MULTI-LATERAL GLOBAL AND UNILATERAL INITIATIVES, ANTIDOTES FOR EFFECTIVE REGULATION AND ADMINISTRATION OF THE TAXATION OF INTERNET TRANSACTIONS.

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Abstract

Globalization and e-commerce driven by the internet have reduced the world into a global village or hamlet as you may wish to call it. The reality is the advent of a global single and open market which can be accessed from any part of the world by the press of buttons or keyboards without any form of physical barriers as they were in the brick-and-mortar market. It has become even more intriguing with the incursion of generative Artificial Intelligence (AI), and Augmented Reality (AR)[81] *to drive both economic activities and other human endeavours both offline and online hence it is the norm globally to leverage the internet in carrying all forms activities with minimal physical contact. The digital space driven by the internet is a two edge sword that is both the bad and the ugly depending on what it is used for provides governmentand the business communities a veritable tool to carry on their activities at a very cheap, convenient, and more efficient way particularly that most of these transactions or activities are hitherto taxable by nature except on the net underscore the need to subject same to tax on the cyberspace. Part of the efforts to achieve this is by ensuring that the taxation of cyberspace orthe internet is regulated through both multi-lateral global and unilateral initiatives for efficient, effective, and coordinated administration of internet tax given the volatility of the internet and the issue of trust and confidence. Regulation had remain a huge challenge and topical issue of discussion until lately Big Fintech has started showing a willingness to be regulated against the initial stand of the industry should self-regulate. Such further deepened the federal government's policy on the digital economy, and ensure tax loopholes in cyberspace are blocked, as well improve government revenue yield. This research is conducted using the doctrinal approach.*

Keywords: Multi-lateral, Unilateral, Initiatives, Internet and Taxation.

1.0 INTRODUCTION:

1.1 Organization for Economic Corporation and Development Guidelines on the Taxation of Electronic Commerce.

The Organization for Economic Co-operation and Development (OECD) is international.[82] Cross-border or international tax treaties on tax are principally pioneered and

[81] It is an interactive experience of a real-world space in which real object or situation is magnified by computer into multiple modalities, which may include visual, auditory, haptic, somatosensory, and olfactory to allow for a second opinion in taking decision. It is a technology deployed in e-commerce to aid the online buyer in making choices on goods and services.

[82] The OECD, or Organization for Economic Cooperation and Development, is an international organization that promotes policy coordination and economic freedom among developed nations. It was derived from the Organization for European Economic Cooperation (OEEC) that was established in 1948 to monitor American and Canadian contributions under the Marshall Plan. Headquartered in Paris, France, the OECD was formed in 1961 and included members from democratic states such as the United States, countries in Western Europe, Japan, Canada, Australia, and New Zealand. The organization expanded in the 1990s to include Mexico, South Korea, and Eastern European nations. Recently, India, Brazil, China, and Indonesia were also made contributions to the work agenda of the OECD. See Corporate Finance Institute, 'OECD: Overview, Mission and Objectives, Functions'(*CFI*,29November2019)<https://corporatefinanceinstitute.com/resources/knowledge/economics/oecd/> Accessed on 29th November 2019.

driven by the UN Model Convention and the OECD Model.[83] Consequently, the need for international regulatory cooperation and global governance is not peculiar to Cyberspace. It is important to state that OECD, through its codes, conventions, intergovernmental cooperation, and both its bi- and multi-lateral treaties over the years, have dealt with and addressed countless tax issues.[84] Notably, we live in a globalized economy where the world continually shrinks daily far beyond the global village into a global hamlet or even a global room, thus making the internet and the myriads transactions and activities conducted on the internet into a digital economy. In this guise, digitalisation has brought multitudes of tax implications to the fore, with profound influence on both tax policy and administration on the domestic and international scene, thereby introducing new challenges.

Consequently, the consequences of the tax policy on digitalisation remained the epicenter of the global discourse on international tax rules. It has continually remained a “fit for purpose” in such a highly evolving world both domestically and internationally.[85] Given the foregone disruptions, it is clear that:

> *From its beginning, the Internet heralded a new world order of inter-connection and decentralization, while the word "globalization" conjured for many the spectre of increasing transnational and supranational governance as well as the growing mobility of persons and capital across geographical boundaries. Thus, both terms have reflected a perception that territorial borders might no longer be as significant as they once were.*[86]

Hence, internet taxation cannot be discussed in isolation from international instruments, models, and conventions that have influenced and or shaped tax laws and policies worldwide, giving it its national and cross-border nature.

It was strongly argued that cyberspace could not legally be administered vide territorially based sovereigns; as such, the cyber community should create its legal jurisdiction or multiple jurisdictions as the case might be. It was further contended that cyberspace should be

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[83] Organisation for Economic Co-operation and Development, Model Tax Convention on Income and Capital (Paris: OECD, 2014).
[84] Stephen J Kobrin, ‘Territoriality and the Governance of Cyberspace’ (2001) 32 Journal of International Business Studies 687, 696–704.
[85] Brett Weaver, ‘Tax Challenges of Digitization’ (*KPMG*, 2019) <https://tax.kpmg.us/insights/global-tax-reform-beps/digital-economy-taxation.html?gclid=Cj0KCQiA48j9BRC-ARIsAMQu3WRxe4WkyNpZv31O_lGIz5ZCM3kR07PS8eMCj0pKvhtpcd56DY2f_-gaAjpAEALw_wcB>accessed on 16th November 2020.
[86] Paul Schiff Berma, The Globalization of Jurisdiction, University of Pennsylvania Law Review, Vol. 151 December 2002 No. 2 Stable URL: < http://www.jstor.org/stable/3312952> p. 314-315 of 545 accessed on 28th March 2020.

administered or governed through decentralized processes wherein network access providers should decide what rules to impose, devoid of government making laws, imposing rules and regulations, and individual users having the right to choose which online community to join, operate from, or in.[87] We observed that forgoing is in sync with the freedom of association and principle of *laisser-faire* on the one hand and underscores the need to regulate the digital space whether by the sovereigns or access network providers. Where such rules are made by the enterprise that does not have the coercion of force what becomes of same, in terms of breaches and threats to governance and security, hence it is observed that:

> *Greater harmonization and coordination of national tax policies will likely be required in the coming years to address this problem. Given that the history of the state is inseparable from the history of taxation, this "globalization of taxation" could have far-reaching political implications…If new developments in the technology of commerce are now undermining the efficiency of the state as an autonomous taxing entity, fiscal pressures may produce a similar shift in de facto political authority away from the state and toward whatever international mechanisms are created to expedite the taxation of these new forms of commerce.*[88]

Indeed, it confirms the reality of the disruption caused by the digital economy, which has affected fiscal, political, and economic governance at the national and international levels, thus making the concept of e-tax very imperative.

OECD has taken a significant step forward in reaching an international consensus on the tax treatment of electronic commerce. As an organisation, it has realised that electronic commerce has enormous potential to change how people work and organise their lives, which aligns with its principal objective of promoting policies that will improve the economic and social welfare of people in developed nations.[89] Even though Nigeria is not a member of the organisation, its' economic policies, regulations, and models have shaped global economies and tax policies. Nigeria is no exception, "we rely on the OECD and others to help us along."[90]

[87] David R. Johnson and David Post, 'Law and Borders-The Rise of Law in Cyberspace,' 48 *Stan. L. Rev.* 1367 (1996). See also, David Post, 'Governing Cyberspace,' 43 Wayne L. Rev. 155, (1996) 165-71.
[88] Roland Paris, 'The Globalization of Taxation? Electronic Commerce and the Transformation of the State' 47 *International Studies Quarterly* 152–158.
[89] Ibid.
[90] City Voice, 'Fowler Kicks off VAT, Digitalisation of Tax Debate at the UN' (*City Voice Newspaper*, 18 October 2018)<http://cityvoiceng.com/fowler-kicks-off-vat-digitalisation-of-tax-debate-at-the-un/>accessedon17th November 2020. Chairman, African Tax Administration Forum (ATAF) had to address the Special Meeting of the United Nations' Economic Council (ECOSOC) on Taxation and Digitalisation of the Economy and the Taxation of ODA-Funded Projects in New York, this opened a fresh frontier on Value Added Tax debate, digitalisation and why the

Nonetheless, its influence went beyond the OECD member countries. The reason why its committee decided to open up space for non-members to benefit and contribute in assisting the committee on fiscal affairs in updating the Model Convention to be in sync with the evolution of international tax rules and principles, taking into account the reality of a global hamlet, not a global village any longer.[91] The OECD Model Convention has broad and far-reaching repercussions on the negotiation, application, and interpretation of tax conventions.[92] In assertingits influences on the global tax policies while working on cross-border consumption taxes, the OECD recommended thus:

> *Conventional goods are taxed at the place of consumption, as defined by the recipient's delivery address, and that given due diligence by supplier and verification by revenue authorities, "appropriate customs systems and collect tax on the importation of physical goods without unduly impeding revenue collection and the efficient delivery of products to consumers.*[93]

It is observed that the above position did not contemplate online transactions of intangible or digital goods and services that cannot be delivered physically, which is the mainstay of online transactions, which is increasing in leaps and bounds by the day. Instead, it was restricted to online transactions, which are tangible and delivered physically. In one of its reports, OECD argues that the tax liability of a consumer should be defined: "In terms of "pure consumption," where the customer uses or consumes the services, which will be impracticablefor digital goods delivered over the internet given "the global nature of e-commerce combined with the mobility of present-day communications…"[94] it is our view that the above supports the fact that online taxation is or should be *sui generis,* hence requires its own set of rules or law to govern same. In achieving that, the rules must take into account four cardinal principles which guide internet taxation, among other things: (1) neutrality; (2) avoidance of no taxation or double(or triple) taxation; (3) equitable distribution of revenues; and (4) maintenance of fiscal sovereignty. Even though the principles may not simultaneously be attainable, especially whether the first three are achievable as the fourth is maintained. More so, autonomous national

Committee of Experts on International Cooperation on Tax Matters is uniquely placed to take account of the views of both developed and developing countries, in shaping debate on these issues.

[91] Art, 10, Model Tax Convention on Income and Capital condensed version (as it read on 21 November 2017).

[92] Article 13, Model Tax Convention on Income and on Capital condensed version (as it read on 21 November 2017).

[93] Stephen J. Kobrin, (n 3) 687.

[94] Ibid.695.

geographic jurisdiction remains the main effective, efficient, and equitable means of tax collection and is often regarded as conventional international economic activity.[95] In this light, Asada reiterates that "the global nature of the internet makes it inevitable that if any meaningful solution would be achieved, it must have a global dimension"[96].

The globalized nature of taxation of internet or online transactions within the digital milieu led the international community to realise that the challenges emanating from the digitalisation of the economy as it relates to taxation can only be fought and won through concerted multilateral efforts in the long term. Thus in addressing the tax challenges of the digital economy,[97] it attempted to address issues, particularly on how such digital economy interfaces with the concepts of source and residence or nature of income, which are crucial to taxation, especially in determining tax liability.[98] These multilateral efforts through the Task Force on Digital Economy (TFE) gave birth to a framework anchored on two pillars; the first isto consider how the extant tax rules deal with or allocate the taxing rights of the income of multinational enterprises in different jurisdictions, among other things, the brick-and-mortar transfer-pricing rules as well as the arm's length principles by modifying same to accommodate the digital disruptions. The framework is also expected to look at specific proposals on selling intangibles, users, or customers, and the place of economic presence, particularly on how to modernise the international tax system to address the challenges of digitalisation, which Nigeria is trying to institutionalise. On the other hand, the second pillar seeks to address the remaining issues of base erosion profits shifting (BEPS), which were hitherto not attended to, as well as to put in place two sets of interwoven rules to address the issue of jurisdiction in a situation where income is subject to or only very low taxation.[99]

[95] Ibid.
[96] Asada D., 'The Problem of the Taxation of Internet Transaction' *Current Jos Law Journal*, 6, 2013, Pp. 206-211.
[97] The report found that giving the changing nature of digitalisation, it is difficult, if not impossible to ring fence "digital economy" from the rest of the economy for the sake of tax alone. Invariably most of the countriessuggesting or agreeing that there is no such a thing as digital economy rather the economy itself had become digitalized and the trend is to continue. See OECD, 'Tax and Digitalisation Policy' (*OECD*, October 2018) <https://www.oecd.org/tax/beps/tax-and-digitalisation-policy-note.pdf>accessed on 19th November 2020.
[98] Ibid. See also OECD, 'Addressing the Tax Challenges of the Digital Economy' (OECD 2014) <https://www.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy_9789264218789-en>accessed on 19th November 2020.
[99] OECD, 'Tax Challenges Arising from Digitalisation' (*OECD*, 2020) <https://www.oecd.org/tax/beps/beps-actions/action1/> accessed on 19th November 2020.

It is crucial at this juncture to take an incisive look at the OECD's Model on Income Tax Convention, which has outlined seven basic criteria to be used in assessing the proposal for taxation of the Internet to include:[100]

1. *Having an equitable tax system wherein payment in similar situations relating to similar transactions should be taxed in the same way;*
2. *The system should be simple such that the cost of administration by tax authorities and compliance cost for taxpayers should be simplified as much as possible;*
3. *There should be certainty in the cost taxpayers can pay upon given transactions to be known in advance. It will enable taxpayers to understand what is to be taxed when and where the tax is to be provided for;*
4. *Any tax system adopted must be effective for it to produce the right amount of tax at the right time and minimize the potential of high tax costs beingavoided;*
5. *Economic dissolution should be avoided: corporate decision-makers should be motivated by commercial rather than tax considerations;*
6. *The system must be sufficiently flexible and dynamic to ensure that tax rules keep pace with technology and commercial developments; and*
7. *Any tax arrangements adopted must take a democratic tax initiative, and any changes to existing international taxation principles should be structured to ensure a fair sharing of the internet tax base among countries, with particular attention to the division of the tax base between developed and developing countries.*

For any item, income, or activity of an individual or enterprise to be subject to tax or such payment deemed taxable, it must have been identified and linked to a given location, thus giving the taxing authority the jurisdiction to enforce compliance with such tax by defaulting or erring taxpayer. In essence, every taxpayer needs a location in each jurisdiction to determine tax liability on their accruable or deemed accrued income. The Model brought to the fore issue of whether the mere use in electronic commerce, and operations of computer equipment in a given country could constitute a permanent establishment.[101] It is our view that any automated equipment used or operated by an enterprise, such as an automated oil drilling rig or extracting equipment that is not manned or operated by personnel of the enterprise, may constitute a permanent establishment in the country where such equipment is located in determining the tax liability of that enterprise.[102] A community reading of Articles 122 and 123 above does not

[100] OECD, 'Art. of the Model Convention with Respect to Taxes on Income and on Capital' (2006) <https://www.oecd.org/tax/treaties/1914467.pdf> accessed on 19th November 2020.
[101] Ibid. Art. 122, 2017.
[102] Art. 123 (n 21).

necessarily suggest that the mere siting of computer equipment in a given location without more would constitute a permanent establishment, conversely in the case of a website which is a mishmash of both the electronic data and the software being used by or stored on the computer, or the equipment as the case may be, does not necessarily in itself translate into real property. Consequently, it does not have a location that can be regarded as a 'business place' since there is no existing facility to be considered as premises at best. In particular situations, equipment or machinery is a combination of data and software that may only constitute a website.

