



Association of Licensed Telecommunications Operators of Nigeria

# **MEMORANDA ON THE REVIEW OF THE NATIONAL TAX POLICY DOCUMENT**

**Telecoms Industry Presentation  
to the  
NATIONAL TAX POLICY REVIEW COMMITTEE  
2016**

# Outline

- Executive Summary
- Best Practice Principles of Taxation
- "Taxes" v. "Levies"
- Harmonization of heads of taxation
- Issues around Multiple/Duplicated Taxation/Levies
- Conclusions/Recommendations

# Executive Summary

- **ALTON Members are responsible Corporate Citizens of the Federal Republic of Nigeria:** our services cut across the gamut of telecoms and ancillary services, e.g. fixed/mobile telephony, internet/data service, infrastructure provisioning, Value Adding and support services. Our Infrastructure is spread throughout Nigeria – *we are therefore natural growth partners to all tiers of government.*
- **We consider Tax Adherence a matter of patriotic duty:** ALTON appreciates the fiscal pressures on MDAs of the respective Federal, State & LGA in their quest to provide the “dividends of democracy” to Nigerians (in the face of dwindling oil revenues). *We assure all concerned that the industry will continue to bear its fair share of this burden.*
- ***The telecoms industry provides very critical social overhead infrastructure*** which powers other sectors. Every sector of the economy (banking, trade, agriculture, education, public service etc..) increasingly rely on efficient telecoms infrastructure to survive – we provide the superhighway necessary for Nigeria's emergence into the club of developed economies.
- ***Treating the industry as a cash cow and imposing myriads of taxes may seem to satisfy immediate revenue objectives,*** but it impedes long-term growth of the overall economy.
- In this Presentation, we have highlighted **best practice considerations which will assist States & tax agencies more efficiently achieve immediate revenue objectives whilst preserving industry growth in the overall interest of the Nigerian economy.**

# ALTON considers Tax Adherence a matter of patriotic duty, but we can only play our part when tax authorities adhere to Principles of Best Practice

## Simple, Certain, easily enforceable

- Unpredictability of current taxation regime disrupts business planning & discourages investment
- Need to simplify complex taxation structure: avoid. imposition of different taxes on same infrastructure at different levels of govt.
- Arbitrary variation of tax rates (year-to-year/agency-to-agency) is detrimental to tax subjects' ability to sustain operations.
- Multiplicity of taxes also negatively impacts MDAs: cost of enforcement is increased & tax administration is complicated (e.g. multiple enforcement actions on the same issue by different MDAs in same State)

## Universality /non-discrimination

- Taxes should be broad-based and fairly distributed – there is no justification for assessing higher taxes on Telco infrastructure.
- Greater effort should be made by govt to spread the tax net rather than overburdening existing/compliant organizations.

## Consideration of externalities

- Taxation should support socio-economic developmental objectives – encourage growth factors & discourage impediments
- Growth of ICT sector is critical to socio-economic States' and national socio-economic growth – tax burden should reflect this.
- overwhelming tax burden challenges long-term viability of businesses, affecting economic wellbeing
- Tax breaks & incentives should be introduced to stimulate investment in ICT sector and unlock inherent developmental opportunities .

**GSMA: 1% point reduction in the tax burden on mobile broadband results in up to 1.8% point increase in penetration and an up to 0.7% point increase in gross domestic product (GDP) over five years**

# The Proliferation of "Taxes" and "Levies" is stultifying national economic growth...

- **“Taxes” vs. “Levies”**
  - Although the National Tax Policy of 2012 does not make a distinction between “taxes” and levies”, clear delineation between the two makes for better planning, greater compliance and higher revenues for government.
  - Taxes should remain as fixed percentage contributions (usually on income), while “levies” are understood as extra amounts/surcharges on consumption/expenditure for a fixed period of time to achieve specific objectives (e.g. Education Levy).
  - The original T&LA has made clear provisions regarding imposition of taxes by the different tiers – we however notice that its provisions are being circumvented by the imposition of myriad “levies” by MDAs. States & LGAs often enact bye-laws and edicts to support illegitimate tax heads outside TLA; sometimes with retroactive effect
  - In accordance with best practices, “Levies” should be temporary and for specific purposes.
  - States/LGA should be able to create levies for specific time periods/purposes, but only the tax heads in the T&LA should be charged.
  - The current unmanageable situation encourages delinquency and evasion.
  - JTB is kindly requested to encourage states to harmonise their taxes and levies to ensure that companies only bear the burden for legitimate tax heads.
  - Taxes and levies must *be proportional, they should reflect administrative costs for provision of the service, and attendant usage costs incurred – (Article 96(3)(d) of the EU Economic Partnership Agreement)*
  - *Taxes and levies should not be punitive or unduly onerous vis a vis the subject of the tax/levy*

# There is therefore an immediate need to harmonize current Heads of Taxation...

- The 2015 amendment to the Taxes & Levies Act (T&LA) was apparently designed to address multiple/ duplicated taxation issues confronting the ICT and other sectors.
- The industry is however concerned that the Amendment has complicated matters, i.e.
  - **By introducing new tax heads**, e.g.:
    - Introduction of Land Use Charge payable to State Govt whilst Tenement Rate remains as tax head collectible by LGs
    - Signage & mobile advertisement fees – jointly collectible by State & LGs
    - Hotel, Restaurant or Event Centre Consumption Tax overlaps Entertainment Tax - both are collectible by the State Govt.
  - **By further complicating the tax regime** with respect to rates to be charged, e.g. business premises registration fees under the Amendment are left to be determined from State to State
- There is an urgent need to review the Amendment by
  - Implementing the best practice principles earlier highlighted (especially non-discrimination).
  - Entrenching the principle that no State can enforce any other Revenue Law outside the T&LA.
  - Ensuring that “Levies” do not transmute to taxes – levies should be discontinued once objectives are met.
  - Avoiding retroactivity of rates.
  - Implementing objective rating systems , i.e. different rates for urban/rural areas .
  - Concretizing taxation principles for universal application by all taxation bodies.

