

TEMPLARS

# TAX *Digest*

2023 YEAR-IN-REVIEW

2024 OVERVIEW

# Introduction

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A major highlight of 2023 was the general election which ushered in a new government. Importantly, while as a final act, the outgoing government passed the Finance Bill 2023 into law, the incoming government, amidst uncertainties, made significant fiscal policies such as subsidy removal, setting up of the Fiscal Reform Committee and postponement of the commencement date of the Finance Act 2023 to September 2023. The year was primarily marked by political, legislative, and administrative changes aimed at establishing a more resilient and progressive fiscal system. These tax policies and administrative changes are likely to affect public perception of the Nigeria's tax system, influence business operations and decision-making, and the government's approach to revenue generation.

Notable legislative changes came with the enactment of the Finance Act 2023, which amended relevant tax and duty statutes to align with the Federal Government's macroeconomic policy reforms and the Business Facilitation Act 2023 (BFA), which introduced crucial amendments to existing tax legislations. The year witnessed the regulatory bodies leveraging technology and combining efforts to ensure a smooth tax administration. Of note, we saw the Federal Inland Revenue Service (FIRS or the Service) prioritizing the enhancement of tax revenue generation from unprecedented sources and the Nigerian judiciary, spearheaded by the Tax Appeal Tribunal (TAT), also played a crucial role in influencing the country's tax environment. The courts and tribunal continuously delivered judicial pronouncements with invaluable insights into the interpretation and application of tax laws, significantly influencing both taxpayers and tax authorities.

Our report examines the key developments in 2023 and presents an overview of the legislative changes, landmark judicial decisions, and administrative initiatives that have significantly influenced the tax environment for businesses. It provides an understanding of the evolving tax landscape in making a forecast for 2024.



# 2023 in Retrospect

## Legislative Developments



## 1. The Business Facilitation Act:

On 13 February 2023, President Muhammadu Buhari signed the Business Facilitation (Miscellaneous Provision) Act into law (the “Act”). The objective of the Act is the elimination of critical bottlenecks and amendment of relevant laws to promote the ease of doing business in Nigeria. The Act amends salient provisions of certain laws including the: Companies and Allied Matters Act, Nigerian Export Promotion Act, Customs and Excise Management Act, Export (Prohibition) Act, Financial Reporting Council Act, Foreign Exchange (Monitoring and Miscellaneous) Act, National Office for Technology Acquisition and Promotion Act, Nigerian Investment Promotion Commission Act, and the Nigerian Oil and Gas Industry Content Development Act.

Under the Act, a single window platform was established to enable parties involved in trade and transport under the Customs and Excise Management Act to interface with each other and the authorities for purposes of fulfilling all import, export, transit related and regulatory requirements.

- Only companies that have incurred a minimum capital expenditure of up to N5,000,000 are now required to obtain a Certificate of Acceptance of Fixed Asset for purposes of claiming capital allowance. This used to be N20,000.
- Employees earning the national minimum wage and above in the private sector are not mandated to contribute 2.5% to the National Housing Fund.
- Only employers with 25 or more workers in their establishment (except employers in the free trade zones) are now required to contribute one percent (1 %) of their annual payroll to the Industrial Training Fund (the Fund). Previously, the law required employers with 5 or more employees to contribute to the Fund. This reduces the burden on employers with less than 25 employees.

## 2. FINANCE ACT 2023 (FA 2023):

In line with the Federal Government’s established practice of annually amending relevant provisions of various tax laws to bring them in tandem with global best practices and generate revenue for government, the immediate past president, President Muhammadu Buhari signed the Finance Bill 2022 into law on 28 May 2023. The FA 2023 amends provisions of Nigeria’s tax and fiscal legislation including the Capital Gains Tax Act, Companies Income Tax Act, Customs, Excise Tariff etc. (Consolidation) Act, Personal Income Tax Act, Petroleum Profits Tax Act, Stamp Duties Act, Value Added Tax Act, and the Ministry of Finance (Incorporated) Act.

