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PERMANENT ESTABLISHMENT AND THE TAXATION OF THE DIGITAL ECONOMY IN NIGERIA: CHALLENGES, REFORMS AND FUTURE DIRECTIONS

By

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Abstract

The concept of permanent establishment has long functioned as the central threshold for the allocation of taxing rights over non-resident enterprises within international tax law. Traditionally anchored in the requirement of physical presence, the doctrine reflects an earlier economic order in which commercial activity was closely linked to tangible assets and fixed locations. However, this foundation has been significantly unsettled by the expansion of the digital economy. Enterprises are now able to participate actively in foreign markets, derive substantial income, and build sustained economic relationships without any meaningful physical footprint. This shift has exposed notable weaknesses in the ability of developing countries, including Nigeria, to tax cross-border digital activities under existing legal frameworks. This article interrogates the continued adequacy of the permanent establishment doctrine within Nigerian law in light of these developments. It examines recent statutory reforms, particularly the introduction of Significant Economic Presence under the Companies Income Tax Act and evaluates the extent to which this innovation addresses the limitations inherent in traditional nexus rules. The analysis is situated within the broader trajectory of international tax reform, drawing comparative insights from developed jurisdictions such as the United Kingdom, where a combination of targeted legislative measures, administrative capacity, and policy coordination has shaped the taxation of digital economic activity. The article demonstrates that while Nigeria has taken important and timely steps, considerable challenges remain. These include tensions with existing treaty obligations, gaps in administrative capacity, and practical difficulties in enforcement. It argues for a more coherent reorientation of taxing jurisdiction towards economic participation, supported by clearer legislative design, strengthened institutional frameworks, and sustained engagement with ongoing international tax reform initiatives. Ultimately, the article contends that an integrated and forward-looking approach is necessary if Nigeria is to respond effectively to the demands of a digitalised global economy.

Keywords: **Permanent Establishment; Significant Economic Presence; Digital Economy; Tax Nexus; International Taxation.**

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1.0 INTRODUCTION

The allocation of taxing rights in international law has long been structured around the doctrine of permanent establishment, which determines when a source jurisdiction may tax the business profits of a non-resident enterprise.[1] The doctrine rests on the premise that a sufficient nexus exists only where an enterprise maintains a fixed place of business within the territory of a state.[2] This approach reflects an earlier phase of economic organisation in which commercial activity was closely associated with physical presence, tangible assets, and identifiable locations of production.

However, this foundation has been significantly challenged by the transformation of the global economy. The rise of digital technologies has enabled enterprises to participate in foreign markets, generate substantial revenue, and maintain sustained economic relationships with consumers without establishing any physical presence in those jurisdictions.[3] Value creation is increasingly driven by user participation, data accumulation, and digital interaction, rather than by traditional factors such as physical infrastructure or labour. The result is a growing disconnection between the legal basis of taxing jurisdiction and the economic realities that underpin modern business models.[4]

The traditional permanent establishment framework is increasingly ill-suited to a digitalised economy in which value creation no longer depends on physical infrastructure. By conditioning taxing rights on physical presence, the rule fails to reflect the economic substance of digital transactions, where enterprises can derive substantial income from market jurisdictions without any tangible footprint.[5] This disconnect produces a structural imbalance

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1 Article 5 of the OECD Model Tax Convention on Income and on Capital 2017 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/04/model-tax-convention-on-income-and-on-capital-2017-full-version_g1g972ee/g2g972ee-en.pdf> accessed on 25 April 2026.

2 OECD, 'Commentary on Article 5: Permanent Establishment' in *Model Tax Convention on Income and on Capital 2017 (Full Version)* (OECD Publishing 2019) <http://dx.doi.org/10.1787/g2g972ee-en\> accessed on 12 April 2026.

3 OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report* (OECD Publishing 2015) <http://dx.doi.org/10.1787/9789264241046-en\> accessed http://dx.doi.org/10.1787/g2g972ee-en\> accessed on 12 April 2026.

4 Ibid.

5 Ibid.

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between where economic activity occurs and where taxing rights are allocated, with significant consequences for revenue mobilisation and fiscal autonomy, particularly in developing economies such as Nigeria. The inadequacy of the existing nexus rule has been extensively acknowledged in international tax policy discourse, most notably in the work of the Organisation for Economic Co-operation and Development on the tax challenges arising from digitalisation.[6]

Nigeria has responded through a combination of legislative and administrative reforms. On the income tax side, the introduction of Significant Economic Presence under section 13 of the Companies Income Tax Act, as amended by the Finance Act 2019, represents a deliberate attempt to extend taxing rights to non-resident companies that derive value from the Nigerian economy without physical presence. The accompanying Significant Economic Presence Order 2020 provides further clarity by identifying the types of activities and revenue thresholds that may give rise to a taxable presence.[7] This framework reflects a shift towards recognising economic engagement and market participation as relevant bases for taxation.

In addition to income tax reforms, Nigeria has also expanded its Value Added Tax regime to address the challenges posed by digitalisation. The Finance Act 2020 introduced provisions requiring non-resident suppliers of digital services to register for VAT in Nigeria and to charge and remit tax on supplies made to Nigerian consumers.[8] This approach aligns with emerging global practice, which increasingly relies on consumption-based taxation as a practical means of capturing value generated through cross-border digital transactions. The Federal Inland Revenue Service (now known as Nigeria Revenue Service) has issued administrative guidance to support the implementation of these rules, including compliance obligations for non-resident suppliers and mechanisms such as reverse charge in appropriate circumstances.[9]

[6] OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS* (OECD Publishing 2018) <http://dx.doi.org/10.1787/9789264293083-en\> accessed on 9 January 2026.
[7] Companies Income Tax (Significant Economic Presence) Order 2020.
[8] Finance Act 2020; Value Added Tax Act Cap V1 Laws of the Federation of Nigeria 2004 (as amended).
[9] Asquith R., 'Nigeria VAT Non-Resident Digital Services 2026' (11 September 2025) <https://www.vatcalc.com/nigeria/nigeria-vat-on-goods-digital-services-jan-2021-for-non-residents/\> accessed on 11 January 2026.

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Even though these reforms represent important progress, their effectiveness remains subject to a number of constraints. The interaction between domestic legislation and Nigeria's network of double taxation agreements continues to limit the application of income tax rules based on economic presence, as most treaties retain the traditional permanent establishment threshold.[10] In addition, practical challenges relating to enforcement, access to reliable data, and administrative capacity affect both income tax and VAT measures in the digital context.[11]

This article proceeds on the premise that Nigeria's current framework, while progressive, remains incomplete. It contends that the effective taxation of digital economic activity requires more than legislative innovation; it demands a careful rethinking of existing doctrines, strengthened institutional capacity, and deliberate alignment with evolving international tax standards. In this regard, the article adopts a comparative orientation, engaging with the experience of developed jurisdictions such as the United Kingdom and South Africa, as well as broader developments under the OECD Inclusive Framework. The objective is to situate Nigeria's approach within the wider landscape of contemporary tax reform and to distill practical insights that may support the design of a more coherent, effective, and sustainable regime for taxing economic activity that no longer depends on physical presence. It concludes by proposing a framework for reform aimed at aligning taxing jurisdiction with economic participation in a manner consistent with contemporary international tax policy.

