital economy may be defined as all economic activities generated from the interaction of people, businesses, and systems through any digital means around the world. It also includes traditional business operations where payments are made digitally with individuals physically present in the business area. (Ahmed & Gillwald, 2020) The digital economy generates revenue from advertising, sales of digital content, subscriptions, content or technology licensing, and exploitation of user data. It bridges the gap in taxing the income of an individual, regardless of physical presence (Dziemianowicz, 2019). It is imperative to note that physical presence does not guarantee payment, and there is no nexus in the allocation of taxing rights to physical presence; hence, the calls for states to implement DST to regulate taxes imposed on MNEs that would stand the test of time in the evolving world of digitalisation (Starkov & Jin, 2024).

DEFINITION AND GENESIS OF DIGITAL SERVICE TAX

Taxes imposed on multinational companies because of their digital activities in jurisdictions other than their resident jurisdiction may be termed a digital service tax. Gray and Huddleston (Huddleston, 1982) posit that the DST applies to select gross revenue that flows from the provision of digital services like streaming services, online advertisement, provision of digital platforms and sale of user data. During the COVID-19 pandemic, the OECD digital economy project BEPS 2.0 project focused on DST because governments faced massive spending on health stimulus and economic growth, while taxes dropped due to lockdown and recession. The pandemic acted as a greater accelerator for online activities, remote work, e- commerce, streaming, social media and digital advertising by MNEs in various jurisdictions. The underlying rationale for the DST was to ensure that market countries get an increase in taxing rights over profits generated by MNEs that operate within their jurisdiction, and collect data from targeted advertisements regardless of their physical presence (Dziemianowicz, 2019; Latif, 2020). The DST was proposed by the European Council together with the UK in March 2018 with the aim of levying income earned by large digital companies on certain digital services, such as online transmission of data, advertising, intermediation, etc (Dziemianowicz, 2019). It was born because the existing international tax regime that applied to MNEs resulted in under-taxation, hence the need for a reform. It was first presented as a short-term solution to remedy the under-taxation of MNEs operating on digital platforms pending a consensus from the OECD. 15 members of the OECD have either implemented

or proposed it. Countries like the United Kingdom, Italy, Spain, and France are amongst the OECD countries that have implemented the DST, while non-members like India, Kenya, Brazil, Indonesia, and Vietnam have proposed its implementation. It has provided a temporary measure to tax the digital economy with a tax rate ranging from 1.5% - 7.5% on revenue generated from the sale of online advertising, provision of digital intermediary services on online marketplaces and sale or use of data (Dziemianowicz, 2019; Latif, 2020).

Sourcing of revenue subject to DST is premised on whether the taxable supplies that are enjoyed in a jurisdiction are based on the Internet Protocol ("IP") address or any method used for geolocation. In Africa, most countries have expanded their indirect taxes to cover digital services and have not implemented DST as part of their legislation (Gastaldi & Zanardi, 2019). South Africa is known to be one of the first countries to introduce taxation of digital services in its indirect tax in 2014(Jantjies, 2020), however, potential revenue was lost because it lacked direct digital tax measures that imposed income generated by digitalised economic activities (Bunn et al., 2020; Gastaldi & Zanardi, 2019; Jantjies, 2020)Kenya has also implemented DST as a direct tax with a rate of 1.5% of income accrued through a digital marketplace. African countries are inhibited from implementing DST because the OECD has not concluded on the BEPS 2.0 guidance on how to tax MNEs that operate in jurisdictions without physical presence (Ouma, 2019; Starkov & Jin, 2024).

DIGITAL SERVICE TAX IN GHANA

The tax revenue in Ghana contributes a relatively small percentage of 13.5% to the gross domestic product ("GDP). This is a matter of concern that requires full attention in the future. Ghana does not have specific laws on DST to curb this. The amendment of the Value Added Tax (GHANA, 2017) Service Tax assumes the function of the DST. It captures digital supply services in Ghana. Non-resident suppliers of telecommunications services and electronic commerce must register for VAT on services provided for use or enjoyment in Ghana, other than through a VAT-registered agent in Ghana. This is found in section 16 of the said Act, Value Added Tax Act 870, 2013 (Warwick et al., 2024).

