Plans to introduce a new tax on communication services underway

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In brief

A new Bill to impose, charge and collect Communication Service Tax (CST) is being introduced by the National Assembly. The CST will be levied on service fees payable by users of electronic communication services at 9% and will be borne by the customers. If the Bill is enacted into law, it will mandate service providers to file monthly tax returns with the FIRS with strict penalties for non-compliance.

The categories of communication services liable to the tax include voice calls, SMS, MMS, Data and Pay TV.

In detail

Background

The Communication Service Tax Bill ("CST" or the "Bill") 2015 is to be introduced at the National Assembly for consideration. The Bill seeks to impose a 9% tax on electronic communication service fee charged by service providers.

Chargeable Services

Section 2 of the Bill provides that CST shall be levied on the electronic communication services supplied by service providers. These are:

(a) Voice calls
(b) SMS
(c) MMS
(d) Pay per View TV stations
(e) Data usage from Telecommunication Services Providers and internet service providers

Service provider in relation to the CST Bill means a person permitted or authorised by the NCC to provide electronic communication services.

Persons liable to pay the tax and rate

The tax will be charged by the service provider in addition to the electronic communication service fee.

The rate of the CST is 9% of the service charge for the use of communication service.

Collection of tax and administration of funds

The Federal Inland Revenue Service (FIRS) will be responsible for the collection of the tax. FIRS will pay the tax collected together with any interest and penalty into the Federation Account. The Federal Government will be responsible for the administration and management of the funds.

Submission of tax returns and payment of tax

All service providers are to file tax returns and pay the tax due not later than the last working day of the month immediately after the month to which the payment relates.

Penalties and interests

Penalties for non-compliance are:

- NGN 50,000 for failure to file returns on due date and a further NGN 10,000 for each day the tax returns is not submitted

- Failure to pay tax by due date attracts monthly interest of 150% of the average of the commercial banks' lending rate

- Refusal of service providers to provide Government access to the network nodes attracts a penalty of 5% of the annual gross revenue of the last audited financial statements

Relationship with the Value Added Tax (VAT) Act

Relevant sections of the VAT Act will apply in the management of the tax with necessary modification. Sections in the VAT Act will also apply in matters of objections and appeals related to the tax. However, this does not include the ability to claim input tax.

Appointment of agents

The Minister and the FIRS in collaboration with the Ministry of Communication and the Nigeria Communication Commission (NCC) are to appoint an agent who will establish both electronic and physical monitoring mechanisms to monitor, analyse, verify, save all necessary data and information both electronic and physical. In addition, the FIRS, the ministry of communications, NCC and such appointed agents must be given access to the network nodes of service providers at an equivalent point in the network where the network providers billing systems are connected.

Objection to a request for the introduction of an equipment or software into the network

A service provider who objects to a request for the introduction of an equipment or software to its physical nodes, shall within 7 days of the request report in writing stating reasons for the objection to the FIRS and other relevant authorities. If after 14 days the issues are not amicably resolved, the service provider shall within 7 days apply to the high court. Where the high court upholds the request for the introduction of an equipment to the service provider's network, the service provider will still be liable to the 5% penalty on its annual gross revenue.

PwC's Observations

1. The Bill seems to mirror the Ghana Communication Service Act. The reference in the Bill to National Health Insurance Levy, which is not applicable in Nigeria, shows that Bill was perhaps developed through a direct "cut and paste" approach.

2. Although the CST is borne by the users of the electronic communication service, it imposes significant compliance burden and costs on the service providers.

3. The Bill does not provide for penalties for the Government monitoring agents for abuse or data protection violation. Confidentiality of the customers using the infrastructure has to be guaranteed and any consequential claims for damages should be borne by such agents or government officials.

4. The Bill does not clarify whether there will be a charge if the subscriber of the telecommunication or television service is outside Nigeria or for foreign interconnect charges billed from Nigeria to foreign telecommunication providers.

5. The 7 days period for service providers to object to a request by the Government to introduce an equipment or software into the subscriber's network may not be sufficient to determine the risk associated with such interference as this may require technical expertise at a significant cost and time.

6. The CST Bill still imposes the payment of 5% of annual revenue tax after a court upholds the introduction of the Government monitoring equipment into the network. This will discourage service providers from challenging the Government where it merely suspects that such introduction may create risks and affect the quality of service enjoyed by subscribers. Interestingly there is no compensation to the service provider where the court rules otherwise.

7. The use of independent consultants could lead to unprofessional behaviour by consultants/agents who are motivated solely by commission for work done.

8. Multiple taxation already exists in the information and telecommunications industry such as IT tax on profits, Annual Operator Levy on turnover and VAT on consumption of their

services. The introduction of the CST therefore increases the tax burden on both service providers and their customers.

The takeaway

The consideration of the CST reflects the Federal Government's appetite to increase revenue through taxes. However, the introduction of new taxes without harmonising existing ones will put pressure on the Nigerian tax system which will be unattractive to investors. It may also be counter-productive in the long run for targets on broadband penetration.

The focus instead, should be on stimulating the economy and ensuring that the tax system is efficient by widening the tax net and creating an effective framework for tax compliance.

If any tax must be introduced on communication services, care must be taken to protect the poor and vulnerable in the society who nonetheless have to use telecommunication services for social inclusion and financial services among others.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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