2.0 THE DOCTRINE OF PERMANENT ESTABLISHMENT AND ITS CONTEMPORARY LIMITS

[10] See Article 5 Convention between the Government of the Federal Republic of Nigeria and the Government of the United Kingdom for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains (1987).

[11] Sanni P. A, 'Electronic Commerce Taxation and Government Revenue Generation in Nigeria: Compliance Challenges and Revenue Potentials' (2025) 10(2) *AE-FUNAI Journal of Management Sciences* 18–32.

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The doctrine of permanent establishment occupies a central position in the architecture of international tax law. It functions as the primary threshold for determining when a source jurisdiction may exercise taxing rights over the business profits of a non-resident enterprise.[12] The concept is most authoritatively expressed in Article 5 of the OECD Model Tax Convention,[13] which defines a permanent establishment as a fixed place of business through which the business of an enterprise is wholly or partly carried on. This formulation has been widely adopted in bilateral tax treaties and has influenced domestic tax legislation across various jurisdictions, including Nigeria.

Within this framework, the permanent establishment rule performs both a jurisdictional and allocative function. It establishes the conditions under which a source state may tax and, where such conditions are satisfied, limits taxation to profits attributable to the activities carried on through the permanent establishment.[14] The underlying logic reflects a compromise between residence and source taxation, grounded in the principle that economic allegiance arises from a tangible and sustained presence within a jurisdiction.[15]

The traditional conception of permanent establishment is built upon three core elements. First, there must be a place of business, which implies the existence of physical facilities such as premises, equipment, or installations. Secondly, the place must be fixed, denoting a degree of permanence and geographic stability. Thirdly, the enterprise must carry on its business through that place, thereby establishing a functional link between the location and the income generating activity.[16] These elements collectively ensure that the threshold for taxation is tied to observable and administrable criteria.

[12] Article 5 of the OECD Model Tax Convention on Income and on Capital 2017 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/04/model-tax-convention-on-income-and-on-capital-2017-full-version_g1g972ee/g2g972ee-en.pdf> accessed on 25 April 2026.

[13] Ibid

[14] OECD, 'Commentary on Article 7: Business Profits' in *Model Tax Convention on Income and on Capital 2017 (Full Version)* (OECD Publishing 2019) <http://dx.doi.org/10.1787/g2g972ee-en\> accessed on 12 April 2026.

[15] Klaus Vogel, *Double Taxation Conventions* (3rd edn, Kluwer Law International 1997) 35.

[16] OECD, 'Commentary on Article 5: Permanent Establishment' in *Model Tax Convention on Income and on Capital 2017 (Full Version)* (OECD Publishing 2019) <http://dx.doi.org/10.1787/g2g972ee-en\> accessed on 12 April 2026.

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In addition to fixed places of business, the doctrine extends to dependent agent permanent establishments, where a person acting on behalf of an enterprise habitually concludes contracts or plays a principal role in their conclusion.[17] This extension is designed to prevent avoidance through the use of intermediaries. The OECD's Base Erosion and Profit Shifting (BEPS) Project, particularly Action 7, introduced refinements to these rules by expanding the scope of dependent agents and addressing the fragmentation of business activities designed to avoid the creation of a permanent establishment.[18]

Despite these developments, the essential structure of the doctrine remains anchored in physical presence. This is reflected not only in the OECD Model Tax Convention but also in the domestic and treaty practice of various jurisdictions. For example, Nigeria's double taxation agreements retain the classical definition of permanent establishment, thereby conditioning taxing rights on the existence of a fixed place of business or equivalent presence.[19] Similarly, under United Kingdom's Corporation Tax Act 2009, non-resident companies are subject to corporation tax on trading profits only where they carry on a trade through a permanent establishment within the United Kingdom.[20]

The persistence of this framework reflects its historical justification. At the time of its development, international business was characterised by relatively immobile factors of production. Enterprises expanded across borders through the establishment of branches, offices, or factories, making physical presence a reasonable proxy for economic activity. The permanent establishment rule therefore provided a practical and administrable basis for allocating taxing rights, while minimising the risk of double taxation and disputes between jurisdictions.[21]

[17] Ibid.
[18] OECD, 'Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 Final Report (2015)' <https://www.oecd.org/content/dam/oecd/en/publications/reports/2015/10/preventing-the-artificial-avoidance-of-permanent-establishment-status-action-7-2015-final-report_g1g58ce8/9789264241220-en.pdf.> accessed on 22 April 2026.
[19] Article 5 of the Convention between the Government of the United Kingdom and the Government of the Federal Republic of Nigeria for the Avoidance of Double Taxation.
[20] Sections 5 & 1141 of the Corporation Tax Act 2009.
[21] Article 5 of the OECD Model Tax Convention on Income and on Capital 2017 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/04/model-tax-convention-on-income-and-on-capital-2017-full-version_g1g972ee/g2g972ee-en.pdf> accessed on 25 April 2026.

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However, the economic assumptions underpinning this framework have been fundamentally altered by digitalisation. Contemporary business models enable enterprises to derive significant value from jurisdictions without establishing any physical footprint. Digital platforms can engage users, collect data, and generate revenue through targeted advertising or subscription services, all without maintaining a fixed place of business.[22] This development exposes a critical limitation of the permanent establishment doctrine: its inability to capture forms of economic participation that are not tied to physical presence.

The OECD has acknowledged this limitation in its work on the tax challenges of digitalisation. While BEPS Action 7 addressed certain avoidance strategies, it did not fundamentally redefine the nexus rule.[23] Instead, more recent initiatives, particularly under Pillar One of the Inclusive Framework, seek to allocate taxing rights to market jurisdictions based on revenue and user participation, thereby moving beyond the constraints of physical presence.[24] These developments signal an emerging consensus that the traditional permanent establishment concept is no longer sufficient as a standalone basis for taxation in a digitalised economy.

In the Nigerian context, the inadequacy of the doctrine is particularly pronounced. Non-resident digital enterprises may derive substantial income from Nigerian markets without satisfying the permanent establishment threshold under existing treaties. A practical illustration can be seen in the operations of global digital streaming platforms such as Netflix, which provide subscription-based services to Nigerian users and generate significant revenue from that market without maintaining a fixed place of business or a dependent agent within Nigeria. Under the traditional permanent establishment rule, such an enterprise would not be

[22] OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS* (OECD Publishing 2018) <http://dx.doi.org/10.1787/9789264293083-en\> accessed on 9 January 2026.

[23] OECD, 'Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 Final Report (2015)' <https://www.oecd.org/content/dam/oecd/en/publications/reports/2015/10/preventing-the-artificial-avoidance-of-permanent-establishment-status-action-7-2015-final-report_g1g58ce8/9789264241220-en.pdf.> accessed on 22 April 2026.

[24] OECD, 'Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy' <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf> accessed on 25 April 2026.