The Value Added Tax 2013 Act 870 has received administrative guidelines for implementation by the Ghana Revenue Authority ("GRA") only in April 2022, and has since included online businesses in the tax net. Unlike the former Value Added Tax (GHANA, 2017), Act 870, list of digital activities within the Ghanaian digital economy and the amount of revenue to be generated from their activities that are taxable by VAT (Ofori-Atta, 2022). They include digital services, including social networking, online gaming, cloud service, video or audio streaming, digital marketplace operation, and online advertisement services. It also defines 'electronic commerce' to include a business transaction, including a digital service that takes place through the electronic transmission of data over a communication network and telecommunication network (Warwick et al., 2024). It specifies that VAT should apply to non-resident suppliers who deal in website supply, web hosting, distant maintenance of programs and equipment, images, text and information and making a database available, music and games, games of chance and gambling games, political, cultural, artistic, scientific and entertainment broadcast and events and distance teaching. The cumulation of charges added to the value of taxable supply forms becomes the basis for assessing the new 15% VAT. These specified activities are subject to VAT and charges in Ghana's domestic market. To enforce compliance, the GRA created a special portal for non-resident companies to formally register with the Commissioner-General and to remit VAT payments via money transfer, bank cards and other means. There are penalties and interest payable for failure to register, submitting late returns, and late payments (Lotsu, 2024).

The amendment in Act 870 is a unilateral DST approach. Also, a comparative view from sections 115 to 120 of the Income Tax Act 2015 (Act 896) reveals that a DST on income could take the form of a withholding tax, requiring residents making payments to non-residents for telecommunications and e-commerce services to withhold a

certain percentage of the gross payment (Owusu-Amoah et al., 2024). Alternatively, non-resident companies that generate income from the digital economy could be directed to pay a percentage of their gross income as income tax. It provides clarity in terms of scope and definition in its statutory language, but it emphasises on non-residents suppliers within the scope of business to establish residency and not through agents, but Permanent Establishment ("PE"). This invariably invokes the traditional manner of transacting for non-resident institutions (Saeed, 2021). Ghana is not a member of the OECD, but it adopts most of its guidelines (Patrick & Julia, 2017).

With an increasing number of jurisdictions implementing measures to tax MNEs that operate within their borders, Ghana should propose a standalone legislation that would tax these MNEs based on their taxable activities. The government is advised to join its regional peers and introduce a comprehensive tax policy to bring non-resident telecommunication and e-commerce service providers into the tax net and tax their fair share of the income they generate (Ahmed & Gillwald, 2020). Also, there have to be regulatory measures and stakeholder collaboration amongst countries that are advanced in the DST system to ensure a transformation in Ghana (Bamfo et al., 2020).

COMPARATIVE ANALYSIS OF DST IN NIGERIA AND KENYA NIGERIA

Nigeria has not implemented a DST yet; its introduction was part of the broader tax reforms that are set to take effect on January 1, 2026 (Udofia, 2025). In 2020, thirty percent (30%) of the taxable income of foreign companies that engage in digital services was subject to tax. These services include transmitting or receiving signals, messages, images, and wireless devices, as well as online payments, which have a significant presence in Nigeria, and the profits from such activities are subject to tax. There are indications that it will be a 30% service charge that is included in gross income for corporate income tax (CIT) and entail compliance and enforcement challenges (Quiñones et al., 2025). Currently, the Tax Identification Number is the only digital approach to digital service tax in Nigeria (Irimia et al., 2021).

DIGITAL SERVICE TAX IN KENYA

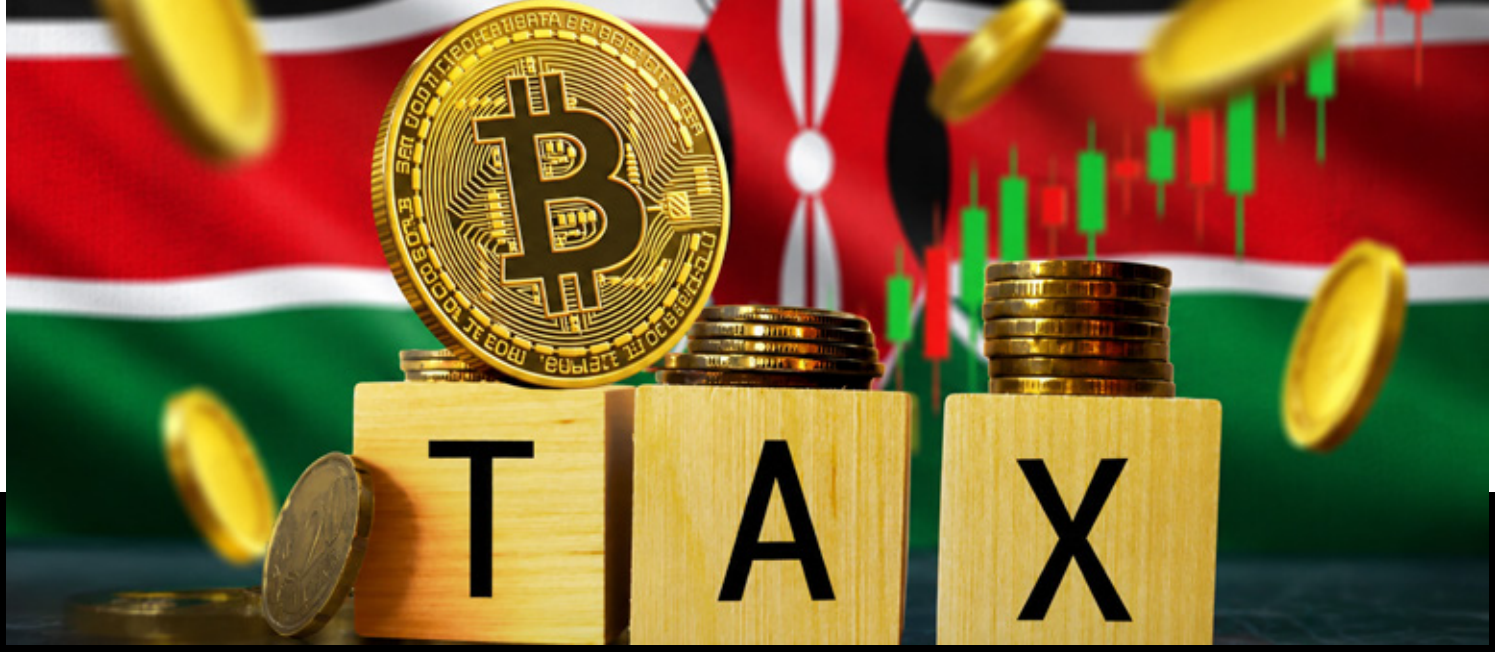
DST was introduced in Kenya on 1 January 2021, first through Kenya's Finance Act 2019 and enacted through the Finance Act 2020 on gross transactional value. The Income Tax Act Chapter was published on 2 January 2021 by the Cabinet Secretary of the National Treasury and Planning, and a directive was issued to guide the application of DST in Kenya.

