Dateline-Nigeria

Nigerian VAT: A Practitioner's Guide

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[pg. 00]

The scope of the Nigerian VAT Act (the "Act") is a moot point. Seemingly straightforward, the provisions of the Act that define transactions that fall within its coverage have generated uncertainty and, consequently, litigation. Court decisions are divergent and continue to stoke public misapprehension of the Act. The Act is limited to goods and services but over the years, court decisions and accepted practice have extended it slowly to transactions involving nontaxable items like intangibles and cross-border services. This article explains the scope of the Act and its application, and seeks to determine its intendment by examining it critically in light of practical issues that can arise in its enforcement.

Supply Under the Act

VAT is created by s. 1 of the Act but the charging provision is s. 2 which says that "the tax shall be charged and payable on the supply of all goods and services (in this Act referred to as 'taxable goods and services')...." The application of VAT, therefore, requires two elements-there must be supply and the supply must be of either goods or services.

There is no definition of "supply" in the Act; however, it can be defined as "providing something." **1** Thus,

if a contract is for the seller to deliver goods at the buyer's shop, supply is made when the seller offloads the goods at the agreed destination. This implies that if the contract requires the buyer to collect the goods at a specific time at the seller's gate and the goods are deposited at that place and at that time, supply is complete.

An issue that arises here is whether "supply" is necessarily a physical act or a notional concept. Must goods be physically delivered for supply to exist or can supply be deemed? For example, is there supply in a sale-and-leaseback transaction, which contemplates that the item would not leave the seller's place before being leased back immediately to the seller? Such a transaction may not involve a supply component as supply seems per force to require an intent by the seller to give up possession.

There is no express requirement that supply be made in Nigeria, which may imply that supply would be taxable even if it takes place outside Nigeria. This cannot be, as laws of the Nigerian legislature are not operative outside Nigeria in view of the constitutional provision that the law-making powers of the legislature are confined to the territory of Nigeria. **2** To this extent, supply would be taxable only if it is made in Nigeria, so the issue is not whether supply needs to be made in Nigeria for it to be taxable, but whether it is actually made in Nigeria. To identify properly the perimeter beyond which supply is not made in Nigeria, below is a discussion of the relationship between the Act and international commerce.

Cross-border trade.

There is never any dispute as to whether supply is made in Nigeria for local transactions-complexities arise in cross-border transactions. From the combined effect of s. 46, which defines imports, and s. 6, which seeks to determine the tax base of imports, it can be deduced that the Act contemplates imports as taxable activities. However, the question is whether imports are strictly taxable. Would fabricated machinery from Detroit, for example, be strictly liable to VAT? It should not be the law that imports are strictly taxable. Rather, it should depend on the provisions of the relevant contract and, in this area, incoterms are critical.

Incoterms define the respective obligations, costs, and risks involved in the delivery of goods from a seller to a buyer. If the contract for the American machinery is "EXW (Ex Works) Detroit," **3** the implication is that the seller need not supply the machinery in Nigeria, but discharges its obligations when it makes the goods available for collection at its premises in Detroit. The buyer is responsible for all other risks including transportation to its preferred destination. Under this contract, supply is not made in Nigeria, but in the United States, so VAT should not apply. On the other hand, had the contract been defined as "DDP" (Delivered Duty Paid), **4** the seller's delivery obligation would not be complete until the machinery is conveyed to the named destination in Nigeria, in which case supply would be made in Nigeria.

It is for this reason that s. 15 (2) and (3), which require tax payment on imports, should be taken with caution. VAT is payable on imports only when they qualify as supply, thus implying that if supply had

already taken place, the mere entry of the goods into Nigeria should not attract any tax. It should always be considered that the taxable activity is "supply in Nigeria," from which it can be inferred that taxing an EXW contract means that a buyer can undertake supply, which would be an aberration.