# Harmonization should conclusively address issues around Multiple/Duplicated Taxation/Levies

The National Tax Policy has long recognized the need for harmonization:

## 6.0 Elimination of Multiple Taxation

Multiple taxation in Nigeria first needs to be defined before it is tackled. The word multiple connotes "numerous", "several", "various" etc. A certain level of multiplicity is unavoidable in a Federal structure as each tier of government may want to charge certain taxes, fees, charges as may be applicable. The only aspect of multiplicity that is avoidable and for which the Constitution itself abhors is that where the tax, fee or rate is levied on the same person in respect of the same liability by more than one State or Local Government Council. In such instances, intensive taxpayer enlightenment and education is required to empower the tax payer and ensure that he/she understands his rights and responsibilities.

In addition, with each taxpayer having a unique taxpayer identification number and all taxing authorities automating their systems, sharing one database and effectively collaborating with each other, this form of multiplicity will be addressed in the long term.

*National Tax Policy 2012*

## Harmonization should conclusively address issues around Multiple/Duplicated Taxation/Levies and other inefficiencies leading to revenue leakage

- Duplication of taxes/levies - different tax heads/levies in respect of the same infrastructure:
  - ***Please see attached Spread sheet titled “Different tax Heads-same Infrastructure”.***
- Same tax/levy being collected at two different levels of government or by different agencies
  - ***Please see attached Spread sheet titled “Same Tax by Different Govt. Agencies”.***
- Retroactive effect of taxes/levies
  - ***please see attached spread sheet titled “Retroactive Tax Effect”***
- Use of tax consultants – this is prohibited by operation of S2(1) of the TLA 1998, but is still in very widespread use
  - ***Please see attached spread sheet titled “Use of Consultants”***
- Gaps and leakages – there is need for JTB to encourage States to adopt Single Account framework and the “Tax Number” system so as to minimise leakage and avoid over-taxing compliant organisations.



# Conclusions and Recommendations

- Based on the foregoing, there is need to immediately review of Taxes & Levies (Amendment) Act
  - Creation of 14 additional tax heads, majority of which has further increased the tax burden on Telcos contradicts best practice trends to reduce weight of tax administration on the ICT sector - *see for instance <http://bizwatchnigeria.ng/nigeria-cut-taxes-telecom-companies-communications-minister/>*
  - Duplication of tax heads by Amendment should be addressed by a further amendment to eliminate any duplicitous/multiple tax heads (see 'Harmonization' slide above)
  - Review to incorporate a provision exempting ICT sector from discriminatory/arbitrary application of taxes under the Act
  - Review to incorporate a section which specifically sets out taxes & levies to be applicable to the ICT sector
  - Review to institute a One-Stop-Shop (OSS) model for taxation related to the ICT sector. Such provision would:
    - Designate a single point for aggregation/collection of all charges due from different categories of ICT providers
    - Provide for distribution of requisite proportions of generated revenue to applicable levels/agencies of Government
    - Harmonize applicable tax heads to the ICT sector
- Incorporation of provision outlawing departure from, or any modification to tax heads, applicable rates or their enforcement under the Act by any level/agency of govt.
- Tenement Rates system is greatly abused and needs to be reformed (e.g. huge "tenement rates" are imposed on *very small portions of land occupied by telecoms operators, while larger portions of the same land is charged much lower*). *Standard rates should be fixed for urban/rural areas per square meter.*

# Conclusions/Recommendations (2)

- **Public-Private Partnership**

- ALTON recommends a cross-sector/multi-stakeholder approach to reduce growing burden of taxation on telecom sector. JTB intervention is critical to reform sector tax administration
- Tax authorities should appreciate the need to leverage mobile platforms to expand the tax net – more Nigerians are on the mobile platform than any other platform.
- Need for externalities to be accounted for in taxation (developmental targets, etc.)
- Tax authorities should take advantage of telecom Industry support to broaden the Tax Net and earn more revenues.
- Need to streamline the taxies/levies that are applicable to telecoms infrastructure providers such as collocation Service providers given their operations. These infrastructures can be equated to power infrastructures such as electric poles/space for siting of electric transformers.
- Tax administration must take externalities into account to avoid prejudicing developmental targets of the Federation, and jeopardizing socio-economic growth
- Need to consider business planning perspectives & welfare of industry to ensure/enforce certainty of taxes & prevent arbitrary/impromptu review
- Adoption of One-Stop-Shop taxation model should be considered to ease administrative burden upon both operators (expedited processes) and tax authorities (cost savings)

## Conclusions/Recommendations (3)

- Need for transparency on determination of applicable taxes/levies for purposes of being ascertainable. This is in addition to making *applicable taxes/levies* non discriminatory against telecommunication companies.
- Need to spell out manner of enforcement which will take into cognizance due process and fair hearing. This will eliminate arbitrariness, resort to self help and illegal sealing of base stations/BTS.
- Elimination of retroactive demands – these are illegal, they encourage corruption and discourage investment.
- Need to organize stakeholders forum to further discuss proposed amendments and/or review of the T&LA and the entire tax administration framework.

**Thank you**

**ALTON**

**2015**