Some highlights of the key changes introduced by the Act includes:

- i. **Amendments to the Capital Gains Tax Act (the “CGTA”):**
  - **Introduction of Digital Assets as Chargeable Assets under the CGTA<sup>1</sup>:** With the enactment of the FA 2023, the list of chargeable assets has been expanded to include digital assets. Accordingly, gains accruing from the disposal of digital assets such as cryptocurrency and Non-Fungible Tokens (NFTs) may be subject to the payment of Capital Gains Tax (CGT).
  - **Deduction of Losses Arising from Sale of an Asset from the Gains Derived from the Sale of another Asset of the Same Class:** Losses arising from the sale of a capital asset can now be deducted from gains derived from the sale of another capital asset, provided that the assets are in the same class. The unutilized losses can be carried forward for a maximum period of five years.

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<sup>1</sup> the CGTA does not define digital assets. However, the Rules on Issuance, Offering Platforms and Custody of Digital Assets which was issued by the Securities and Exchange Commission defines digital assets as “a digital token that represents assets such as debt or equity claim on the issuer”. The definition may however be wider for tax purposes.

## ii. Amendments to Companies Income Tax Act (the “CITA”)

- **Introduction of Unrestricted Capital Allowances for Companies in the Upstream and Midstream Petroleum Industry:** Prior to the enactment of the FA 2023, only agro-allied and manufacturing companies were allowed to claim 100% of capital allowance in respect of qualifying capital expenditure incurred by them in a particular year of assessment. Other companies were subject to a capital allowance claim of 66.6% or 2/3rd of their assessable profit in each year of assessment. However, with the enactment of the FA2023, companies engaged in upstream and midstream petroleum operations will now be able claim 100% capital allowance alongside agro-allied and manufacturing companies in each year of assessment.

## iii. Amendment to the Petroleum Profits Tax Act (the “PPTA”):

- **Contributions to Decommissioning and Abandonment Funds to be deemed Allowable Deductions:** The Act introduces a new provision to the effect that contributions made to any fund, scheme or arrangement approved by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) for the purpose of decommissioning and abandonment are to be treated as allowable tax deductions under the Petroleum Profits Tax Act upon the provision of the statement of account of the fund. Any surplus amount left in the fund account after decommissioning will be subject to petroleum profits tax.<sup>2</sup>

## iv. Amendment to the Value Added Tax Act (the “VATA”):

- **VAT to be Remitted on or before the 14th Day of the Following Month:** Persons appointed by the FIRS to withhold and collect VAT at source are now required to remit the VAT to the FIRS on or before the 14th day of the following month and no longer on or before 21st day of the following month.

## v. Amendments made to the Tertiary Education Trust Fund (Establishment Etc) Act:

- **Increase of Education Tax Rate:** Education tax (EDT) rate has been increased from 2.5% to 3%. This is the second year in a row that EDT will be increased. FIRS in its public notice of 9 June 2023 stated that the new rate of 3% shall take effect from 1 July 2023 on companies with accounting period beyond 1 July 2023. Companies registered in Nigeria are advised to take note of the due date for the revised EDT rate.

More information regarding the changes introduced by the FA 2023 can be found [here](#)

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<sup>2</sup>Section 16 of the Finance Act introduced paragraph (a) to section 10 of the PPTA.

# Policy and Tax Administration



## 1. FIRS GUIDELINE ON THE WITHHOLDING OF VALUE ADDED TAX (VAT)

On 3 March 2023, the FIRS issued an information circular on withholding and self-accounting of VAT (“the Circular”). The Circular highlighted the legal framework for withholding VAT on taxable supplies, VAT collection obligations as well as VAT withholding obligations on transactions with non-resident suppliers.

The Circular obligates resident taxpayers to withhold or self-charge VAT on taxable supplies which have not been charged to VAT by the supplier of taxable goods/services<sup>3</sup>. Similarly, resident taxpayers in transactions with non-resident suppliers, who have not been appointed by the FIRS to account for VAT, shall have the obligation to withhold or self-charge for VAT on their transactions. Taxpayers are also required to remit self-charged VAT to the FIRS in addition to their existing obligation to collect and remit VAT on their taxable supplies.