Nonetheless, a server that hosts a website accessed as equipment having a physical location could include a 'fixed place of business' in which such enterprise operates such a server.Thus, this call for the need to make a clear distinction between a server and a website exceptionally since it is the enterprise that operates the server wherein the website is hostedmight be different from the enterprise that carries on business through the said website hosted on the server by the Internet Service Provider (ISP).[103] A brief definition is considered to better understand Server and Website or Domain. In hosting websites on a server by an ISP, usually, such enterprise seeking to have its site hosted pays the ISP for the space on the disk in the server for the storage of software and data required by the website without more. Even if such an enterprise was specific as to where its website should be hosted on the server, it still does not qualify the enterprise to have a physical presence in such a location where the ISP hosted its site on its server, given that the website is not tangible. The implication is that the enterprise will not have acquired a place of business simply by hosting its site on a server in that location, subjecting its income to tax. In contrast, where an enterprise carries on business via its website atthe same time it is in control of the server either because of lease or outright purchase, the location where such a server is situated could be regarded as a permanent establishment of the enterprise, particularly where all other requirements of Article 124 have been complied with. See, ***ITO v. Right Florist Pvt Ltd,***[104] the Kolkata Tribunal of India held that a website *per se* could not constitute a PE in India under the Income-tax Act, bearing in mind OECD Model Commentary, which contains that a search engine, which has a presence through its website, cannot be a PE under the treaty except in a situation where its web servers are also located in the same jurisdiction which must be in sync with the physical presence test.

[103] Art. 124 (n 21).
[104] 154 TTJ 142.

The model also presented a situation where computer equipment such as a server can be likened to automated pumping equipment used to exploit oil or natural resources wherein no enterprise personnel is required to carry on the business of profits making in that location.[105] This may be regarded as a "virtual" permanent establishment. In ***Amadeus Global Travel v. Deputy Commissioner Income Tax***, in a case involving Computerized Reservation Service (CRS) for air tickets, the Delhi Tribunal concluded that bookings fees received from Indian entities by nonresident companies providing CRS are liable to be taxed in India. The Tribunal came to that conclusion on the premise that those companies have a "virtual" presence in India (Virtual Presence).

The model further provides that computer equipment in a given location may only be regarded as a permanent establishment where it is regarded as fixed. For computer equipment like server or server switches, what is important is not the likelihood of moving such a server or server switch, but whether the same has been moved from that location. Thus it is a question of fact and not speculation. The implication is that for a server to constitute a fixed place of business, such a server must have been located in that place for a sufficient period to become fixed within the meaning of paragraph 1.[106] ***E-bay International v. AG*** the Mumbai Tribunalheld that income earned by eBay from operating Indian-specific websites is not in the "Fees for Technical Services." The Tribunal, in determining the issue of PE, held that while the Indian Company was a dependent agent of E-bay, the Indian company did not have the authority to conclude contracts. However, they were legally and economically dependent on E-bay. Therefore, the Tribunal held that E-bay does not have a PE in India.

Where an enterprise conducts electronic commerce operation, vide a piece of computer equipment in a given location strictly for preparatory or auxiliary activities and not the core activities, it cannot be regarded as having a permanent establishment in such a location.[107] Preparatory or auxiliary activities may include: a). Providing a communication link, like a telephone line between suppliers and customers; b). Advertising goods or services by communicating information through a mirror server for security and efficiency purposes, gathering market data for the enterprise, and supplying information to such enterprise. But wheresuch activities constitute in themselves the central or significant part of the business activity of

[105] Art. 127 (n 21).
[106] Art. 125 (n 21).
[107] Art. 128 (n 21).

the enterprise as a whole or in a situation where other core activities of the enterprise are carried on through the same computer equipment, paragraph 4 may not apply particularly where the equipment is regarded as a fixed place of business of the enterprise as discussed in articles 123 to 127 above, same would constitute a permanent establishment in that location.[108]

Conversely, the situation in the global arena is that some e-Commerce companies escape from the tax net, hence do not pay tax in any country. Understanding these challenges States encountered as the effect of the digital economy, OECD came up with the Base Erosion and Profit Shifting (BEPS) Action Plan 1 to address tax challenges in the digital economy. While working on the above plan, the organization considered some issues in ensuring that whatever proposal was eventually adopted will undoubtedly address the challenges experienced. Issues considered include:

1) *Ensuring those core activities that cannot inappropriately benefit from the exception from PE status and artificial arrangements relating to sales of goods and services that cannot be used to avoid PE status;*
2) *The importance of intangibles, the use of data, the spread of global value chains, and their impact on transfer pricing;*
3) *The possible need to adapt Controlled Foreign Corporation (CFC) rules to the digital economy; and*
4) *Address opportunities for tax planning by businesses engaged in VAT-exempt activities.*[109]

There are no set principles for the taxation of e-commerce transactions. However, there are certain, judicial precedents in this regard from which support could be drawn and safeguards could be applied.

OECD further buttressed its standing as an organisation significantly poised to work on ensuring that challenges presented by e-commerce tax are squarely addressed through global collaboration or coordination[110] put in place guidelines wherein States such as Nigeria can adopt with modifications or use as guide in formulating new rules or provisions to regulate the taxation of e-commerce. The said guidelines are summarised hereunder as follows:

[108] Art. 129 (n 21).
[109] <www.dhruvaadvisors.com> accessed on 9th May 2020.
[110] Alain Charlet and Stéphane Buydens, 'The OECD's Draft Guidelines on Neutrality for Value Added Taxes' (2011) 61 Tax Notes International 7, 443. In, D. A Ariyoosu, Taxation of Electronic Commerce in Nigeria (Stirling- Horden Publishers Limited 2014) 42-113.

a) *The technologies underlying e-commerce offer governments significant new opportunities to improve taxpayer service, and those opportunities should be pursued;*

b) *Taxation principles that guide governments about conventional commerce should quite properly guide the government concerning e-commerce: those principles being neutrality; efficiency; certainty and simplicity; effectiveness and fairness; and flexibility;*[111]

c) *Taxation principles can be implemented for e-commerce through existing tax rules with some adaptation of the existing rules;*

d) *There should be no discriminatory tax treatment of e-commerce.*

e) *Application of the taxation principles should maintain the fiscal sovereignty of countries,*
ensure a fair tax base-sharing between countries, and avoid double and unintentional non-taxation.

f) *The process of putting flesh on these principles should involve intensified cooperation and consultation with economies outside of the OECD area, with business and non-business taxpayer groups; and*

g) *Government intervention should be proportionate, transparent, consistent, predictable, and technologically neutral when required.*[112]

In furtherance to the OECD global intervention or tax initiatives, it also proposes to treat digital products as services which coincides with the EU's thought on the VAT proposal wherein the trade in digital goods or products is to be treated as a supply of services. In that vein, the EU also proposes synchronizing VAT rates on all e-services into a single rate. Indeed, doing so could lead to tax losses, given that consumption taxes are often lower on services than on goods. It also can give rise to losses on tariffs and import duties, particularly on digital goods that were usually in the past transported physically or in a tangible form, which would not be possible in the new dispensation, thus leading to much lower duties. The effect of all these realities would hit developing countries very hard, bearing in mind their reliance on import duties as a source of revenue to the government compared to developed climes.[113] It is our view that at this point, it will be important to deploy the use of technology such as AIs' to serve as tax officers or collecting tax agents to collect taxes on those goods which hitherto now would not be transportedphysically or in tangible form through the physical border but the internet.

[111] These principles have been discussed above. They represent the cannons of taxation hence serve as test buds for any good tax, once a tax regime fails this test it then lacks the character of a good tax.
[112] Richard Jones and Subhajit Basu, 'Taxation of Electronic Commerce: A Developing Problem' (2002)16 International Review of Law, Computers & Technology 35, 8-9.
[113] Ibid. 9.

The above has brought to the fore the need for global re-appraisal and initiatives on tax and commerce generally as against just focusing on tax as it affects the digital economy alone as observed by the OECD, but also see the need to consider the use of Artificial Intelligence (AIs), Smart Fluid System (SFs) and Autonomous Machines (AMs) in driving e-commerce and internet taxation in the present age.

1.2 UNITED NATIONS MODEL ON TAXATION OF DIGITAL ECONOMY.

In credence to the truism that the digital economy is global, the internet or taxation of e-commerce cannot be treated otherwise; thus, tax issues at that level can only best be handled from an international perspective. It is even so as the common ground for tax rift is the incidence of double taxation, which internet taxation was no different. Following the preceding, the United Nations Model Double Taxation Convention (UN) between Developed and Developing Countries (the United Nations Model Convention) constitutes an integral component of the continuing deliberate international initiatives at disregarding the issue of double taxation. Historically these initiatives were started by the League of Nations[114] , and the Organisation drove it for European Economic Co-operation (OEEC)[115] at the regional level. Consequently, the UN also put solid platforms of expression in place via a series of model or draft model bilateral tax conventions.[116] As mentioned earlier, the significant influence of both the UN and OECD models on global taxation cannot be overemphasised. They both have a common goal of addressing global tax challenges and thus have achieved some consistency and express divergent views where such is necessary for ensuring that the main goal is achieved.[117] In exemplifying such divergence, we have stated previously in this work that the United Nations Model Convention is generally inclined to the principles of "source country" taxing rights under tax treaties as the taxing rights of the host country of investment against taxing rights of the "residence country" of the investor.[118]

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[114] As it was then called until after its failure by the end of 2nd world war in 1945 it was now called as 'UN' United Nations.
[115] (Now known as the Organisation for Economic Co-operation and Development (OECD). See discussion in preceding page on OECD.
[116] 'United Nations Model Double Taxation Convention between Developed and Developing Countries 2017 Update' 12.
[117] Ibid.
[118] Ibid.

The Model Convention, in its bid for a balanced approach or some sort of compromise on the tax mentioned above principle, ensures that the source country guarantees: (a) taxation of income from foreign capital takes into account expenses allocable to the earnings of the income so that such income is taxed on a net basis, that (b) taxation should not be so high as to discourage investment and that (c) it should take into account the appropriateness of the sharing of revenue with the country providing the capital. It also encapsulated the idea that it would be apt for the residence country to extend a measure of relief from double taxation through either a foreign tax credit or an exemption, which was also the case with the OECD Model Convention.[119]

The UN Model Convention defines 'person' to include an individual, a company, and any other body of persons while, on the other hand, it proffers a restrictive definition but in terms of 'company' to mean anybody corporate or any entity that is treated as a body corporate for tax purposes.[120] Also, as seen in this work earlier, wherein the definition of the term resident by the UN Model convention[121] is in *pari materia* with the provision of the OECD Convention Model, these are some of the areas of such collaboration. Nonetheless, it did not define source or source income. The model convention addressed the economic nexus needed for any source state to exercise its taxing rights under the tax treaty. The model defined PE to mean "a fixed place of business through which the business of an enterprise is wholly or partly carried on" which also "includes especially: (a) A place of management; (b) A branch; (c) An office; (d) A factory; (e) A workshop; (f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources."[122] The provisions are also in *pari materia* with the OECD Model Convention, except in the case of the differences in the time frame of six months provided by the UN Model Convention against twelve months period provided in the OECD Model Convention concerning the threshold period within which building sites could be regarded as PE.[123] The implication is that once such a building site, assembly, or installation project runs for not less than six months,it will constitute a PE, which consequently enables the source state to exercise taxing rights on the company's income. However, a few developing countries oppose the six-month (or 183 days)

[119] Ibid. 9.
[120] Article 3(1) (a) & (b) United Nations Model Double Taxation Convention between Developed and Developing Countries 2017 Update.
[121] Article 4 (1) (n 41).
[122] Article 5(1) & (2) (n 41).
[123] Article 5(3) (a) (n 41).

thresholds based on two main reasons: their first argument is that in the case of construction, assembly, and similar activities due to modern technology, it could be of concise duration and still result in a substantial profit for any such enterprise; while the second argument fundamentally rests on the plank that the period during which foreign personnel remains in the source country is irrelevant to their right to tax the income (as it is in the case of artistes and sportspersons under Article 17.[124] The two arguments are profound going forward, particularly inthis digital age wherein what could take a year to assemble manually could now be done using technology in two or three months. One basic element that prompts Permanent establishment is the time spent doing or engaging in business in a particular location or country. The essence of this requirement is to prevent subjecting a business that carries on sporadic or exploratory activity in a country to tax. Going forward in a changing world, the condition is becoming more relaxed as countries are fast realising that some revenue-creating activity can occur in short visitsrather than only in a continual presence setting. A case in point is where, only recently, Chinahad to change the way it is to calculate the time required in determining the threshold for the 'permanent' element of PE, from a simple six months of continuous activity to a more flexible 'aggregate' method of 183 days within 12 months. Without a doubt, this new approach would have captured more business activity as 'permanent,' even where employees may be coming and going from the country using short-term business visas.[125]

Paragraph 4 reels out other activities to be regarded as 'fixed' for purposes of qualifying as 'PE' but none of such mentioned computer equipment or server, probably because the provision does not contemplate 'Virtual Establishment', which is a reality of the digital economythat has come to stay, see the case of ***Amadeus Global Travel v. Deputy Commissioner Income Tax.***[126] Worthy of note is that in determining PE under the Model, "the actions of a "dependent agent" may constitute a permanent establishment, even without having and habitually exercising the authority to conclude contracts in the name of the enterprise, where that person habitually maintains a stock of goods or merchandise and regularly makes deliveries from the stock."[127]

[124] Committee of Experts on International Cooperation in Tax Matters 18th session New York, 23-26 April 2019 Item 3 (b) of the provisional agenda Update of the UN Model Double Taxation Convention between Developed and Developing Countries - Permanent Establishment E/C.18/2019/CRP.8 (p.26-56).
[125] <https://shieldgeo.com/ultimate-guide-permanent-establishment/> accessed on 1st June 2020.
[126] (n 29).

It is important to observe that paragraph 4 is meant to prevent an enterprise in a particular State from being taxed in another State where it merely carries on a purely preparatory or auxiliary business in that State. While paragraph 4.1 is complementary to that provision, thus guaranteeing that business or activities which are introductory or auxiliary are carried on at a fixed place of business must be considered bearing in mind other inter-related activities that constitute complementary functions that are part of the chain of business wherein the same enterprise or a closely related enterprise carries on in the same State—nonetheless distinguishing between activities which may be preparatory or auxiliary in nature and others which may not remain instead a difficult task. One fundamental principle to be used in determining whether such activity in the fixed place of business forms an essential and significant part of theenterprise's activity. The red flag here is that no two situations may be the same; hence each condition should be treated on its own merits. Nonetheless, where a 'fixed place of business' whose main broad activity is identical to the general purpose of the entire enterprise, it does not in this respect carry on a preparatory or auxiliary activity.[128]

Careful consideration of subparagraphs (a) and (b),[129]reveals that it is not necessary (whether the storage or delivery takes place before or after the goods or merchandise may have been sold), so long as the goods or merchandise belongs to the enterprise, once such are in the appropriate location. It must be mentioned that the provision could apply irrespective of the fact that part of the goods stored at a location has already been sold once the title in the property of the goods will only pass to the customer after delivery. It is also instructive to observe that the subparagraphs cover events where a facility is used or a stock of goods or merchandise is maintained for any combination of storage, display, and delivery since facilities used for the delivery of goods will almost always also be used for the storage of these goods, at least for a short period. The words "goods" and "merchandise" used in the provisions under review refer to tangible property. They do not cover immovable property and data, although they may apply to tangible products like CDs and DVDs.[130]

The UN Model, unlike the OECD Model Convention 2017, did not make express provisions for e-commerce as contained in Articles 122 to 129. The closest can be seen in Article 6(2), wherein it reminisces on the issues of storing, displaying, and delivering goods for a short

[128] Ibid.
[129] Art. 6(2)(a) & (b) UN Model Convention.
[130] (n 41) 36.

period. Consequently, words like goods and merchandise are used to refer to tangible properties. However, they may apply to tangible products like data, such as Compact Disks and Digital Video Disks. In examining the nature of the activities performed at such locations as earlier observed where the activities are merely preparatory or auxiliary to the business of selling products on the Internet (for example, the location is used to operate a server that hosts a website which, as is often the case, is used exclusively for advertising, displaying a catalogue of products, or providing information to potential customers). In such a situation, paragraph 4 will apply, and the location will not constitute a permanent establishment. But where, however, the main functions connected to sales are carried on in that location (a case in point is where in concluding a contract with a customer, wherein payment and delivery of the products were performed automatically through the equipment located in such location), indeed, these activitiescannot be regarded to be merely preparatory or auxiliary.[131]

In response to calls for a more significant involvement on issues of great importance, the UN will further enhance International tax cooperation within its broader framework of promoting development and poverty reduction. Given the foregoing, it posited that it would increase efforts to enhance tax revenues through modernized tax systems, more efficient tax collection, broadening the tax base, and effectively combating tax evasion. The above actions are to be undertaken with an overarching view to make tax systems more pro-poor. In that guise ofmaking each country responsible for its tax system, such national efforts can best be supported by strengthening technical assistance and enhancing international cooperation and participation in addressing international tax matters, particularly regarding double taxation. Going forward, it is determined to promote such international cooperation in tax matters by strengthening international institutional frameworks or arrangements.[132]

1.3 EUROPEAN UNION'S APPROACH FOR TAXATION OF ELECTRONIC COMMERCE.

[131] (n 41) 54 & 55.

