TAXATION OF DIGITAL ECONOMY: THE CONSEQUENCES OF NIGERIA'S REFUSAL TO ENDORSE THE OECD G20/IF DIGITAL TAX AGREEMENT

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Abstract

The emergence of the internet has turned the world into a Global village. People across the Globe and in all walks of life can now transact business with one another without geographical limitations. Thus, it has become possible for Multinational enterprises (MNEs) and other non-resident companies (NRCs) in the West or anywhere to deal with their targets in other regions, such as Africa, without the necessity of physical presence or the incorporation of a subsidiary in the region or country of interest. The result is that the countries where those goods or services are sold (the market jurisdictions) are deprived of the opportunity of taxing those MNEs or NRCs because the extant traditional international tax regime relies heavily on physical presence in a tax jurisdiction. To remedy the situation, several countries of the world, including Nigeria, came up with the idea of unilateral digital services tax which puts the MNEs at risk of multiple taxations on the same stream of income. The Inclusive Framework (IF) on Base Erosion and Profit Shifting ("BEPS") led by the Organization for Economic Cooperation and Development ("OECD/G20) is primarily set up to resolve the problems of digital taxation that often lead to multiple taxation in several jurisdiction or no taxation at all. The OECD/G20 IF came up with a resolution on how to tax digital earnings – especially in market jurisdictions. The opposition to this proposal comes mainly from developing economies. Nigeria is one of the countries that have not signed up to this proposal. The sum of the views against the agreement is that the OECD/G20 IF does not favor developing countries with low gross domestic product. This paper

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evaluates the rationale for Nigeria's refusal to endorse the OECD/G20 IF. It further evaluates the possible benefits that may accrue from the deal; and makes a case for harmonization of conflicting interests for the benefits of the parties at both ends.

Keywords: Taxation, Digital Economy, Digital Tax, Nigeria, Agreement, OECD.

1. Introduction

Globalization and digitalization have had a significant impact on economies and people's lives all around the world, and this impact has only grown in the twenty-first century,[1] The impact of this new technological wave cannot be limited to specific sectors of the economy or countries/ regions.[2] As a result, the use of new digital technology has not only transformed traditional business models but has also enabled the emergence of new digital-based business models that pose challenges to how economies have traditionally been taxed.[3] In Africa, MNEs such as Facebook, Amazon, Twitter, etc. with significant economic presence are making the most of the moment with less tax. For one, it is estimated that over 200 million people in Africa use Facebook and approximately 21 million people in the region purchase items online.[4] In Nigeria, the number sits at over 31.6 million

[1] OECD/G20 Base Erosion and Profit Shifting Project, *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (October, 2021) https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf (last accessed on September 10, 2024).

[2] Cristian Oliver Lucas-Mas and Raul Felix Junquera-Varela, 'Tax Theory Applied to the Digital Economy: A Proposal for a Digital Data tax and a Global Internet Tax Agency' *International Bank for Reconstruction and Development / The World Bank* (2021)

[3] Ibid.

[4] United Nations Conference for Trade and Development (UNCTAD) 'B2C. E-Commerce Index 2018: Focus on Africa' Technical Note on Information Communication Technology Information for Development. https://unctad.org/en/PublicationsLibrary/tn_unctad_ict4d12_en.pdf (last accessed on September 10, 2024).

users[5] making Nigeria Facebook's largest market in Africa.[6] The implications of this are not far-fetched. Additionally, while the digital economy was built on the foundation of the fourth industrial revolution (4IR), which was fueled by the internet's global interconnectedness, the COVID-19 pandemic heightened the dependence of the digital economy on global trade and commerce. The COVID-19 pandemic accelerated growth by altering how people interacted and businesses operated, causing the majority of processes to be digitized. The pandemic had a significant impact on economic sectors such as manufacturing, tourism, and mining, causing financial losses, job losses, and reduced economic activity.[7] These COVID-19-related challenges resulted in lower tax revenues for economies, forcing governments to seek alternative revenue sources to fund government spending.[8] What is troubling about the situation is that, despite the enormous profits many of these companies have made as a result of the world's growing reliance on the digital sphere and its increased interconnectedness with the market jurisdictions, many of which are African countries, the latter were not made to receive a fair share of the accrued income as tax. In the wake of the recent development, the conventional international tax systems proved to be less significant. The advent of the digital economy raised new fundamental policy questions related to its effects on competition and the need to adapt existing tax systems to the new way of doing business.[9] The existing international taxation framework was designed for a less globalized economy. According to the European Commission, digital businesses pay a lower effective tax rate than traditional businesses.[10] While some studies question the digital economy's under-taxation, there is an

