

DIGITAL ECONOMY TAXATION: RISKS AND OPPORTUNITIES FOR PORTFOLIO TECH COMPANIES

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1. Introduction

In the last decade, Nigeria and many African countries have witnessed significant digital transformation. The digital transformation has been driven largely by increased access to the internet, mobile broadband connectivity and growing digital infrastructure such as subsea cable networks and broadband infrastructure. The transformation has also been accelerated by the growth of digital businesses in e-commerce, fintech and other forms of technology startups, coupled with the adoption of e-government solutions to enhance the delivery of public services.

In June 2025, the President of the Federal Republic of Nigeria signed four (4) tax legislations into law as part of a transformational tax reform to overhaul Nigeria's tax framework with a view to positioning Nigeria as a globally competitive tax jurisdiction, harmonise and simplify tax rules and create a business-friendly tax environment. The Nigeria Tax Act, 2025 ("NTA") which is one of the tax legislations signed into law by the President, as part of the tax reforms, repeals ten (10) existing tax legislations, amends tax provisions of fifteen (15) other legislations and subsidiary legislations and consolidates Nigeria's existing tax legal framework into a single tax legislation with a view to modernising the Nigerian tax legal framework and position it for global competitiveness.

Prior to 2019, a lot of the economic activities within the digital ecosystem were not captured for tax purposes, in view of the fact that the previous tax legislations did not contemplate economic activities within the digital economy. The Finance Act 2019 and the Companies Income Tax (Significant Economic Presence) Order 2020 introduced the concept of Significant Economic Presence to bring certain activities within the digital ecosystem (such as streaming and downloading of digital content, provision of goods and services through digital platforms, etc) within the Nigerian tax net. The NTA has now introduced changes that ensure activities within the digital ecosystem are adequately captured within the Nigerian tax net and provide clarity in relation to grey areas for the taxation of economic activities within the digital ecosystem. The NTA also adopts the OECD 2-Pillar solution for taxation of the digital economy. An overview of the changes introduced by the NTA, including the ensuing risks and opportunities, are discussed below.

2. Value-Added Tax on Non-Resident Supplier

Section 151 (1) of the NTA provides that a non-resident person who makes taxable supplies to Nigeria shall register for tax and include Value-Added Tax ("VAT") on its invoice for all taxable supplies. Under the Guidelines on Simplified Compliance Regime for Value Added

Tax for Non-Resident Suppliers 2021, services provided by Non-Resident Supplier include streaming services, online gaming, online ticketing, online advertising, cloud computing, e-commerce services, payment services, etc.

Where a Non-Resident Supplier makes taxable supplies from outside of Nigeria to persons in Nigeria, the taxable person to whom the supply is made shall withhold VAT.¹ This would imply that Nigerian corporate recipients are liable to self-account for VAT (via reverse charge) if the Non-Resident Supplier fails to comply. In addition, the Nigeria Revenue Service (“NRS”) may appoint any person to collect the VAT and remit it to the NRS.² Non-compliance carries consequences that extend beyond administrative penalties, including blocked platform access, regulatory scrutiny, and difficulties in obtaining licenses or partnerships. In view of the above changes by the NTA it is important to ensure that portfolio tech companies providing digital services that qualify as Non-Resident Suppliers such as as streaming platforms, cloud computing, online advertising, software subscriptions, and even crypto exchanges are registered for tax purposes in Nigeria and put in place adequate measure to ensure compliance with deduction and remittance of VAT in Nigeria including the appointment of a representation for the purpose of compliance with its VAT obligations.³ Also, portfolio tech companies that are the recipients of digital services from Non-Resident Supplier should take into account that they may be liable to self-account for VAT

if the Non-Resident Supplier fails to comply.

3. Ability to Claim Input VAT for Telecommunication Portfolio Companies

The NTA, in Section 158, introduces mandatory e-invoicing and VAT fiscalization. The fiscalization system shall consist of electronic devices, software solutions or a communication system involving secured network, or any such combination of the components for electronic invoicing and data transfer as the NRS may prescribe or deploy. In Section 156, it expands the scope for claimable input VAT to also cover VAT incurred on services and fixed assets, which relate to vatable supplies. Where supplies are made to Telecoms customers (who are mandated to deduct VAT at source), recovery of input VAT may be difficult. In such cases, companies can apply for a VAT refund, which must be processed within 30 days. If not refunded, the amount can be offset against other federal tax liabilities.

4. Significant Economic Presence

Section 17 of the NTA 2025 replaces the prior SEP Order with a broader, more enforceable statutory framework. Under Section 17(3)(a) of the NTA 2024, a non-resident becomes taxable in Nigeria once it establishes either a Permanent Establishment (“PE”) or a Significant Economic Presence (“SEP”), with profits attributable to that presence.

The NTA’s SEP definition (Section 17(9)(b)) is expansive and explicitly

designed for the digital economy. It includes activities such as:

- (a) electronic commerce and application stores
- (b) high-frequency trading and electronic data storage
- (c) online advertising, cloud computing, and digital content services
- (d) online teaching, gaming, and participative network platforms
- (e) supply of user data, search engines, and online payments

For portfolio tech companies, this means that any digital interaction with Nigerian consumers, without local offices, agents, or staff, can trigger SEP. Profit attribution rules (Section 17(5)-(7)) require allocation based on a non-resident's global EBIT margin, limiting opportunities for artificial profit shifting. Where attribution is not possible, a minimum tax of 4% of Nigerian-sourced income applies (Section 17(8)). SEP has thus become the new taxable nexus, replacing the traditional "no local entity, no tax" assumption.