The concept of supply is easier to relate to imported goods than to services. First, the Act creates confusion by its definitions of "import" and "imported service." While imports are services brought into Nigeria, imported services are services performed in Nigeria. Flowing from this uncertainty is a second difficulty-are services capable of delivery in the same way as goods? A service is not property or a thing but rather an intangible item in the form of human effort, skill, or labor. **5** It is incongruous to associate services with delivery. It, therefore. stands to reason that the requirement that a service be supplied in Nigeria is satisfied when the service is performed in Nigeria. If the customer is in Nigeria, the transaction is taxable, but exempt as exported service if the customer is abroad. **6**

So, in determining whether a nonresident has supplied services in Nigeria, the enquiry should be whether the activity was carried out in Nigeria. Thus, the definition of "imported service" as a service rendered in Nigeria by a nonresident to a person inside Nigeria is consistent with the intendment of the Act. To this end, advisory services provided by foreign firms to Nigerian clients are not taxable. Repair of equipment by an engineering firm in Berlin also falls outside the scope of the Act.

Further, the law recognizes an export processing zone (EPZ) as a different jurisdiction from where imports can be made to Nigeria. **7** An enterprise in the EPZ, therefore, qualifies as a nonresident and any services performed by it for a resident entity would be taxable only if performed in the customs territory. **8** However, in the modern service industry where there is considerable subcontracting, a relevant question is how services supplied by a subcontractor in the customs territory would be treated.

These facts appeared in *Nigerdock*, **9** where an EPZ enterprise contracted by a resident to undertake certain works subcontracted some of the services to be performed in the customs territory to a third party. Although the Tax Appeal Tribunal (TAT), a specialist tax adjudicatory body, did not address this issue, contractual arrangement of this nature is commonplace. Resolution of this question depends on the identity of the customer to the subcontract. One view is that this is a domestic service since the customer is the resident firm and the subcontract is executed for its ultimate benefit. A contrary argument is that the EPZ enterprise is the customer since it is the direct beneficiary of the subcontract, so the service is exported.

Charging principle: origin or destination?

Allied to the above discussion is the question whether in relation to cross-border trade Nigeria's supply tax regime is modelled after the origin or destination principle. The destination principle, which is the WTO-sanctioned international norm, advocates taxation at the point of consumption. **10** Under the origin principle, a country levies VAT on any value created within its borders. **11** Taxation is on economic activity irrespective of the location of consumption. A more succinct distinction is that destination

principle seeks to tax domestic consumption while the origin principle taxes domestic production. **12**

Nigeria's VAT regime is tailored largely according to the destination principle. Goods are taxable when delivered in Nigeria while exported goods and services performed in Nigeria for nonresident entities are exempt. **13** However, for "imported services," it seems that both origin and destination principles apply as the services would have to be performed by the nonresident in Nigeria and for a customer within jurisdiction. The VAT system does not recognize services performed outside the country for a resident customer.

Case law on foreign supplies.

Taxation of items provided by nonresident suppliers has been debated at the TAT in several cases. In the first of three cases, **14** Gazprom received consultancy services from nonresident firms but did not remit any tax on payments to these firms. The Federal Inland Revenue Service (FIRS), being of the opinion that these services were taxable, raised two assessments requiring Gazprom to remit the assessed sums to it. **15** The VAT regime for nonresident firms includes Act s. 10, which says:

> (1) For the purpose of this Act, a nonresident company that carries on business in Nigeria shall register for the tax with the Board, using the address of the person with whom it has a subsisting contract, as its address for purposes of correspondence relating to the tax.
>
> (2) A nonresident company shall include the tax in its invoice and the person to whom the goods or services are supplied in Nigeria shall remit the tax in the currency of the transaction.

Gazprom objected to the assessments on the ground that the transactions were not taxable because the services were not provided in Nigeria, while the FIRS responded that by virtue of the destination principle, the relevant element is whether consumption took place in Nigeria. The TAT avoided commenting on whether the services were supplied in Nigeria, which was indispensable in any decision on the dispute, but went on to hold that the services were not taxable on the basis of its finding that the firms were not carrying on business in Nigeria, and therefore disentitled from charging VAT.

In the second case, **16** Vodacom failed to remit tax on payments for satellite-based bandwidth capacity provided by a Dutch company. In response to an FIRS assessment, Vodacom argued that the bandwidth was not supplied in Nigeria but from the Netherlands and, therefore, were not imported services. The FIRS countered by describing the transaction as an imported service originating from the Netherlands and received in Nigeria. The TAT accepted and applied the destination principle by holding that the transaction was chargeable to VAT.

