

Nigeria's Alignment with the OECD BEPS Framework: Legislative Reforms under the Nigeria Tax Act, 2025



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Introduction

Nigeria has taken major legislative steps to limit base erosion and profit shifting (BEPS) risks and to align its domestic tax framework with emerging global standards. The OECD describes BEPS as strategies that exploit gaps and mismatches in tax rules to shift profits to low- or no-tax jurisdictions, undermining the integrity and fairness of tax systems. Nigeria's engagement with the BEPS agenda has been shaped by its participation in the OECD/G20 Inclusive Framework, where over 140 jurisdictions collaborate on the BEPS package and monitor implementation of key standards.

The Nigeria Tax Act, 2025 (NTA) is central to this alignment. The Act was signed on 26 June 2025 and took effect from 1 January 2026. Though there has been controversies surrounding the Act and the other three Tax Reform Laws, the Nigeria Revenue Service and some States have commenced full implementation of the Laws. The NTA repeals and consolidates multiple tax statutes into a unified regime, and it embeds several provisions that mirror BEPS anti-avoidance techniques—particularly those dealing with controlled foreign companies, minimum effective tax, and related-party pricing. The NTA therefore represents both a structural consolidation and a substantive modernization of Nigeria's anti-avoidance toolkit.

Background: Nigeria and the OECD BEPS Framework

The OECD/G20 BEPS Project launched a package of 15 Actions to address international tax avoidance and profit shifting.

The BEPS package seeks to ensure that profits are taxed where economic activities take place and where value is created. The Inclusive Framework expands participation beyond OECD members, enabling developing countries to participate on an equal footing and to adopt BEPS outcomes in a manner suited to their capacities and policy priorities.

Nigeria has historically adopted BEPS-related measures selectively. Long before the NTA, Nigeria introduced a digital nexus approach via the Companies Income Tax (Significant Economic Presence) Order, 2020, which set conditions—including a ₦25 million turnover threshold—under which a non-resident company could be deemed to have a taxable presence in Nigeria for specified digital activities. Nigeria also implemented transfer pricing and transparency measures through Transfer Pricing Regulations and the Country-by-Country Reporting (CbCR) Regulations 2018, which are designed to support BEPS Action 13 transparency and risk assessment.

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A recurring policy theme is Nigeria's stated caution regarding wholesale adoption of the OECD Two-Pillar Solution, especially Pillar One. Public commentary has cited concerns about scoping thresholds and dispute resolution mechanisms. Nonetheless, OECD-Nigeria technical engagements have recognized that global minimum tax developments (Pillar Two) can affect incentives and tax base outcomes whether or not Nigeria formally endorses certain multilateral instruments. In this context, domestic reforms like minimum effective tax and top-up tax rules can be understood as base-protection measures that also reduce Nigeria's exposure to foreign top-up taxation on Nigeria-sourced profits.

Key Legislative Reforms in the Nigeria Tax Act, 2025

The NTA contains a set of headline reforms that correspond to core BEPS concerns: (i) minimum tax and top-up mechanisms that reduce the incentive to park profits in low-tax jurisdictions; (ii) controlled foreign company rules that curb offshore deferral; (iii) codified nexus rules that better capture digital value creation; (iv) strengthened related-party and anti-avoidance rules to counter artificial arrangements; and (v) transparency and compliance infrastructure (including alignment with existing CbCR/transfer pricing documentation regimes).

Minimum Effective Tax Rate (METR) and Top-Up Tax (NTA s.57 and s.6(3))

The Act introduces an effective tax rate framework in section 57 and links it to a 'top-up' mechanism in section 6(3). Section 6(3) provides that where income tax paid by a non-resident subsidiary (or group company) yield less than the minimum effective tax rate prescribed by the Act, the Nigerian parent company must pay an amount that brings the subsidiary's income tax up to the minimum. Professional summaries describe this as an additional tax imposed on Nigerian parent companies to meet the global minimum effective tax rate, aligning with the logic of OECD Pillar Two (GloBE) rules, which apply a top-up tax when the jurisdictional effective tax rate falls below the minimum.