[132] Michael Lennard, 'The UN Model Tax Convention as Compared with the OECD Model Tax Convention–Current Points of Difference and Recent Developments' IBFD Asia-Pacific Tax Bulletin January/February 2009 11<www.un.org/esa/ffd/doha/> accessed on 21st May 2020.

The European Union (EU) is a unique economic and political union between 28 independent European countries.[133] The EU was formed from the idea that countries that trade with one another become economically interdependent and more likely to avoid conflict.[134] The result was the formation of the European Economic Community (EEC), created in 1958, and since then, what began purely as an economic union has evolved into an organisation. The name was then changed from the European Economic Community (EEC) to the European Union (EU) in 1993.[135] The EU has never seriously considered e-commerce benefiting from preferential taxation, as it has in the United States.[136] Ambitiously though, The European Union has expressed its intent to become the most competitive and dynamic knowledge-based economy globally, capable of sustainable economic growth with more and better jobs and greater social cohesion.[137]

A study of the EU E-Commerce Directives set out clearly that services delivered electronically should be regarded as being done in the EU where the receipt of such service is subject to the state's VAT irrespective of the location of the supplier.[138] Worthy of note is that the Nigerian extant tax legal regime does not have any specific legal framework for VAT on e-commerce.[139] The VAT rules for non-EU suppliers engaging in Business to Customers (B2C) in the EU jurisdiction will not change along with the VAT paid by importing companies under the self-assessment arrangements.[140] EU is the first jurisdiction to initiate, develop and implement a simplified consumption tax framework on e-commerce under the OECD Directives.[141] The EU working paper in 1999 revised the VAT directives for goods and services irrespective of the medium through which the goods were sold. It also emphasized the need for practical application of the rules.[142]

[133] European Union, 'The EU in Brief' (Europa, 2019) <https://europa.eu/european-union/about-eu/eu-in-brief_en#from-economic-to-political-union> accessed on 23rd December 2019.
[134] Ibid.
[135] Ibid.
[136] Charles E. Mc Lure Jr, 'Taxation of Electronic Commerce in the European Union'. Prepared for Presentation at a Conference on Tax Policy in the European Union(Research Centre for Economic Policy, Erasmus University Rotterdam 2001)1.
[137] European Union, 'Lisbon European Council 23-24.03.2000: Conclusions of the Presidency' (*European Parliament*, 2019) <https://www.europarl.europa.eu/summits/lis1_en.htm> accessed on 23rd December 2019.
[138] New European E-Commerce VAT Rules<http://www.fdpa.com/VAT.rules.htm> accessed on 25th May 2020.
[139] Ariyoosu D.A, *Taxation of Electronic Commerce in Nigeria*, (Stirling-Horden Publishers Ltd; Ibadan, 2014) p.47. (pp.47-113).
[140] VAT on E-Commerce <http://www.expArtax.nl/vatecommerce.htm> accessed on 25th May 2020.
[141] Ariyoosu, (n 64).
[142] Richard Jones and Subhajit Basu, 'Taxation of Electronic Commerce: A Developing Problem' (2002) p. 8.

Consequently, the EUC in 2000, through a proposal, sought to modify the rules applying VAT to categories of services supplied by the electronic or digital medium, subscription-based and pay-per-view radio, and television broadcasting. It aims to create a level playing field for the taxation of digital or e-commerce in sync with the OECD principles.[143] Going forward, on 7 May 2002, the council adopted directive 2002/38/EC on VAT arrangements applicable to radio and television broadcasting services and gave electronically supplied services and took effect on the 1st July 2003. As a corollary to the above, the council on 27 June 2006 adopted directive 2006/58/EC; directive 2006/138/EC was adopted on 19 December 2006, and directive 2008/8/EC was also adopted on 12 February 2008. Eventually, the VAT tax arrangements were extended to 31 December 2009, the effective date. The changes allow EU suppliers to charge VAT as adopted suppliers when providing electronic services to EU nontaxable persons.[144] Despite all these directives, 2008/8EC was also extended to 1st January 2010 as a permanent measure applicable to customers within the EU jurisdiction from 1st January 2015. The 27 member states would have introduced broad reforms to the VAT obligations for B2C e- commerce sellers and marketplaces, among other things:[145]

1) *Lunching the One-Stop-Shop (OSS) EU VAT return;*
2) *Ending low-value import VAT exemption and new IOSS Return; and*
3) *Making marketplaces deemed supplier VAT.*

The thrust of the reform is, amongst other things: a) ensure that sellers will have the capacity to report all their pan-EU sales on a single VAT return in their home country against having multiple VAT registrations across the EU; b) it seeks to boost cross-border online trade as well promote trade across the EU’s digital single market by reducing compliance obligations; and
c) It is poised to tackle the stubborn € 5 billion e-commerce VAT fraud gap, having a member States trying to close import loopholes and co-opt online marketplaces into collecting VAT instead of sellers.[146]

Literature has shown that the EU extant tax legal regime has not adequately addressed the supply of services delivered online by digital means related to EU and non-EU countries;

[143] Ibid.
[144] Ariyoosu, (n 64) 50.
[145] <https://avalara.com/vatlive/en/vat-news/eu-2021-e-commerce-vat-package.htm> accessed on 25th May 2020. (wherein on the 8 May 2020, the 2021 EU VAT e-commerce package including the reform was delayed or extended to 1st July 2021).
[146] Ibid.

hopefully, the proposed 2021 reform will provide that succor. A careful look at the three broad reforms shows that:

1) *A single EU VAT return for e-commerce distance selling means that the distance selling thresholds simplification will be withdrawn to introduce a single EU VAT return, a One-Stop System (OSS). The implication for sellers shipping goods from their home country to customers across the EU may prefer to use OSS to report their entire Pan –EU sales instead of the current regime wherein VAT is to be registered in each country once the seller passes through the relevant country distance selling threshold, which is cumbersome on the sellers. The present extension is a leap from the 2015 Mini-One-Stop-Shop (MOSS), which successfully trailed the single EU return for B2C sales of digital, telecoms, and broadcast services such as streaming media e-books, apps, e.t.c. In summary, VAT must be paid to the home country's tax office.*[147]
2) *They were closing the import VAT exemption loophole- Import 'Green channel.' Starting from July 2021, the €22 VAT exemption on small, imported items into the EU for customer delivery will be withdrawn. It was evident that the said exemption was seriously abused by sellers who deliberately under-declared the import value of goods to avoid VAT. Instead, the VAT is to be charged at the pointof sale for the consignment not exceeding 150 Euros. The new VAT regime will bedeclared and paid for vide the Import One Stop Shop (IOSS), which is to create a more efficient fast-track, or 'Green Channel,' quick and easy customs clearance; this initiative is one worth considering given the challenges experience withpayment of duties and clearance in Nigeria. This suggests that from the effective 2021 date, EU sellers will no longer be disadvantaged on price as non-EU sellers will charge VAT on imported goods. It will allow non-EU sellers register for IOSSin a single EU jurisdiction to declare the VAT on any shipment below 150 Euros, referred to as the 'Non–Union scheme.' If the seller chooses not to use the IOSS, then the customer is bound to pay the delivery or customs agent to access their goods*[148].
3) *Marketplaces become the deemed seller and VAT collectors. The reforms will enable marketplaces to facilitate cross-border sales to consumers through third parties, wherein they are regarded as the 'deemed seller' in certain circumstances. It is considered to be the full liability regime, but it does not include product liability. The EU defined the word facilitating to mean 'electronic platforms assisting sellers and consumers in coming together and striking acontract for the supply of goods on a cross-border basis.' The marketplace is to facilitate B2C sale imports, not beyond 150 Euros and distance selling cross- border or domestic transactions of any value for non-EU sellers. It also providesa scheme for the marketplace to opt-out of and has the VAT transferred to the delivery company of the seller. This arrangement makes the marketplaces liableto charge and collect VAT on deemed seller transactions. They are encouraged to charge the customer VAT at the POS and declare it instead of the seller.*[149]

[147] Ibid.
[148] Ibid.
[149] Ibid.

Given this proposed reform and going forward in no distance, the EU will likely trail-blaze the tax terrain by having a more robust and all-encompassing digital tax regime on online transactions or e-commerce.

1.4 UNITED KINGDOM TAX POLICY ON ELECTRONIC COMMERCE.

In November 1999, the United Kingdom government issued Electronic commerce: The UK's Taxation Agenda.[150] The document defines electronic commerce in the following terms (Para 1.3):

> *Using an electronic network to simplify and speed up all stages of the business process, from design and making to buying, selling and delivery e-commerce is the exchange of information across electronic networks, at any stage in the supply chain, whether within an organisation, between businesses, betweenbusinesses and consumers, or between the public and the private sectors, whether paid or unpaid.*

Before then, in October 1998, the UK Inland Revenue and Her Majesty (HM) and Customs and Excise jointly published a paper on tax policy in respect of e-commerce. The publication set the agenda of e-commerce in perspective, which drew its source and inspiration from the OECD Framework conditions. The subsequent merger of the Inland Revenue and Her Majesty and Customs and Excise into becoming Her Majesty's Revenue and Customs led to the withdrawal of the publication made in 1998 nonetheless continues to contribute to the growth of international tax policy as well as implement its approaches as it found relevant by the OECD and EU framework on taxation of e-commerce.[151] In doing so, it ensures that UK residents carrying on the internet or online transactions are taxed similarly to those carrying on both traditional and physical businesses. This guide outlines certain key UK tax considerations for a company conducting electronic business in the UK. For e-commerce conducted by UK resident companies with UK individuals or businesses, the tax treatment is largely the same as physical business."[152] This tax is imposed on two categories of e-incomes: a). taxes on the 'www' income

[150] Ibid 11.
[151] Ariyoosu, (n 64) 51.
[152] Pinsent Masons, 'Out Law Guide, 'Introduction to Taxation of E-Commerce' <https://www.pinsentmasons.com/ou-law/guides/taxation-of-e-commerce> accessed on 19th November 2020.

of any such person resident in the UK; and b). taxes on income accruing in the UK from any such person not a resident of the United Kingdom.

It is critical to understand who a resident is in this context. It seems to be any company incorporated in the UK is regarded as a UK tax resident, which is the same position as the Nigeria Company Income Tax Act.[153] Nonetheless, a UK company could be considered a tax resident in different jurisdictions based on necessary tie-breaker[154] provisions in the double tax treaty.[155] On the other hand, a company not incorporated in the UK may be regarded as a UK taxresident depending on the circumstances, such as having its business centrally managed and controlled[156] from the UK or depending on the tie-breaker provision of a particular double tax treaty.[157] In a situation where a company does not tax residents in the UK, its profits may have arisen in the UK and may be subject to UK tax. Where a company trades in the UK vide its branch or agency, corporation tax would be imposed on it; else, it would be liable to income tax. It must also be clear that even where profits were derived from a UK trade, it might not have the requisite taxing powers or jurisdiction except such activities in the UK constitute a branch or agency wherein the e-trade profits were earned.[158] In ***Calcutta Jute Mills Co. v Nicholas***[159] it was held that "a company manufacturing Jute in India and holding the Board of Directors' meetings in India was controlled in India" while in ***Ogilvie v Kitton,***[160] wherein a UK- resident who owns an enterprise that had its business operations located in Toronto, and Canada, wherehe was directing the affairs of the enterprise through the agent who managed the business on his behalf. "The court held that he was in control of the business." Nonetheless, control of the parentcompany may not automatically imply control of the subsidiary company. See ***Pilkington v I. R. C***[161] UK leverages its extensive network of double tax treaties with other tax jurisdictions to protect taxpayers from being taxed by more than one tax jurisdiction over the same profits and

[153] Cap. C21, L. F. N 2004.
[154] 'Tie- breaker' is a situation wherein a particular taxpayer (whether individual or company) has dual residence and there claim and counter claim between the contending tax jurisdiction in determining where he is resident for the purpose of paying a given tax.
[155] (n 77).
[156] Refers to the place where is controlled from against where its main business is transacted or conducted. As it could be seen in s. 15(2) 2004 PPTA and s. 22(2) (b) 2004 CITA with slightly different definitions compared to PPTA.
[157] (n 77).
[158] Ibid.
[159] (1876)1 T.C, 83.
[160] (1908) S.C. 1003; 5 T.C.338.
[161] (1982) S.T.C 103.

gains it drew inspiration from the OECD Framework, which maintains that trading income should be taxed in a jurisdiction where the taxpayer has a 'permanent establishment' through a website itself does not constitute permanent (PE). The server itself will not be sufficient to amount to the PE of a business carrying on trade through a website on that server.[162] Yet other OECD member states view it differently, wherein a server constitutes a PE. Concerns surrounding the incidences of tax avoidance by multinationals compelled the OECD to propose achange in the definition of PE.

One interesting issue that came to the fore in determining what constitutes the supply of digital goods for e-commerce tax purposes. In determining the supply of digital goods, it is essential to classify whether the generated income is business profit or royalty. Digital goods like software or music that could be downloaded under the brick-and-mortar rules are considereda right to use products. At the same time, they give rise to royalties in so many climes. Nevertheless, if contained in CD-ROM or other tangible formats, they will constitute the supply of goods, thus giving rise to profits. In the UK, digital products or goods over the Internet are regarded as supplies of services rather than goods. This rule changed from the 1st January 2010, such that for supplies of service in the event the customer is registered for VAT, such service is deemed to be supplied where the customer belongs. At the same time, individuals who receive supplies in their capacity are considered as belonging to their usual residences and businesses or where they have a business or fixed establishment with the flavour of service.[163] The extant UK e-commerce tax regime presents so much- burden on small-scale businesses in accounting for taxes across the UK, VAT inclusive, but for the 2021 proposed reforms, which provide a ray of hope.