In *Gazprom*, as in *Vodacom*, the TAT shied away from commenting on the purport of "supply in Nigeria," **17** which is the operative phrase that places a transaction within Nigeria's tax jurisdiction. Any resolution

of this issue would have to identify the point at which supply took place, in the course of which it may be necessary to formulate a workable principle that would guide future adjudication. Services, in view of their nature, are supplied on performance and, assuming that the item supplied in *Vodacom* was a service **18** , absent evidence that it was performed in Nigeria, there is no justification for the TAT's decision. It is concerning that the TAT failed to recognize the relevance of "imported service" as defined in the law, which clearly requires a nonresident to perform its service within jurisdiction for it to be VAT-able. Besides being hard to defend, these conflicting decisions not only introduce confusion on the topic but also create the worrying impression that the judiciary is blatantly pro-Revenue, which is not healthy for the investment climate in the country.

In the third case, **19** a nonresident, Petrobras SA, performed services for Brasoil on which the FIRS made an assessment. In response, Brasoil argued that no tax should apply since the services were largely performed outside jurisdiction. Without considering the relevant provisions of the law, the TAT rejected Brasoil's arguments on the ground that in its closing arguments, Brasoil said that the foreign services were liable to income tax. The TAT took the view that this statement had compromised Brasoil's position that the services were performed outside the reach of the VAT regime.

It is this author's opinion that the TAT's decision is wrong. Income tax is different from VAT and the basis for their respective liabilities also differs. VAT taxes only domestic transactions, while the grounds for income tax are varied and include activities undertaken outside jurisdiction. **20** It is, therefore, possible for a transaction to give rise to income tax without constituting a taxable supply.

It is also regrettable that, in glossing over the issue of taxable supply, the TAT missed an opportunity to tackle another interesting point. It was borne out in the course of evidence that Petrobras performed most of the services outside jurisdiction, with a fragment rendered locally. How would the supply tax, if any, be determined? Are the activities performed locally to be isolated, valued, and taxed or the entire contract sum becomes taxable? This issue is a common feature in EPC (engineering, procurement, and construction) contracts. A persuasive argument would be that since the Act applies only to domestic supply, tax should be limited to local services.

Goods and Services

VAT is a tax on goods and services and a supply of either or both would attract the tax. As straightforward as that may seem, taxpayers and the tax authority do not always agree on whether an item is goods, services, or neither. Judicial intervention has not been helpful in resolving this controversy but has rather obfuscated the matter more. An example of this is *FBIR v. Ibile Holdings.* **21** The tax authority commenced an action on Ibile's failure to remit VAT arising from its business of building, selling, and leasing properties for commercial purpose. The now-defunct VAT tribunal held that Ibile's transactions were taxable because they constituted supply of goods under the Act. The basis for this was Act s. 42 (now s. 46), which defined "supply of goods" as "any transaction where the whole property in the goods is transferred or where the agreement expressly contemplates that this will happen and in

particular includes the sale and delivery of taxable goods or services used outside the business, the letting out of taxable goods on hire or leasing, and any disposal of taxable goods."

This decision is regrettable and highlights the failure of the VAT tribunal to appreciate the legal significance of real estate transactions in Nigeria. Ownership of all land in Nigeria is vested in the state and the maximum interest that a person can acquire over real estate is a right of occupancy, **22** which is the equivalent of a lease and on its expiration, the real estate reverts to the state. In other words, land or real estate cannot be sold in Nigeria since the vendor has no more than a leasehold interest. A party can assign the unexpired residue of its leasehold or create a sub-lease in favor of another, with the state holding the reversionary interest on the expiration of the head lease. Consequently, by "building, selling and letting out of properties for commercial purpose," Ibile was only distributing its interest over the real estate; in one case, it assigned the unexpired residue of its leasehold (otherwise referred to as sale), while in others, it created sub-leases. The relevant issues here are to identify the item that is the subject matter of the transactions undertaken by Ibile, and then determine whether it is goods, services, or neither. It is this author's view that the item is the right to the unexpired residue of Ibile's leasehold in some cases and a right to a sub-lease in others, and neither of these is a good or service. Rather, they are incorporeal property.

