

SIGNIFICANT ECONOMIC PRESENCE (SEP)

THE NIGERIAN EXPERIENCE

by

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Agenda

- Background
- The Old
- The New
- The Intricacies
- The Solution
- The Result
- The Challenges
- The Future





SNIPPETS ABOUT NIGERIA

- Nigeria's total population is about 220 million.
- Nigeria's GDP was estimated to be about \$477.39 billion in 2022.
- Nigeria's internet penetration rate stood at about 55% (over 110 million users) as at January 2023 with annual growth rate of over 4%.



Tuesday, February 2, 20XX

The old

... the brick and mortal only era

OLD NEXUS TO TAX IN NIGERIA-

- (a) if a non-resident company has a **fixed base** of business in Nigeria;
- (b) if it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person (as an **agent**) in Nigeria
- (c) if that trade or business or activities involves a **single contract** for **surveys, deliveries, installations** or **construction**.
- (d) where it fails to price the related party transactions at arms length

Top 10 companies in the world 2010

1. Wal-Mart Stores
2. Royal Dutch Shell
3. Exxon Mobil
4. BP
5. Toyota Motor
6. Japan Post Holdings
7. Sinopec
8. State Grid
9. AXA
10. China National Petroleum



The new

The new borderless world, the new technology and the evolving taxation in pursuit of effects without presence.

Top 10 companies in the world 2020

1. **Apple Inc.**
2. **Microsoft Corporation.**
3. **Alphabet Inc.**
4. **Amazon.**
5. **Berkshire Hathaway Inc.**
6. **Facebook.**
7. **Alibaba Group.**
8. **JPMorgan Chase & Co.**
9. **Tencent Holdings Limited**
10. **Visa Inc.**

The Intricacies



1. Scale without mass
2. Reliance on intangible assets
3. Data and user participation

Nigeria reacted by introducing two new sections to create new nexus for taxing the new reality.

Section 13(2) (c) and Section 13(2) (e)

The Solution

Creation of a new nexus

Section 13(2)(c) and (e) of CITA provides that a non-Nigerian company will be deemed to have derived profits from Nigeria and so taxable in Nigeria if the company satisfies the following conditions:

- 1) the company transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems, or any other electronic or wireless apparatus to Nigeria in respect of ANY activity including the following:
 - (a) electronic commerce;
 - (b) application store;
 - (c) high frequency trading;
 - (d) electronic data storage;
 - (e) online adverts;
 - (f) participative network platform;
 - (g) online payments.
2. profit is attributable to such activities; and
3. **the company has a Significant Economic Presence in Nigeria**

The solution – new nexus

Tweaks made to Section 13(2) as ne solution to new reality

- a)fixed place of business (PE)
- b) Agency nexus
- c) **Provision of digital goods or services where the company has Significant Economic Presence (SEP) in Nigeria.**
- d) single contract for Surveys, Deliveries, Installations or Construction
- e) **If the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has SEP in Nigeria.** The WHT shall be the final tax if such company is not within (a – d) above.
- f) Artificial transactions between connected persons.

NOTE: FA 2019 empowers the HMOFNP to issue an order on what constitutes SEP.



The Solution

SEP as defined by the Minister of Finance

DIGITAL ACTIVITIES COVERED BY SEP

A company other than a Nigerian company shall be deemed to have SEP in Nigeria in any accounting year where it:

- a) Derives gross turnover or income of more than **N25 million** or its equivalent in other currencies, in that year from any or a combination of the following:

Note (**N25m is to achieve equity and fairness for local companies**)

The Netflix logo, featuring the word "NETFLIX" in white, bold, sans-serif capital letters with a slight 3D effect, set against a solid red rectangular background.The Facebook logo, consisting of the word "facebook" in a blue, lowercase, sans-serif font.The Amazon logo, featuring the word "amazon" in a black, lowercase, sans-serif font, with a curved orange arrow underneath it pointing from the 'a' to the 'z'.The Match Group logo, featuring a stylized "iG" in blue and teal colors, followed by the words "Match Group" in a dark blue, sans-serif font.