## 2. TAXATION OF INTERNATIONAL SHIPPING COMPANIES

The FIRS issued a public notice in 2023 (the **2023 Notice**) requesting all international shipping companies (ISCs) operating in Nigerian territorial waters to regularize their tax affairs no later than 31 December 2023. Prior to the 2023 Notice, FIRS issued circular No.2021/14 dated 3 June 2021 and a public notice dated 17 December 2021 requiring ISCs to regularize their tax filings within three months from the date of the circular. There was however a very low compliance by the ISCs.

FIRS subsequently issued the 2023 Notice requesting the affected ISCs to conclude the regularization of their tax filings no later than 31 December 2023 with a threat to commence enforcement action against all defaulting ISCs after the expiration of the grace period of 31 December 2023<sup>4</sup>. The 2023 Notice is sequel to the tax demand notices issued by FIRS to International Petroleum tankers and transport vessels operators for the recovery of freight taxes for 2010 – 2019.

## 3. 2023 FISCAL POLICY MEASURES

On 20 April 2023, the Federal Government approved the Fiscal Policy Measure 2023 (FPM 2023) which replaced the Fiscal policy Measures 2022 (FPM 2022) and took effect on the 1<sup>st</sup> of May 2023. The FPM 2023 introduced some amendments or adjustments to the fiscal policy framework.

### Highlights of the amendments/ adjustments

- The FPM reduced the import duty on certain items on the National list<sup>5</sup> to promote and stimulate growth in critical sectors of the economy. The reduced import duty will however only be accessible to verified investors/manufacturers who require the items as inputs for production. The FPM also revised Import Adjustment Tax (ITA) for certain items and added 17 new items to the existing 172 items in the IAT list. Any new import transaction entered after 1st May 2023 shall be subjected to the new import duty.

<sup>3</sup> Sections 10(3) and 14(3-4) of the Value Added Tax Act.

<sup>4</sup> Following a stakeholders meeting held in late 2023, the deadline of 31 December 2023 was postponed to 31 March 2024.

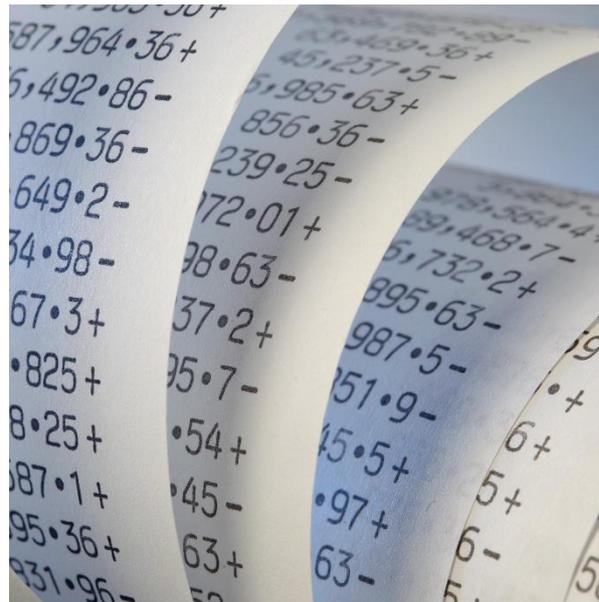
<sup>5</sup> Some of the items in the national list whose import duties were reduced are used compressor, carpet and rugs, mosquito repellent, soap and detergent, waste pharmaceuticals, bagged cements, tomato ketchup and other tomato sauces, spaghetti/noodles, etc.

- Telecommunications Services:**

The Finance Act 2021 introduced excise duties on telecommunications services and donated powers to the President of the Federal Republic of Nigeria to prescribe the rate of excise duty. A 5% rate was prescribed and published in the official gazette No.88 on 11 May 2022. The FPM 2023 confirmed the imposition of excise duties on prepaid and post-paid telecommunication services.
- Tobacco and Tobacco Products:**

The FPM 2023 increased the excise duty rate from N4.70 per stick of cigarette in the 2022 FPM to N8.20 per stick of cigarette. Additionally, an excise duty rate of N1,500 per kilogram or N3,500 per liter imposed on additional products that contain tobacco substitutes in any proportion.
- Green Taxes and Climate Change Interventions:**

As part of its commitment to climate change adaptation and migration due to environmental degradation, the Federal Government through the FPM 2023, introduced a green tax comprising of an excise duty of 10% on Single Use Plastics including containers, films, and bags. The FPM 2023 also increased the Import Adjustment Tax on the importation of other plastic items<sup>6</sup> as well as an Import Adjustment Tax of 2% on motor vehicles with engine capacities of 2000cc and above<sup>7</sup>. However, motor vehicles with engine capacities below 2000cc, mass transit buses, electric vehicles and locally manufactured vehicles are exempted from the Import Adjustment Tax.