Incorporeal property.

Incorporeal property is legal right in property that has no physical existence such as patent, lease, or mortgage. **23** This kind of property lacks a physical body and so cannot be touched. Transfer of such property is not by sale but by an assignment of the assignor's subsisting rights in the property. **24** In 2011, the taxation of incorporeal property was the subject of a Nigerian high court decision in *CNOOC & Anor v. FIRS.* **25** In this case, SAPETRO (South Atlantic Petroleum Company Limited), a local E&P company, which was the contractor in a deep-water production sharing contract, assigned 90% of its contractor's interest to the Chinese oil company CNOOC. CNOOC challenged an assessment of the transaction to tax in the sum of US$133,361,596.68 on the ground that the assignment did not fall within the province of the Act.

The court agreed with CNOOC that the item assigned was a right and neither goods nor services, but a chose in action and, accordingly, the transaction was not liable to VAT. In affirming that choses in action were outside the contemplation of the Act, the court sought to draw a parallel between the Act and the U.K. VAT Act 1994. S. 5(2)(b) of the U.K. VAT Act says: "anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services."

The court said that, in the U.K., it was solely as a result of statutory intervention that the assignment of a right constituted services, the supply of which would be taxable. Consequently, the absence of any reference to incorporeal property in the list of taxable items was evidence that such property was outside the coverage of the Act. The effect of this decision is to exclude from tax dealings in stock, options,

franchise, copyright, and any property that exists as rights.

Other intangibles.

The question here is whether the principle in *CNOOC* can be extended to all forms of intangible property other than choses in action. Examples of intangible property that do not exist as rights include electricity, internet bandwidth, airtime, and methane or dry gas. These items constitute a class of property different from choses in action in the sense that not being rights, they are properties capable of being sold and not assigned. However, they have in common with incorporeal property an absence of the kind of physical presence typically associated with goods. Are these items, therefore, taxable?

The answer to this question will determine the validity of the transfer in 2005 of a 20-story real estate by the former Nigerian state electricity monopoly to the federal tax authority in settlement of an alleged debt of N8.6bn (US$27m) that arose from unremitted VAT on electricity sales. The transaction was conducted on the understanding that electricity was either a good or service and, so its supply to residential and other users was taxable. For several years, the power monopoly did not remit any tax, with the result that by 2005, the amount was huge and could be settled only through the transfer of the high-rise property in one of Nigeria's prime real estate locations. **26**

Considerable uncertainty exists as to what electricity is. In the U.S., the definition of "goods" in the Uniform Commercial Code **27** has polarized the courts, with some holding that electricity satisfies the requirements for classification as a good because it is able to move from generation to metering and can be felt by touching the wires (though with disastrous consequences), while others prefer to classify it as a service on the logic that utilities do not manufacture electricity, but set in motion the elements that allow its flow. **28**

The view that electricity is goods is tantamount to the claim that air is goods since it possesses the twin features of tangibility (it can be felt) and movability (it moves). On the other hand, electricity does not fit into the definition of service because utilities actually generate electricity when they use fossil-fuel plants. Admittedly, the process appears somewhat different for, e.g., hydroelectricity, wind farms, and solar power. However, power purchase agreements are for the sale of property, i.e. electricity, and not for services.

On the other side of the divide is common law that restricts goods to items that have a physical and tangible presence. **29** This represents the law in New Zealand where case law does not recognize electricity and other intangibles as goods or service, **30** and statutory assistance was sought when it was necessary for electricity to be considered as goods. **31**

Although this issue is untested in Nigeria, a court is more likely to follow the common law due to the definition of "goods" by certain local statutes. There is no federal legislation on sale of goods because internal trade is not within the purview of federal jurisdiction. **32** In the Nigerian state of Lagos, "goods" is defined to include:

> all chattels personal, other than things in action and money, and includes emblements, industrial growing crops, and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale. **33**

Personal chattels are any movable **34** article of personal property such as cars, furniture, cash, etc. **35** Electricity does not qualify as personal chattels and so is not goods. Consequently, the real estate transfer to the federal tax authority in discharge of the tax remittance obligation of the former power monopoly was clearly without legal justification.