The Solution

SEP as defined by the Minister of Finance

DIGITAL ACTIVITIES COVERED BY SEP

Streaming or downloading services of digital content, including but not limited to movies, videos, music, applications, games, and e-books to any person in Nigeria.

Transmission of data collected about Nigerian users which have been generated from such users' activities on a digital interface including websites or mobile applications.

Provision of some goods and services through the digital platforms

Provision of intermediation services through a digital platform; website or other online application that links suppliers and customers in Nigeria.

The Netflix logo, featuring the word "NETFLIX" in white, bold, sans-serif capital letters with a slight 3D effect, set against a solid red rectangular background.

A company other than a Nigerian company shall be deemed to have SEP in Nigeria in any accounting year where it:

- a) Derives gross turnover or income of more than **N25 million (fairness)** or its equivalent in other currencies, in that year from any or a combination of the following:



The Solution

SEP as defined by the Minister of Finance

DIGITAL ACTIVITIES COVERED BY SEP

A company other than a Nigerian company shall be deemed to have SEP in Nigeria in any accounting year where it:

- b) Uses a Nigerian domain name (.ng) or registers a website address in Nigeria.
- c) Has a purposeful and sustained interaction with persons in Nigeria by customizing 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.

The Uber logo, consisting of the word "Uber" in a bold, black, sans-serif font, is centered within a white rectangular box.

**Significant Economic Presence
(SEP)**



The Solution

Payments excluded from SEP

Exemptions

No SEP in respect of payment:

- to employee under the contract of employment.
- For teaching by educational institution
- By a foreign PE of a Nigerian company

Significant Economic Presence
(SEP)



The uniqueness of Nigerian SEP

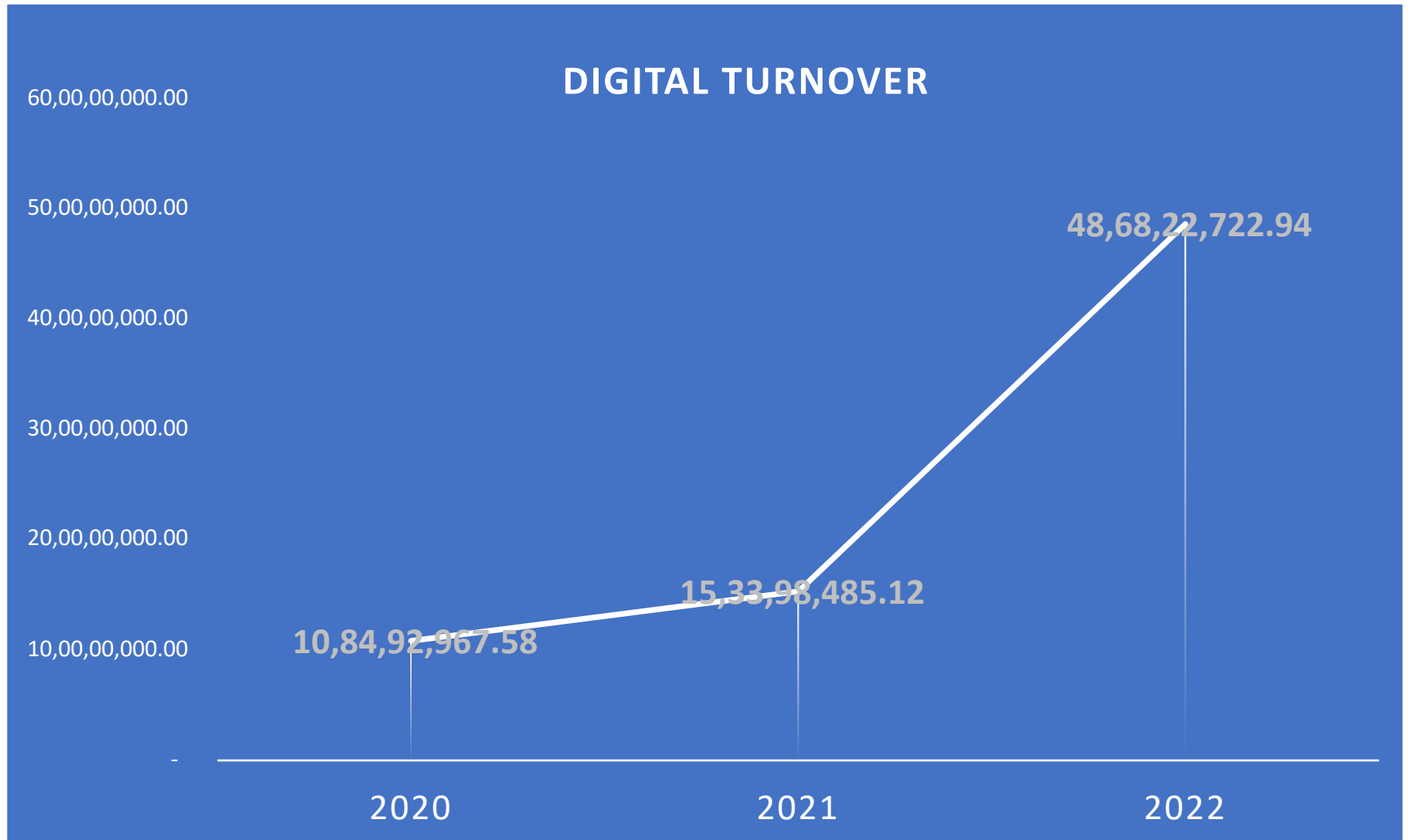
- It is not considered as a unilateral approach or DST because it is under our income tax law.
- It addresses the issue of tax nexus and creates a nexus using turnover threshold and not user participation.
- Other nexus is the use of a Nigerian domain name (.ng) or registration of a website address in Nigeria or furnishing of TCMP remotely to Nigeria.
- Notwithstanding its provision, if Nigeria sign up to Pillar 1, the provision of Pillar 1 will apply to entities in scope of Pillar 1.