#### 4. FIRS MEMORANDUM OF UNDERSTANDING (MOU) WITH HMRC

On 16 March 2023, the FIRS signed an MoU with the United Kingdom's tax authority, His Majesty's Revenue and Customs (HMRC) with the aim of fostering improved collaboration and capacity building between the two tax authorities. The HMRC, in its statement, emphasized that the MoU would allow for capacity building in areas such as Transfer Pricing, Country-by-Country Reporting Standards, Exchange of Information and Audit in the Oil and Gas industry. The MoU is in line with FIRS goals of building a data-focused tax administration and improvement of stakeholder relations.

<sup>6</sup> Items such as sheets, foils, polymers, and photocopying papers

<sup>7</sup> 2000cc to 3,999cc

## **5. REQUIREMENT OF TAX CLEARANCE CERTIFICATES FOR FX REQUESTS**

Between 30 May 2023 and 1 June 2023, commercial banks in Nigeria required their customers to present TCCs and other relevant documents on the Central Bank of Nigeria (CBN) trade monitoring system portal for all foreign exchange requests (FX requests) including Personal Travel Allowance (PTA) and Business Travel Allowance (BTA). Applications for government loans, certificate of occupancy and registration of motor vehicles, also require a TCC for completion.

## **6. VARIATION OF THE EFFECTIVE DATE OF FINANCE ACT 2023**

On 25 August 2023, the FIRS issued a public notice (the Variation Notice) notifying taxpayers of the postponement of the effective date of the Finance Act 2023 to 1 September 2023. The Notice was issued further to the Finance Act (Effective Date Variation Order) 2023, which had extended the effective date of the Finance Act 2023 from 1st May 2023 to 1st September 2023.

Further to the Variation Notice, all VATs withheld or collected in August 2023 were to be remitted to the FIRS on or before the 14th day of September 2023; all items removed from the definition of land became chargeable to VAT at the prevailing rate from 1st September 2023; and the new EDT rate of 3% was to take effect on 1<sup>st</sup> September 2023 in respect of accounting period ending on or after 1<sup>st</sup> September 2023.

## **7. REMOVAL OF VAT ON DIESEL**

On 1 October 2023 the Federal Government of Nigeria (“FGN”) announced the suspension of VAT charge on diesel for 6 months. The suspension came as part of the concessions made by the FGN in the on-going negotiations between the FG, Nigeria Labour Congress and the Trade Union Congress which was precipitated by the removal of subsidy on fuel, and the resultant hike in fuel price. The 6 months suspension of VAT on diesel will elapse on **31 March 2024**.

## **8. WAIVER OF PENALTIES AND INTERESTS ON OUTSTANDING TAX LIABILITIES**

On 5 December 2023, the FIRS issued a notice for the one-off waiver of penalties and interests on all outstanding tax liabilities (the “Waiver”). The Waiver was issued on the condition that full payment and discharge of outstanding principal tax liabilities would be made on or before 31 December 2023. The Waiver is consistent with Section 32 of the FIRS (Establishment) Act, 2007 (the “FIRS Act”) and acknowledges the difficulties experienced by taxpayers in discharging their tax obligations, alongside the commitment of the new government to support businesses in Nigeria.

## **9. IMPORT DUTY AND VALUE ADDED TAX EXEMPTION ON LIQUEFIED PETROLEUM GAS (LPG) IMPORTS**

On 28 November 2023, the Honourable Minister of Finance and the Coordinating Minister of the Economy, (the “Minister”), in a letter titled “Exemption of Payment of Import Duty and Value Added Tax on the Import of Liquefied Petroleum Gas (LPG)” (the “Letter”) reiterated the Presidency’s directive that importation of LPG is exempt from VAT and Import duty.