Further, the foregoing illustrates the TAT's error in *Vodacom*, where it held that the supply of bandwidth capacity was a supply of services and, therefore, taxable. This error is common among Revenue and taxpayers as demonstrated by the federal tax authority's recent closure of the offices of Swift Networks, an Internet access provider, for failure to remit VAT in the sum of N702m (US$2.2m). **36** Bandwidth is the total maximum transfer rate of a network cable or device and measures how fast data can be sent over a connection. **37** It lacks a physical and tangible presence and so does not qualify as personal chattel. Also, as information capacity, bandwidth is property, though intangible, and, therefore, excluded from services.

A related item, airtime, has a huge market in Nigeria. With 145 million active mobile subscribers, the airtime scratch card market is worth about N1 trillion (US$3.2b) while the virtual top-up segment brings in N447b (US$1.4b) monthly. **38** The tax on these sums is sizeable and would continue to grow as both economic activities and the population estimated at about 180 million expand. Telecommunication companies have traditionally included this tax on airtime sales, and failure to remit it has exposed them to dire consequences. Recently, the offices of a major telecommunications company were sealed to enforce VAT remittance of N24.3b (US$77m). **39** It is hoped that as tax education and knowledge grow, taxpayers will be equipped to challenge incorrect assessments judicially with robust and articulate arguments. This will assist in reducing the risk of judicial misdirection as most of the judges and some of the tax commissioners appointed into the TAT may not have sufficient tax knowledge to produce the right decision independently.

Contract Structuring

Contractual arrangements can determine taxation. How a transaction is described is critical. When a transaction includes intangibles, care should be exercised in not lumping the various items together; the intangibles should be excluded from the rest of the supplies. The individual items involved in a transaction should be identified and the purchase price distributed among them in the invoice. This is because it is easier to demonstrate that specific items are not goods or services (while conceding that others are) than to lump the different items into one and seek to convince the FIRS or the courts that the singular, multifaceted item is not taxable.

On an asset sale of a business, tax would apply to certain items such as machinery and equipment, and

not to others, including goodwill, organizational and human capital processes, technology, and computer programs. Extending this approach to petroleum industry divestments would exclude from VAT items such as goodwill, oil mining lease, subsisting crude oil offtake contracts, prepayments, and debtors' liability.

In the extractive industry, information on the geology and mineralization of a location is an invaluable commodity. When an E&P (exploration and production) company engages an exploration firm to provide this information, VAT would apply since the contract is for services, unlike when the exploration company acquires this data independently and sells it to the E&P company.

Also, recognizing a transaction for what it is can affect VAT liability. Warehousing should not be described as a service but a contract for storage or space. A contract for storage is neither a contract for goods nor services. Thus, a ports and terminals operator should exclude container storage facilities from the list of services that it provides to the ports authority and customers. When an ICT (information and communications technology) firm provides Internet access and follow-up maintenance, only the latter should be referred to as ICT services.

Distinction should be maintained in contract documentation between the contract fee and reimbursables, as the latter is not taxable. **40** This is an efficient structure for EPC contracts where the procurement component can be substantial and impact adversely on VAT if not excluded from the contract price.

Exempt Goods and Services

Under the Act, certain items are VAT exempt. **41** These are goods and services listed in Parts I and II of the First Schedule to the Act and include medical services and products, basic food items, educational materials, all exports, baby products, fertilizer, equipment required for agricultural activities, and equipment for the use of gas in downstream operations. It seems that in deciding whether an item is taxable, the exemption or otherwise of the item is relevant. In *Ibile Holdings*, where the issue was whether the building, selling, and renting of properties was liable to VAT, the affirmation of the VAT tribunal was informed in part by the omission of these activities from the list of exempted items. Also, in *Vodacom*, the TAT, while sidestepping the issue of "supply in Nigeria," hastened to note that bandwidth was not exempt.