The Finance Act, 2023, for Turnover Tax at 1.5% on gross sales or revenue came into effect from 1 July 2023. The effects of the COVID-19 pandemic called for the need to expand the tax base, resulting in the introduction of DST as a solution to increase tax revenues (Mponwana & Ndlovu, 2024).

SCOPE OF DST IN KENYA

The DST in Kenya was set at a rate of 1.5% applicable to the gross revenue generated from digital platforms and initially applicable to both residents and non-residents. It applied to taxpayers who were digital market and service providers, thus individuals who provided a platform to enable interaction between sellers and buyers and individuals who provide digital services through a digital marketplace, respectively (Kelbesa, 2020).

Regulation 3 of the Finance Act, 2023 provides for the qualifying digital services to include downloadable digital content, streaming of digital content and all forms of monetising data of Kenyan users, subscription-based media, data management using electronic means, online sales of tickets and search-related activities. Communication services, such as phone calls and messaging, were excluded from digital services and advertising services as well. Digital advertising was excluded because it was subject to withholding tax at 20%, which was more than the revenue of the DST,1.5%. Regulation 4 of the said Act posits that taxpayers shall be



liable if they provide qualifying service to users deemed to be in Kenya; thus, if a Kenyan-based device is used to access the digital interface and services are paid for through a Kenyan Banking institution(Kelbesa, 2020). No qualifying threshold was provided for a company to meet before DST applied, just the gross transactional value of the digital service provided, which is the payment received as consideration of the digital services or the commission or fee paid by the user of the digital marketplace platform. Regulation 12 provides for the penalties default parties may face due to non-compliance flowing from failure to submit a DST return by its due date, resulting in a penalty of 5% of the tax due, and failure to pay by the due date also results in a penalty of 5% of the unpaid tax. DST paid by non-residents with a PE in Kenya may be offset against their normal income tax liability, while DST paid by non-residents without a PE is regarded as a final tax (Kelbesa, 2020).

MNEs complain about the vagueness of the DST legislation, which compels them to exit the Kenyan market because they are always in scope and results in uncertainty. Deloitte in 2020 noted that a minimum threshold for the applicability of DST must be set to exempt businesses with low margins and prevent companies with value transactions from facing disproportional compliance costs (Cano, 2020). This results in a significant rise in their tax burden and their inability to absorb the tax burden, which translates to consumers through price increases. It threatens the growth of the digital economy and full recovery from the COVID-19 crisis. Kenya needs to implement specific laws on DST to curb the loopholes mentioned above (Jones & Cano, 2021). (Cano, 2020; Jones & Cano, 2021)

ALIGNMENT AND DIVERGENCE OF THE OECD PILLAR ONE

OECD pillar one aims to reform international tax rules by reallocating taxing rights to the market jurisdictions, particularly for large MNEs with significant profits derived from the local markets. Article 7 of the OECD Model Tax Convention provides that a company needs to have a PE in another contracting state before business profits can be taxed; otherwise, it would be taxed in the state of its residence.