1.5 UNITED STATES APPROACH TO TAXATION OF ELECTRONIC COMMERCE.

Taxation of e-commerce or online transactions in the US comes forth with myriads of constitutional issues such as shared taxing powers between the federal taxes, state taxes, and local taxes, mainly that the federal constitution governs it. A federal setting that practices the presidential system of government, like Nigeria, has its taxing powers shared or allocated to each component of the federation by the Constitution,[164] wherein each of such component is limited and cannot act outside the taxing powers allocated to it by the constitution, doing so will be ultra

[162] (n 77).
[163] Ibid.
[164] First Schedule Constitution of Federal Republic of Nigeria 1999 (as amended).

vires, and the courts could strike down same. The huge challenge taxation of electronic commerce faced in the US is constitutional and technical.[165] Going forward, attempts were made to harmonising these challenges to address them.[166] Consumption tax, also known as sales(meaning that consumers only pay sales tax on taxable items they buy at retail)[167] taxes werevery collected by most states and many local governments, which could be likened to VAT in Nigeria though FIRS collects it, whether, in US or Nigeria, the taxes were borne by consumers and collected by merchants to be remitted to the appropriate taxing authority as the case might be. The challenge of situating internet taxation in the 'brick and mortar' tax regime became even more profound, given the requirement of PE which is hitherto a physically fixed place of carrying on business to allow for the taxation of income, sales, or services rendered by an enterprise in the US. In ***National Ballas Hess v Department of Revenue of State of Illinois,*** **[168]** itwas held that National Bellas Hess, the appellant, is a mail-order house with its principal place ofbusiness in North Kansas City, Missouri. It was only licensed to do business in North Kansas andin Delaware, where it was incorporated. Nonetheless, the appellant does not have an office, outlet, or sales representative in Illinois, yet the tax authority obtained a judgment against it to pay for use tax.

While in the celebrated case of ***Quill v North Dakota,*** **[169]** Quill is a Delaware company having offices and warehouses in Illinois, California, and Georgia. However, none of its workers work or reside in North Dakota, more so that its ownership of tangible property in that State is so insignificant that you could say almost nonexistent. The company sells office equipment and supplies; Quill carries on or markets its business using catalogues and flyers, advertisements in national periodicals, and telephone calls. North Dakota imposed a use tax upon property purchased for storage, use, or consumption within the State. North Dakota then requires every "retailer maintaining or having a place of business in" the State to collect the tax from the consumer and remit it to the State. Upon a Writ of Certiorari to the Supreme Court of North Dakota on May 26, 1992, His Lordship Justice Stevens, in delivering the Court's opinion, declined to follow *Bellas Hess*, instead, he opined that the tremendous social, economic,

[165] Ariyoosu, (n 64) 52.
[166] 'Taxation of E-commerce'<http://www.out-law.com/page-7512> accessed on 30th May 2020.
[167] Jennifer Dunn, 'Chapter 1 The Complete Sales Tax Guide for Online Sellers [Nexus by State Included]<https://www.bigcommerce.com/blog/ecommerce-sales-tax/#undefined>accessed on 30th May 2020.
[168] 386 U.S.753, 1967.
[169] 504 U.S. 298, 1992.

commercial, and legal innovations" of the past quarter-century had made such view now outdated. The decision of the State Supreme Court to grant certiorari in *Bellas Hess* must either be reversed or overruled, as it agrees with the reasoning of the State Court.

The Supreme Court, in reversing the decision of the trial court, concluded that "wholesale changes" in both the economy and the law made it inappropriate to follow *Bellas Hess* today wherein for a merchant to calculate, collect and remit the qualified tax to the taxing authority will constitute a monumental burden to the merchant hence, all that the merchant is expected to do is to collect use taxes from consumers or customers that reside in the state where such a merchant had a 'nexus.' A total of 45 U.S. states and Washington D.C. all imposed sales tax. Mostpermit cities, counties, and other "special taxing districts" to impose a sales tax. Consequently, local areas, like Rhinebeck, New York, have an odd amount of sales tax put together. Nexus[170] is significant in collecting sales taxes from an online transaction by an online retailer within the state. The presence of nexus enables the state to allow the retailer to charge and collect sales tax from buyers or customers in that state.[171] Nexus can be determined in the following ways:

- **a)** *A location: an office, warehouse, store, or other physical presence of a business.*
- **b)** *Personnel: an employee, contractor, salesperson, installer, or other person working for your business.*
- **c)** *Inventory: Most states consider storing inventory in the state to cause nexus even if you have no other place of business or personnel.*
- **d)** *Affiliates: Someone who advertises your products in exchange for a cut of the profits creates nexus in many states.*
- **e)** *A drop shipping relationship: If you have a 3rd party ship to your buyers, this may create nexus.*
- **f)** *Selling products at a trade show or other event: Some states consider you to have nexus even if you only sell theirs temporarily.*[172]

A three-year moratorium was imposed on the 1998 ITFA (Internet Tax Freedom Act) by the Congress, wherein set up the Advisory Commission on Electronic Commerce wherein after ten months of work on 12 April 2000, the commission presented to Congress its findings and study on issues of taxation and the Internet. Nonetheless, the commission could not get the required two-thirds majority votes at the end of its work to send in a "formal" recommendation to

[170] It is a sweet way to say 'significant connection' to a state. In states like Illinois, Louisiana, Mississippi , Nevada, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Washington D.C. nexus were define to include "doing business" or "engaged in business, in the state.
[171] Jennifer Dunn, (n 93).
[172] Ibid.

Congress on taxing electronic commerce. Instead, a simple majority of 19 members agreed on a comprehensive plan that addresses many Internet and

Telecommunications tax policy issues. A summary of the proposal includes the following:

a) *Extended the moratorium period on Internet taxes for five years.*

b) *Prohibited taxation of digitized goods and products as well as their non-digitized counterparts;*

c) *Banned all forms of taxes on Internet access;*

d) *An abolished federal excise tax of 3 percent on telephone calls;*

e) *Encouraged states and local governments to reform industry-specific telecommunications taxes;*

f) *Established firm "nexus" rules for e-commerce to make it very clear when states and local governments could levy taxes on vendors of interstate commerce;*

g) *Encouraging states and local officials to work together to simplify their sales tax collection systems as well create some uniformity; and*

h) *Established another Advisory Commission to monitor the ongoing efforts and determine whether states and local governments should be allowed to collect taxes on out-of-state Internet vendors once tax code simplification is complete.*

These proposals were indeed the pivot of the US's growth and development of internet taxation or e-commerce. One of the most fundamental issues confronting the Commission was applying state and local sales and using taxes to the internet and other remote retail sales, which is germane in determining ‘virtual’ PE. These led to the passing of new legislation in November 2001 wherein a moratorium period of further two years was granted on the ITFA, following which the Internet Non-Discriminatory Bill meant to extend the moratorium permanently was passed in 2003 by the US House of Representatives. Though the said Bill did not sail through theUS Senate in December 2004, a compromise Bill was initiated and passed, which extended the moratorium for four years.[173]

A group, ‘the Download Fairness Coalition,’ is at the forefront of ensuring a uniform and direct internet tax, which will address the issue of double taxation on the customers. Theprovisions of the Streamlined Sales and Use Tax Agreement provide that a State may exercise authority under the Act beginning 180 days after the State publishes notice of the State’s intent toexercise the authority under the Act, but not earlier than the first day of the calendar quarter, that is, at least 180 days after the date of the enactment of the Act. Conversely, if a State that is not a

[173] Graham J. H Smith, Internet Law and Regulation (4th Ed. Sweet & Maxwell, London, 2007) 1038 in Ariyoosu, (n 35) 55.

Member State under the Streamlined Sales and Uses Tax Agreement is authorized, notwithstanding any other provision of law, to require all sellers not qualifying for the small seller exception described in subsection (c) to collect and remit sales and use taxes the State chooses to implements the minimum simplification requirements in paragraph (2). Such authority shall commence not earlier than the first day of the calendar quarter that is at least six months after the date so provided by the State, amongst other things.

There exist some significant differences between the EU and the US in the way taxes are collected as well as their approaches to international taxation rules on e-commerce. EU countries derive a large percentage of government tax revenue from consumption taxes on domestic goods and services, especially from VAT which may range up to 29%. It is also interested in increasing the import of digital content and services from outside the EU, which would be exempted from VAT payments in the EU. While on the other hand, the US government gets most of its tax revenues from personal, corporate income tax, and social security contributions. It is worth mentioning that the US is presently both a net exporter and the leading exporter of e-commerce worldwide. Consequently, it has a great interest in encouraging businesses such as e-commerce businesses to establish in the United States wherein they will pay direct taxes to its tax authorities.[174]

The reality is that an increasing amount of e-commerce is done digitally, not in physical form, so customers and payments are not traceable. It has also widened the gap between the technology-exporting developed countries like the US and technology-importing developing countries like Nigeria, on the one hand, and between those countries whose main tax base is a direct tax and those that can raise substantial amounts of revenue through consumption taxes on the other hand. A threat is sure to deepen developing countries' disadvantage in competing with developed nations.[175] If the gap must be narrowed, then developing countries like Nigeria must, as a matter of urgency, through deliberate policies, take advantage of the reality or potential the digital economy presents.

2.0 UNILATERAL ACTIONS ON TAXATION OF INTERNET TRANSACTIONS.

[174] <http://www.bileta.ac.uk/01papers/rjones.html> accessed on 1st June 2020.
[175] Ibid.

Digitally-based enterprises are poised to contain the ever-changing nature of digital tax rules, which is the new normal in the present digital economy. The wave of this change is blowing across countries around the globe, particularly in the absence of a solid multilateral solution to internet taxation and the ability of countries to tax revenues of tech giants within theirdomain who surreptitiously shifts huge profits to tax haven, thus depriving their home states the needed revenue for development. In this guise, about 23 countries have introduced different forms of digital tax laws, while nine countries followed too in 2020, and 8 countries were planning to introduce the same.[176] We will discuss in detail the digital tax initiatives adopted in India and France given, the success achieved by these counties in that regard, and their ability to have trail robustly blazed the grey area of digital tax, as well as discuss Nigeria's effort at joiningthe league of digital tax players in recent time. It shows how many initiatives individual countries adopt to address the challenges of digital taxation without a definite global framework or solution. The unilateral measures taken range in different forms. However, they are broadly categorized into the following: virtual PE measures, equalization levies, withholding taxes,diverted profit taxes, and VAT/GST-type indirect taxes[177].

2.1 The Republic of India.

India is one of the leading countries in the campaign for the introduction of internet taxation; that conviction was demonstrated by the passage of the digital tax legislation enacted

176 Countries with new digital tax laws: Albania; Angola; Australia; Bahrain; Bangladesh; Belarus; Canada; Iceland Japan; India; New Zealand; Norway; Russia; Saudi Arabia; Serbia; South Africa; South Korea; Taiwan; Turkey; United Arab Emirates; and the United States (wherein some states have introduced same) is currently undergoing a widespread reform in its tax policy when it comes to digital products and online businesses. Even though, some states charges sales tax on Sales and digital products. It is instructive to note that the Supreme Court ruling in *South Dakota v. Wayfair Inc. 585 US (2018)* allows state governments to tax out of state sales tax. It has emboldened individual states across America to adopt a new digital tax law called economic nexus. It made retailers with an annual sales exceeding $100,000 or with more than 200 separate transactions in a particular state to compulsorily register, collect, and pay sales taxes in that state. The annual sales threshold applies to both B2B andB2C transactions. While remote sellers that stay under this "minimum presence" threshold are not subject to tax under this rule. However, it should be noted that the thresholds vary from states. These are states who already have the new law in place, or are in the process of adopting it, inter alia: Washington, Wyoming, Wisconsin, Virginia, Vermont, Texas, Tennessee, South Dakota, Rhode Island, Pennsylvania, North Dakota, North Carolina, NewMexico, New York, Mississippi, Maine, Louisiana, Kentucky, Iowa, Indiana, Illinois, Idaho, Hawaii, Georgia, Connecticut, California, Arkansas and Alabama. B. Countries that have introduced digital tax in 2020: **Cameroon;** Indonesia**;** Malaysia; Mexico; **Nigeria;** Uganda; Uzbekistan. C. Countries planning to introduce digital tax: Algeria; China; Colombia; Fiji; Israel; Thailand; Ukraine. The digital taxes may in some cases takes the form of a GST or VAT while on the other plank some requires thresholds, but other countries do not, registration is a prerequisites in some clime registration is required, the digital tax vary from single to double digit percentages.
<https://quaderno.io/blog/digital-taxes-around-world-know-new-tax-rules/> accessed on 15th June 2020.

177 Ibid 9.

on the 1st of August 2019. India has, over the years, witnessed phenomenal growth with clear indications of exponential growth in the future, particularly in e-commerce. Its market size rose to Rs. 8146 Cr in 2007 and increased to Rs. 14030 Cr. in 2008, and it stood at Rs. 46520 Cr by 2011, representing 471.08% growth within four years.[178]

Sections 2-69 of the Finance Act, 2019 became effective by the 1st day of April 2019. Sections 92 to 112 and 114 shall come into force on such date as the Central Government may appoint pursuant to notification in the Official Gazette.[179] India imposed taxes to use its country's digital infrastructure, known as India's equalization levy, introduced by India's Finance Act 2016; this was quite profound. The Act,[180]focused on indirect taxes, wherein section9, in particular which amended section 35D[181] to substitute "bank account," with "bank account or through such other electronic mode as may be prescribed" inter alia sections 11(i), 14, 16, 18 and 27[182] all have similar phrases which reads: "… such other electronic mode as may be prescribed" and section 11(ii) reads "such Cheque or draft or electronic clearing systems or such other electronic mode as may be prescribed." while from section 70 deals with indirect taxes which reads in part that "… requires presenting electronic manifest of export or import goods to the proper officer before departure of conveyance from a customs station" and section 99[183] reading in part provides "…use of the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act to the electronic cash ledger for integrated tax, central tax, state tax, union territory tax or cess." Section 102[184] in amending 53A inserted "the electronic cash ledger" which is the same with section 114[185] which amended 99; section 183[186] of the Act in amending the Securities and Exchange Board of India 1992 particularly section 15c of the principal Act,[187] after the words

[178] Kirti and Namrata Agrawal, 'Impact of E-commerce on Taxation', International Journal of Information and Computation Technology Vol. 4, Number 1 (2014),101 International Research Publications House <http://www.irphouse.com/ijict.htm> accessed on 30th May 2020 (pp. 99-106).
[179] Section 1 (1) & (2), (a) & (b) Finance (No.2) Act, 2019.
[180] Finance (No. 23) Act, 2019, reveals inter alia that it has amended many financial and tax-based legislations amongst which we will be concerned with the: Income –Tax Act 1961; the Securities and Exchange Board of India 1992; the Payment and Settlement System Act 2007; Finance Act 2016; and Finance Act 2018.
[181] Income Tax Act 1961 of India.
[182] The Finance (No.2) Act, 2019 No.23 of 2019, '209695.Pdf' <https://egazette.nic.in/WriteReadData/2019/209695.pdf> accessed on 1st September 2021.
[183] The Finance (No.2) Act, 2019 No.23 of 2019.
[184] The Finance (No.2) Act, 2019 No.23 of 2019.
[185] The Finance (No.2) Act, 2019 No.23 of 2019.
[186] The Finance (No.2) Act, 2019 No.23 of 2019.
[187] The Finance (No.2) Act, 2019 No.23 of 2019.

have been called upon by the Board in writing "the word including by means of electronic communication" shall be inserted even more profound is section 185.[188]

In amending the Payment and Settlement System Act 2007, the Finance Act 2019, particularly in section 204, provides that:

> *Notwithstanding anything contained in this Act, no bank or system provider shall impose, whether directly or indirectly, any charge upon a personmaking or receiving payment by using the electronic modes of payment prescribed under section 269SU of the Income-tax Act, 1961.*

From the community reading of the Finance Act 2019, India deliberately ensures that her laws are in sync with the reality of the digital economy, aside from the different campaigns on e- commerce tax initiatives embarked upon both at the global and domestic levels. A case in pointis the judicial pronouncement in ***ITO v. Right Florist Pvt Ltd***[189] and in ***Amadeus Global Travel v. Deputy Commissioner Income Tax***[190]**,** amongst others, where the Tribunal profoundly concluded that these companies have a "virtual" presence in India which constituted a "virtual" PE. One major milestone in the development of e-commerce taxation in India is the constitution of the 1999 High Powered Committee (HPC) under the leadership of Shri. Kanwaljeet Singh, the committee suggested a low withholding tax as possible e-commerce taxation to protect against the incidence of base erosion. The idea was to prevent the incidence of double taxation on the taxpayer.[191] In a situation, an individual or enterprise transfers partial rights in a product, such will constitute royalty.[192] That kind of payment is subject to tax in the state where such transfer and or payment must have occurred.