Ordinarily, the logic behind exemption is to exclude from VAT items that, but for exemption, would be taxable. Consequently, the issue of exemption should arise only after it is determined that an item is a good or service. But, as noted above, there are other items that are neither goods nor services and for which exemption is pointless. Subjecting an item to tax merely because it is not exempt is akin to creating a third category of taxable items besides goods and services. The VAT tribunal and TAT were, therefore, wrong for implying that not listing an item as exempt suggests that the item comes within the scope of the Act.

Reverse Charge

A resident is expected to reverse-charge itself and pay tax from the supply of goods when its supplier is nonresident. **42** The concept of reverse charge is recognized internationally, as it is impractical to require foreign businesses to register for VAT in all jurisdictions with which they deal. **43** In Nigeria, an offshoot of this concept that is common among some tax and legal practitioners is that for VAT to be payable, it must be charged in any invoice from the nonresident, and that failure to do so discharges the resident from any payment obligation. This proposition, which has the potential to affect local transactions when a vendor omits to charge tax, draws from the combined effect of Act ss. 2 and 10 that VAT "...shall be charged and payable on the supply of all goods and services" and "a nonresident company shall include the tax in its invoice and the person to whom the goods or services are supplied in Nigeria shall remit the tax...," respectively. The proposition is hinged on the assumed peremptoriness of the word "shall," which serves to make the charging obligation a precondition to tax payment or remittance, whichever applies.

The TAT has accorded judicial support to this line of reasoning. In *Gazprom*, one of the issues was whether the receipt of invoices charging VAT from the nonresidents was a precondition for Gazprom to remit the tax. Holding that it did, the TAT identified the legislative intent to be that the tax should be paid only after it is invoiced. Consequently, Gazprom had no obligation to remit any VAT since the tax was not charged by the nonresident vendors. This issue arose again in *Vodacom*, where the TAT, refusing to follow its decision in *Gazprom*, held that s. 10 was merely an administrative provision and need not be complied with for VAT to be payable.

The decision in *Vodacom* is correct because s. 2 creates both a charging obligation on a vendor and a paying obligation on a customer, but does not disclose any intention to subject the latter obligation to the former. S. 10(2) does not evince any such intention either. The TAT was, therefore, wrong for holding in *Gazprom* that under s. 10 chargeability precedes payment. Applying the principle in *Gazprom* to local transactions would shield from tax payment customers whose vendors omitted to include VAT on their invoices. Indeed, the law expects such customers to self-charge so long as the item supplied is goods or services.

Conclusion

With increasing economic significance, VAT can only generate more disputes between taxpayers and Revenue on its scope and application. The courts have demonstrated a proclivity for a case-by-case approach, as opposed to formulating general principles to guide present and future cases that would improve consistency of decisions and enhance tax predictability. Justification for this may be that with tax, a technical subject in which the judges may not be well versed, it is safer to take a short term perspective. The lack of robustness of judicial decisions is worrying, promoting tax uncertainty and

weakening fiscal competitiveness. Indeed, a more correct adjudication would make manifest tax-planning opportunities for transactions, especially intangibles and cross-border commerce, and, together with the nation's low VAT rate, the lowest in the sub-region, should position Nigeria as an attractive investments destination.

(1.) Companies Income Tax Act, Chapter 21, Laws of the Federation of Nigeria 2004

(2.) Constitution of the Federal Republic of Nigeria

(3.) Land Use Act, Chapter L5, Laws of the Federation of Nigeria 2004

(4.) Sale of Goods Law of Lagos State

(5.) Uniform Commercial Code (USA)

(6.) Value Added Act, Chapter V1, Laws of the Federation of Nigeria 2004

(7.) Black's Law Dictionary, 7th Edition

(8.) The Free Dictionary available at http://www.thefreedictionary.com/supply

(9.) USLEGAL.COM, "Incorporeal Property Law & Legal Definition," available at http://definitions.uslegal.com/i/incorporeal-property/