The Minister likewise reiterated the Presidency's directive issued on 7 June 2019 which granted import waiver on the importation of LPG machinery and equipment. The eligible machinery and equipment are listed in an appendix to the Letter and contains 38 machinery and equipment.

The Nigeria Custom Service and the FIRS are expected to comply with the directives, with the former required to withdraw all debit notes for VAT and import duty issued to petroleum marketers who have imported LPG.

#### **10. POSTPONEMENT OF THE IMPLEMENTATION OF THE GUIDELINES FOR VALUE ADDED TAX ON THE SUPPLY OF LOW-VALUE GOODS THROUGH DIGITAL MEANS BY NON-RESIDENT SUPPLIERS.**

On 11 October 2021 the FIRS issued the Guidelines on Simplified Compliance Regime for VAT for Non-Resident Suppliers (NRS) (the "Guidelines"). The Guidelines appointed NRS as VAT collectors for the FIRS and required them to register for VAT and obtain Tax identification Number in their own name, issue VAT invoices and collect and remit VAT due on taxable supplies made in Nigeria.

Taxable persons to whom supply of taxable goods or services are made, are obligated to withhold and self-account for VAT where the NRS fails to collect the tax. Implementation of the Guidelines was scheduled to commence from 1st January 2022 with respect to NRS supplying services and intangibles and 1st January 2024 with respect to NRS supplying goods. However, by a notice issued 15 January 2024, the FIRS postponed, indefinitely, the implementation of the Guidelines on the supply of low-value goods through digital means by NRS.

#### **11. IMPACT OF FISCAL REFORM COMMITTEE REPORT ON TAXATION**

On 7 July 2023 the Presidential Fiscal Policy and Tax Reforms Committee was set up by the President to review and advise on reforms to shape Nigeria's fiscal policy and tax system. The committee is responsible for the various aspects of tax law reform, fiscal policy design and coordination, as well as revenue administration. The reforms are designed to transform the tax system to support sustainable development and achieve a minimum of 18% tax-to-GDP ratio within the next three years.



The Committee's terms of reference cover Fiscal Governance; Revenue Transformation and Economic Growth Facilitation. In the last quarter of 2023, the committee presented its reports to the President with key recommendations to address critical economic issues ranging from exchange rate management, impact of fuel subsidy removal, moderation of inflation, and facilitation of economic growth. Some key recommendations made by the Committee with respect to taxation include:

- Use of technology “**Data4Tax**” to expand the tax net.
- Increase of the personal income tax exemption threshold and personal relief allowance.
- Suspension of VAT on diesel and tax waivers on CNG<sup>8</sup>, CNG conversion, and renewable energy items.
- Payment of taxes on foreign currency denominated transactions in Naira for Nigerian businesses.
- Suspension of multiple taxes to remove burdens on the poor and small businesses and compensate with windfall revenue of certain agencies.
- Modify Tax ProMax to allow taxpayers to make part payments of outstanding tax liabilities.
- Imposition of excise tax on foreign exchange transactions outside the official market.



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<sup>8</sup> Compressed Natural Gas

# Judicial Decisions



## 1. NETWORK FACILITY PROVIDERS NOT LIABLE TO NITDA LEVY

Following the decision of the TAT in an appeal filed by **INT Towers Limited v. FIRS**, network facility providers are not liable to the levy imposed on telecommunication companies under the National Information Technology Development Act (the “**NITDA**”). The Levy is charged at 1% of the profit before tax of telecommunications, insurance and financial services companies.

The TAT ruled that companies whose operations involve providing infrastructure sharing and colocation services to telecommunication companies are not telecommunications company within the contemplation of the NITDA.

## 2. CASINO AND GAMING ACTIVITIES CONSTITUTES SUPPLY OF SERVICES UNDER THE VAT ACT

In an appeal between **Tourist Company of Nigeria Plc (“TCN”) v. FIRS**, the TAT ruled that gaming and casino activities are taxable supplies within the meaning of the VAT Act and therefore subject to VAT.

TCN, a hospitality and entertainment service provider who operates a gaming and casino facility within its premises, argued that the provision of gaming and casino activities within its premises should not qualify as a taxable service as the gaming chips were provided to customers free of charge. FIRS however submitted that since TCN earns an income from providing services, including gaming and casino services, through its premises, the revenue derived from such services should be subject to tax under the VAT Act.