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regarded as having a taxable presence in Nigeria for corporate income tax purposes, notwithstanding its substantial economic engagement with Nigerian consumers.[25]

This has necessitated the introduction of alternative nexus rules, such as Significant Economic Presence, which seek to capture economic activity that falls outside the traditional framework.[26] However, the coexistence of these emerging domestic rules with treaty based permanent establishment provisions creates a degree of legal fragmentation, raising important questions about coherence and enforceability.[27] This is particularly so because while domestic reforms increasingly seek to establish taxing rights based on economic participation, many of Nigeria's existing double taxation agreements continue to preserve the traditional physical presence threshold for taxing business profits.[28] The limitations of the doctrine are not confined to income taxation. Even where jurisdictions have sought to respond to digitalisation through indirect taxation measures, such as value added tax on digital services, the underlying issue of nexus remains significant.[29] Consumption based taxes may provide a more immediate mechanism for capturing value generated within market jurisdictions, but they do not resolve the broader question of how taxing rights over business profits should be allocated in a digital economy.[30]

A critical reassessment of permanent establishment is therefore unavoidable. The doctrine continues to serve important functions, particularly in providing certainty and facilitating treaty coordination. However, its reliance on physical presence as the primary determinant of nexus is increasingly difficult to justify in light of contemporary economic realities. The challenge is not merely to refine the existing framework, but to reconsider its underlying

[25] OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS* (OECD Publishing 2018) <http://dx.doi.org/10.1787/9789264293083-en\> accessed on 9 January 2026.

[26] Ernst & Young, 'Nigeria issues order on definition of significant economic presence in Nigeria' <https://globaltaxnews.ey.com/news/2020-5817-nigeria-issues-order-on-definition-of-significant-economic-presence-in-nigeria> accessed on 9 January 2026.

[27] Nwabachili C. O. and Nwabachili C. C., 'Taxing the Digital Sector of the Nigerian Economy: Challenges and Prospects' (2022) 9(4) *Nnamdi Azikiwe University Journal of Commercial and Property Law* 1-12.

[28] Ibid

[29] OECD, 'Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project' <http://dx.doi.org/10.1787/9789264241046-en> accessed on 9 January 2026.

[30] OECD, 'Reallocation of taxing rights to market jurisdictions' <https://www.oecd.org/en/topics/sub-issues/reallocation-of-taxing-rights-to-market-jurisdictions.html> accessed on 12 April 2026.

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assumptions and to develop a more comprehensive approach that reflects the nature of digital economic activity.

3.0 THE CURRENT FRAMEWORK FOR TAXING DIGITAL ECONOMIC ACTIVITY IN NIGERIA

Nigeria's present framework for taxing digital economic activity reflects a transition from a reactive fragmented regime to a more coordinated and forward-looking system. The succession of tax reforms introduced between 2019 and 2025 reflects a deliberate effort to modernise Nigeria's approach to the taxation of digital economic activity. Beginning with the introduction of Significant Economic Presence as a nexus rule for certain non-resident enterprises and the expansion of the value added tax regime to capture digital supplies, these reforms progressively moved beyond piecemeal legislative intervention towards a more coordinated framework for taxing value generated within the Nigerian market.[31] More recent reforms have sought to consolidate this policy direction within a broader restructuring of the national tax system.

In doctrinal terms, this represents a move away from a rigid reliance on physical presence towards a recognition of economic participation and market engagement as the basis of taxing rights. This aligns Nigeria's approach with emerging global trends, particularly those reflected in the OECD Inclusive Framework, which emphasises the role of market jurisdictions in the allocation of taxing rights. The application of the Significant Economic Presence and VAT on digital service are considered below.

3.1 Significant Economic Presence

Significant Economic Presence is a central feature of Nigeria's income tax framework for digital activities, although its role has evolved over time. Originally introduced through the Finance Act 2019 and operationalised by the Companies Income Tax (Significant Economic

[31] Ernst & Young, 'Nigeria issues order on definition of significant economic presence in Nigeria' <https://globaltaxnews.ey.com/news/2020-5817-nigeria-issues-order-on-definition-of-significant-economic-presence-in-nigeria> accessed on 9 January 2026; Federal Inland Revenue Service, 'Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers Circular No.: 2021/19' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/guidelines-on-simplified-compliance-regime-of-vat-for-non-resident-suppliers-(october-2021).pdf> accessed on 12 April 2026.

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Presence) Order 2020,[32] the concept has developed beyond a discrete legislative intervention into a broader component of Nigeria's response to the taxation of digital economic activity. In this sense, Significant Economic Presence (SEP) reflects a deliberate shift away from conventional nexus rules anchored in physical presence towards a framework that seeks to capture economic participation in digitally mediated and cross border commercial transactions.[33] This development mirrors a growing policy recognition that traditional jurisdictional thresholds are increasingly inadequate for taxing value generated in the digital economy.

Under the current framework, the Companies Income Tax (Significant Economic Presence) Order 2020 provides that a non-resident company will be deemed to have Significant Economic Presence where it derives gross turnover or income exceeding ₦25 million in an accounting year from specified digital activities involving Nigeria.[34] These include the streaming or downloading services of digital contents, including but not limited to movies, videos, music, applications, games and e-books to any person in Nigeria, transmission of data collected about Nigerian users which has been generated from such users' activities on a digital interface including website or mobile application, provision of goods or services directly or indirectly through a digital platform to Nigeria and provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria.[35]

Significant Economic Presence may also arise where the non-resident company uses a Nigerian domain name or registers a website address in Nigeria, or where it maintains purposeful and sustained interaction with persons in Nigeria through the customisation of its digital platform, including the display of prices in Nigerian currency or the facilitation of

[32] Companies Income Tax (Significant Economic Presence) Order 2020, S.I. No 9 of 2020, Federal Republic of Nigeria Official Gazette No 21, Vol 107 of 10 February 2020, B113–B115

[33] Nwabachili C. O. and Nwabachili C. C., 'Taxing the Digital Sector of the Nigerian Economy: Challenges and Prospects' (2022) 9(4) Nnamdi Azikiwe University Journal of Commercial and Property Law 1-12.

[34] Section 1(a) of the Companies Income Tax (Significant Economic Presence) Order 2020, S.I. No 9 of 2020, *Federal Republic of Nigeria Official Gazette* No 21, Vol 107, 10 February 2020, B113–B115.

[35] Section 1(a)(i-iv) of the Companies Income Tax (Significant Economic Presence) Order 2020, S.I. No 9 of 2020, *Federal Republic of Nigeria Official Gazette* No 21, Vol 107, 10 February 2020, B113–B115.

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payment in local currency.[36] The scope of the SEP extends further to non-resident companies providing technical, professional, management, or consultancy services to a person resident in Nigeria, or to a fixed base or agent of a foreign company situated in Nigeria, subject to the statutory exceptions provided in the Order.[37]

Collectively, these provisions of the Companies Income Tax (Significant Economic Presence) Order 2020 reflect a significant departure from the traditional conception of taxing nexus founded on physical presence within a jurisdiction. Rather than conditioning tax liability on the existence of tangible infrastructure, a fixed place of business, or other conventional manifestations of territorial establishment, the framework recognises that meaningful economic participation may arise through sustained commercial engagement with a market, even in the absence of any physical footprint.

This represents an important conceptual shift in Nigeria's income tax regime, one that seeks to align the exercise of taxing rights with the economic realities of digital commerce, where value creation is increasingly driven by user interaction, remote service delivery, data exploitation, and digitally mediated transactions. In this sense, the Significant Economic Presence framework embodies an attempt to redefine taxable nexus by privileging economic substance and market engagement over the formal requirements of physical establishment.

3.2 VAT on Digital Services

The evolution of Nigeria's value added tax regime represents one of the most significant aspects of the country's response to the challenges posed by the digital economy. While the reform of income taxation through Significant Economic Presence sought to address the limitations of traditional nexus rules in relation to business profits, the value added tax framework has emerged as a more immediately effective mechanism for capturing revenue from cross border digital transactions. This is largely because, unlike income taxation, the VAT regime is not dependent on the existence of a permanent establishment or comparable

[36] Section 1(b-c) of the Companies Income Tax (Significant Economic Presence) Order 2020, S.I. No 9 of 2020, *Federal Republic of Nigeria Official Gazette* No 21, Vol 107, 10 February 2020, B113–B115.