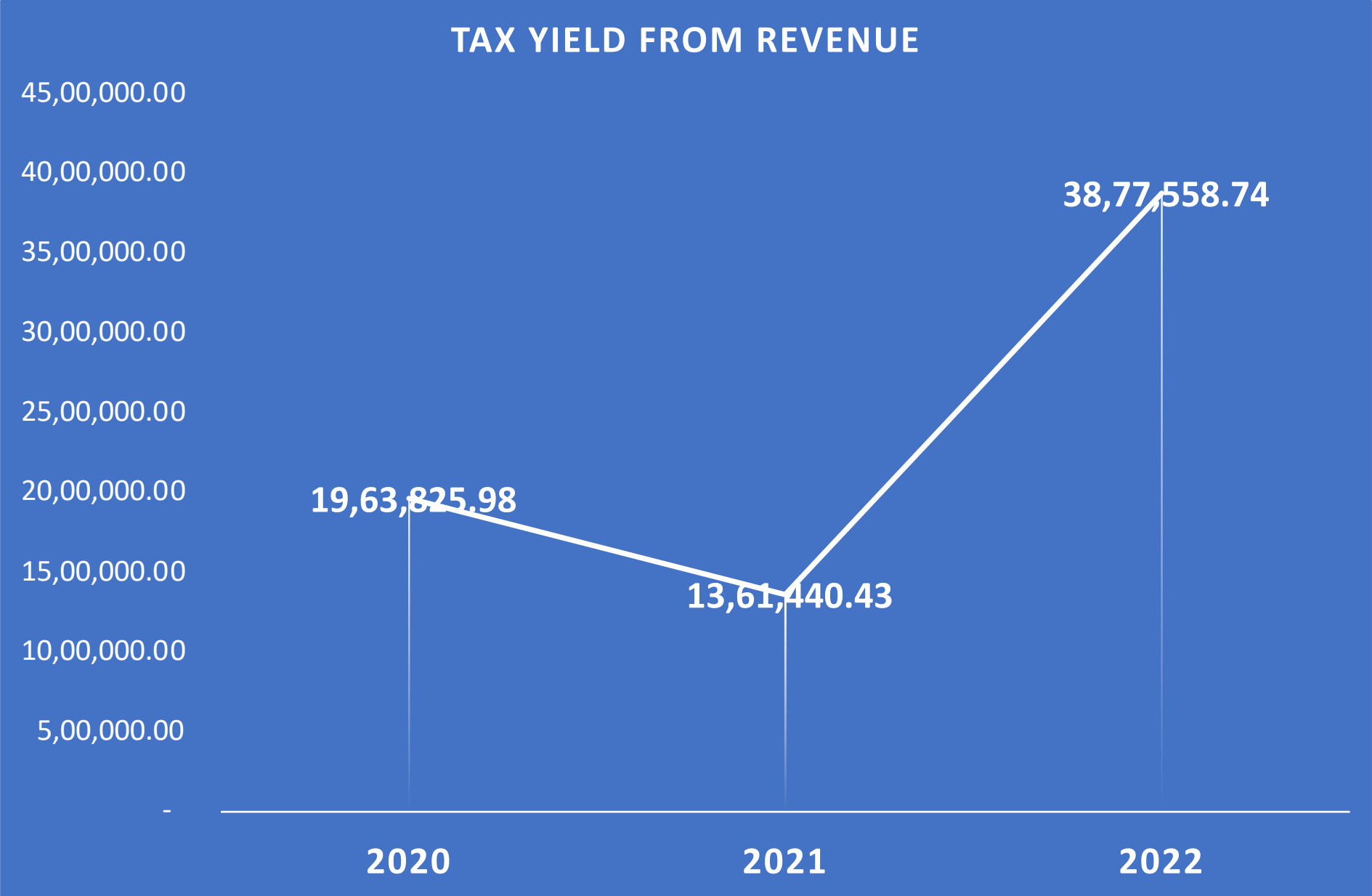
The result

YEAR	2020	2021	2022
CURRENCY	USD	USD	USD
REVENUE	108,492,967.58	153,398,485.12	486,822,722.94
TAX	1,963,825.98	1,361,440.43	3,877,558.74
YIELD	1.81	0.89	0.80
NO. OF COMPANIES	21	24	28