In its ruling, the TAT concluded that TCN earns an income on the [gaming and casino] services it provides, and that lack of

consideration would not exempt the income from being taxed for VAT purpose.

## 3. FIRS HAS POWERS TO APPOINT NON-RESIDENT SUPPLIERS AND INTERNET INTERMEDIARIES AS VAT COLLECTOR AGENT

Relying on the provisions of the Finance Act 2021<sup>9</sup> and the Guidelines on Simplified Compliance Regime for Value Added Tax for Non-resident Suppliers of 11 October 2021 (the “**Guidelines**”), FIRS appointed Bolt Operations OU (Bolt), a non-resident supplier and internet intermediary, as its agent responsible for charging, collecting, and remitting VAT on supplies made by Nigerian resident suppliers to their customers through Bolt’s platform. Specifically, Bolt was appointed to collect and remit VAT from drivers and restaurants using the Bolt’s platform to provide services to their customers.

Bolt challenged its appointment in an appeal before the TAT on the basis, amongst others, that the appointment was contrary to the VAT Act. Bolt argued that the Nigerian resident suppliers using its platform to provide services to consumers were, in any case, exempted from VAT obligations as their taxable supplies do not exceed N25,000,000.00 (Twenty-Five Million Naira) within a calendar year.<sup>10</sup> FIRS presented arguments to the contrary, and claimed to have the powers to appoint any person including Bolt as its VAT collection agent without restrictions.<sup>11</sup>

Agreeing with the FIRS, the TAT confirmed FIRS’ powers to appoint any person, including Bolt, as a VAT collection agent for supply of taxable goods and services.

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<sup>9</sup> Section 10(3)

<sup>10</sup> section 15(2) of the VAT Act

<sup>11</sup> Section 10(4) of the VAT Act



#### 4. APPLICABLE POSTED PRICE FOR CRUDE OIL SALES IN THE ABSENCE OF AN AGREEMENT WITH THE GOVERNMENT OF NIGERIA

Following an audit of Pillar Oil Limited for the 2016, 2017 and 2018 years of assessment, FIRS raised additional tax assessments on the company imposing the price applied by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) in computing royalties, as the posted price of crude oil. Pillar Oil, in an appeal before the TAT, challenged FIRS unilaterally imposition of NUPRC's price as the posted price of crude oil in the absence of an agreement with the Government of Nigeria as required under the Petroleum Profit Tax Act (PPTA).<sup>12</sup>

FIRS contended that the absence of an agreement with Government of Nigeria does not invalidate the imposition of the price determined by NUPRC as what matters was the existence of any form of agreement between the government and the Appellant.

The TAT upheld the arguments of FIRS and ruled that the application of the price determined by the NUPRC for the computation of royalties as the posted price of crude oil in the additional tax assessments imposed on Pillar Oil was valid.

#### 5. COUNTRY-BY-COUNTRY REGULATIONS 2018 IS *ULTRA VIRES* THE FIRS ACT AND THE CONSTITUTION

Following the signing of the Multilateral Competent Authority Agreement on Country-by-Country Reporting (**CbC MCAA**) by Nigeria in January 2016, FIRS made the Income Tax (Country-by-Country Reporting) Regulations 2018



(“**CbC Regulation**”) for the implementation of the Country-by-Country Reporting in Nigeria. The FIRS subsequently issued notices of administrative penalties on **Check Point Software Technologies B. V. Nig Ltd (Checkpoint)** for the contravention of the CbC Regulations.

Checkpoint appealed against the administrative penalties imposed on it by FIRS on the basis that the CbC Regulation was *ultra-vires*, null and void as the FIRS had no Board in place to make the regulation at the relevant time. Checkpoint also argued that the OECD Country by Country Multilateral Competent Authority Agreement (CbC MCAA), pursuant to which the CbC Regulation was made, is an unenforceable international treaty as it is yet to be domesticated by the National Assembly as required under the Nigerian Constitution. In response, FIRS argued that the CbC Regulation was not only made to give effect to the CbC MCAA, but also to give effect to the FIRS Act, the Company Income Tax Act and the Petroleum Profit Tax Act all of which laws give validity to the

<sup>12</sup> See Section 23(3) of the Petroleum Profit Tax Act.