[37] Section 2(1) (a-b) of the Companies Income Tax (Significant Economic Presence) Order 2020, S.I. No 9 of 2020, *Federal Republic of Nigeria Official Gazette* No 21, Vol 107, 10 February 2020, B113–B115.

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physical nexus, but is instead grounded in the destination principle, under which tax liability arises in the jurisdiction where consumption occurs.[38]

A decisive shift occurred with the amendments introduced through the Finance Act 2020, which substantially restructured the VAT treatment of non-resident suppliers engaging with the Nigerian market.[39] Under the current legal framework, non-resident companies making taxable supplies to persons in Nigeria are required to register for VAT, charge the applicable tax on such supplies, and remit the tax to the Federal Inland Revenue Service.[40] This marked an important departure from the earlier uncertainty that surrounded the taxation of electronically supplied services, particularly where suppliers maintained no physical presence in Nigeria.

The present framework is sufficiently broad to capture a wide range of digitally supplied services and commercially mediated transactions. In practical terms, the regime applies to supplies made through digital platforms, including streaming services, software subscriptions, online advertising, cloud based digital services, electronic marketplaces, and other remotely supplied services consumed within Nigeria.[41] The legal logic underpinning this approach is that the place of consumption, rather than the place of supplier establishment, should determine taxing jurisdiction for indirect taxes. This reflects internationally accepted VAT principles and aligns Nigeria's approach with contemporary global practice in the taxation of digital consumption.[42]

A further strength of the current VAT framework lies in its legislative structure. The Nigerian VAT regime adopts a broad charging model under which taxable supplies are presumed to fall within the tax net unless specifically exempted or zero rated by law.[43] This reduces

[38] OECD, 'International VAT/GST Guidelines' <http://dx.doi.org/10.1787/9789264271401-en> accessed on 12 April 2026.
[39] Finance Act 2020, Act No 14 of 2020, Laws of the Federation of Nigeria.
[40] Ibid.
[41] Federal Inland Revenue Service, 'Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers Circular No.: 2021/19' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/guidelines-on-simplified-compliance-regime-of-vat-for-non-resident-suppliers-(october-2021).pdf> accessed on 12 April 2026.
[42] Ibid.
[43] Ibid.

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interpretive uncertainty and provides a clearer statutory basis for taxing digital transactions than was previously the case. In the context of rapidly evolving digital business models, such legislative breadth is particularly important, as it allows the framework to respond more effectively to new forms of electronically mediated commerce without requiring constant statutory amendment.[44]

From a practical perspective, the VAT regime presently offers Nigeria a more workable tool for taxing digital economic activity than the corporate income tax framework.[45] While the Significant Economic Presence rules represent an important doctrinal innovation, their effectiveness remains constrained by the continuing relevance of treaty based permanent establishment rules in treaty situations.[46] By contrast, VAT obligations imposed on non-resident suppliers operate within a distinct legal framework that is less vulnerable to such jurisdictional limitations.[47] Although, this does not suggest that VAT resolves the broader challenges of allocating taxing rights over business profits in the digital economy.[48] It does, however, demonstrate that indirect taxation has provided Nigeria with a more administratively viable mechanism for securing fiscal participation from cross border digital commerce.[49]

At the heart of Nigeria's contemporary VAT regime for digital transactions lies the Federal Inland Revenue Service Guidelines on Simplified Compliance Regime for Value Added Tax for Non Resident Suppliers 2021, which constitute the principal administrative framework for enforcing VAT obligations on cross border digital supplies consumed in Nigeria.[50] While the Finance Act 2020 established the statutory basis for bringing non-resident suppliers within the VAT net, the Guidelines provide the practical compliance architecture necessary to

KPMG, 'Guidelines on simplified VAT compliance regime for non-resident supplier' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/guidelines-on-simplified-vat-compliance-regime-for-non-resident-suppliers.pdf> accessed on 12 April 2026.

45 Nwankwo C. B., 'Value Added Tax on Digital Services: An Analysis of Nigeria's Approach Towards Global Standards' (2025) 2(1) *Nnamdi Azikiwe University Journal of Private and Property Law* 59.

46 Odiase P. O., 'Taxing the Digital Economy: Nigeria's Financial Act 2019 and Significant Economic Presence Order 2020' (2022) 14(2) *African Journal of Legal Studies* 269.

47 Echendu C, 'Nigeria's Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities' (2020) 74(9) *Bulletin for International Taxation* 524.

48 Ibid.

49 Nwankwo C. B., 'Value Added Tax on Digital Services: An Analysis of Nigeria's Approach Towards Global Standards' (2025) 2(1) *Nnamdi Azikiwe University Journal of Private and Property Law* 59.

50 Ibid.

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operationalise that framework.[51] Their significance lies in translating legislative intent into an administratively workable mechanism capable of responding to the realities of digital commerce.[52]

A central feature of the Guidelines is their clear adoption of the destination principle, under which VAT liability is determined by the place of consumption rather than the physical location of the supplier.[53] In effect, digital services consumed in Nigeria are taxable in Nigeria irrespective of where the supplier is located.[54] This brings within the VAT net a broad range of electronically supplied services, including streaming platforms, cloud computing, online advertising, software subscriptions, digital marketplaces, online booking services, online betting, and other automated digital services.[55]

Equally significant is the simplified compliance regime created for non-resident suppliers. Rather than requiring physical establishment in Nigeria, the Guidelines impose direct obligations on qualifying foreign suppliers to register for VAT, obtain a Tax Identification Number, charge VAT, file returns, and remit tax to the Federal Inland Revenue Service.[56] They also extend compliance responsibility to digital intermediaries and platform operators that facilitate taxable supplies, thereby strengthening enforcement within the platform economy.[57]

The Guidelines further provide practical indicators for determining whether digital consumption occurs in Nigeria, including billing address, geolocation data, IP address, Nigerian incorporation, and payment through Nigerian financial institutions.[58] Importantly,

[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] Federal Inland Revenue Service, 'Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers Circular No.: 2021/19' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/guidelines-on-simplified-compliance-regime-of-vat-for-non-resident-suppliers-(october-2021).pdf> accessed on 12 April 2026.
[57] Ibid.
[58] Ibid

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they clarify that VAT registration does not, without more, create income tax liability, thereby preserving the distinction between consumption taxation and corporate income taxation.[59]

Taken as a whole, the Guidelines represent a significant institutional and administrative response to the enforcement complexities presented by the digital economy. Beyond merely supplementing the statutory VAT framework, they provide the practical machinery through which Nigeria can assert and enforce consumption tax obligations against non-resident digital suppliers operating across borders without physical presence.[60] Their broader significance lies in the fact that they move the Nigerian VAT regime from abstract legislative aspiration to functional regulatory implementation by establishing clear compliance obligations, definable jurisdictional indicators, and enforceable collection mechanisms tailored to digital commerce.[61] In this sense, the Guidelines have emerged as the operational foundation of Nigeria's VAT approach to the digital economy and one of the clearest illustrations of the Federal Inland Revenue Service's institutional adaptation to the changing architecture of global digital trade.