(10.) Nigerdock v. FIRS (2016) 24 TLRN

(11.) Gazprom v. FIRS (2015) 19 TLRN

(12.) Vodacom v. FIRS (2016) 23 TLRN

(13.) Brasoil v. FIRS (2016) 24 TLRN

(14.) FBIR v. Ibile Holdings (2010) 2 TLRN

(15.) CNOOC & Anor v. FIRS (2011) 4 TLRN

(16.) Dixon vs. The Queen [2015] NZSC 147 (SC 82/2014)

(17.) Electricity Supply Association of New Zealand Inc. vs. Commerce Commission (1998) 6 NZBLC 102,555

(18.) Chapter 2, "Fundamental Principles of Taxation," in Addressing the Tax Challenges of the Digital Economy (OECD Publishing, 2014) available at http://www.oecd-ilibrary.org/docserver/download/2314251ec005.pdf?expires=1478023048&id=id&accname=gu

(19.) OECD International VAT/GST Guidelines, Guidelines on Neutrality, Committee on Fiscal Affairs, Working Party No. 9 on Consumption Taxes, Centre for Tax Policy and Administration available at https://www.oecd.org/tax/consumption/guidelinesneutrality2011.pdf

(20.) Oliveira, "Economic Effects of Origin and Destination Principle for Value-Added Taxes," available at https://www2.gwu.edu/~ibi/minerva/spring2001/jesus.oliveira.pdf

(21.) ACADEMIC, "Incorporeal Property," available at http://law.academic.ru/9833/incorporeal_property

(22.) Iyanda, "After Glo, FIRS seals off Jimoh Ibrahim's companies, others over tax default," 12 May 2016, available at http://www.qed.ng/?p=27222#.WA1MbuUrLIU

(23.) Computer Hope, "Bandwidth," available at http://www.computerhope.com/jargon/b/bandwidt.htmComputer Hope, "Bandwidth," available at http://www.computerhope.com/jargon/b/bandwidt.htm

(24.) Adepetun, "Virtual airtime top-up business hits N447b monthly, says Mobifin," 17 June 2016 available at

http://guardian.ng/business-services/virtual-airtime-top-up-business-hits-n447b-monthly-says-mobifin/
(25.) Punch Newspaper, "FIRS shuts Glo offices, others over VAT," 12 May 2016 available at http://punchng.com/firs-shuts-glo-offices-others-vat/
(26.) Ekundayo, K., Nigeria: N8.5bn Debt: Revenue Service May Seize NEPA Complex, 4 May 2005, available at http://allafrica.com/stories/200505040094.html
(27.) Incoterms 2015 available at http://www.one-ill.com/downloads/incoterms%202015.pdf
(28.) Spenser, "Is Electricity a Good or a Service"?, Weltman, Weinberg & Reis Co., L. P. A. available athttp://www.martindale.com/business-law/article_Weltman-Weinberg-Reis-Co-LPA_2176130.htm
(29.) Moon, "Intangibles as Property and Goods" (Published in New Zealand Law Journal, July 2009) available at http://www.ajpark.com/media/98143/intangibles_as_property_and_goods.pdf

1 www.thefreedictionary.com/supply.

2 Under s. 4 of the Constitution of the Federal Republic of Nigeria, the federal legislature has powers to make laws for the peace, order, and good government of the Federation or any part thereof. Laws made by the federal legislature also apply to Nigeria's High Commission and embassies in other countries as these places are considered under international law as extensions of the territory of Nigeria.

3 Incoterms 2015, www.one-ill.com/downloads/incoterms%202015.pdf.

4 *Id*.

5 Black's Law Dictionary, 7th ed.

6 VAT Act, para. 4 Part II of First Schedule.

7 VAT Act, s. 46 (on definition of "import")

8 *Nigerdock v. FIRS* (2016) 24 TLRN 1, pages 11-12.

9 *Id*.

10 "Fundamental Principles of Taxation," in *Addressing the Tax Challenges of the Digital Economy* (OECD Publishing, 2014), ch. 2, pages 43-44, www.oecd-ilibrary.org/docserver/download/2314251ec005.pdf?expires=1478023048&id=id&accname=guest&checksur

11 OECD International VAT/GST Guidelines, Guidelines on Neutrality, Committee on Fiscal Affairs, Working Party No. 9 on Consumption Taxes, Centre for Tax Policy and Administration, www.oecd.org/tax/consumption/guidelinesneutrality2011.pdf, page 4.

