

Proposed communications tax bill

A case of discriminatory tax?

Following harsh reality of global decline of crude oil price, it has become obvious that Nigeria can no longer rely on oil revenue to sustain the economy; hence the need to identify and explore alternative sources of generating revenue by the Federal Government of Nigeria (FGN).

One area that the FGN is focusing to plug the gap in revenue is taxation; thus the proposed introduction of the Communication Services Tax Bill (the Bill). The Bill seeks to impose and collect communication services tax (CST or levy) on charges payable by consumers of electronic communication services in Nigeria (excluding private electronic communication services) at the rate of 9%.

Key highlights of the Bill are as follows:

- Electronic communication services subject to the levy include: voice calls, SMS, MMS, data usage (both from Telecommunication Services Providers and Internet Service Providers), Pay per View TV Stations etc.
- The tax is to be paid together with the electronic communication service charge payable to the service provider by the user of the service.
- The tax is payable whether or not the person making the supply is permitted or authorized to provide electronic communications services.
- The Federal Inland Revenue Service (FIRS) is responsible for collecting the tax from service providers and remitting it into the Federation Account.
- All service providers are expected to file monthly returns not later than the last working day of the month immediately after the month to which the tax returns and payment relate.
- Penalty for failure to file returns on or before the due date is ₦50,000 and an additional ₦10,000 for each day the returns are not submitted.



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- Failure to pay the tax by the due date attracts monthly interest on the tax due at a rate of 150% of the average of prevailing commercial banks' lending rates as published by the Central Bank of Nigeria and for this purpose, part of one month shall be deemed to be one month. Where interest payable is not paid within one month after the due date, interest shall be paid on the unpaid interest at the same rate and manner on the unpaid tax.
- Where tax, penalty and/or interest is due, FIRS may apply to the Court for an order that compels an individual or business who holds money for or on account of the service provider to pay to the FIRS that money or so much of it as is sufficient to discharge amount due. Where this situation continues, FIRS may apply to the Court for an order to distraint the assets, goods, etc. of the service provider.
- In the case of liquidation or bankruptcy, the tax, penalty and/or interest due shall take precedence over other obligations.
- For the purpose of verification of taxes due to government, an agent would be appointed to establish both electronic and physical monitoring mechanisms to monitor, analyse, verify and save all necessary data and information.
- A service provider who refuses to provide access to its relevant network for government or its appointed agent commits an offence and is liable to a penalty of 5% of annual gross revenue of the last audited financial statements and if situation persists after 90 days, National Communications Commission (NCC) may revoke the operating license of that service provider.
- **Multiple taxation:** The CST is a consumption

tax, which will be in addition to value added tax (VAT) that consumers of telecommunication services are already subjected to. This will potentially reduce the purchasing power of consumers in the midst of rising prices and negatively impact investment climate in the economy.

- **Discriminatory tax burden:** The telecommunication sector remains one of the success stories of effective policy implementation in the last decade. Friendlier tax policies, amongst others, can only stimulate continuous productivity and investment in the sector. Considering that telecommunication services still need to be extended especially to the rural areas, will the Bill not be perceived to be a deliberate attempt to stall the growth of this particular sector?
- **High cost of voice and data:** Consumers in Nigerians are believed to pay one of the higher costs for voice and data services despite the high population. Will the Bill not further raise the agitation of consumers of telecommunication services?
- **Emphasis on collection and recovery of tax:** The Bill has stringent provisions on imposition of penalty and interest for failure to collect CST in comparison with what are contained in other tax legislation. The work

of service providers as collection agent of government is perceived to be a thankless job. Service providers should be compensated for acting as collection agents to encourage them to collect rather than penalizing them for not collecting.

The FGN's step towards diversification of revenue sources is laudable and demonstrates the progressive efforts to move the economy forward. However, the Government should develop structures that will ensure that taxpayers outside the tax net, especially in the informal sector, are captured and taxed adequately rather than introducing “emergency taxes” at every opportunity.

The National Tax Policy (NTP) provides that improvement in revenue generation is not necessarily achieved by increasing taxation but through expansion of the overall tax/revenue base and creation of an improved structure for tax and revenue generation at all levels of government. The FGN will achieve a lot by consulting the NTP from time to time in its quest to improve tax revenue and plug the gap created by the dwindling oil revenue.

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