



E-COMMERCE: AN EVOLVING MARKET AND THE NEED FOR VAT

Value Added Tax (VAT) is tax payable on the supply all of goods and services, except those exempted by the law.¹ It is a multi-stage tax system imposed at every stage of production chain, that is, from the manufacturer to the final consumer. The final consumer usually bears the burden of VAT.

It is apparent that the legislators envisaged a physical transaction when drafting Nigerian VAT laws, however it is no longer news that we are in the 21st century, where the definition of business has since transcended the realm of the physical. Nowadays, businesses and transactions can be finalised without any physical contact between the manufacturer and the final consumer, especially with advent of platforms like Amazon, E-bay, Google Store, i-Store, Mastercard, Visa, Konga, Jumia etc, this arrangement is known as E-commerce.

E-COMMERCE.

E-commerce is a commercial arrangement through the use of the internet, with a wide spectra of business activities (marketing, sale, purchase, exchange etc of tangible or intangible goods and services) that can be carried out under it. These activities can either be carried out locally or internationally over the internet, and more often than not, require no physical contact between the supplier and the consumer.

¹ Section 1 & 2 of the Value Added Tax Act, LFN 2004 (VATA)

E-commerce transactions can be carried out between Business to Business (B2B), or Business to Customer (B2C), and can occur both locally and internationally.

The above poses the following questions as it relates to collection and remittance of VAT:

1. How can the tax man capture effectively under the tax net, ALL suppliers operating in the e-commerce for the purpose of VAT registration?
2. How can the tax man ensure proper collection and remittance of VAT on goods and services exchanged via the internet, especially where the transaction is carried out internationally?

Currently the Nigerian Value Added Tax Act, makes no specific arrangement for collection and remittance of VAT on transactions of this nature, especially where those transaction involve cross-border supplies. Bearing in mind that e-commerce is one of the industries that will now enjoy pioneer status in Nigeria², it therefore means that if our country is to generate any income at all from this industry, our VAT laws must be updated to cover this new commercial terrain.

In recent years, the EU and a number of countries around the globe have, as a consequence of these global trends, continued to introduce specific VAT rules applicable to e-commerce to their economy, to ensure that the right amount of VAT is collected at the right place, and at the right time.³ These rules are largely modelled after the Organisation for Economic Co-operation and Development (OECD) recommendations given from time to time.

OECD RECOMMENDATIONS.

The emergence of electronic commerce in the 1990s came with a number of taxation questions for all governments. The OECD, with its long and successful history of developing practical solutions to international tax issues, reacted quickly and by 1998 had agreed the Ottawa Taxation Framework Conditions.

The Ottawa Taxation Framework Conditions set out a number of principles governments should adopt in their approach to taxation of this emerging sector. Since 1998 the work of the OECD's Committee on Fiscal Affairs has continued

² Item 21 on the updated list of pioneer industries contained in the Industrial Development Income Tax Relief Act

⁴ www.tandfonline.com/doi/full/10.1080/20488432.2017.1317945?scroll=top&needAccess=true

to develop these principles into practical guidance for international application.⁴

HIGHLIGHTS OF THE OTTAWA TAXATION FRAMEWORK:

At Ottawa it was agreed that the following broad taxation principles should apply to e-commerce:

- Neutrality – taxation should seek to be neutral and equitable between forms of e-commerce and between conventional and e-commerce, so avoiding double taxation or unintentional non-taxation.
- Efficiency – compliance costs to business and administration costs for governments should be minimised as far as possible.
- Certainty and simplicity – tax rules should be clear and simple to understand, so that taxpayers know where they stand.
- Effectiveness and fairness – taxation should produce the right amount of tax at the right time, and the potential for evasion and avoidance should be minimised.
- Flexibility – taxation systems should be flexible and dynamic to ensure they keep pace with technological and commercial developments.⁵

Since the above were released in 1998, five business-government Technical Advisory Groups (TAGs) under the Committee on Fiscal Affairs (OECD) provided input into the development of these principles from time to time, covering Business Profits, Consumption Tax, Income Characterisation, Professional Data Assessment and Technology.⁶

⁴ <http://www.oecd.org/tax/administration/20499630.pdf>

⁵ <https://www.oecd.org/tax/consumption/Taxation%20and%20eCommerce%202001.pdf>

⁶ <http://www.oecd.org/development/electroniccommerce.htm>

OECD - MECHANISMS FOR THE EFFECTIVE COLLECTION OF VAT/GST WHERE THE SUPPLIER IS NOT LOCATED IN THE JURISDICTION OF TAXATION:

The Guidance was issued in October, 2017 to promote the effective collection of consumption taxes on cross-border sales. It focuses on the implementation of the recommended approaches included in the 2015 Final Report on Action 1 "Addressing the Tax Challenges of the Digital Economy" of the BEPS project (BEPS Action 1 report). These recommended approaches, which are also included in the International VAT/GST Guidelines, have already been successfully implemented by a large number of countries.⁷

The Guidance is divided into three major components, proffering the following solutions:

1. Key policy questions and design issues concerning the collection of VAT/GST on supplies of services and intangibles in cases where the supplier is not located in the jurisdiction of taxation.
2. Guidance on a range of specific design questions related to the implementation of "registration-based collection regimes", that is, VAT/GST collection regimes that are based on the requirement for a foreign supplier to register and remit the tax in the jurisdiction of taxation.
3. Detailed guidance on the design and practical operation of a "simplified registration and compliance regime" for non-resident suppliers.

Although the report does not provide detailed prescriptions for national legislation, it however presents a range of possible approaches and considerations, which if properly implemented will assist policy makers in developing a suitable legal and administrative framework for VAT deductions in relation to transactions this nature.⁸

CONCLUSION

⁷ <http://www.oecd.org/tax/tax-policy/oecd-delivers-implementation-guidance-for-collection-of-value-added-taxes-on-cross-border-sales.htm>

⁸ <http://www.oecd.org/tax/tax-policy/mechanisms-for-the-effective-collection-of-VAT-GST.pdf>

Indirect taxation is one of every government's preferred mode of revenue generation. However, if not properly regulated it can cause a massive leak in the revenue of a country.

Digitization of the world economy has caused a shift in the definition of the everyday business, and has translated economic climates into business terrains they are not so familiar with. This is a potential avenue for loss of returns payable to an economy, while many countries have been able to recognise this and make laws to prevent unnecessary leakages, others are oblivious of this shift or do not realise its effect on the business terrain.

As time goes by, more and more cracks in the legal framework of these unobservant economies are exposed, especially in the area of taxation of businesses.

It is therefore important for Nigeria as a country, to re-evaluate the legal framework for business transactions carried out both locally and internationally, by taking a cue from the OECD and other countries that have successfully applied these guidelines, in order to reap the promising returns of an evolving market.

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