Practical insight: implementation will depend on the Nigeria Revenue Service (NRS) issuing detailed computational rules (the NTA anticipates this in relation to the CFC/top-up mechanics). Key design questions include: defining 'covered taxes,' addressing timing differences (e.g., deferred tax), handling foreign tax credits, and coordinating with tax incentives so Nigeria retains taxing rights rather than ceding top-up capacity to other jurisdictions.

Controlled Foreign Company (CFC) Rules (NTA s.6(2))

Section 6(2) introduces a deemed distribution rule for profits retained by a foreign company controlled by a Nigerian company. Where such profits could have been distributed without detriment to the foreign company's business, the attributable share is treated as distributed and included in the Nigerian company's profits. This corresponds closely to BEPS Action 3, which recommends CFC rules as a tool to prevent the artificial diversion or deferral of income through offshore entities.

Practical insight: the statutory text does not fully spell out key definitional elements (for example, what level of ownership or influence constitutes 'control' and how to determine distributable profits without harming operations). As a result, implementing guidance and administrative practice will be central to taxpayer certainty and to the defensibility of assessments.

Significant Economic Presence (SEP) and Digital Economy Taxation (Action 1)

Nigeria's SEP approach predates the NTA and is grounded in the 2020 SEP Order, which sets a ₦25 million turnover threshold for certain digital activities and includes non-monetary tests such as use of a .ng domain or sustained interaction targeting Nigeria.

The NTA's broader reforms to the taxation of non-residents and the codification of digital and cross-border taxing rules should be read alongside SEP, because both aim to capture value created in Nigeria without requiring a traditional physical permanent establishment.



Disputes involving cross-border services and the location of consumption have been litigated in VAT contexts. In *Vodacom Business Nigeria Ltd v. FIRS*, the Court of Appeal upheld VAT on bandwidth services supplied by a non-resident where the service was received/consumed in Nigeria and discussed the recipient's obligation to self-account under a reverse-charge approach. This consumption/destination logic is relevant to the NTA's VAT framework and to broader debates about taxing remote supplies in the digital economy.

Transfer Pricing, Documentation, and Country-by-Country Reporting (Actions 8–10 and 13)

While the NTA consolidates the tax system, Nigeria's core transfer pricing compliance architecture is reflected in the existing regulations and reporting rules referenced in professional guidance. The CbCR Regulations 2018 are explicitly linked to BEPS Action 13 and require multinational groups meeting the applicable thresholds to file standardized CbC reports that help tax authorities conduct risk assessments and identify profit shifting patterns.

Nigeria's first major transfer pricing decision; *Prime Plastichem Nigeria Ltd v. FIRS* at the Tax Appeal Tribunal, illustrates how tribunals may treat documentation quality and methodological consistency. In that case, the TAT upheld the FIRS adjustment and emphasized the taxpayer's burden of proof and the importance of reliable information supporting the chosen method and profit level indicator. This jurisprudence reinforces that the arm's-length mandate in the NTA (see section 191) will be enforced in practice through evidence and documentation.

Worldwide Income/Residence-Based Taxation and Anti-Avoidance Recharacterization:

The NTA adopts a residence-based approach for Nigerian companies by deeming profits of a Nigerian company to accrue in Nigeria wherever the profits arise even if such revenue is not brought into Nigeria (see section 6(1)).

This is complemented by anti-avoidance standards in the Act's general provisions. Section 190 addresses 'Artificial transactions,' and section 191 requires related-party transactions to be conducted at arm's length. Together, these provisions provide a statutory basis for challenging arrangements that lack economic substance or that are structured primarily to obtain tax advantages through form-over-substance design.

Nigerian courts have repeatedly emphasized strict statutory interpretation in tax matters. In *Vodacom's Case*, the Court of Appeal reiterated that where statutory language is clear, courts give the words their ordinary meaning and read related provisions together. Similarly, in *Shell Petroleum Development Co. of Nig. Ltd v. Federal Board of Inland Revenue (SC)*, the Court dealt with deductibility issues and reinforced the broader interpretive principle that deductions and reliefs must be grounded in clear statutory authority and supported by proper evidence.