4.0 PERSISTING CHALLENGES IN TAXING DIGITAL ECONOMIC ACTIVITYY IN NIGERIA

Notwithstanding the significant doctrinal and legislative progress recorded in Nigeria's taxation of digital economic activity, the present framework remains constrained by a range of structural, legal, administrative, and practical limitations that continue to undermine its overall effectiveness.[62] The challenge is not merely that digital taxation presents technical difficulties; rather, the deeper concern is that the legal architecture within which Nigeria seeks to tax digital commerce remains partly rooted in assumptions developed for a materially different commercial era.[63] Consequently, while recent reforms reflect a commendable

[59] Ibid.
[60] Nwankwo C. B., 'Value Added Tax on Digital Services: An Analysis of Nigeria's Approach Towards Global Standards' (2025) 2(1) *Nnamdi Azikiwe University Journal of Private and Property Law* 59.
[61] Ibid.
[62] Odiase P. O., 'Taxing the Digital Economy: Nigeria's Finance Act 2019 and Significant Economic Presence Order 2020' (2022) 14(2) *African Journal of Legal Studies* 269.
[63] Ibid.

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attempt to modernise the tax system, important gaps persist between legislative ambition and practical enforceability.

The difficulties confronting Nigeria's digital tax framework are interconnected rather than isolated. They arise from the continued dominance of treaty-based permanent establishment rules in international tax allocation, the practical limits of enforcing tax obligations against non-resident digital enterprises operating across borders, and the broader administrative difficulties associated with regulating a borderless digital economy.[64] These limitations are compounded by the persistent disconnect between traditional tax concepts and contemporary digital value creation, particularly in relation to data-driven commerce, platform-based business models, and highly integrated multinational digital enterprises.[65] The combined effect is that Nigeria's current framework, while significantly improved, remains transitional rather than fully settled. Some of the challenges confronting the taxation of digital transactions are considered below.

4.1 Treaty Constraints and the Persistence of Permanent Establishment

A foundational limitation of Nigeria's current framework lies in the interaction between domestic reforms and its network of double taxation agreements. While domestic law, through section 13(2)(c) of the Companies Income Tax Act (CITA) and the Significant Economic Presence (SEP) regime, seeks to establish nexus based on economic participation, most of Nigeria's treaties continue to adopt the classical definition of permanent establishment as the basis for allocating taxing rights.[66]

Under the established principles of international tax law, treaty obligations prevail over inconsistent domestic legislation.[67] The effect is that, in treaty situations, Nigeria's ability to tax the business profits of a non-resident enterprise remains contingent on the existence of a

[64] Nwankwo CB, 'Value Added Tax on Digital Services: An Analysis of Nigeria's Approach Towards Global Standards' (2025) 2(1) *Nnamdi Azikiwe University Journal of Private and Property Law* 59.
[65] Ibid.
[66] Echendu C., 'Nigeria's Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities' (2020) 74(9) *Bulletin for International Taxation* 524.
[67] Klaus Vogel, *Klaus Vogel on Double Taxation Conventions* (4th edn, Kluwer Law International 2015)

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permanent establishment within its territory.[68] This creates a clear doctrinal misalignment: a company may meet the threshold of SEP under Nigerian law and yet fall outside the scope of Nigerian taxation because it lacks a fixed place of business under the applicable treaty.

The persistence of this conflict reveals the limits of unilateral reform in a treaty-driven system. As the OECD has acknowledged, the permanent establishment concept continues to serve as the cornerstone of international tax allocation rules, notwithstanding its inadequacy in addressing digital business models.[69] While the OECD BEPS Action 7 reforms sought to expand the scope of dependent agent permanent establishments and address artificial avoidance, they did not fundamentally displace the requirement of physical presence.[70]

For Nigeria, the practical consequence is a two-tier system. Non-resident enterprises from treaty jurisdictions may rely on treaty protection to avoid income tax liability, while those from non-treaty jurisdictions may be subject to SEP-based taxation. This differential treatment raises concerns about neutrality, fairness, and competitive distortion.[71] It also underscores the need for treaty renegotiation or alignment with emerging international standards, including the OECD's Pillar One proposals.[72]

4.2 Enforcement Challenges in a Borderless Digital Economy

Even where the legal framework establishes taxing rights, enforcement remains a critical constraint. Digital enterprises can operate in Nigeria without any physical presence, making it difficult for the Federal Inland Revenue Service (FIRS) to identify taxable activities, assess

[68] See Article 5 Convention between the Government of the Federal Republic of Nigeria and the Government of the United Kingdom for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains (1987).
[69] OECD, 'Commentary on Article 5: Permanent Establishment' in *Model Tax Convention on Income and on Capital 2017 (Full Version)* (OECD Publishing 2019) <http://dx.doi.org/10.1787/g2g972ee-en\> accessed on 12 April 2026.
[70] Ibid.
[71] Echendu C., 'Nigeria's Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities' (2020) 74(9) *Bulletin for International Taxation* 524.
[72] Ibid.

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liabilities, and ensure compliance. This challenge reflects the broader limitations of applying territorially grounded tax administration mechanisms to borderless digital business models.[73]

A central practical difficulty is data asymmetry. Tax authorities often lack direct access to reliable information on cross-border digital transactions. In many cases, they must rely on self-reporting by non-resident companies or indirect information from financial institutions, payment processors, and local intermediaries.[74] This creates a risk of under-reporting and significantly limits the effectiveness of both corporate income tax and VAT enforcement in Nigeria's digital economy. The Federal Inland Revenue Service itself has acknowledged the importance of access to digital transaction data in improving compliance monitoring.[75]

Jurisdictional limitations further complicate enforcement. Where a non-resident enterprise fails to comply with Nigerian tax obligations, the absence of physical assets or a conventional enforcement nexus within Nigeria constrains the practical ability of tax authorities to compel compliance.[76] Although mutual administrative assistance mechanisms and exchange of information agreements may provide some support, their effectiveness depends heavily on reciprocal international cooperation, treaty coverage, and domestic institutional capacity.[77]

The challenge is particularly acute in relation to platform-based and decentralised digital actors, including participants in the remote service marketplaces, and virtual asset ecosystems.[78] Such actors may operate through fragmented or distributed digital structures, making it difficult to identify the relevant taxable person, determine the jurisdictional nexus,

[73] OECD, 'Tax Administration 2023: Comparative Information on OECD and other Advanced and Emerging Economies', <https://doi.org/10.1787/900b6382-en> accessed on 26 April 2026.
[74] Yariv Brauner and Pasquale Pistone, 'Adapting Current International Taxation to New Business Models: Two Proposals for the European Union' (2017) 71(12) *Bulletin for International Taxation* 1.
[75] Federal Inland Revenue Service, 'Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers Circular No.: 2021/19' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/guidelines-on-simplified-compliance-regime-of-vat-for-non-resident-suppliers-(october-2021).pdf> accessed on 12 April 2026.
[76] OECD, '*Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint*' <https://www.oecd.org/en/publications/tax-challenges-arising-from-digitalisation-report-on-pillar-one-blueprint_beba0634-en.html> accessed on 26 April 2026.
[77] Ibid.
[78] OECD, 'Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues' <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-policy/flyer-taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.pdf> accessed on 26 April 2026.