In her collaborative efforts on the global initiatives on taxation of e-commerce, India did not shy away from making bold to place her disagreement with OECD on tropical issues she strongly believes otherwise, which has helped in shaping legal tax regime not only in India but globally. A cursory consideration of the 28 issues differs from the categorization of 11 issues. In the 11 issues, OECD regarded the transactions as business earnings implying that the country of payment cannot tax such transactions: India Income Act, India-U.K. treaty, India-U. S. A treaty

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188 The Finance (No.2) Act, 2019 No.23 of 2019.
189 (n 25).
190 (n 29).
191 Ibid.
192 Section 9(1)(vi) of the Income Tax Act, 1961 of India, defines royalty to mean the consideration arising on the transfer of all or any rights in respect of a copyright or a scientific work.

regarded such transactions as Royalty, conferring the powers to tax those transactions as Tax Deducted at Source (TDS).[193]

2.2 France.

The French law has been swept up in the frenzy of digital communication[194] , especially in the wake of high unemployment in France; many workers and unemployed people see digital platforms as new opportunities for new additions or sources of income. For example, “The Uber platform, established in more than 600 cities in eighty countries, has revealed to everyone a new way of working, which has caught on the World Wide Web.”[195] Whereof the French law in defining digital platform(s), saw it as “Businesses, whatever their place of establishment, that connect persons remotely by electronic means for the sale of a good, the provision of a service, or the exchange or sharing of a good or service.”[196] It is or views that this definition is comprehensive and profound in terms of making the issue of PE very flexible such that irrespective of the place of establishment or business, once there is a connection, whetherremotely or otherwise, via electronic medium for the sale of goods, provision of service, exchange, or sharing of goods and service suffices to determine digital or electronic transactions for e-taxation. Suffice it; the reality in France is that e-tax has become an inevitable componentof its digital economy. In this light, digitization of the economy is viewed like a stopwatch, ticking off seconds by seconds in the innovation race. Only a few experts are familiar with this brand-new system of doing business and tax under this regime. Indeed, it will be woe for those without smartphones or apps, who have no plans to ride-share or have dinner at a stranger’shome and do not know how to locate a plumber at 8:00 p.m., at the lowest possible rates. The good news is that young people, on the other hand, are eagerly rushing to meet this new, wide- open universe head-on, while their parents feel like they have missed the bus, and their grandparents stayed at home.[197]

The world in time past was anchored on brick and mortar so are the rules or principles governing the same. However, now it has changed and still changing at the speed of light

[193] (n 108) 104.
[194] Marie-Cécile Escande- Varniol, The Legal Framework for Digital Platform Work: The French Experience, in Law and the "Sharing Economy" (eds. Derek McKee, et al) Published by: University of Ottawa Press <http://www.jstor.com/stable/j.ctv5vdczv.14> accessed on 8th June 2020 (P.321-355).
[195] Ibid 322.
[196] Ibid. as per (s 242bis Code Général des Impôts, & s. L. 111-7 of the Code de la consummation)
[197] Marie-Cécil, (n 121) P.322.

wherein platforms are changing from transforming services that were hitherto free or gratuitous services such as driving, having people over for dinner, babysitting the neighbour's children, or sorting photographs into paid services via the internet and consequently, making them taxable. Before now such activities were perceived as unpaid but friendly gestures extended by way of mutual assistance or relationship, it is now carried out on a larger scale due to the power of the algorithm apps and platform marketing,[198] a case in point is the popular *'Uber'* and '*O pay*' which drives gamut of so many different taxable online revenue-generating services. President Emmanuel Macron, in further buttressing the reality of the digital economy, views it as a truism wherein the new economy's stakeholders are not free riders in today's world as the new economy created some disruption and inequality. It has disrupted communities and created situations that require compensation and support. Consequently, it is only legitimate and apt to demand from making lots of profits from the new economy to contribute to that pause.[199]

It is the belief within the French government circle that those two categories of companies established their businesses without paying their fair share for the benefits of the public services they use in France and other countries hence the need to capture digital profits made in France into the tax net by the DST. The Minister of Finance and Economics seeks to target commission-based platforms, like Amazon, Airbnb, Criteo, and Booking. command projected the new tax regime to be an efficient tax that will quickly yield 500 million euros to help finance public services.[200] He said that "taxation for the 21st century has to be built on what has value today. "And that's data," he added thus: "It is a matter of fiscal justice, with these companies paying some 14% less tax than small and medium-sized enterprises in Europe."[201] Even though not all services are taxed, those exempted from DST include Services that are not ordinarily designed to connect users, which may include:

i) *Direct sales of goods and services, including digital content (e-commerce, on-demand video, and music services)*
ii) *Messaging and payment services*
iii) *Advertising services are targeted solely based on the website content. They are identical for all Internet users (and not explicitly based on user data obtained that show his transaction pattern, etc.).*

[198] (n 1) 325.
[199] France's Digital Tax Bill, 6 March 2019 President of the French Republic Speech at the Sorbonne
[200] Section 9(1)(vi) of the Income Tax Act, 1961 of India.
[201] Cyril Wolmark, "Quelle place pour le travail dans le droit du travail?" (2016) 5 Dr soc 439 in Law and the "Sharing Economy" (eds. Derek McKee, Finn Makela and Teresa Scassa) Published by: University of Ottawa Press < http://www.jstor.com/stable/j.ctv5vdczv.14> accessed on 8th June 2020 324. (P.324-355).

iv) *Sales of data not gathered online or for purposes other than advertising.*
v) *Regulated financial services or qualifying payment services*[202].

The DST applies to French or foreign businesses that carried out any of the two categories of digital services within the scope contemplated by the law and receive revenue in consideration of such services. The thresholds in a previous calendar year are more than a). €750million tax for taxable digital services supplied globally and b). €25 million for taxable digital services supplied in France. If both thresholds are more than the total amount, the Frenchreceipts are taxable under given conditions; such is to be calculated on a consolidated group basis.[203] It must be stated, too, that where a business or company pays the DST and is also subject to corporate income tax in France, such will be able to deduct the digital tax payment from the taxable income. In calculating the €750 million thresholds, the global receipts are considered while in the case of the €25 million for (a). Intermediary Digital Services (IDS) receipts here mean all monies paid by interface users for accessing and using it, and (b). Digital Advertising Services (DAS) depend on the user's data, i.e., all the amounts paid by the advertiser as consideration for the actual posting of the advertising messages or any sucheconomically linked transaction.[204]

Profoundly, the user's IP (Internet Protocol) address serves as the coordinate to determine the user's location, whether he is in France or elsewhere. It is our candid view thatthis indeed provides some succor in determining the user's location for digital tax purposes. Another corollary to that is the issue of digital privacy. The law also provides a timeline for the final regularization of the digital presence ratios of 50% advance payment based on data, which took place between 25th July 2019 and 31st December 2019. Barely a month after the DST law was accented to and published on the hills of stiff opposition by the US with threats of retaliationon French companies, France and the US reached a compromise, thus ending the faceoff or standoff such that France agreed to repay companies any difference that exists between the DST and proposed mechanism being drawn up by the OECD when it eventually comes to be.[205]

Nonetheless, France's bold step has reshaped the narratives on digital tax wherein the EU by December 2020 intends to introduce a digital tax to tax tech giants, to achieve that, it requires

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[202] Ibid.
[203] <https://taxfoundation.org/italy-digital-services-tax/> accessed on 12th June 2020.
[204] Ibid.
[205] (n 127).

the unanimous approval of the 28 member states. A country like Germany is already exhibiting cold feet in that respect. In contrast, countries like Luxembourg, Ireland, and the Netherlands, with low corporate tax rates, sternly oppose the proposal,[206] wherein they positioned themselves as tax havens. It is instructive to say that the DST came into being when OECD is consistently driving the wheel of global consensus in formulating new global tax rules to address thechallenges of digitalization of the economy. Indeed, it is compelled to investigate the DST and develop a framework as soon as possible, particularly since other countries are beginning to implement it.

2.3 Nigeria.

The Minister of Finance, Budget, and National Planning, Mrs. Zainab Ahmed, on 5th January 2022, announced during the public presentation and breakdown of the 2022 budget held in Abuja that the Federal government will impose a 6% Offshore Company Digital Services Tax (OCDST) on offshore companies who provide digital services to local customers in Nigeria on their turnover pursuant to the provisions of the 2021 Finance Act.[207] The Act brought to the limelight a range of digital activities and electronic commerce to subject such activities to taxation for the first time in line with the digital reality around the globe, which inter alia includes "electronic commerce, application store, high-frequency trading, electronic data storage,online adverts, participative network platform, online payments and so on, to the extent that the company has a significant economic presence in Nigeria and profit can be attributable to such activity"[208] the Act empowers the Minister of Finance, Budget, and National Planning to order and determine what constitute the threshold of the significant economic presence of a companyin Nigeria for tax purposes.[209] Under the forgone provision and in line with the federal government policy on the digital economy the Minister set out the threshold targeted to digital tax services, such as Apps, with high-frequency trading or engaging in electronic data storage and online advertising, significantly such taxes will be based on turnover tax which will be on a fair and reasonable basis.

[206] <https://www.dw.com/en/france-to-set-new-500-million-digital-tax-for-30-tech-giants/a-47759058>accessed on 9th June 2020.

[207] <https://www.arise.tv/nigeria-introduces-6-tax-on-digital-services-non-resident-companies/ >accessed on 6th January 2022.

[208] Section 4(2)(c), Finance Act, 2019 Federal Republic of Nigeria Official Gazette No. 6Lagos - 14th January, 2020, vol. 107 Government Notice No. I I (Which amended section 13 of CITA).

[209] Section 4(4), Finance Act, 2019. (Which amended section 13 of CITA).

The OCDST has some features akin to the DST in France and Italy though; they are more structured and comprehensive legal regimes that hitherto had passed into law. Though focused more on tech giants than what looks like a digital VAT in Nigeria or at best Sales of goods tax which has been abolished and VAT introduced in its stead. The Act amended Sections10, 31, and 14 of VAT, which placed VAT obligation on non-resident digital companies supplying Nigerians who self-cant for VAT. “So if you visit Amazon, we are expecting Amazon to add a VAT charge to whatever transaction you are paying for. I am using Amazon as an example. We will be working with Amazon to register as a tax agent for the FIRS”.[210] Thedigital tax policy is the government’s way of modernising tax for the smooth sailing of the digitaleconomy as well improves its compliance. Unlike in the brick and mortar, digital non-resident companies do not need to be registered in the country before they can be subject to digital tax and Federal Inland Revenue Services (FIRS) collect and remit same, even when the current imbroglio between the federal government and 36 States still lingers in court.[211] It is imperativeto note that the need for collecting or regulatory agency deploys the use of AI and AR to ensure digital tax compliance will be efficient, cheaper, accurate, and work round the clock without fatigue, which is also timely given the benefit of ease of tax compliance. Thus, The Executive Chairman of the FIRS, Muhammad Nami, had caused while speaking as a Special Guest at the Pedabo 2022 Annual Public/ Private Sector Engagement, that FIRS will achieve 100% automation of all the tax administration processes in Nigeria within its mandate. Doing so willnot only help block revenue leakages but also revolutionise revenue generation in the country, particularly given the amendment of Section 25 of the Federal Inland Revenue Service (Establishment) Act 2007, by Section 18 of the Finance Act 2021, which makes anyone or person who fails to grant the Service access to its information technology systems to connect to its automated tax administration solution is liable to penalties. He further stated that “in 2022, theService will give priority to the collection of taxes from the digital economy and that it will deploy technological tools in assessing entities that fall within the Significant Economic

[210] Ibid.

[211] “The Federal Inland Revenue Service may lose over N2.4tn revenue to the 36 state governments in 2022 if it loses its appeal against a Federal High Court verdict which barred it from collecting the Value Added Tax and Personal Income Tax”<https://punchng.com/vat-controversy-firs-may-lose-n2-4tn-revenue-to-states/> accessed on 7th January 2022.

Presence (SEP) threshold and relevant turnover generated from Nigeria"[212] indeed same underscores the essence of this research which is timely.

3.0 DRAFT DIRECTIVES ON ELECTRONIC SIGNATURES.

Digital signatures improve the capacity of parties to contract to authenticate their electronic communication. It requires very sophisticated encryption and decryption technology to verify the other party's identity in such an electronic transaction. The importance of Digital Signature law to resolving disputes arising from e-commerce amongst contracting parties cannot be overemphasised Electronic or digital signature may be that name in an email address or the combination of the name and the domain name in an email address or the combination of the name and the domain name email address used in identifying the person. In some cases, it could be used to describe or hazard a guess on the function of an organisation, whether private or public, even though, in some cases, it is difficult to come to such a conclusion from the email name due to the combinations of words and letters to hide the identity of the owner of the email. In the event, the sender decides to hide the email address, and invariably the sender's identity of such correspondence is likely to be disputed. Hence, evidence will be required to establish the email's source and unravel the sender's identity.[213]

In a situation where the sender of an email decides to hide the actual email address andthe sender's identity such communication making it not obvious, it could give birth to many issues. In such circumstances, disputes are most probable. Hence, evidence will be required to establish amongst other issues the email's source to unravel the sender's identity. In the case of ***McGuren v Simpson,***[214] whether communication through an email was capable of being regarded as an acknowledgment the same way as one in writing and regarded as signed, as may be required by the Limitation Act 1969 (NSW). Mr. Simpson and Ms. McGuren were involvedin a relationship between 1992 and 2000. Mr. Simpson received a Cheque for $23,000 inNovember 1993 while he was in prison; he claimed damages for personal injuries he suffered ina motor vehicle accident. He, consequently, endorsed the said Cheque in favour of Ms.

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[212] <https://thenigerialawyer.com/firs-targets-100-automation-of-tax-administration-processes/>accessed on 24th Janaury 2022.

[213] Stephen Mason, 'The name in an email address', Electronic Signatures in Law (Published by: University of London Press, Institute of Advanced Legal Studies (2016) 11<https://www.jstor.org/stable/j.ctv5137w8.17> accessed on 4th April 2020.

[214] [2004] NSWSC 35.