Validity of subsidiary regulations and penalty design

BEPS implementation also depends on valid subsidiary legislation for reporting and penalty regimes. In *Check Point Software Technologies B.V. Nigeria Ltd v. FIRS*, the TAT held certain administrative penalty notices and the CbCR Regulations to be void, also the Federal High Court upheld the tribunal's decision in 2025. Whether or not that line of cases is ultimately narrowed on appeal, it highlights a practical risk: where the NTA delegates rulemaking and penalty powers, the NRS must ensure procedural and institutional validity to avoid enforcement being undermined by ultra vires arguments.

Administrative and Dispute Resolution Context

At the core of the effective implementation of Nigeria's BEPS-aligned tax provisions is a functional and accessible judicial framework capable of resolving complex tax disputes. In this regard, the Supreme Court's validation of the Tax Appeal Tribunal (TAT) as a duly constituted and recognized administrative tribunal is a significant institutional development.



Complex BEPS-aligned rules are likely to generate disputes regarding computation, scope, and procedural compliance. The Supreme Court's decision in *TSKJ Construcoes Internacional Sociedade Uniperssoal LDA v. FIRS* affirmed that the Tax Appeal Tribunal is an administrative tribunal with quasi-judicial powers to adjudicate tax disputes, and that taxpayers must ventilate grievances at the TAT before appealing to the Federal High Court on points of law. This clarification strengthens institutional predictability for disputes likely to arise under the NTA's CFC and METR/top-up tax rules.

Challenges and Outlook

Administrative capacity and technical complexity:

The NTA's BEPS-aligned rules (CFC, METR, top-up tax, and anti-avoidance) require specialized skills in international tax, accounting-based effective tax rate computations, and cross-border audit techniques. Professional analyses emphasize that firms must review structures and compliance processes in light of the Act's commencement, reflecting expected complexity in operationalizing new rules.

Legislative clarity and implementing regulations:

Although the Act contains core rules (e.g., s.6(2)-(4) and s.57), key details will rely on implementing guidance, especially where concepts like 'control,' 'distributable profits,' and ETR computation need precise standards. The NTA itself anticipates 'detailed rules' by the revenue authority for implementing the CFC/top-up mechanics.

Dispute risks and litigation posture: The jurisprudence discussed above suggests likely pressure points: (i) documentation and burden-of-proof issues in transfer pricing (Prime Plasticochem), (ii) debates on regulatory validity and penalty powers (Check Point commentary), and (iii) consumption-based taxation of cross-border services (Vodacom). The Supreme Court's TSKJ decision makes the TAT the focal first-instance forum for many of these disputes.

Investment climate and incentive redesign:

Minimum effective tax and top-up rules can affect the value of tax incentives. OECD-Nigeria technical discussions have warned that if Nigeria provides incentives that lower effective

taxation, other jurisdictions implementing Pillar Two may collect top-up taxes unless Nigeria uses domestic mechanisms to retain those revenues. This creates an incentive for Nigeria to rationalize and redesign incentives (e.g., shifting from exemptions to qualified, substance-based credits) while maintaining investor certainty.

Digital Economy Taxation Complexity: Taxing digital services under SEP rules is challenging due to the lack of physical presence and difficulty in tracking revenue sources. Enforcement is particularly hard when dealing with global tech giants.

Treaty Limitations: Nigeria's tax treaties with other countries may not yet reflect BEPS principles, especially in areas like hybrid mismatches and dispute resolution. This limits the effectiveness of cross-border enforcement.

Conclusion

The Nigeria Tax Act, 2025 is a landmark consolidation that also embeds several BEPS-aligned measures into domestic law. Specifically, CFC rules (s.6(2)), top-up tax and minimum effective tax structures (s.6(3) and s.57), and general anti-avoidance rules on artificial transactions and arm's-length related-party dealings (ss.190-191) provide stronger legal bases for tackling profit shifting and aggressive tax planning. Nigerian jurisprudence provides interpretive context for these reforms. Vodacom illustrates a destination/consumption approach to cross-border VAT and a strong emphasis on statutory language; Prime Plasticochem shows how tribunals may treat transfer pricing burdens of proof; and TSKJ clarifies the institutional pathway for tax disputes, reinforcing the TAT's role. Together, these developments suggest that the effective integration of Nigeria's tax framework with BEPS frameworks will require not only statutory reforms, but also credible implementing guidance, improved administrative capacity, and predictable dispute resolution mechanisms."

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