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COMPANIES INCOME TAX (SIGNIFICANT ECONOMIC PRESENCE) ORDER, 2020

WHAT TAXPAYERS SHOULD KNOW

The enactment of the Finance Act, 2019 was greatly welcomed by various stakeholders although relevant clarifications are still required in respect of some provisions therein. In providing these clarifications, the Service has issued a lot of explanatory notes; public notices; information circulars; etc. and also series of orders by the Honourable Minister of Finance as empowered by the enabling Act.

One of the reforms introduced by the Finance Act is the inclusion of income from online activities carried out by non-resident companies to Nigeria counterpart, given that such activities constitute significant economic presence in Nigeria.

For the purpose of clarifying on the concept of “*Significant Economic Presence*”, The Minister of Finance has signed the **Companies Income Tax (Significant Economic Presence) Order, 2020** which provides as follows:

- Any company that derives gross turnover or income of more than **N25Million** or its equivalent in other currencies or from any or combination of the following:
 - ✓ Companies streaming or downloading services of digital contents including but not limited to movies, videos, music, applications, games and e-books to any person in Nigeria.
 - ✓ Companies that transmit data collected about Nigeria users which have been generated from such users’ activities on a digital interface including websites or mobile applications.
 - ✓ Companies that provide intermediation services through digital platform website or other online applications that link suppliers and customers in Nigeria
 - ✓ Companies that use Nigerian domain name (.ng) or registers a website address in Nigeria
 - ✓ Companies that have a purposeful and sustained interaction with persons in Nigeria by customizing its digital page or platform to target persons in Nigeria including reflecting the prices of its products or services in Nigeria currency or providing options for billing or payment in Nigerian currency.
- In determining whether the threshold of **N25Million** is reached, the activities carried out by connected persons in that accounting year shall be aggregated.

- In a case where multilateral agreement addressing tax challenges of digitalization of the economy, exists with Nigeria, the subsisting transactions shall be treated in line with the agreement.

The determination of significant economic presence in any accounting year for a company other than a Nigerian company, providing technical services, professional, management or consultancy shall be based on earning income or receiving payments from:

- ✓ A person resident in Nigeria and (or) a fixed base or agent of a company other than a Nigerian company.

The following shall not constitute significant economic presence for rendition of technical services, professional, management & consultancy:

- ✓ Payment to an employee under the contract of employment.
- ✓ Payment for teaching in an educational institution for teaching by an educational institution.
- Payment by a foreign fixed based of a Nigerian company.

ISSUES OF CONCERN

- The N25Million turnover threshold for the determination of significant economic presence may imply exemption of many more non-resident entities who are engaged in online transactions with Nigerian companies but with gross turnover of below N25Million.
- From the list of online activities provided, activities not stated therein but from which a non-resident entity earns gross turnover of N25Million and above are exempted from the scope of significant economic presence.
- The Service would still be required to give working guidelines on how to capture online activities of non-resident entities and also how to enforce compliance with relevant tax obligations in Nigeria.

TAKE HOME

The taxation of online transactions in Nigeria is now taking a better approach and becoming more of a reality. In essence, more would be expected from all the relevant stakeholders, particularly the consultants to support this move.

The need to hold non-resident companies accountable to tax for transactions carried out in Nigeria should be seen as a collective effort. Remember tax is a crucial fiscal policy instrument in driving growth and development.