[5] Lars Karmer, *Facebook subscribers in West African countries 2020* (February, 2022) https://www.statista.com/statistics/1139386/facebook-subscribers-in-west-african-countries/ (last accessed on September 10, 2024)
[6] Yomi Kazeem, "Many People use Facebook in Nigeria than anywhere else in Africa" https://qz.com/africa/611516/more-people-use-facebook-in-nigeria-than-anywhere-else-in-africa/ (last accessed on September 10, 2024)
[7] Favourate Mpofu, Taxation of the Digital Economy and Direct Digital Service Taxes: Opportunities, Challenges, and Implications for African Countries (2022) https://doi.org/10.3390/economies10090219 (last accessed on September 10, 2024)
[8] Ibid.
[9] Marcin Szczepanski, 'Taxing the Digital Economy: New Developments and the way forward *European Parliamentary Research Service* October, 2021. https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698761/EPRS_BRI(2021)698761_EN.pdf (last accessed on September 10, 2024).
[10] Ibid

international agreement that the current rules must be revised.[11] The ongoing base erosion by MNEs and NRCs and the ensuing revenue loss under the conventional tax administration mechanism, which limits taxing powers to physical connectedness of the MNEs with the principal place of business or permanent establishment, gave rise to the search for the best measure for the taxation of the digital economy. To address the problem, many countries have unilaterally imposed a tax on digital services. The Nigerian President signed into law the Finance Act 2020[12] which amended the Companies Income Act to introduce the digital services tax, which taxes NRCs with significant economic presence (SEP) in Nigeria. The overall effect of the changes is that if a company has SEP in Nigeria, its profits from any trade or business—excluding those of a Nigerian company—are considered to be taxable in Nigeria. However, it is feared that an uncoordinated or unilateral imposition of tax on digital income by each country would result in multiple taxation of the same stream of income and, as a result, have a negative impact on MNEs' global earnings. To harmonize competing interests on the best way to tax the digital space among developed, developing countries and MNEs, the idea for the Inclusive Framework was birthed.

Before the emergence of the agreement, the OECD issued the Base Erosion and Profit Shifting[13] (BEPS) Action Plan in 2013 to address the impact of digitalization on international taxation.[14] The 15 actions

[11] Ibid

[12] Section 4 of the Finance Act amended section 13 of the Companies Income Tax Act to introduce DST in Nigeria. Other countries, including Austria, the Czech Republic, France, India, Italy, Spain, Turkey, and the United Kingdom, imposed DSTs as a stopgap measure to the G-20 consensus-based solution.

[13]Base erosion and profit shifting (BEPS) refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax. Profit shifting generally involves a multinational corporation or any company that shifts its profit from where it is made to a jurisdiction where it will pay less or no tax at all. By relocating profits to a tax haven, a multinational corporation underreports the value of its profits in the countries where it manufactures or sells goods and services, allowing it to pay less or no tax in those countries. The profit is then taxed at a very low rate or not at all in the country where the profit is shifted. See OECD "Base Erosion and Profit shifting (BEPS)", online: OECD < Base erosion and profit shifting (BEPS) | OECD> (last accessed on September 10, 2024); See also: Tax Justice Network, "What is Profit Shifting?" available from <https://taxjustice.net/faq/what-is-profit-shifting/ > (last accessed on September 10, 2024)

[14] Lucas-Mas and junquera-Varela, supra n.2, at 5.