The result

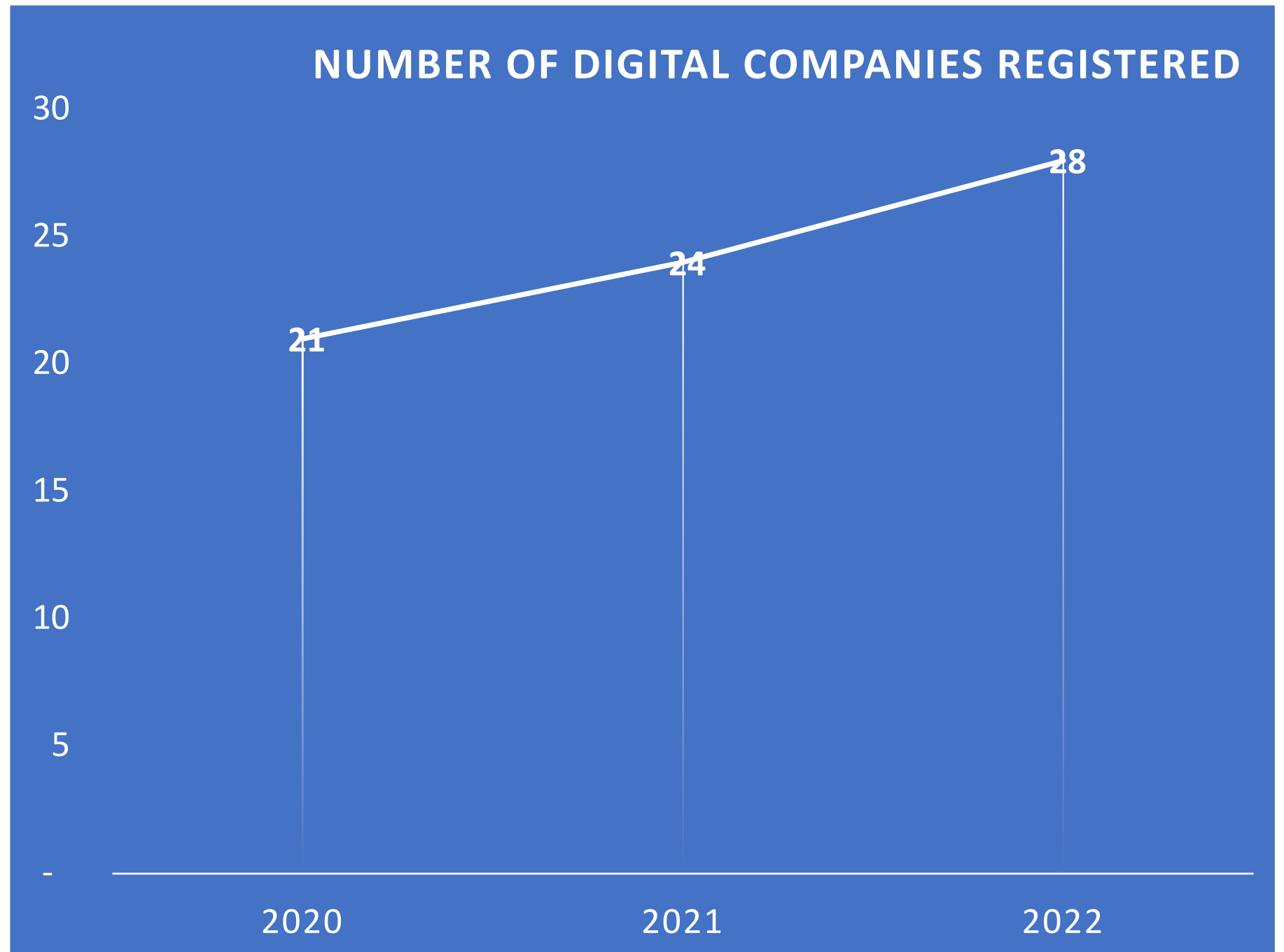


The result



The result

Tuesday, February 2, 20XX



The Challenges.

Like every maiden undertaking: not seeing all the possible outcomes/reactions during drafting stage of SEP order

1. Absence of profit allocation rule.
2. Low tax yield companies exploiting challenges of attribution
3. Challenges in expansion of tax net.
4. Not binding on entities from treaty countries (16 countries).
5. Treaty shopping and substance around the principal purpose.
6. Bureaucratic challenges of MLI ratification.
7. Difficulty in treaty amendment or renegotiation
8. Compliance enforcement challenges.



The mitigative efforts on attribution using FIRS circular

Options Available for turnover basis of assessment.

1. The profitability ratio or profit margin of the company using (EBITDA) to its global turnover.
2. The profitability ratio or profit margin of the group to which the company belongs, determined on the basis of the ratio of the profit before tax (PBT) of the group to the group's turnover.
3. A fair and reasonable percentage of 20% (resulting in effective tax rate of 6% on turnover)
4. Any other basis that the Service may consider fair and reasonable.



The future

- i. Enact a clearer rule on profit attribution
- ii. More push for ratification of Multilateral instrument. The bill is already before the Nigerian Legislator.
- iii. Activate international cooperation mechanisms with other foreign jurisdictions to enforce the payment of taxes evaded in Nigeria.
- iv. Collaboration with financial institutions and other relevant government agencies:
 - For data about digital activities.
 - For enforcement.