12 Oliveira, "Economic Effects of Origin and Destination Principle for Value-Added Taxes" (April 2001), pages 17-18, www2.gwu.edu/~ibi/minerva/spring2001/jesus.oliveira.pdf.

13 VAT Act, para. 6 Part I of First Schedule

14 *Gazprom v. FIRS* (2015) 19 TLRN 66.

15 This was in accordance with Act s. 10(2), which says that when a nonresident firm supplies goods or services in Nigeria, the recipient would be responsible for remitting VAT to the FIRS.

16 *Vodacom v. FIRS* (2016) 23 TLRN 72.

17 This phrase is in VAT Act s. 10(2) and is a fuller enunciation of the intendment of the law than s. 2.

18 This author's opinion is that bandwidth is not service, as discussed in the text below.

19 *Brasoil v. FIRS* (2016) 24 TLRN 24.

20 Under s. 13(2)(c) of the Companies Income Tax Act, contract price is taxable even though some components of the contract are executed offshore.

21 (2010) 2 TLRN 151.

22 Land Use Act, ss. 1 and 5.

23 "Incorporeal Property Law and Legal Definition," http://definitions.uslegal.com/i/incorporeal-property.

24 "Incorporeal property," http://law.academic.ru/9833/incorporeal_property.

25 (2011) 4 TLRN 185.

26 Ekundayo, "Nigeria: N8.5bn Debt: Revenue Service May Seize NEPA Complex," May 4, 2005, http://allafrica.com/stories/200505040094.html.

27 U.C.C. section 2-105(1) defines goods as "all things (including especially manufactured goods) which are movable at the time of identification to the contract for sale...."

28 Spenser, "Is Electricity a Good or a Service?," Weltman, Weinberg & Reis Co., L.P.A., www.martindale.com/business-law/article_Weltman-Weinberg-Reis-Co-LPA_2176130.htm.

29 Moon, "Intangibles as Property and Goods," New Zealand Law Journal (July 2009), www.ajpark.com/media/98143/intangibles_as_property_and_goods.pdf, page 5.

30 In *Dixon v. The Queen* [2015] NZSC 147 (SC 82/2014) delivered on October 20, 2015, the New Zealand Supreme Court referenced the high court decision in *Electricity Supply Association of New Zealand Inc. v. Commerce Commission* (1998) 6 NZBLC 102,555, which held that electricity was neither goods nor services.

31 Moon, *supra* note 29, page 7. In New Zealand, "goods" was defined to include electricity in the Consumer Guarantees Act in response to an earlier high court decision that electricity was not goods.

32 Constitution of the Federal Republic of Nigeria, s. 4, says that the federal legislature can make laws on matters listed in the Exclusive and Concurrent Lists. Internal trade is not in either of the lists.

33 Sale of Goods Law of Lagos State, s. 2. The Sale of Goods legislation of the various states usually contains identical provisions.

34 This is the context in which the word "*movable*" is ordinarily used.

35 See various definitions of "chattels personal"- http://thelawdictionary.org/chattels-personal-mozley-whitley/ and www.thefreedictionary.com/chattel+personal.

36 Iyanda, "After Glo, FIRS Seals Off Jimoh Ibrahim's Companies, Others Over Tax Default," May 12, 2016, www.qed.ng/?p=27222#.WA1MbuUrLIU.

37 "Bandwidth," www.computerhope.com/jargon/b/bandwidt.htm.

38 Adepetun, "Virtual Airtime Top-Up Business Hits N447b Monthly, Says Mobifin," June 17, 2016, http://guardian.ng/business-services/virtual-airtime-top-up-business-hits-n447b-monthly-says-mobifin.

39 "FIRS Shuts Glo Offices, Others Over VAT," May 12, 2016 http://punchng.com/firs-shuts-glo-offices-others-vat.

40 *Brasoil, supra* note 19, page 36.

41 VAT Act, s. 2.

42 VAT Act, s. 10(2).

43 Note 10, *supra*, page 45.