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or enforce compliance obligations. The OECD has consistently recognised that these evolving business models pose substantial difficulties for conventional tax administration systems designed around physical presence and identifiable intermediaries.[79]

Nigeria's reliance on reverse charge and simplified VAT collection mechanisms reflects an attempt to address these enforcement limitations. Under the Value Added Tax Act (as amended), VAT obligations may be shifted to Nigerian recipients in certain cross-border transactions, while the FIRS has also introduced administrative frameworks requiring non-resident suppliers of digital services to register for VAT compliance.[80] However, these mechanisms remain structurally limited. Their effectiveness depends on taxpayer awareness, voluntary compliance, administrative monitoring, and the practical capacity of the FIRS to track digital consumption patterns. In practice, compliance gaps are likely to persist, particularly among small and medium-sized enterprises and individual consumers with limited tax compliance infrastructure.[81]

4.3 Informality, Compliance Gaps, and Market Realities

A distinctive feature of Nigeria's digital economy is the high level of informality. A significant proportion of digital transactions is conducted by small-scale operators, freelancers, and online vendors who operate outside formal regulatory and tax systems.[82] This reality poses a serious challenge to the effectiveness of both SEP and VAT measures.

Many digital entrepreneurs in Nigeria, particularly micro and small online businesses, lack sufficient awareness of their tax obligations, while limited tax knowledge has been shown to

79 Ibid.

80 Federal Inland Revenue Service, 'Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers Circular No.: 2021/19' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/guidelines-on-simplified-compliance-regime-of-vat-for-non-resident-suppliers-(october-2021).pdf> accessed on 12 April 2026.

81 Nwankwo CB, 'Value Added Tax on Digital Services: An Analysis of Nigeria's Approach Towards Global Standards' (2025) 2(1) *Nnamdi Azikiwe University Journal of Private and Property Law* 59.

82 National Bureau of Statistics (NBS), *Labour Force Statistics: Unemployment and Underemployment Report Q4 2024* (Abuja, NBS 2025) 17; Guardian Nigeria, 'Only 3% of Informal Sector Taxable, Says Oyedele' (22 July 2025) https://guardian.ng/news/only-3-of-informal-sector-taxable-says-oyedele/ accessed 11 October 2025.

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negatively affect compliance behaviour.[83] The complexity of registration procedures, filing obligations, and documentary requirements may further discourage voluntary compliance, especially among smaller operators with limited administrative capacity.[20] For non-resident digital suppliers, the incentive to comply may be even weaker where enforcement risks are perceived to be low, a concern reflected in the FIRS's adoption of a simplified VAT compliance regime for foreign suppliers.[84]

The informal nature of the digital economy also complicates monitoring. Transactions may occur through multiple channels, including social media platforms, peer-to-peer payment systems, and informal networks, making it difficult for tax authorities to track economic activity.[85] This reduces the effectiveness of tax policy and contributes to revenue leakage.

4.4 Technological and Institutional Capacity Constraints

The effective taxation of digital economic activity depends on the capacity of the tax administration to deploy appropriate technological and institutional tools. Nigeria has made considerable progress in modernising its tax system, including the introduction of electronic filing and digital compliance initiatives. However, challenges persist in areas such as real-time monitoring of digital transactions, integration of data across government agencies and use of advanced analytics for risk assessment and compliance.[86]

The OECD has emphasised that digitalisation of tax administration is essential for effective taxation of the digital economy.[87] Achieving this requires sustained investment in infrastructure, systems, and human capital. In addition, the taxation of digital business models

[83] Abdulhamid E., Yusuf M. B., Bala S. D. and Naziru S., 'The Moderating Effect of Tax Knowledge on the Relationship between Tax Rates and Tax Compliance of MSMEs in Nigeria' (2024) 2(1) *FUDMA Journal of Accounting and Finance Research* 126–129.

[84] Federal Inland Revenue Service, 'Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers Circular No.: 2021/19' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/guidelines-on-simplified-compliance-regime-of-vat-for-non-resident-suppliers-(october-2021).pdf> accessed on 12 April 2026.

[85] OECD, 'Digital platforms have an important role to play in value added tax policy in the sharing and gig economy' <https://www.oecd.org/en/about/news/announcements/2021/04/digital-platforms-have-an-important-role-to-play-in-value-added-tax-policy-in-the-sharing-and-gig-economy.html> accessed on 12 April 2026.

[86] Nwankwo CB, 'Value Added Tax on Digital Services: An Analysis of Nigeria's Approach Towards Global Standards' (2025) 2(1) *Nnamdi Azikiwe University Journal of Private and Property Law* 59.

[87] OECD, 'Tax Administration 2023: Comparative Information on OECD and other Advanced and Emerging Economies' <https://doi.org/10.1787/900b6382-en> accessed on 10 March 2026.

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requires specialised expertise in areas such as transfer pricing, data analysis, and digital commerce. Building and retaining this expertise within the tax administration remains an ongoing challenge for a developing country such as Nigeria.[88]

4.5 Valuation and Profit Attribution in Digital Business Models

Perhaps the most complex challenge lies in the valuation and attribution of income derived from digital economic activity. As stated earlier, traditional tax rules are based on the ability to allocate profits to specific jurisdictions based on identifiable economic activity. In the digital economy, value creation is often intangible, diffuse, and highly integrated across multiple jurisdictions.[89]

Digital enterprises derive value from a combination of factors, including user data, algorithms, brand value, and network effects. These elements are difficult to quantify and even more difficult to allocate geographically. For example, user participation in Nigeria may contribute to value that is monetised in another jurisdiction, raising complex questions about the appropriate allocation of taxing rights.[90]

While the SEP framework establishes a nexus based on economic engagement, it does not provide detailed rules on profit attribution.[91] This creates uncertainty and increases the risk of disputes between taxpayers and the tax authority. The OECD's transfer pricing guidelines offer some guidance, but they are not fully adapted to the realities of digital business models.[92] International efforts to address these issues, particularly under the OECD's Pillar One initiative, seek to introduce new allocation rules based on market jurisdictions.[93]

4.6 Structural Implications and the Limits of Current Reform

[88] International Monetary Fund, 'Building Tax Capacity in Developing Countries' <https://www.imf.org/-/media/files/publications/sdn/2023/english/sdnea2023006.pdf> accessed on 10 March 2026.

[89] OECD, 'Tax Challenges Arising from Digitalisation– Interim Report 2018: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project' <http://dx.doi.org/10.1787/9789264293083-en> accessed on 12 April 2026.

[90] Ibid.

[91] Echendu C., 'Nigeria's Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities' (2020) 74(9) *Bulletin for International Taxation* 524.

[92] OECD, 'Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy' <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> accessed on 15 April 2026.

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Taken together, these doctrinal and practical challenges reveal the structural limits of Nigeria's current framework. Treaty constraints restrict the application of income tax rules, enforcement difficulties limit compliance, informality weakens the tax base, and valuation problems undermine the alignment between economic activity and taxation.

These challenges are not unique to Nigeria; they reflect broader tensions within the international tax system.[94] However, their impact is particularly pronounced in developing economies, where administrative capacity and bargaining power in treaty negotiations may be more limited.[95]

Nigeria's current framework for taxing digital economic activity represents a significant step forward, but it remains a transitional system. The challenges identified above underscore the need for continued reform, particularly in relation to treaty alignment, administrative capacity, and the development of coherent rules for profit attribution. Addressing these issues will be essential if Nigeria is to effectively align its tax system with the realities of a digitalised global economy.