The purpose of pillar one is to allocate a new taxing right to market jurisdictions that are non-existent in the international corporate income tax rules; the requirement of establishing a PE may not stand the test of time

ROLE OF THE AFRICAN TAX FORUM AND REGIONAL DIGITAL TAX EFFORTS

The African Tax Administrators Forum (“ATAF”) is an international organisation aimed at improving African tax systems. It adopts the OECD framework to achieve global tax solutions to eradicate challenges in digital economies. The ATAF Cross Border Taxation Technical Committee, together with the secretariat, published a proposed approach to drafting legislation on digital services in 2020 to provide African countries with a framework and structure for DST to address tax challenges (Starkov & Jin, 2024). A DST rate of 1% to 3%

was proposed by the ATAF on gross annual income earned by MNEs and requirements that needed to be complied with when allocating income from digital services to specific jurisdictions based on their user participation in each country (Reeves, 2021). ATAF has called on OECD to simplify pillar one to maintain fairness.

OPPORTUNITIES, CHALLENGES, AND IMPLICATIONS OF ADMINISTERING DST.

Researchers advise on revenue generation possibilities that increase tax revenue mobilisation from taxing MNEs such as Amazon, Google, Yahoo, Facebook, web-based services, and E-commerce marketplaces. DST aims to capture new businesses and platforms that were previously not subject to tax. According to (Rukundo, 2020), Africa faces a lot of administrative challenges in the process. (Ahmed & Gillwald, 2020) posit that the design policy of the digital tax system may lead to taxes being regressive while (Kim, 2019) highlights the weakness, absence of enforcement and frameworks that emanate from the process. These reasons have cost Africa a lot in terms of increasing its tax base. The ability to be everywhere and nowhere is the strength of the digital economy, yet problematic, but achievable (Suryo et al., 2025). African countries are enjoined to introduce DST for a better economy.

Also, DST would be difficult to implement if there is a lack of political and financial support from a country, as in the case of South Africa. (Liganya, 2020)) of Tanzania discussed the lack of clear legislation on taxing e-commerce activities. Irimia et al posit that taxes calculated on revenue lead to rates that are high because no deductions are allowed due to no consideration of profits. DST affects businesses with high volume with low margin transactions and products in the sense that the total revenue might seem very high, but the company makes minimal profit, resulting in the liquidation of businesses due to high tax burden. This could drive MNEs away or the resident countries engaging in retaliatory behaviour, leading to double taxation.

BROADER POLICY AND DEVELOPMENTAL CONSIDERATION

A policy document named 'Domestic Resource Mobilisation Digital Service Taxation in Africa in 2020' was a forum to work towards the development of a 'suggested approach to drafting Digital Service Tax Legislation' to guide African countries on the framework for implementing DST. Countries were cautioned to be proactive while waiting for the OECD-driven solutions on their implementation, as delays may be costly because of untapped revenue. Member countries were encouraged to implement their own digital service tax in favour of the OECD and make room for adjustment from future guidelines (Starkov & Jin, 2024). A DST of 1%-3% on gross annual revenue from digital transactions accruing in the market jurisdiction was suggested to be used as the yardstick for its implementation.

Also, DST would be difficult to implement if there is a lack of political and financial support from a country, as in the case of South Africa. (Liganya, 2020)) of Tanzania discussed the lack of clear legislation on taxing e-commerce activities. Irimia et al posit that taxes calculated on revenue lead to rates that are high because no deductions are allowed due to no consideration of profits. DST affects businesses with high volume with low margin transactions and products in the sense that the total revenue might seem very high, but the company makes minimal profit, resulting in the liquidation of businesses due to high tax burden. This could drive MNEs away or the resident countries engaging in retaliatory behaviour, leading to double taxation.

In 2019, Egypt considered implementing a digital tax on social media and other advertising platforms; the implementation dates and scope of the digital tax remain hazy (Simbarashe, 2020). Despite the enactment of DST legislation, African countries must strike a balance between mobilising tax revenue from digital transactions and the need to attract foreign direct investment to stimulate growth (Oguttu, 2016). Measures must be put in place to ensure that countries remain competitive in the global market environment and to guard against double taxation or double non- taxation of income received or accruing from the sale of digital

goods and services. The digital taxation laws of less advanced countries need to draw inspiration from advanced nations for cues to promulgating novel tax policies that support a good tax system (Aisyah & DP, 2025).

In conclusion, African countries need to implement a specific legislation on direct DST to target the gross revenue that MNE's derive from specific digital activities in their jurisdictions with a maximum rate of 3%; regardless of the profit MNE's anticipate to make. Notably, the rate of 1% to 3% of revenue cannot be considered too high to chase MNEs out of a jurisdiction because deductions are not allowed on profits and taxable income.

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