are calculated to assist governments with domestic and international rules and regulations, as well as to ensure that profits are taxed in the market jurisdictions. Since then, the global economy has become more digital, and there have been growing concerns about base erosion and profit shifting. The lack of a regulatory framework for the rapidly digitizing economy, as well as the legal uncertainty it creates for taxpayers and governments, prompted the G-20 Finance Ministers to request an interim report on the implications of digitalization for taxation by 2018.[15] Following the publication of the report, the G-20 mandated the need for a consensus-based solution to address the (direct) tax challenges of economic digitalization by 2020. The Steering Group actively worked on the OECD's Inclusive Framework on BEPS with support from the OECD Secretariat after the G-20 gave it this mandate[16]. The Base Erosion and Profit Shifting ("BEPS") agreement was reached by 136 members of the OECD/G20 IF in October 2021, after a series of protracted negotiations.[17] The multilateral digital taxation agreement (the "Agreement") establishes a global minimum tax rate for MNEs or NRCs. Instead of limiting tax jurisdiction to the traditional principal places of business or permanent establishments, the Agreement recognizes the allocation of taxing rights to market jurisdictions. In particular, it takes a two-pillar approach to address digital tax challenges. The first pillar emphasizes the potential loss of tax revenue brought on by the digitalization of global economy; and seeks to improve the situation by acknowledging the taxing authority of market jurisdictions, i.e., the places where goods and services are sold or where users are situated. There are, however, restrictions placed on the recognition of this taxing right.[18`] Pillar two limits tax competition on corporate income tax by instituting a global minimum corporate tax at 15% (the GloBE rules).

Despite the majority of OECD/G20 IF members accepting the agreement[19], Nigeria and Kenya, two African members of the group,

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[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] This will be dealt with later in this paper

[19] As of November 4, 2021, 137 member-states and jurisdictions representing more than 90% of global GDP out of 140 members have endorsed the Two-Pillar Solution to establish a new framework for international taxation and agreed on a Detailed Implementation Plan, which calls for the new rules to be implemented by 2023. See OECD/G20 Base Erosion and Profit Shifting Project, 'Statement on the two Pillar

chose not to ratify the multilateral agreement on the taxation of the digital economy. The refusal to sign the multilateral agreement shows that Nigeria and other developing countries are uncomfortable with the proposed multilateral agreement on digital taxation. For one, Nigeria does not perceive the Two-Pillar solution as a helpful mechanism. The government claims that because the threshold for MNEs under Pillar 1 is so high, it makes provision for income leakage(s) of earnings of MNEs actively involved in Nigeria's digital space; and, thus, disadvantages the country if the deal is endorsed. However, refusing to sign the contract could also have negative effects such as difficulty tracking taxable revenue accruing to MNEs, confusion arising from the unclear interplay of tax treaties and national laws, trade and political tensions with other signatories, etc. These problems are considered below. Many benefits stand significant to the endorsement of this deal, especially to developing countries – such as Nigeria. The merits are the reverse of the problems highlighted.

Against this backdrop, the object of this paper is to evaluate Nigeria's refusal to endorse the OECD/G20 IF agreement and the impact the refusal will have on the Nigerian economy while making a case for Nigeria to sign the agreement. To achieve the objective above, this paper is divided into five segments. This first segment introduces the context and overview of the discussion and explains what this paper is set out to achieve. The second segment discusses the salient features of the OECD G20/IF Digital Tax Agreement. It is intended to expose the reader to the make-up of the two pillars and what is expected of member States in the implementation of the agreement. It is expected that this will serve as a precursor to the discussion that follows in Segment 3 on the reasons for Nigeria's refusal of the digital tax deal. The implications of this refusal were highlighted in this segment. The sum of the views under this part is that the nation will lose more than it stands to gain if it does not sign the deal. However, it makes a case for the OECD/G20 IF to consider the claims of Nigeria and other developing countries and to harmonize the obvious conflicting interests. The benefits that might accrue to developing countries, such as Nigeria, in the event that it signs the deal were discussed in the

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Solution to address the Tax challenges arising from the Digitization of the Economy' October 8, 2021, available at https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf (last accessed on September 10, 2024).

succeeding segment. It suggests, among other things, that endorsing the deal will foster economic cooperation, which will assist Nigeria to track taxable income accruing to these MNEs in order to tax them accordingly. The paper concludes on the note that it is beneficial for Nigeria to endorse the deal rather than the unilateral imposition of digital service tax.