McGuren's sister to allow her to lodge the Cheque in her account on behalf of her sister (Ms. McGuren did not want to pay the Cheque into her account, as it would affect the state benefits, she was receiving at the time). Wherein Mr. Simpson claimed that the defendant used almost the entire money for her purposes whereof he sought to recover his money from Ms. McGuren. And the defendant, in her defence claimed that she used the money under his instructions and with his approval. Mr. Simpson's main evidence was the email Ms. McGuren sent to him. The email reads in part:

> *Date: Wed, 29 Sep 1999 14 16.20+1000 To: "Rob – yahoo" <Robert-john-simpson@yahoo.com.au>From "McGuren, Kim" Kim.Mcguran@air.gov.au. I am going to try and book a cab for 6 pm at childcare, does that suit you? It probably won't turn up, but I may as well book it. So, what do you want to do: split up, – go to counseling, or – just blame each other for everything since everything is obviously the other persons fault, for the rest of our lives? Yes, I spent: the money and I shouldn't have, and yes, you have been violent, and you shouldn't have so what now?*

Harrison, in dealing with an appeal from the Local Court Magistrate, considers the issue for determination to be "whether Mr. Simpson's cause of action was statute-barred under s14 of the Limitation Act 1969 (NSW)." Section 54 has extended the time-limited wherein the person against whom the cause of action lies confirms the cause of action by acknowledging it to the person who holds the action, providing the acknowledgment in writing and signed by the maker. Mr. Simpson's case was that Ms. McGuren acknowledged the cause of action in the email she sent him when she wrote, "Yes, I spent the money, and I should not have." The Magistrate previously held that the email constitutes an electronic communication within Section 9(1).[215] Even though the Act was not in force at the time the email was sent, the provisions of the Act didnot apply to the email. Hence the Magistrate's decision was incorrect. Master Harrison dealt withthe problem in the context of the common law. First, he concluded that the email constituted a written document. In so doing, he noted the expansive approach taken in other jurisdictions and decided to construe the Act to take into account the changes in technology, views taken by judges in England and Wales and the USA in the 19th century, where he held thus: "It is my viewthat … Section 54 of the Limitation Act[216] ought to be read to accommodate technological change and that, accordingly, the email sent by the plaintiff constitutes a written document." On

[215] Electronic Transaction Act 2000 (NSW).
[216] The Limitation Act 1969 (NSW).

the second plank, he agreed with the decision of the Magistrate that the email address was a signature for section 54(4) of the Act, As Ms. McGuren's name appears in the email, and she expressly acknowledges in the email as an authenticated expression of a prior agreement, the email is recognisable as a note of a concluded agreement. Accordingly, the Magistrate was correct at law to conclude that Ms. McGuren signed the email and that the requirements of section 54(4) of the Act were met. It was open to the Magistrate to find that Ms. McGuren acknowledged the claim and admitted her legal liability to Mr. Simpson and that which he seeks to recover."

Even though by the 1990s, many states in the US adopted some part of the Uniform Electronic Transactions Act, which compulsorily validates e-signatures on a vast scale. Leveraging on this development to further achieve more uniformity in the states' laws, the US, and the federal government enacted "E-Sign" in 2000, just like Lebanon, which signed its Lebanon: Draft Law on E-Signature on the 3rd April 2000.[217] The law preempted all other existing state laws unless it was the original form of the Uniform Electronic Transactions Act. Unfortunately, United States jurisdictions now have a "patchwork quilt" of different laws regarding digital signatures. The UK Electronic Communications Act enacted in 2000 recognised the validity of e-signatures and affirmed its admissibility in evidence in court proceedings. Eventually, in 2002 e-Signatures Regulations came into force to implement some provisions of the EU E-Signatures Directive; nonetheless, both UK and the US remained technologically neutral.[218]

In the English case of ***J Pereira Fernandes SA v. Mehta,*[219]** a question arose for a determination as to "whether the name forming part of an email address could be construed as a signature." J Pereira Fernandes S.A, a Portuguese company, supplied bedding products in July 2002 to Bedcare (UK) Limited, where Mr. Mehta was a director. Bedcare failed to pay for the products received and was wound upon a Petition by J Pereira Fernandes S.A, by order of court made on 7 March 2005. The cause of the appeal before HH Judge Pelling QC, sitting as a judge of the Chancery Division, related to the presentation of a winding-up petition by J Pereira

[217] Lebanon: Draft Law on E-Signature Source: Arab Law Quarterly, 2001, Vol. 16, No. 4 (2001), pp. 407-413 Published by: Brill Stable URL: <http://www.jstor.com/stable/3382061> accessed on 24th June 2020.
[218] Stephen E. Blythe, Digital Signature Law of the United Nations, European Union, United Kingdom and United States: Promotion of Growth in E-Commerce with Enhanced Security, 11 RICH. J.L. & TECH. 2 (2005), <http://law.richmond.edu/jolt/v11i2/Article6.pdf.> accessed on 24th June 2020.
[219] 2006] 1 WLR 1543; [2006] 2 All ER 891; [2006] 1 All ER (Comm) 885; [2006] All ER (D) 264 (Apr); [2006] IP & T 546;

Fernandes S.A on 12 January 2005. On 20 February 2005, an email was sent from the email address 'Nelmehta@aol.com' to Ian Simpson & Co, solicitors acting for J Pereira Fernandes S.Ain the email, Mr. Mehta's name was not typed at the end of the email. District Judge Harrison of SA on 9 November 2005 gave a summary judgment in favour of J Pereira Fernandes to the tune of £24,985.53 and the costs of the claim, summarily assessed in the sum of £1,080.00. Mr. Mehtawas subsequently granted leave to appeal by Holman J on 20 February 2006. The email address on this email also appeared on other emails sent to Ian Simpson & Co by Mr. Mehta, which included his name typed at the end of the email.

Consequently, two issues arose for determination: (a). "Whether the e-mail could be considered a sufficient note or memorandum, and if so," (b). "Whether it was signed by the party charged, that is, by him, or by somebody else on his behalf." The email was a rare example of a document brought into the purview of section 4 of the Statute of Frauds 1677, which applies only to contracts of guarantee. The content of this email provided a guarantee that Mr. Mehta offered to cover debts owed by the company personally. The Act envisages that no action shall be brought charging the defendant for any special promise concerning debt default or miscarriages of another person except where the agreement, memorandum, or note is in writing and signed by the person charged in addition to that or other persons he lawfully authorized.[220] While delivering his summary judgment, Harrison DJ held that the email did amount to a note or memorandum of guarantee, even though he avoided making a clear and definite pronouncement on whether the names in the email address could amount to a signature. Judge Pelling QC agreedwith Harrison DJ on this point and held the email as not a note or memorandum that brought it within section 4 of the statute. He stated that the statute aims to protect people from being liable for informal communications as such may have been made without considering issues of ambiguity or situations where such communication might be fraudulently made by the person charged. The reasoning hinges on the fact that the contract's essential terms offered by such a party expected that his offer was accepted unconditionally, aside from being documented in writing as required by section 4.[221]

It was concerning the second question, whether the email had been signed. It was shown by the evidence adduced by solicitors for J Pereira Fernandes S.A from several emails they

[220] Section 4 Statute of Frauds 1677.
[221] Ibid.

received from Mr. Mehta wherein he included his name typed at the bottom of the text. But in the instant case, the evidence of several communications from the same address demonstrated that they were authentic. Mr. Mehta did not dispute the email that was sent. The evidence upon which a decision was made in Fernandes was more substantial than the evidence that Prakash J dealt with in ***SM Integrated Transware Ltd v. Schenker Singapore (Pte) Ltd.***[222] In this instance, Judge Pelling QC believed that the email address was likened to an automatically generated name and facsimile number of the sender of a facsimile transmission. However, his comments noted that a human being had to type the data into the software: in sending emails, what is essential is certainly not what was inserted by the sender of such mail but rather what was automatically inserted into the mail which the judge was of the view that if being case such information must have been supplied before it can be inserted automatically. The court was also of the view that it was not in dispute that the email was sent on the instruction of Mr. Mehta. It does not matter how his address was inserted in the email, as the same is inconsequential to the issue for determination.

Information may be inserted 'automatically' as presented in the case at hand yet the judgments suggest a clear misunderstanding of the workings of the email as a human being has to impute the information into the machine. The facsimile number of the sender is for specific performance, accepted the offer wherein his printed name served as a signature to hold him to the promise he made.[223] In ***Orton v. Collins,***[224] Peter Prescott QC sitting as a Deputy Judge made the following observations concerning ***Mehta v. J Pereira Fernandes S.A*****:** Mr. Zelin doubted whether simply typing 'Putsmans' on the email amounted to a signature that complied with the Practice Direction, citing ***Nilesh Mehta v. J Pereira Fernandes S. A,***[225] but wisely he did not waste much time on the point. In that case, the signature was alleged to be constituted by the words 'From: Nelmehta@aol.com' appearing in the email header. It was a mere statement of the sender's email address and would have been generated automatically after the message was transmitted. It was not put there by the sender to authenticate the document. In our case, the word'Putsmans' was deliberately typed in (what is more, after the customary salutation 'Yoursfaithfully'). I do not doubt that its purpose would be recognised throughout the profession,

[222] 2005] 2 SLR 651, [2005] SGHC 58.
[223] See AUSTL. TAX' N OFF., Tax and Internet (Austl. Govt' Printing Serv. 1997) (discussing Report on the Challenges of Electronic Commerce for tax administration) [hereinafter ATO] at ss7.2.1-7.2.8.
[224] [2007] EWHC 803 (Ch), [2007] 1 WLR 2953.
[225] [2006] EWHC 813 (Ch).

signifying that document was being sent out with the authority of the defendant's legal representative.' (Emphasis added).

However, the judge seems to have taken it for granted that the word 'Putsmans' was deliberately typed in without any evidence on the point. The word, together with 'Yours faithfully.'

In the case of ***Poly USA, Inc., v. Trex Company, Inc*.**[226] by its initial supporting brief, Poly claimed that when Beladakis signed May 28, 2004, emailed document that it became binding on both parties because Trex 'signed' the document with an electronic signature by sending it through a Trex email account.[227] Poly did not pursue this argument at the hearing norin its additional briefing. Nevertheless, the court finds that using a Trex email account to send an email does not necessarily constitute an electronic signature under 15 U.S.C. § 7006 and that Trex did not intend to electronically sign the emailed document by sending it from a Trex email account. Thus, the May 28 emailed document was not binding.

It is the view that while considering the position that an email address can serve as proof of intent, although rejecting that as it could, in this case, the judge made a very important observation that the mere use of an email address does not necessarily constitute an electronic signature, particularly where there is no intention to sign. Deciding whether an email address can constitute a form of electronic signature will depend on the facts of each case and not a one size fit all situations. It must be stated that it is given in Contract law the world over, which has become a tradition that parties to contract without being told expects to affix their signatures to the document, thus signifying their intent to be bound by same. Indeed the advent of the digital age wherein e-signature surfaced as one of the breakthroughs and a challenge that we must grapple with. E-signature is regarded as any form of letters, characters, or symbols manifested byelectronic or similar means and executed or adopted by a party with an intent to authenticate a writing, or in the case of data in electronic form which are attached to or logically associatedwith other electronic data and which serve as a method of authentication. E-signature couldadopt different forms: a digital signature, a digitized fingerprint, a retinal scan, a PIN (Personal

[226] W.D. Va. No. 5:05-CV-0031 (March 1, 2006).

[227] See 15 U.S.C. § 7006 ('the term "electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.').

Identification Number), a digitized image of a handwritten signature attached to an electronic message, or merely a name typed at the end of an e-mail message.[228]

E-signature is one of the breakthroughs of the digital revolution. Yet, some lawmakers see the laws mandating signatures to authenticate certain transactions as a threat or obstacle to e-commerce, thus limiting it from reaching its pinnacle. Also, in opposition to making legislation for e-signatures, critics believe that legislative intervention is premature, will be overregulating, and interfere with the evolution of the market. These arguments did not take into account some of the advantages e-signature has over the ink on paper signatures amongst which; it eliminates the need to go through a trusted third party or a (CA) to link an e-signature to an individual; its digital signature dynamics has helped in overcoming the digital technology susceptibility which makes it prone to easy forgery and manipulation thus creating some high degree of security much greater than can be found in ink on paper signature; This is to help in addressing concerns of whether contracts entered into and executed entirely vide electronic means will be deemed valid; how to accept e-signatures as strong evidence without placing on defendants in both civil and criminal cases an impossible burden of proof, in the event of defence of obscure technical failure or corruption of Certification Service Provider (CSP) or failure which CSP discovered after the fact and choose to cover up; and whether computers can enter into a contract as if they have a legal personality of their own or as agents of corporate entity. The Signature Directive hasa two-prong approach in its attempt to define the legal effects of electronic signatures such that member states are expected to on the first prong ensure that an electronic signature is not denied legal effectiveness and admissibility as evidence in legal proceedings: a. simply because it is not in electronic form; b. not based on a qualified certificate[229] issued by an accredited certification service provider, and c. not created by a secure signature- created device. On the second prong of legal validation, it gives qualified technologies the same legal equivalence with handwritten signatures, such that member states are expected to: a. ensure e-signatures that are based on a qualified certificate and which are created by a secure-signature-creation device meets the legal requirements of a signature in connection to data in electronic form just like the handwritten signature also satisfy the requirement in the case of a paper-based data; and b. admissible as

[228] Stephen E. Blythe (n 140).
[229] Certificate is an electronic attestation which links signature-verification data to a person and confirms the identity of that person while a qualified certificate is a certificate that meets specific security standard and is issued by a qualified certification-service-provider known as CA or CSP.

evidence in legal proceedings.[230] This is the case of the saying that it is difficult to improve the present condition by the best law; nonetheless, it is easy enough to ruin it by bad laws. It is important to state that many states are taking steps through harmonised cross-border recognition of e-signatures wherein states are trying to remove obstacles in their national laws to the use of digital signatures. However, the directives remained unparalleled in bringing harmonized e-signatures as gains to e-commerce and digital growth.[231]

It is a very fundamental, significant, and far-reaching amendment wherein: In defining evidence by handwriting, it included “electronic media" whereof Article 142 repealed I, provided a broader definition of evidence by handwriting to address any legal disparity that may arise from the confusion between handwriting and documentary and between the paper document that makes the handwriting or the document. Consequently, by the new definition, writing will no longer be specifically writing on paper alone but includes writing on electronic media, which will be on the same pedestal or footing as a written document. It has also made electronic medium a potential and acceptable medium for evidence once these two conditions are fulfilled: First, the identity (cyber identity) of the person who issues it is recognizable, andthe second condition is that the document must be systematised and reserved according to conditions that guarantee the credibility and integrity of its contents.

4.0 DRAFT DIRECTIVES ON ELECTRONIC COMMERCE.

The advent of Electronic commerce has changed how commerce is conducted. The sudden disruptions to commerce and trade introduce or provide new options to lingering legal challenges bedevilling both trade and tax policy, particularly in changes that create new challenges in developing appropriate tax policy and modifying tax administration processes.[232] The Internet certainly has introduced a new predicament for tax authorities and governments in dealing with the fragile issues of regulating, taxing, and expelling the digital platform, hence the need for legal frameworks initiatives like Directives on electronic commerce to set out a policy direction for e-commerce and trade.

