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S. I. No. 9 of 2020

COMPANIES INCOME TAX ACT
(CAP. C21, LAWS OF THE FEDERATION OF NIGERIA, 2004)
COMPANIES INCOME TAX (SIGNIFICANT ECONOMIC
PRESENCE) ORDER, 2020

[3rd February, 2020]

Commence-
ment.

In exercise of the powers conferred upon me by Section 13(4) of the Companies Income Tax Act (CITA) Cap. C21, Laws of the Federation of Nigeria, 2004 (as amended), and all other powers enabling me in that behalf, I, ZAINAB SHAMSUNA AHMED, Honourable Minister of Finance, Budget and National Planning, make the following Order—

1.—(1) For the purpose of Section 13(2)(c) of CITA, a company, other than a Nigerian company, shall have a significant economic presence in Nigeria in any accounting year, where it—

Significant
Economic
Presence of a
Company in
Nigeria
under
Section
13(2)(c) of
CITA.

(a) derives gross turnover or income of more than N25 million or its equivalent in other currencies, in that year, from any or combination of the following—

(i) 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,

(ii) transmission of data collected about Nigerian users which has been generated from such users' activities on a digital interface including website or mobile applications,

(iii) provision of goods or services other than those under sub-paragraph (5) of this paragraph, directly or indirectly through a digital platform to Nigeria, or

(iv) provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria;

(b) uses Nigerian domain name (.ng) or registers a website address in Nigeria; or

(c) has a purposeful and sustained interaction with persons in Nigeria by customising its digital page or platform to target persons in Nigeria, including reflecting the prices of its products or services in Nigerian currency or providing options for billing or payment in Nigerian currency.

(2) For the purpose of the provisions of sub-paragraph (1) of this paragraph, "any other electronic or wireless apparatus" referred to in section 13(2)(c) of the Act, includes digital or related activities carried on through satellite.

(3) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, any company, other than a Nigerian company, covered under a multilateral agreement or consensus arrangement to address the tax challenges arising from the digitalization of the economy, to which Nigeria is a party, shall be treated in accordance with that agreement or arrangement.

(4) The provisions of sub-paragraph (3) of this paragraph applies from the date in which such agreement or consensus arrangement becomes effective in Nigeria.

(5) For the purposes of determining whether the threshold in sub-paragraph (1) of this paragraph have been met, activities carried out by connected persons in that accounting year shall be aggregated.

(6) In this paragraph "connected persons" includes :

(a) persons that are "associates", as defined in the Companies and Allied Matters Act, CAP C20, LFN 2004 (as amended) ; or

(b) persons that are business associates in any form, provided that, persons are considered to be business associates where—

(i) one person participates directly or indirectly in the management, control or in the capital of the other, or

(ii) the same person or persons participate directly or indirectly in the management, control or in the capital of both enterprises.

Significant economic presence of a Company in Nigeria under Section 13(2)(e) of CITA.

2.—(1) For the purpose of Section 13(2)(e) of CITA, a company, other than a Nigerian company, carrying on a trade or business comprising the furnishing of services of technical, professional, management or consultancy in nature, shall have a significant economic presence in Nigeria in any accounting year, where it earns any income or receives any payment from—

(a) a person resident in Nigeria ; or

(b) a fixed base or agent of a company, other than a Nigerian company in Nigeria.

(2) For the purposes of section 13(2)(e) and sub-paragraph (1) of this paragraph, services of a technical nature means any services of a specialised nature (including advertising services, training, or the provision of personnel) that are not professional, management, or consultancy services.

(3) Notwithstanding the provision of sub-paragraph (1) of this paragraph, a company shall not have a significant economic presence in Nigeria in relation to a payment, where the payment is made—

(a) to an employee of the person making the payment under a contract of employment ;

(b) for teaching in an educational institution or for teaching by an educational institution ; or

(c) by a foreign fixed base of a Nigerian company.

3. This Order may be cited as the Companies Income Tax (Significant Economic Presence) Order, 2020. Citation.

MADE at Abuja this 3rd day of February, 2020

• ZAINAB SHAMSUNA AHMED
*Honourable Minister of Finance, Budget
and National Planning*