2. Evaluation of the OECD/G20 of Tax Agreement

The OECD/G20 IF Tax agreement presents a two-pillar approach to solving the tax problems created by the digitization of the global economy; and the inability of the old/traditional principle of taxation that is grounded on physical nexus/presence of the income earners to a market jurisdiction. The agreement, among other things, seeks to imbue coherence and near-unanimity of international tax rules to engender transparency in the discharge of tax obligations.[20]

2.1 Pillar One:

Pillar One reviews profit allocation and nexus rules for in-scope groups and companies. It operates with the assumption that a portion of an in-scope group's residual profit, which is likely to be generated by capital, risk management functions, and/or intellectual property, should be taxed in end-market jurisdictions where goods or services are used or consumed.[21] The original goal of pillar one was to regularize highly digitalized business models. However, with the negotiation and adoption, the scope shifted to other industries outside extractive and regulated financial services. Under pillar one, in-scope companies are multinational enterprises (MNEs) with a global turnover of more than 20 billion euros with profitability of more than 10% (i.e., profit before tax or revenue) calculated using an averaging mechanism. The turnover threshold will be lowered to 10 billion euros if the tax

[20] European Parliamnet, “Balancing on Two Pillars: Global Corporate Tax Reform”, online: European Parliament < Balancing on two pillars: The global corporate tax reform > (last accessed on 10 September 2024); KPMG Report, ‘BEPS 2.0: Pillar one and Pillar Two’ https://home.kpmg/xx/en/home/insights/2020/10/beps-2-0-pillar-one-and-pillar-two.html (last accessed on September 10, 2024).

[21] KPMG Report, ‘Pillar One: Profit allocation and nexus’ https://assets.kpmg/content/dam/kpmg/xx/pdf/2021/11/beps-pillar-one-web.pdf (last accessed on September 10, 2024).

certainty on Amount A is successfully implemented, and the review period will start seven years after the agreement enters into force and ends no later than one year after that.[22] Amount A may be allocated to a market jurisdiction under the new special purpose nexus rule if the in-scope MNE receives at least 1 million euros in revenue from that region. The nexus will be 250 000 euros for smaller jurisdictions whose GDP is less than 40 billion euros. The special purpose nexus rule comes into play only when determining whether a jurisdiction is eligible for Amount A allocation. The cost of compliance, including tracing small amounts of sales, will be kept to a minimum. Revenue will be sourced to the end market jurisdictions where goods or services are used or consumed. Detailed source rules will be created for particular types of transactions in order to make it simpler to apply this principle. When implementing the sourcing rules, an in-scope MNE must use a trustworthy method that takes into account the MNE's unique facts and circumstances.

In-scope MNEs will benefit from mandatory and binding dispute prevention and resolution mechanisms that will avoid double taxation for Amount A, including all issues related to Amount A (e.g., transfer pricing and business profit disputes). Disputes over whether issues may be related to Amount A will be resolved in a mandatory and binding manner without causing a delay in the substantive dispute prevention and resolution mechanism. An elective binding dispute resolution mechanism will be available only for Amount A issues for developing economies that are eligible for deferral of their BEPS Action 14 peer review and have no or low levels of MAP disputes[23].

On Amount B, the application of the arm's length principle to in-country baseline marketing and distribution activities will be streamlined and simplified, with a special emphasis on the needs of low-capacity countries. This project ought to have been completed by the end of 2022.

Amount A is to be implemented through a Multilateral Convention (MLC). The MLC is an agreement to reallocate taxing rights for MNEs. This was released by the OECD in October 2023. With the MLC all parties are to repeal their digital services taxes (DST) and other similar measures applicable to all companies and commit not to

[22] OECD, supra n. 19.
[23] Ibid.

enact similar measures in the future. No newly enacted DST or other pertinent, comparable measures will be imposed on any company thereafter. The removal of existing DST and other relevant similar measures will be coordinated appropriately. The IF takes note of reports from some members that transitional arrangements are being discussed as soon as possible.