The legal regime of the e-commerce Directive implemented in August 2002 in the European Union aims to develop a unique structure for controlling and promoting online

[230] (n 142).
[231] <https://www.cl.cam.ac.uk/~rja14/signaturedoc.html> accessed on 24th June 2020.
[232] Richard L. Doernberg and Luc Hinnekens, Electronic Commerce and International Taxation (1999).

businesses and the digital community. The directive focuses on online contracts, ISP liabilities of ISPs, consumers' right to privacy from 'spam' and 'cookies,' country of origin regulation, and online dispute resolution (ODR) bearing in mind that the Electronic Commerce Directive (ECD), was adopted for the first time on the 8th of June 2000, which made the walking path ready for an easy transmutation of the European Single Market into the digital age. This structure, regarded as the EU's omnibus legislative action though, may be found in different EU legislation such as consumer protection, distance selling, digital signatures, taxation, competition law, privacy, telecommunications, and intellectual property, all having a direct effect on e-commerce. It still placed the ECD as the substantive legal structure or instruments that defined European e-regulatory policy and thoughtfully harmonised significant legal domains considered the main impediments to developing electronic Single Market.[233] It broadly covered thorny areas such as creating a common jurisdictional platform for e-commerce actors based on the 'country oforigin' regulation, which is to reduce legal risk and doubt; it provides for appropriate immunities for online intermediaries, which include ISPs and hosts; it also clarifies how and when e- contracts could be concluded on-line; it regulated how commercial communications on-line, including 'spam' or junk email, are treated or regarded; it seeks to encourage alternative dispute resolution ('ADR') and codes of conduct with the ultimate view of addressing some of the teething taxation problems which constitute key issues for revenue authorities, inter alia:

a. *To review existing taxation structures which include concepts of source, residency, permanent establishment, and place of supply, in the shares of electronic commerce and also to modify extant arrangements or develop fair alternatives, where necessary;*

b. *To ensure that technologies driving electronic commerce, including e-payment systems, do undermine the capacity of tax authorities to administer tax law adequately;*

c. *To provide a clear and equitable tax regime for both physical and electronic trade and commerce; and*

d. *To examine how the best advantage can be taken of these new technologies to the overall benefit of taxpayers by providing them with better service,*[234] *as earlier discussed.*

The diverse legal regimes or instruments are all skewed towards (i) promoting and making European Community a viable competitor in the ICT market; (ii) guaranteeing the

[233] Lilian Edwards, (Ed), *The New Legal Framework for E-Commerce in Europe*, (Hart Publishing: 2005) Pp.v.
[234] OECD, Electronic Commerce: OECD Policy Brief No.1 -1997 (visited Nov. 23, 1998) <http://www.oecd.org/publications/POL_brief/9701pol.htm> accessed on 1st August, 2020.

protection of the rights of citizens from the European Community and consumers in the new online commercial, public and governmental information society; and (iii) build confidence in the on-line platform as a safe place for consumers and government to transact in commerce, deliver goods and services as well as engage in social interaction. Although some of the archaic European laws have been amended to be in sync with the challenges of digital trade yet are not adequate. A case in point is the taxation of electronic services, which passed a huge challenge to merchants desiring to sell online either into or out. The Single Market had indeed become an irksomely "square peg in the round hole by existing laws on cross-border VAT"[235]The initiativesadopt a more serious position was taken with a view to rooting out spam through the adoption of an 'opt-in' regime, which also broadly it considers the basic issue on how to balance the many opportunities the Internet offer marketing and collection of personal data, given the desire to protect consumer privacy as a fundamental human right which remains sacrosanct. The directives seek rules or regulations with a long set of guidelines in deciding which court should exercise jurisdiction in hearing and resolving disputes, which law is to be applied (*lex causae*), and how the court's decision so adopted will be bindingly enforced by parties concerned.[236]

It is interesting to note that the Internet has turned almost everyone into either a buyer or seller irrespective of the border and engaged in commerce or some sort of trade between small businesses and consumers. While in Europe, statistics reveal that most e-commerce transactions were carried out on a B2B model. Hence, most of the legal initiatives were designed to regulate the business-to-consumer (B2C) marketplace, nonetheless, not really in sync with the e-commerce marketplace reality.[237] A general overview of the directives on e- commerce focused on, among other things: (a) Strengthening and boosting a single internal market; (b) Regulate e-commerce from the standpoint of Country of Origin rather than Country of Destination; (c) Guarantee privacy of electronic communication in e-commerce;
(a) Electronic contracts under the e-commerce regime; challenges associated with liabilities of ISPs and intermediate service providers under the dispensation of e-commerce; (f) Effective Online Dispute Resolution (ODR) mechanism; (g) Electronic Money and; (h) VAT on electronic services.

[235] Lilian Edwards, (n 184).
[236] Charlotte Waelde, Article 3, ECD: Internal Market Clause International Private Law, Consumers and the Net: A Confusing Maze or a Smooth Path Towards a Single European Market, The New Legal Framework for E- Commerce in Europe,(by Hart Publishing: 2005) p. 3. (546).
[237] Ibid.

11. DRAFT DIRECTIVES ON DATA PROTECTION.

Today, the internet has become the major tool used in accessing massive amounts of information for transactions, such as buying, and selling of goods and services online, partaking in online auctions, and e-banking. Access to such information on the computer, referred to as data, has posed several related challenges to intellectual property rights, such as copyright, privacy, trans-border data flow, and data protection. This is even more profound given the ease with which large amounts of information can be accumulated, accessed, manipulated, used, and transmitted, creating both substantial opportunity and significant concern aside from the increasing economic value and social importance of information in today's world amongst techs giants, nations, individuals, and business enterprise especially marketing outfits. Thus, data is regarded as 21st-century gold. It is important to note that computers and electroniccommunications networks have become a mixed blessing. They are indispensable tool thatallows massive information storage, processing, dissemination, searching, and retrieval.[238] It willbe apt also to state that the free flow of information across international borders requires senders and receivers to conform to agreed standards or translate between standards at the gateway or interfaces between systems with different internal standards.[239]

Trans-border data flow and the capacity of the private community to transport such information, whether within or outside the EC, is undoubtedly vital to the capability of both international and multinational companies to provide quality services to their customers on a global scale.[240] This data protection has become one area wherein serious security is extremely required and obligations equally placed on data managers and those who process the same for outsourcing companies by providing the needed management of the technological facilities. Wherein have in place applications that will avert or reduce the number of legal issues that may arise because of information technology?[241] Computer programs, databases, computer files, or printed documentation being computer software are generally protected by copyright law. That remained the situation until changes were made to the copyright law, effective 1 January 1998. Itgenerally became acceptable that computer databases were to be protected by copyright as

[238] David I. Bainbridge, *Introduction to Information Technology Law,* (Sixth Edition Pearson Education Limited, 2008) P.1.
[239] Arthur D. Little, Consulting, Decision Resources Report (1981)< https://www.adlittle.com/pt-ko> accessed on 19th August 2020.
[240] Joseph I. Rosenbaum, the European Commission Draft Directive on Data Protection, (American Bar Association: 1992) <http://www.jstor.com/stable/29762281> accessed on 1st August, 2020 p. 7.
[241]David I. Bainbridge, (n 199). P. 4.

literary works as they could be regarded as compilations.[242] The Copyright and Rights in Databases Regulations 1997, which came into force on 1 January 1998, completely changed the legal landscape of the protection of databases. These Regulations were made to comply with the Directive on the legal protection of databases, particularly the Directive 96/9/EC of the European Parliament and the Council of 11 March 1996 on the legal protection of databases. It must be mentioned that the United States does not have a single omnibus data protection law which is to cover both public and private sector information. It also did not have a single law covering all kinds of data collection either by the government or the private sector. In the same vein, it does not have a central privacy or data protection commission or a single regulatory body that oversees privacy or data protection.[243] It should be noted that adequate protection of data can be achieved in diverse ways such as national legislation, domestication of international conventions,adoption of codes of practice, compliance with industry standards, increased disclosure to customers, making contractual mechanisms to serve as alternative and complementary ways in which protection can be achieved.

Given the value ascribed to data in the digital economy, it is imperative for nations and governments world over (Nigeria inclusive), to put in place laws and regulations to protect data, such that both the owners of the data and the recipient of the same are not put at risk. Particularly the protection of Personal Data and privacy flows from the stream of fundamental rights of citizens to privacy. It has assumed an international status[244] wherein the Federal Constitution of Nigeria drew its life from. "The privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications is hereby guaranteed and protected,"[245] thusmaking such right sacrosanct. Data being individuals, governments, or business enterprisesinformation collated and stored through algorithms in hard disks, retrievable devices, or in the clouds, often referred to as modern-day gold underscores the premium placed on it. Concerted efforts need to be made through legislation, directives, frameworks, and regulations geared towards protecting data or information in the custody of those keeping same as well as those whomay want to access or use same without authorization either for personal or nefarious acts. The interventions include the Freedom of Information Act 2011 (FOI), the Cybercrimes Act 2011,

[242] Ibid. p. 72.
[243] Joseph I. Rosenbaum, (n 201) p. 3.
[244] Paragraph 12 of the Universal Declaration of Human Rights (1948).
[245] Section 37 CFRN 1999 (as Amended).

the National Information Technology Development Agency Act 2007 (NITDA), The Consumer Code of Practice Regulations 2007, The Data Protection Regulation 2019, and The Consumer Protection Framework issued by the Central Bank of Nigeria 2016 which contains provisions restraining financial institutions from disclosing the personal information of their customers to the third party except as required by law. It is the responsibility of The National Information Technology Development Agency[246] to develop guidelines or framework for e-governance, supervise the use of e-data interchange as well as other forms of e-communication as an alternative to the paper form of governance, commerce, education both in public and private sectors to guarantee e-communication and improve the exchange of data and information electronically.[247]

Despite the myriads of laws, rules, and directives, which did not provide the needed protection to data, the owners, and its users until the advent of the data regulation in 2019, which changed the narrative in the protection of personal data hitherto midwife the birth of the FOI 2011 which focused more on public information. The regulations in a clear, simple, and broad sense defined, as well as the process of transmission of the subject matter, particularly in ChapterOne Article 1.3 (d) & (e) of the Data Regulations 2019[248]

The court in ***CBN & Anor V. PPDC Ltd/Gte,***[249] juxtaposes the need for unhindered access to information held by a public custodian and the need to consider the public interest in giving out such information. The Act[250] seeks to make records and information available to interested public members upon request. Freedom of Information Act, 2011 was enacted clearly to make public records and information freely available to any member of the interested public. The Court in ***Nnaemeka V. Chukwuogor***[251] held that:

> *It is one thing to request information from an institution, as provided by the Act; it is entirely another thing when it comes to compelling that institution to release information, where it refuses to release such information as requested because if the information is indeed of such a nature that it affects a third party*

[246] Section 6(a)-(i) NITDA 2007.
[247] Davidson Oturu, An Overview of Big Data and Data Protection In Nigeria, <www.aelex.com> accessed on 19th August 2020.
[248] "Data" means characters, symbols and binary on which operations are performed by a computer. Which may be stored or transmitted in the form of electronic signals is stored in any format or any device; e) "Database" means a collection of data organized in a manner that allows access, retrieval, deletion and procession of that data; it includes but not limited to structured, unstructured, cached and file system type databases;
[249] (2018) LPELR-45856(CA) P.9 @21 Para Section C-B.
[250] The Freedom of Information Act, 2011.
[251] (2007) 5 NWLR (PT. 1026) 60.

interest, it is expedient also to include the third party in the suit so instituted, at least as a nominal party, otherwise no Court will lawfully make an order against a third party, whose interest will be affected, when in fact he is not a party to the suit at all.

The Act in Section 1 confers the right to commence proceedings to compel compliance by any unwilling custodian; however, the right to information is not absolute, as certain forms of information are exempted from disclosure as per Sections 12, 14, and 15 of the Act.

It is imperative to state that NITDA is the national agency entrusted with the mandate to plan, develop, regulate, and promote information technology in Nigeria, where such information is protected. Thus, the regulation stipulates minimum requirements for data protection, collection, storage, processing, management, operation, and technical controls for information.So far, it is about the only regulations in detailed and specific terms that provide for the protection, storage, transfer, or treatment of personal data. Even though FOI Act was enacted to inter alia ensure public records and information is radially made available to all and grants the unhindered public access to public records and information, this right is not without limitation.[252]To further buttress how sacrosanct it is to protect the privacy of individual's data and orinformation, the Court of Appeal did not mince words in the case of ***Habib Nigeria Bank Limited v. Fathudeen Syed M. Koya1,***[253] wherein the bank was allegedly accused of disclosing customer's bank transaction details to a 3rd party wherein reaffirming the long-aged elementary principle of law posited that the bank owed its customer a duty of care and secrecy. The above decision is in sync with the letters and spirit of the constitution and international instruments and re-echo best practices in information and data collection, storage, processing, management, and usage.

11.1 Transfer of Data to Third Countries and Data Mining.

The digital disruptions leading to broad participation in e-commerce businesses are not unconnected to its advantages, which make business management much easier, create newservice platforms, lower transaction costs, and provide better customer relationships. Theseadvantages indeed leverage information technologists' expertise, including statisticians who have

[252] Sections 14 & 16 of the FOI Act 2011 wherein such right was limited in circumstances provided particularly where granting access will infringe on the right of a 3rd party or on the overall interest of the public, such access may be denied.
[253] [1990 - 1993] 5 NBLR p. 368 at 387.

moved from marketing strategists to marketing firms wherein data is used to predict customers' purchasing behaviour or consumption pattern. It also provides focused or targeted services that have increased the fortunes of data mining. Indeed, tech giants like Amazon, Google, and Microsoft are deeply engaged in statistical research, giving them an edge over other 22nd-century businesses. The place of data mining became even more pronounced in the wake of the tech evolution, wherein search engine firms (and Map Quest) initially saw themselves as high-tech telephone books which generate revenue from advertisements.

Consequently, new business opportunities arose because of using data mining algorithms to recommend books or hotels to customers or target advertising more effectively based on activity histories.[254] It marked the blossoming of the data market, particularly that businesses thatcollect or gather data for resale began to emerge in recent times. They aggregate and organize data to be used and analysed by others (in contrast to data collected to meet specific business objectives). Lexis-Nexis-Seisint and ChoicePoint are examples of tech firms collecting electronicdata about people from multiple sources, analysing the data, and selling the material or information to other firms.[255]

Data mining plays a huge role in the growth and development of e-commerce in the present day, depending on the varying degrees of sophistication adopted or employed. This allows businesses to access recent data streams that shape management or decision-making in ways not previously possible. For example, an online auction at e-Bay provides data on how much money customers are willing to pay for a product. While on the other hand, a clickstream analysis provides clues on how people weigh information in purchasing decisions. It also provides a wide ability to identify product defects rapidly (e.g., monitoring user groups quickly found the legacy code flaw in Grand Theft Auto: San Andreas). The application of social network analysis provides fine-structure data on the relationships between people and businesses.This indeed has reduced the burden for marketers and marketing firms to continue to rely on the brick-and-mortar procedure of research wherein they can easily mine or pay for a large data that could not be obtained manually or through other research methods, it makes such research to be conducted within a short time, less energy is required and at a lower cost. Given Nigeria's

[254]L. Banks and Y. H. Said, Data Mining in Electronic Commerce, Statistical Science, Vol. 21, No. 2, A Special Issue on Statistical Challenges and Opportunities in Electronic Commerce Research (May, 2006), pp. 234-246 Published by: Institute of Mathematical Statistics Stable URL:<https://www.jstor.org/stable/27645752> accessed on 14th October 2019 P. 236.
[255] Ibid.

population and the level of digital user penetration in 2020 increased by 14 percent, mainly in May, this is based on data released by NCC in like manner, active internet subscribers soared from 123 million to 141 million[256] of the population, thus suggesting the quantum of data that is being mined daily, given the new normal wherein the internet drives activities due to the covid- 19 pandemic. Yet such a gold mine is underutilised in Nigeria as the country is only recently waking up to such a reality. Lagos State, on 3rd December 2020, launched the Lagos Start-ups, anattempt to build a smart digital city that will leverage data in planning and effective governance. That data is a significant asset on which businesses and firms thrive; hence, they prefer to mine the data by themselves and store it from their competitors.