FUTURE PLANS



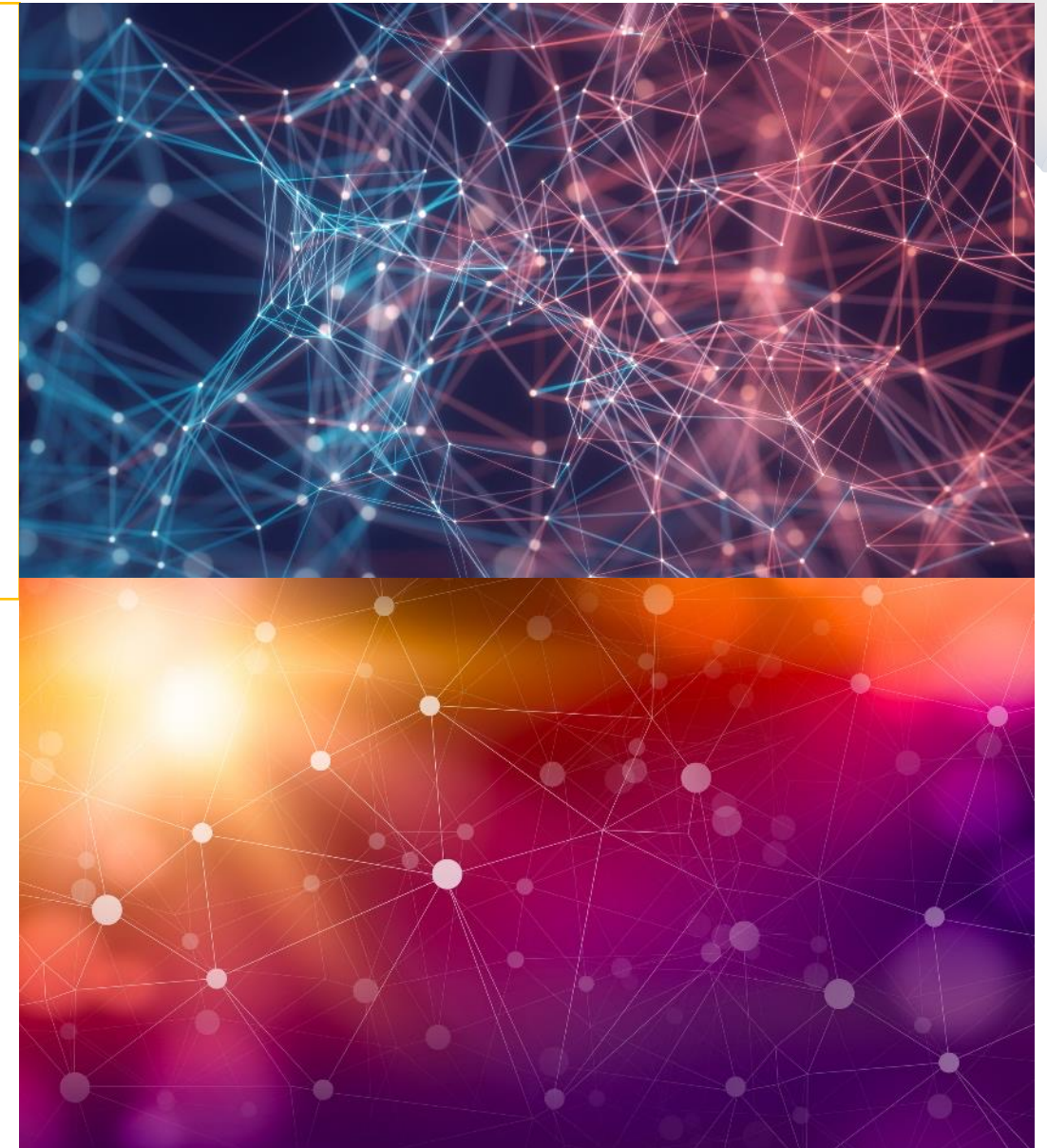
Summary

The SEP provision adeptly resolves the tax nexus concern for entities within Pillar 1 Amount A.

Our next steps include ensuring more clarity in attribution and vigilantly tracking the issue's progression, especially in light of the United Nations' recent endorsement of collaborative efforts on this matter.

It's been a great pleasure
to have you listen.

Thank You



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