2.2 Pillar Two

Pillar two is made up of two interlocking domestic rules that form the Global anti-Base Erosion Rules (GloBE) rules. The rules are as follows: (i) Income Inclusion Rule (IIR), which imposes a top-up tax on a parent entity in respect of a constituent entity's low taxed income; and (ii) Undertaxed Payment Rule (UTPR), which denies deductions or requires an equivalent adjustment to the extent that a constituent entity's low tax income is not subject to tax under an IIR. In addition, there is a treaty-based rule known as the "Subject to Tax Rule" (STTR) that permits source jurisdictions to impose limited source taxation on specific related party payments subject to tax at a rate below a minimum rate. Under the GloBE rules, the STTR will be creditable as a covered tax. The IF members recognize that the STTR is critical to reaching agreement on Pillar 2 for developing countries. When requested, IF members who apply nominal corporate income tax rates lower than the STTR minimum rate to interest, royalties, and a defined set of other payments would incorporate the STTR into bilateral treaties with developing IF members. The taxing power will be limited to the difference between the minimum and maximum rates on the payment. Simply put, under this rule, source jurisdictions may withhold tax at a minimum rate of 7.5% to 9% from payments of interest, royalties, and certain other payments made between related parties when there is no minimum tax rate applicable to those payments.

The GLoBE rules impose a 15% global minimum tax rate (or "GMT") on MNEs with revenues of more than 750 million euros. The GloBE rules will have the status of a common approach. This means that while IF members are not required to adopt the GloBE rules, if they do, they will implement and administer the rules in accordance with the outcomes specified in Pillar 2, including in light of the model rules and guidance agreed upon by the IF. They are also expected to accept the application of the GloBE rules applied by other IF members, including agreement on rule order and the application of any agreed safe harbors.

According to the OECD, Pillar 2 will increase yearly global tax receipts by US$150 billion.

3. Evaluation of the Nigerian Position

The OECD/G20 tax deal brokered by the G-20 Leaders in October 2021 seeks to curb tax avoidance by MNEs. However, with the finalization of the deal, came resistance from the developing economies – which includes most African Member States, who do not agree that the proposal is for best interests.[24] Nigeria, as a member state of the OECD/G20 Inclusive Framework on BEPS since 2016, commits to the implementation of the four minimum standards, which include harmful tax practices (Action 5), tax treaty abuse (Action 6), country-by-country (CbC) reporting (Action 13), and dispute resolution mechanisms (Action 14).[25] This notwithstanding, Nigeria has refused the endorsement of the OECD G20/IF Digital Tax Agreement. This decision sparked concerns and questions, which were properly addressed by the Executive Chairman of the FIRS, Mr. Muhammed Nami, who held that the nation's cautious approach to the endorsement of the digital tax deal was in the best interest of the country and that this would ensure that the nation does not lose out on its potential revenue from the digital economy.[26] On that ground, he cited some reasons for the refusal which are as follow:

1. That the threshold for which these MNEs would be taxed is unfavorable to Nigeria because it stipulates that a company or enterprise must have an annual global turnover of €20 billion and a global profitability of 10%. Since most MNEs that operate in the country do not meet such criteria, they would not be taxable. There also exists the requirement that the €20 billion revenue and 10% profitability must have been made within an average of four consecutive years and since this is likely

[24]West African ADministration Forum (WATAF), "WATAF Commentary on the OECD/G20 Inclusive Framework Two-Pillar Solution To Address The Tax Challenges", Available from <https://wataf-tax.org/2021/10/27/wataf-commentary-on-the-oecd-g20-inclusive-framework-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy/> (Accessed on September 10, 2024).

[25] Ososami Lolade, "BEPS in Nigeria and implications for cross-border taxation", (internationaltaxreport.com) last accessed on September 10, 2024.

[26] Chibueze Joseph, "FIRS explains Nigeria's rejection of OECD tax agreement", (guardian.ng 24th May, 2022) (last accessed on September 10, 2024).

infeasible, Nigeria may be robbed of their fair share from the digital income generated within its jurisdiction by MNEs.

2. The Agreement prescribes that for MNEs to be subject to CIT in Nigeria, such MNEs must have generated €1m in turnover in the relevant year. This in itself would exclude many MNEs from the Nigerian tax net and then create a disparity which would be unfair, especially to local companies begin to pay tax moments after they make a gross turnover of more than N25,000,000 – the equivalent of any amount above US$15,625 at the exchange rate of US$1 for N1,600.