Often, there exist some exceptions or time frames, regarding the storage of data, depending on the nature of the data and who is the owner or custodian of such personal,business, or public data: a case in point is the e-Bay bid sequence data often available for 15 daysafter the close of the auction, unlike Amazon whose price data are freely available. Privacy of mined or stored data is critical such that even when open data exist, it is tough for the custodian to allow an outsider to know or have access to the timings of promotional campaigns and websitechanges that affect consumer behaviour, which is a fundamental asset to their business breakthrough liken to trade secrets. The use of applications or tools that allow for analysed data sharing will allow users to compare multiple databases without combining them directly; hence, business firms may learn faster from their joint data without disclosing any of their basic information. Nonetheless, sharing analysed databases is confined to mere summary statistics and multiple linear regressions. Certainly, such non-detailed analyses will not make any meaningful sense or meet the business manager's or mogul's needs to make an informed decision as per tailored marketing.[257]

The NITDA regulations gave consent a prime place in data collection, processing, storage, utilisation, and /or transfer and gave Data Subject the right to request the Controller to delete personal data without delay where any of the following grounds applies: (a). the personal data are no longer necessary concerning the purposes for which they were collected or processed;(b). the Data Subject withdraws consent based on the processing; (c). the Data Subject objects to the processing, and there are no overriding legitimate grounds for the processing; d) the personal

[256] <https://businessday.ng/technology/Article/nigerias-internet-users-surge-14-in-year-to-may-2020/> accessed on 6th November 2020.
[257] (n 215) p.237.

data have been unlawfully processed; and (e). the personal data must be erased to comply with Nigeria's legal obligation.[258] In its bid to protect personal data from misuse and/or poor storage, the regulations ensure regulatory safeguards or restrictions with which the data controllers must comply in collecting and storing personal data. In the event that a Data Controller processes personal data of more than 1000 subjects within six months, it is expected that a soft copy of the summary containing information stated in sections 22 and 35 shall be submitted to the Agency. But where a data Controller processes more than 2000 personal data of subjects within 12 months, he shall make such submission as stated above to the agency annually on or before the 15th of March of the following year.[259]

Data mining in e-commerce, provides enormous opportunities to businesses and business owners, especially in providing the raw materials for tailored marketing, which has become much easier these days; it has made the Customer Relationship Manager very efficient as a well-engendered trust which was hitherto a challenge for most firms. It provides the information needed for research at a much lower cost-efficiently, and reliably. Thus, it has become a radially available tool for business strategies to forecast customers' future consumption behaviouralpatterns for a given product given the large data at their disposal.

12. FINANCE ACT 2019.

The Finance Act 2019 was presented by President Muhammadu Buhari as an Executive Bill alongside the Appropriation Bill 2020 to the joint session of the National Assembly on the 8th of October 2019. The Bill was passed into law by both houses on the 21st and 27th ofNovember 2019, respectively; the bill was assented to by Mr. President on the 13th of January 2020. The Act, being omnibus legislation, has amended several seven substantive Laws, amongst which: Companies Income Tax Act, Value Added Tax Act, Customs and Excise Tariff Etc. (Consolidation) Act, Personal Income Tax Act; Capital Gains Tax Act, Stamp Duties Act; and Petroleum Profit Tax Act Cap P13, LFN 2004 to review tax provisions wherein it makes the tax laws more responsive to tax reform.[260] The Act is generally believed to have heralded a joyous mood suggesting that the legislation was long in coming to address specific issues in the tax laws, which have lingered for years. How the Act was presented seems to have reintroduced the

[258] Article 2.13.8 NITDA Regulations 2009.
[259] Article 3.1.6 & 3.1.7 (n 13).

lost tradition wherein Appropriation Bill is accompanied by a Finance Act, which provided the needed stage in meeting revenue targets in the Appropriation Act, thus making tax the new crude oil or black gold.[261] In supporting the implementation of the Appropriation Act 2020, the Act also provides a supervisory instrument that will create an enabling environment for ease of business in Nigeria.[262] This step made the World Bank rank Nigeria 131st out of 190 countries onits ease of doing business index and 159th on the specific area of ease of paying taxes. Indeed, these are vital indices that influence the growth and development of national economies. It suggests that deliberate steps must be taken to improve the country's annual ranking continually.

The Act has made it mandatory for companies and individuals to have a Tax Identification Number (TIN) before they can operate a bank account for business purposes. However, pre-existing account holders are required to obtain the TIN. The law also expects companies to state conspicuously such TIN on all business correspondences with other companies or their financial statements or audited reports, communication with FIRS, or any government agency.[263] Profoundly the Act brought to the limelight a range of digital activities and electronic commerce to subject such activities to taxation in line with the digital reality beingthe new economic hub. Losing out from the digital economy amount to losing humongous revenue given the enormous resources trafficked on the highway untapped, which the Act has deliberately taken steps to bring a range of such digital activities into the tax net. Wherein theAct provides that:

If it transmits, emits, or receives signals, sounds, messages, images, or data of any kind by cable, radio, electromagnetic systems, or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high-frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has a significant economic presence in Nigeria and profit can be attributable to such activity.[264]

The Act did not only reel out activities that could be subject to tax if the company renders such services but for the company to fall under the categories of a company whose

[261] <https://andersentax.ng/finance-act-2019-and-its-impact-on-ease-of-doing-business-in-nigeria/>accessed on 7th November 2020.
[262] <https://www.manifieldsolicitors.com/2020/02/17/a-recap-of-the-nigerian-finance-act-2020-insights-to-major-changes-and-effect/> accessed on 7th November 2020.
[263] Section 3 Finance Act 2019, (which substituted section 10 of CITA).
[264] Section 4(2)(c), Finance Act, 2019 (Which amended section 13 of CITA).

income can be subject to tax under this section, it must be shown that the company in question has a significant economic presence in Nigeria. Its profit is attributed to such activity. The question of how you determine the significant economic presence is within the powers of the Minister from time to time to determine the threshold to be used in ascertaining the economic presence of a company that engages in the above activities in Nigeria or renders such services to Nigerian residents and profits are made from such activities. The law did not lay down a guide ortemplate for the Minister to exercise the powers provided in the law. "If the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has a significant economic presence in Nigeria"[265] The Act further provides that "for subsection (2)(c) and (e), the Minister may by order, determine what constitutes the significant economic presence of a company other than a Nigerian company."[266] Even where such digital services are entirely rendered from outside the country to a Nigerian resident, a foreign company, entity, or service provider may have a significant economic presence in Nigeria if so determined by the Ministerof Finance. Thus its profits or income will be subject to tax in Nigeria. As it is argued that the powers of the Minister will give room for discretion which will not be healthier for business. Instead, the companies, and the Ministry of Finance, should develop guidelines for business operations in Nigeria in this respect, taking a leaf from other climes to be in sync with best global practices.[267] Without mincing words, the Act has set the stage for a further and more robust engagement and/or discussion on digital taxation, thus maximizing the available resourcesthat abound in the digital economy or highway-related economic activities and electronic data storage/mining, which is a gold mine.

13. NIGERIA TAX ANTI-AVOIDANCE REGULATIONS.

Tax is a compulsory exertion on the citizens by the government with the belief that it will provide basic amenities and services to its citizens whether such services are provided to taxpayers or not will excuse or justify failure or any refusal to pay tax which the law prescribed such act as an offence hence punishable. It is natural to feel that where the government is

[265] Section 4(2)(f) Finance Act, 2019.
[266] Section 4(4) Finance Act, 2019.
[267] <https://andersentax.ng/finance-act-2019-and-its-impact-on-ease-of-doing-business-in-nigeria/> accessed on 7th November 2020.

reckless, irresponsible, and unaccountable with the tax collectors and has nothing to show for it in terms of infrastructure, the people are most likely to develop a nonchalant attitude towards the payment of taxes. Refusal to pay tax is not an option available to the taxpayer; at best, what the taxpayer can do is postpone or reduce his tax liabilities by arranging his affairs to enable him to pay the minimum tax possible. Usually, it is done through tax planning, forecasting tax liabilities, or formulating ways and opportunities to mitigate tax liabilities as permissible within the confined of the law. Yet, the law did not define the terms tax avoidance or tax planning nor set a boundary between acceptable tax planning and unacceptable tax avoidance in specific terms.

In limiting or mitigating the incidence of tax liability, the same is arranged and or planned so that the taxpayer would take advantage of the law without him running afoul of the tax law. See ***Inland Revenue Commissioners v. Duke of Westminster***[268] wherein Lord Tomlin stated that:

> *Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.*

Without more taxpayers, without offending, the law can manage their affairs to mitigate their tax, thus paying the lowest tax validly possible and cannot be forced to pay beyond what the taxpayer had arranged. Caution must also be employed in tax planning to avoid tax or mitigate the amount of tax to be paid, without which it could amount to tax evasion, which is criminal. The Court in ***Ayrshire Pullman Motor Services & Ritchie v. CIR***[269] stated the rationale behind tax planning:

> *No man in this country is under the smallest obligation, moral or other, to arrange his legal relation to his business or his property to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow- and quite rightly- to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is, in like manner, entitled to be astute to prevent so far as he honestly can, the depletion of his mean by the Revenue:*

Tax payment is not supposed to burden the taxpayer; hence every tax would take advantage of any legal opening to him under the law to mitigate his tax liabilities. These could be

[268] [1936] 19 T.C. 490.
[269] [1929] 14 T.C 754.

achieved through (a) Optimal Transaction Structuring;[270] (b) Locations with Double Taxation Agreements (DTAs) with Nigeria;[271] (c) Utilizing Tax Incentives; Recognizing and Maximizing Tax Loopholes;[272] (d) Donations to Non-Profit Organizations/Causes;[273] and (e) Donations to Not-for-Profit Organizations/Causes.

Nonetheless, the National Tax Policy saw tax avoidance as the primary source of tax leakages. Consequently, it recommended both legislative and administrative ways to block any loophole in the system notably, where the oil revenues fortune has gravely dwindled, and Nigeria's debt profile has risen[274] to the rooftop, aside from borrowing from China to Brazil. Theabove scenario further underscores the place of non-oil revenue, especially the internet or e- commerce tax, which remains untapped. The policy seeks to address aggressive tax avoidance against the intendment of the law, which has been the new preoccupation of multinationals or transnational companies due to the failure of the anti-avoidance rule.[275] Principally Individuals orcorporations refuse to pay taxes by concealing the true state of affairs of their businesses due to high prevailing tax rates in the country, even though, in a few instances, they may do so due to the failure of the government to utilize the tax revenue to provide the needed infrastructures. Conversely, Bhatia saw tax evasion as an illegal way of avoiding tax liability, which he said was a fraudulent practice; the contrast is that the former is legal and dogging tax liability without breaking the law, while the latter is illegal and fraudulent as well. Though it may be classified into legitimate avoidance which the taxpayer takes advantage of the tax relief(s) or exemption provided by the legislators, or it could be illegitimate avoidance such that the taxpayer takes advantage of the loopholes in the tax law to reduce his tax liability in a manner ordinarily the Act did not contemplate or would encourage.[276]

To address tax avoidance, especially 'aggressive tax avoidance,' the lawmakers provided Anti-avoidance legislation to prevent persons or corporations who try or want to escape tax liability by using artificial or fictitious transactions to avoid tax; usually, it does not involve acts of criminality. Anti-avoidance legislation challenges taxes arrangement, which is eventually seenby the tax authorities as fictitious or artificial, where it was done solely to evade tax liability. See

[270] Section 11 and 23(1)k Personal Income Tax Act, Cap P8 LFN, 2004 (PITA) and CITA, respectively.
[271] Section 24 CITA.
[272] Section 30 CGT Act, Section 34 CITA, Section 39 CITA and Section 11 PPTA.
[273] Fifth Schedule CITA.
[274] <https://gravitasreview.com.ng/shop/aggressive-tax-avoidance-in-nigeria/> accessed on 8th November 2020.
[275] Section 22 of the Companies Income Tax Act.
[276] Ayua I. A, The Nigerian Income Tax Law, (Spectrum Law Publishing, 1996) P. 303.

Akinsete Syndicate v. Senior Inspector of Taxes[277] where the apex Court, per Bairamian JSC, held that: "It is trite that a person may use lawful means to avoid tax; what he may not do is totry to evade it. What he does should be genuine, not merely values hide or disassemble the reality of things."

The law preempts a situation where the tax authority suspects foul play or regards the transaction as fictitious. It will subject such tax assessment to more scrutiny by applying the anti-tax rules or provisions, thereby making the necessary adjustment it considered appropriate in counteracting the taxpayer's tax liability reduction.[278] A transaction may be regarded as fictitious or artificial where there exist transactions between people either of which one has control over the other or they are related or a transaction between persons controlled by another such that the transaction may not be fairly or independently made and at arm's length.[279] The above provisions are in *pari materia* with Company Income Tax,[280] Petroleum Profits Tax[281], and Capital Gains Tax.[282] Instructive is the discretion of the board to remain unquestioned even on appeal; at best, their decision may either be affirmed or varied by the body of commissioners or court as the case may be.[283]

All the above provisions appeared to have summarised the General Anti-Avoidance Rule (GAAR) being measures targeted at checking and stopping the incidences of tax avoidance by ensuring that taxpayers' assessment is correct as they pay the exact tax they ought to pay. It is more of an administrative mechanism without any definitive judicial pronouncement that may not stop taxpayers from developing new ways of avoiding tax, especially with the advent of e- commerce, which could make fictitious transactions more prevalent. The law did not define key terms like fictitious or artificial instead, what may constitute artificial or fictitious[284] is at the discretion of the board, and may be abused in the case of PPTA (Petroleum Profit Tax Act). Suchdiscretion cannot be challenged. Thus, it may be important to make such an erring taxpayer pay the cost of such an exercise where the tax authority finds the taxpayer employed the use of

[277] (1976) NTC 109.
[278] Section 17(1) Personal Income Tax Act 2004.
[279] Section 17(3) (b) Personal Income Tax Act 2004.
[280] Section 22(1) & (3) (b) Companies Income Tax Act CAP. C21 LFN 2004.
[281] Section 15 (1) Petroleum Profits Tax Act 2004.
[282] Section 20(1) Capital Gains Tax Act 2004.
[283] Section 15 (3) Petroleum Profits Tax Act 2004.
[284] Derek, Adetokunbo Obadina, 'Fighting Aggressive Tax Avoidance in Nigeria: An Agenda for Reform' <www.researchgate.net>accessed 8 November 2020.

artificial transaction to avoid tax. Taxation of e-commerce presents a new dimension to tax evasion and avoidance, which may require forensic analysis.

14. CONCLUSION/RECOMMENDATION

Both the multilateral global and unilateral initiatives in place have successfully set the template or agenda for the taxation of internet transactions though much needed to be done both at the global and individual state level. It is crystal clear that to achieve the needed result of having in place standard internet tax code or regulation states both within and outside the OECD needed to close ranks and sustained pressure on the organisation to ensure that there is a common internet tax regulation particularly that internet tax is global in nature. This is even more imperative given the globalization, digitalization, and the incursion of generative AIs, AR, and SFs which have become man's current reality when both government and private institutionsare daily becoming automated.

As part of such efforts there is a need for legislation in this direction by the legislatures whereof deliberately and intentionally put in the works digital reforms for effective regulation especially now that fintechs are beginning to succumb to the regulation of the digital space.