5.0 COMPARATIVE INSIGHTS FROM OTHER JURISDICTIONS

Drawing comparative insights from developed jurisdictions provides a clearer appreciation of how the challenges associated with taxing digital economic activity may be addressed within a coherent legal and administrative framework. The purpose of this section is not descriptive exposition, but the extraction of evidence-based guidance from systems that have confronted similar problems with greater institutional maturity.

The experience of the United Kingdom, read alongside developments within the OECD Inclusive Framework and comparable reforms in African countries such as South Africa and the European Union, offers a structured basis for identifying what Nigeria's framework presently lacks in terms of legal precision, administrative capacity, and policy coordination.

[94] Ibid.

[95] International Monetary Fund, 'Building Tax Capacity in Developing Countries' <https://www.imf.org/-/media/files/publications/sdn/2023/english/sdnea2023006.pdf> accessed on 10 March 2026.

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5.1 The United Kingdom: Targeted Legal Innovation and Administrative Depth

The United Kingdom's approach to digital taxation is characterised by incremental adaptation rather than doctrinal rupture. The permanent establishment concept remains embedded within its corporation tax system under the Corporation Tax Act 2009, preserving continuity with international tax norms. However, recognising the limitations of that concept in the digital context, the UK has adopted targeted supplementary measures designed to capture value linked to domestic markets.[96]

The most prominent of these is the Digital Services Tax (DST), introduced under the Finance Act 2020.[97] The DST imposes a-2 percent charge on revenues derived from specified digital business activities, including social media platforms, search engines, and online marketplaces, where such activities involve UK users.[98] The design of the DST reflects a deliberate shift towards market-based taxation, recognising user participation as a relevant factor in value creation.

From a doctrinal perspective, the DST operates as a proxy mechanism, addressing the difficulty of attributing profits in highly integrated digital business models.[99] While it does not replace corporation tax, it fills a gap left by the permanent establishment rule. Importantly, its scope is carefully circumscribed, with clear thresholds and exclusions designed to target large multinational enterprises.[100]

What is particularly instructive for Nigeria is the precision of the UK's legislative drafting. The Finance Act 2020 and accompanying Her Majesty's Revenue and Customs (HMRC)'s guidance provide detailed definitions of in-scope activities, clear rules for revenue attribution, and explicit thresholds for liability.[101] This level of clarity reduces ambiguity and facilitates compliance, addressing a key weakness in Nigeria's SEP framework.

[96] HM Revenue and Customs, '*Digital Services Tax Manual*' https://www.gov.uk/hmrc-internal-manuals/digital-services-tax accessed 26 May 2026.
[97] Ibid.
[98] Ibid.
[99] Ibid.
[100] Ibid.
[101] Ibid.

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Equally significant is the administrative sophistication of the HMRC. HMRC operates with advanced data analytics, integrated reporting systems, and established compliance strategies.[102] The OECD has consistently ranked the UK among jurisdictions with high levels of tax administrative capacity, particularly in the use of technology and data to monitor compliance.[103] This institutional strength enables the effective implementation of digital tax measures, ensuring that legislative innovation translates into actual revenue collection.[104]

Another defining feature of the UK system is its consultative policy culture. Tax reforms are typically preceded by public consultations, engagement with stakeholders, and the publication of draft legislation.[105] This process enhances the quality of legislative design and fosters a cooperative relationship between the tax authority and taxpayers. It also reduces the likelihood of unintended consequences, a risk that is more pronounced in rapidly evolving areas such as digital taxation.[106]

The UK's approach is further characterised by strategic alignment with international developments. The DST is explicitly framed as a temporary measure, intended to operate pending the implementation of global solutions under the OECD Inclusive Framework.[10] This reflects an understanding that unilateral measures must ultimately be reconciled with multilateral agreements to ensure long-term stability and avoid double taxation.[107]

5.2 The Emerging Global Framework: OECD and Beyond

At the international level, the taxation of digital economic activity has been the subject of sustained reform efforts, most notably under the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS).[108] The Two Pillar Solution, agreed in principle by over 135

[102] OECD, 'Tax Administration 2023: Comparative Information on OECD and other Advanced and Emerging Economies' <https://doi.org/10.1787/900b6382-en> accessed 26 May 2026.
[103] Ibid.
[104] Ibid.
[105] HM Treasury and HM Revenue and Customs, *Digital Services Tax: Consultation* (7 November 2018, updated 11 July 2019) https://www.gov.uk/government/consultations/digital-services-tax-consultation accessed 26 May 2026.
[106] Ibid.
[107] Ibid.
[108] OECD, Addressing Base Erosion and Profit Shifting, OECD Publishing. <http://dx.doi.org/10.1787/9789264192744-en> accessed 26 May 2026.

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jurisdictions, represents the most significant attempt to reconfigure the international tax system in response to digitalisation.[109]

Pillar One seeks to reallocate a portion of the profits of large multinational enterprises to market jurisdictions, based on revenue and user engagement, irrespective of physical presence.[110] This represents a fundamental departure from the traditional permanent establishment rule and aligns closely with the conceptual basis of Nigeria's SEP framework. Pillar One introduces a new taxing right, which allocates residual profits to market jurisdictions using a formulaic approach.[111] While the detailed rules are complex and implementation remains ongoing, the underlying principle is clear: economic participation, rather than physical presence, should determine taxing rights. The OECD has also emphasised the importance of tax certainty, dispute prevention, and administrative coordination in implementing these reforms.[112] This reflects an awareness that legal innovation must be supported by institutional capacity and international cooperation.

Beyond the OECD, developments within the European Union further illustrate the trend towards digital taxation. Proposals for digital levies, expanded reporting requirements, and enhanced cooperation among tax authorities demonstrate a broader movement towards transparency and market-based taxation.[113]

For Nigeria, the global framework provides both a normative benchmark and a practical pathway. Engagement with these developments is essential to ensure that domestic reforms remain compatible with international standards and to avoid conflicts arising from unilateral measures.

[109] OECD, 'Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy' <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> accessed on 15 April 2026.

[110] Ibid.

[111] OECD, 'Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project'<https://doi.org/10.1787/beba0634-en> accessed on 15 April 2026.

[112] OECD, 'Tax Certainty and Policy Implementation' <https://www.oecd.org/en/topics/sub-issues/tax-certainty-and-policy-implementation.html> accessed on 15 April 2026.

[113] Pantazatou A, 'Why EU Revenue Matters: A Case for an EU Digital Levy' (2025) 4(1) *European Law Open* 919, 925.

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5.3 South Africa: Practical Adaptation within a Developing Economy

South Africa offers a particularly relevant comparative example, demonstrating how a developing economy can respond to digitalisation through administrative pragmatism and targeted reform. Rather than focusing primarily on income tax nexus, South Africa has prioritised the taxation of digital activities through its VAT regime on electronic services.[114] Amendments to the Value Added Tax Act have extended VAT to non-resident suppliers of electronic services, including streaming, online advertising, and cloud-based services supplied to South African consumers.[115]

The strength of the South African approach lies in its clarity and operational simplicity. The legislation defines taxable electronic services, establishes clear registration thresholds, and provides straightforward compliance procedures.[116] This reduces ambiguity and facilitates enforcement, particularly in relation to non-resident suppliers.