3. That the Internationalization of tax dispute resolution and exclusion of Nigerian law and Courts on disputes arising from the implementation of Pillar 1 is unacceptable as it would culminate to heavy expenditure for the country beyond the tax yield of such cases.[27]

A question that follows is "whether these reasons are justifiable with regards to the need to harmonize competing interests on the best way to tax the digital space among developed, developing countries and MNEs, for which the Digital Tax Deal was entered?" Although Pillar 1 (which introduces destination-based taxation) seems revolutionary, even though it appears to award some taxing rights to low- and middle-income countries (LMICs), of which Nigeria is a part (where the sales of MNEs' goods or services are delivered), its impact on the revenue of these LMICs is low. It applies only to a fraction of the profits of MNEs, and according to analysis based on a methodology developed by Oxford Economics for Oxfam, only 49 LMICs for which data is available would gain from the Pillar 1 directive to the tune of $749 million, which is only 0.026% of their GDP. Oxfam estimates that if all 49 LMICs levied a tax of 3% of gross revenue from automated digital services, they could raise almost as much as they would under Pillar 1. Hence, the Nigerian position that it would be disadvantaged by the stipulated threshold is true. In the same vein, the economic condition in Nigeria provides support to the belief that the MNCs may

[27] Thisday Newspapers, "FG: Why Nigeria Has Not Endorsed OECD's Proposal on Digital Economy", online: Thisdaylive.com < FG: Why Nigeria Has Not Endorsed OECD's Proposal on Digital Economy – THISDAYLIVE > (last accessed on September 10, 2024).

evade tax if they were not able to recoup taxable income (within the threshold) from Nigeria.

Pillar 2, on the other hand, whose reach is the imposition of a 15% global minimum tax rate (or "GMT") on MNEs with revenues of more than 750 million euros, was declared by the Oxfam analysis to be biassed against LMICs. It requires that a global minimum tax be paid by nearly all large multinational corporations at a tax rate of 15% in nearly all countries where they have market jurisdictions.[28] This rate is too low compared to the economic status of many LMICs, Nigeria included, which have rates of over 30%. With the possibility that the tax will be collected by the resident countries (high-income countries) of these MNEs, it leaves Nigeria with nothing as it further deteriorates the already low revenue tax positions of the Country as estimated by the Tax Justice Network.[29] Furthermore, with the requirement under the Tax Deal that unilateral DSTs be removed by members who endorse the deal, African countries will be grossly denied the taxing rights over MNEs not within the threshold. Following this line of thinking, although the deal is commendable, the grievances of these LMICs should be looked into, and a fair deal drawn up to relocate a substantial quota of MNEs' profits to the market jurisdictions. [30] While the Nation in this regard has opted to go "pillar-less"[31], it has already set up measures with which the country can yet derive revenue from the taxation of digital economy.

First, with the introduction of the Companies Income Tax Significant Economic Presence (SEP) in 2020, the scope of Nigerian tax net is expanded to rope the taxation of Non-resident Companies (NRCs) which have no physical presence in Nigeria, thus creating a unilateral DST. With the order, MNEs without a physical presence in Nigeria are

[28] Ibid 5

[29] Arise News, " $492 billion Lost Annually To Global Tax Abuse, Nigeria Loses $384m, Report Reveals", online: Arise News < $492 billion Lost Annually To Global Tax Abuse, Nigeria Loses $384m, Report Reveals - Arise News > (last accessed on September 10, 2024)

[30] Giulia Mascagni & Rhiannon McCluskey *"Is the inclusive Framework tax deal in the interests of lower-income countries"* International Centre for Tax & Development. Available at: <https://www.ictd.ac/blog/inclusive-framework-tax-deal-interests-lower-income-countries/> (last accessed on September 10, 2024).

[31] Mbaebie Barbara and Oseni Atinuke, "Nigeria: A Nation Without 'Pillars': Nigeria's Rejection Of The OECD's Two-Pillar Solution" KPMG NIGERIA, (Mondaq.com 29th September 2022) (last accessed on September 10, 2024).

expected to register and pay tax to Nigeria. In furtherance of the SEP Order, in 2021, the Finance Act 2019 introduced the requirement for the imposition of tax on a fair and reasonable percentage of the turnover of companies that have SEP in Nigeria where the said company discloses profits lower than expected by the Service.