5. Taxation Of Non-Resident Companies (NRCs)

Sections 17–21 consolidate the rules for non-resident taxation into a unified, more administrable framework. The regime is assertive in taxing digital and cross-border commerce as follows: -

(a) Taxable Income: NRCs are taxed on income accruing in or derived from Nigeria, attributable to a PE or SEP, or earned from services provided remotely but paid for by Nigerian residents (Sections 17(1)–

(3)). This will include SaaS subscriptions, cloud services, outsourced development, and cross-border consultancy.

(b) Withholding Tax as Final Tax:

Where no PE or SEP exists, tax withheld at source on Nigerian-sourced payments constitutes final tax (Section 17(4)), incentivising careful service structuring.

(c) Profit Attribution: PEs or SEPs allocate profits using arm's-length principles, applying global EBIT margins where necessary, with a 4% minimum tax on Nigerian-sourced turnover (Sections 17(5)–(8)).

(d) Sector-Specific Rules: Section 18 of the NTA addresses NRCs in shipping and air transport, applying globally consistent revenue allocation formulas. The principle is consistent: if income touches Nigeria, Nigeria will tax it.

Some of the risks on the rules relating to NRCs include the following: -

- (a) Increased compliance costs as other African jurisdictions adopt similar SEP and digital VAT rules
- (b) Platform liability for third-party non-compliance
- (c) Transfer pricing exposure under the new EBIT-based profit attribution method
- (d) Risk of double taxation until treaty updates reflect the digital presence rules.

Early compliance would enable portfolio tech companies to: -

- (a) enhance credibility with

regulators, investors, and partners

(b) ensure effective cross-border structuring as the rules now align with global digital tax frameworks (OECD Pillar One & Two, DST models)

(c) ensure competitive advantage over non-compliant rivals facing operational restrictions

(d) achieve stronger due diligence profile for fundraising or exit planning

6. Exemption of Gains from Sale of Assets of Labelled Startups

Section 163 (1) (m) of the NTA 2025 exempts from tax gains accruing from the disposals of assets by an angel investor, venture capitalist, private equity fund, accelerators with respect to a labelled startup, provided that the assets have been held in Nigeria for a minimum of twenty (24) months. In addition, NRCs providing technical, professional management or consulting services to labelled startups are subject to a final withholding tax of 5% on income earned from such services. Under Section 13 of the Startup Act No. 32 of 2022, a startup is eligible for labelling where: -

- (a) It is registered as a limited liability company under the Companies and Allied Matters Act, and has been in existence for a period not more than 10 years from the date of incorporation;
- (b) Its objects are innovation, development, production, improvement, and commercialisation of a digital technology innovative product or process;
- (c) It is a holder or repository of a product or process of digital

technology, or the owner or author of a registered software;

(d) It has at least one-third local shareholding held by one or more Nigerians as founders or co-founders of the startup.

However, it is pertinent to note that an organisation which is a holding company or a subsidiary of an existing company which is not registered as a startup will not be eligible for startup labelling.

7. Profit and Gains from Transactions in Digital and Virtual Assets

Section 4 (1) (j) of the NTA provides that income, profits or gains of a person accruing in or derived from Nigeria from transactions in digital and virtual assets shall be chargeable to tax. The NTA provides that digital assets shall mean digital representation of value that can be digitally exchanged, including crypto assets, utility tokens, non-fungible tokens, and such other similar digital representation or derivatives of any of the listed or similar assets and any other assets as may be defined by the relevant regulatory authority. The NTA also provides that any loss incurred in any period from sales, disposal or any other transaction in digital assets shall only be deductible in determining the profits from the business relating to digital or virtual assets.⁴

8. Unified Development Levy

Prior to the enactment of the NTA, portfolio tech companies were the subject of multiple overlapping levies such as the tertiary education tax, IT

Tax, NASENI levy and police fund levy. The NTA now consolidates all overlapping levies into a single development imposed at 4% of assessable profits of all companies under chapters two and three of the NTA, other than small companies and non-resident companies. The NRS shall collect the levy and pay it into a special account created for that purpose, and revenue accruing from the levy shall be distributed as follows: -

- (a) Tertiary Education Trust Fund – 50%;
- (b) Nigerian Education Loan – 15%;
- (c) National Information Technology Development Fund – 8%;
- (d) National Agency for Science and Engineering Infrastructure – 8%;
- (e) National Board for Technological Incubation – 4%;
- (f) Defence and Security Infrastructure Fund – 10%; and
- (g) National Cybersecurity Fund – 5%.

Conclusion

The NTA has clearly created a regime that incorporates digital businesses and activities within the Nigerian tax framework. Therefore, portfolio tech companies will have to understand the impact of the provisions of the NTA on their respective nature of business they operate, with a view to ensuring compliance in order to avoid sanctions.

Importantly, there are a number of incentives and benefits which the NTA provides to portfolio tech companies, which have been mentioned above. These incentives and compliance requirements, when

adopted by portfolio tech companies, will help to secure regulatory certainty, competitive advantage, and long-term market stability.

[1] Section 151 (2) of the NTA

[2] Section 151 (3) of the NTA

[3] Section 151 (6) of the NTA

[4] Section 27 (6) of the NTA

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