The role of the South African Revenue Service (SARS) is central to the effectiveness of this framework. SARS has developed detailed guidance, simplified registration systems, and proactive communication strategies aimed at both domestic and foreign taxpayers.[117] This emphasis on administrative accessibility and taxpayer engagement has contributed to relatively high levels of compliance.

South Africa's experience underscores the importance of aligning legal design with administrative capacity. By focusing on VAT, which operates on a transactional basis, the system avoids some of the complexities associated with income tax nexus and profit attribution. While this does not eliminate all challenges, it provides a more immediately enforceable mechanism for capturing revenue from digital activities.

[114] South African Revenue Service (SARS), 'SARS Foreign Suppliers of Electronic Services Guide' <https://www.sars.gov.za/wp-content/uploads/Ops/Guides/VAT-REG-02-G02-Foreign-Suppliers-of-Electronic-Services-External-Guide.pdf> accessed on 15 April 2026.

[115] Hassan M.E., Bornman M. and Sawyer A., 'Guidelines for a Simplified Value-Added Tax Act' (2024) 38(3) South African Journal of Accounting Research 229, 235.

[116] South African Revenue Service, Frequently Asked Questions: Supplies of Electronic Services (Value-Added Tax, Issue 4) <https://www.sars.gov.za/wp-content/uploads/Ops/Guides/LAPD-VAT-G16-VAT-FAQs-Supplies-of-electronic-services.pdf> accessed 26 May 2026.

[117] Ibid.

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6.0 LESSONS FOR NIGERIA

The comparative insights examined above provide a basis for a more focused analysis of how Nigeria can strengthen its framework for taxing digital economic activity. This section of the article synthesises those insights into practical and doctrinal lessons, emphasising institutional capacity, legal clarity, treaty strategy, technological infrastructure, and policy sequencing.

6.1 Institutional Capacity and Administrative Effectiveness

The most immediate lesson is that effective taxation depends on institutional capacity. The contrast between HMRC and the Federal Inland Revenue Service (renamed as Nigeria Revenue Service) is instructive. HMRC's ability to deploy advanced analytics, integrate data systems, and enforce compliance reflects decades of institutional development.[20]

For Nigeria, the priority must be sustained investment in digital infrastructure, data analytics capabilities and specialised expertise in digital business models. Without such capacity, even well-designed legal rules will have limited practical impact.

6.2 Legal Drafting and Doctrinal Precision

A second lesson concerns the importance of clarity in legal design. Ambiguities in Nigeria's SEP framework, particularly in relation to qualitative criteria and profit attribution, reduce predictability and hinder enforcement.

Comparative experience suggests that Nigeria should provide clearer statutory definitions, issue detailed administrative guidance and ensure consistency across tax instruments. Clarity is essential for compliance, dispute resolution, and effective administration.

6.3 Treaty Strategy and International Alignment

The persistence of treaty constraints underscores the need for a more strategic approach to treaty policy. Nigeria must actively engage in renegotiating existing treaties, aligning domestic rules with OECD developments and participating in multilateral reform processes. This will enhance the effectiveness of domestic reforms and reduce conflicts.

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6.4 Technology, Data, and Enforcement

Comparative experience highlights the central role of technology and data. Effective taxation of digital activities requires the ability to collect and analyse large volumes of information. Nigeria should prioritise digital reporting systems, data sharing mechanisms and the use of analytics for compliance monitoring. These measures will strengthen enforcement and reduce reliance on indirect mechanisms.

6.5 Policy Sequencing and Coherence

The importance of policy sequencing cannot be overstated. Reforms should be introduced as part of a coordinated strategy, rather than as isolated measures. For Nigeria, this means integrating SEP and VAT within a unified framework, aligning short-term measures with long-term objectives and ensuring consistency across legislative and administrative instruments

The experience of the United Kingdom, South Africa, and the emerging global framework demonstrates that effective digital taxation is achieved through the interaction of legal clarity, administrative capacity, and strategic alignment. Nigeria has made important progress, but the comparative analysis makes clear that further development is required. By internalising these lessons, Nigeria can move towards a more coherent and effective system that better reflects the realities of a digitalised global economy.

7.0 CONCLUSION

This article has examined the continuing adequacy of the permanent establishment doctrine as the principal threshold for the allocation of taxing rights in an increasingly digitalised economy. The analysis demonstrates that while the doctrine retains historical and doctrinal significance within international tax law, its reliance on physical presence no longer reflects the realities of contemporary business models. Digital enterprises are now able to derive substantial value from jurisdictions such as Nigeria through sustained economic engagement with users and markets, without establishing any tangible footprint. In this context, the traditional nexus rule appears increasingly misaligned with the economic substance of cross-border activity.

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Nigeria's response to this challenge, particularly through the introduction of Significant Economic Presence under the Companies Income Tax Act and the expansion of Value Added Tax to digital services, represents a clear and commendable shift towards recognising economic participation as a basis for taxation. These reforms signal an important departure from the strict confines of physical presence and place Nigeria within the broader trajectory of global tax reform. The incorporation of digital services within the VAT net, coupled with the extension of income tax nexus through SEP, reflects a deliberate attempt to capture value generated within the Nigerian market.

However, as the analysis has shown, these reforms remain incomplete in both doctrinal and practical terms. The continued dominance of treaty-based permanent establishment rules limits the effectiveness of domestic innovations, creating a structural tension that cannot be resolved through unilateral measures alone. In addition, challenges relating to enforcement, administrative capacity, and compliance constrain the practical reach of the existing framework. The difficulty of valuing and attributing income in digital business models further complicates the alignment between economic activity and taxation.

The comparative analysis of the United Kingdom and South Africa, together with developments under the OECD Inclusive Framework, underscores that the effectiveness of digital taxation depends not only on legal innovation but also on institutional strength and policy coherence. Jurisdictions that have made greater progress in this area exhibit certain common features: clarity in legislative drafting, advanced administrative capacity, effective use of data and technology, and strategic alignment with international developments. These elements are not merely supportive; they are constitutive of a functioning digital tax system.

For Nigeria, the path forward lies in consolidating and refining its existing reforms rather than abandoning them. The concept of economic presence, as reflected in the SEP framework, provides a viable foundation for future development, but it must be supported by clearer rules, particularly in relation to profit attribution and scope of application. At the same time, the VAT regime should be further strengthened through improved compliance mechanisms and administrative coordination.

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More fundamentally, Nigeria must invest in the institutional and technological capacity necessary to enforce its tax rules effectively. The ability to collect, analyse, and act on data relating to digital transactions will be critical in bridging the gap between legal entitlement and actual revenue collection. Equally important is the need for a more strategic approach to treaty policy and international engagement, ensuring that domestic reforms are not undermined by external legal constraints.

The future of taxation in a digital economy lies not in the abandonment of established principles, but in their reconceptualisation in light of economic reality. Physical presence can no longer serve as the sole determinant of taxing rights. Instead, a more nuanced approach is required, one that recognises economic participation, user engagement, and market contribution as relevant factors. This shift is already evident in emerging international frameworks, particularly under the OECD's Pillar One initiative, and Nigeria's continued engagement with these developments will be essential.

Nigeria has taken important and necessary steps towards reform, but the current framework remains transitional. The realisation of an effective and equitable system of digital taxation will depend on the integration of doctrinal innovation with institutional capacity, administrative effectiveness, and international coordination. It is through this combination that Nigeria can align its tax system with the demands of a rapidly evolving global economy.