Secondly, FIRS in conjunction with the internal revenue service of the 36 states and FCT, has deployed the use of Blockchain technology so as to have easy access to the economic activities (both physical and virtual) of individuals and corporate bodies. It thus seeks to utilize this technology to achieve an exponential increase in tax revenue by means of the collation of data on economic transactions into a central National Tax Data Bank.

To better manage the taxation of non-residents and cross-border transactions, the Service established a specialized office, the Non-Resident Persons Tax. It is expected that tax certainty would be established and double taxation on NRCs drastically reduced.

4. Possible Benefits from the Digital Tax Deal

However, amidst the above reasons why Nigerians did not and should not sign the agreement, there are certain benefits that are predominantly feasible and accessible upon signing the agreement. For Instance:

1. **Certainty of Compliance:** The Nigeria SEP regime is currently faced with the issue of certainty of compliance and organization with respect to enforceability and monitoring of MNEs and NRCs' activities. There is also the issue of difficulty in ascertaining with clarity and certainty the outcomes of the interplay between national laws and certain tax conventionss - especially with the provision of tax law on the tax percentage of MNEs that meet the N25 million threshold. There is also the difficulty in ascertaining how much MNEs actually generated from Nigerians. However, these issues can be easily tackled under the OECD/G20 IF agreement. For instance, there is a degree of consent donated by members who are signatories. Hence, MNEs emanating from such countries will be easily monitored by international bodies. More so, no country or MNEs would like to be subjected to the International dispute resolution mechanism, hence, they will be duty bound to see

that these agreements are duly followed. Also, there is a standard penalty for defaulters.

2. **Avoidance of Trade Barrier:** Most MNEs that carry out digital services are US Corporations. The US government abhors DSTs and holds it as a trade barrier. It has expressed its willingness to impose trade sanctions on most countries that adopt such taxes. With return of Donald Trump to the White House, the US' threat should be taken more seriously. Nigeria is not, at the moment, in a position to engage in a trade war with a global economic powerhouse like the US.

5. Recommendations and Conclusion

The foregoing establishes a ground for harmonization of the provision of the OECD/G20 IF Tax Deal and Nigerian position in order to give a level playing field for the NRCs with significant economic presence in Nigeria.

Nigeria should find ways to push for a more equitable outcome of the Digital Tax Deal rather than simply rejecting it. Given the fact that the deal seeks to protect every member country of the OECD from the problems of created by abusive tax avoidance, tax evasion and undue tax competition. Nigeria should streamline its SEP Order Rule to come into effect with Income Inclusion Rules to shore up its effective tax rate so as not to lose its tax base to developed countries. In order to deal with Profit Shifting, although the United States and European Union adopted domestic top up taxes to cover the lapses occasioned by the Pillar 2 directive, towing this line will not favour Nigeria as MNEs may choose to shift its profits to low-rate tax havens. Nigeria may (following negotiations with the OECD/G20 IF) opt for a unilateral base erosion tax.

OECD should seek to accommodate the particularities of LMICs by reduction of threshold of Pillar 1, or allow them not to sign the Pillar 1 multilateral agreement or exempt them from the restriction altogether. They should not be coerced into acceding to all provisions of the agreement; since this would be inequitable as their taxing rights to MNEs would be removed under the guise of removing unilateral measures[32]. It is therefore concluded that a negotiated outcome with OECD/G20 IF would serve Nigeria better and avoid economic trade war that may result from the current unilateral digital service tax regime it follows. The economic position of Nigeria does not afford it the privilege of flexing economic muscles with the US or any advanced economy.

[32]Mustapha Ndajiwo & Learnmore Nyamudzanga, "What Does the G7 Proposal on Taxation of the Digitalised Economy Mean for African countries,", online: < What Does the G7 Proposal on Taxation of the Digitalised Economy Mean for African countries? - Africa Policy Research Institute (APRI) (afripoli.org) > (last accessed on September 10, 2024)