CbC Regulation which is enforceable in Nigeria.

The TAT however ruled that the CbC Regulation was inconsistent with the FIRS Act and the Constitution of the Federal Republic of Nigeria since the CbC MCAA was yet to be domesticated. The TAT found that international agreements, treaties, or convention upon ratification, do not automatically have the force of law until such agreements have been domesticated in accordance with the provisions of the Nigerian Constitution and that only a legally constituted Board of FIRS can exercise its powers to make regulations.

## 6. COMMENTARIES ON OECD MODEL TAX TREATY IS INAPPLICABLE TO THE INTERPRETATION OF THE DOUBLE TAX TREATY BETWEEN FRANCE AND NIGERIA

The TAT, in an appeal between **CMA CGM S.A (CMA) v. FIRS**, has ruled that the commentary on Article 8 of the OECD Model Tax Treaty is inapplicable to the interpretation of Article 8 of the Nigeria-France Double Tax Agreement (DTA).

CMA challenged the FIRS imposition of additional company income tax (CIT) on it for income derived from the late return of containers, unreturned and damaged containers, cleaning fees, shipping line agency commission and port fees (the “Tax heads”). CMA contended that applying the commentary of Article 8 of the OECD Model Tax Treaty in interpreting Article 8(1) of the DTA between Nigeria and France, income derived from the Tax heads are exempt from tax in Nigeria. Arguing to the contrary, FIRS submitted that (i) Article 8 of the DTA clearly limits the categories of income to which the DTA applies<sup>13</sup>, (ii) the income derived from the Tax heads are subject to the taxing provisions under the CITA and (iii) the commentaries of the OECD Model DTA are non-binding comments written by authors and are neither international treaties nor national statutes.

Agreeing with the FIRS, the TAT found that the provision of Article 8 of the OECD Model Tax Treaty is different from Article 8 of the DTA and therefore inapplicable to the interpretation of Article 8 of the DTA.

<sup>13</sup> I.e., freight income from the carriage of passengers, mails, livestock, or goods.

## **7. FIRS CONSENT/APPROVAL REQUIRED FOR THE SALE OR TRANSFER OF TRADE/BUSINESS UNDER CITA**

In an appeal between **DANGOTE AGRO SACKS LTD. v. FIRS**, the TAT ruled that the consent of the FIRS is required for taxpayers to qualify for the incentives and concessions granted under CITA where a company is sold or transferred for the purpose of reorganization.

The TAT noted the provisions of CITA<sup>14</sup> which specifies that no merger, takeover, transfer or restructuring of trade or business shall take place without the consent and clearance of the FIRS failing which the FIRS has the statutory discretion to waive the cessation rules<sup>15</sup> and deem the transferred assets at the Tax Written Down Value (“TWDV”).

## **8. REQUIREMENT FOR TAXPAYERS TO DEPOSIT DISPUTED ASSESSMENT SUM BEFORE APPEAL DECLARED NULL AND VOID**

In the suit filed by Joseph B. Daudu SAN against the Federal Inland Revenue Service, the Federal High Court has invalidated the provisions of its Rules, requiring a deposit of a disputed assessment, as infringing on the right of appeal of taxpayers.

The provisions of Tax Appeal Tribunal (Procedure) Rules (2021) – which require taxpayers to deposit 50% of the disputed amount, the Federal High Court of Nigeria (Federal Inland Revenue Service) Practice Directions (2021), and the Federal High Court of Nigeria (Tax Appeals) Rules (2022) which requires taxpayers to deposit the full judgment sum in appealing a decision of the TAT, were struck down by the Court.

The Court affirmed the right to appeal as a constitutional entitlement and declared the provisions unconstitutional, null, and void, stressing that the provisions favoured the FIRS without adequately balancing the interests of tax debtors.

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<sup>14</sup> Section 29(12) of the CITA

<sup>15</sup> Based on the CITA, where a company permanently ceases to carry on a trade or business in an accounting period, its assessable profits will be the amount of its profits from the beginning of the accounting period to the date of cessation and tax shall be payable within six months from the date of cessation on such assessable profit. However, where there is a business reorganization involving related companies where one company ceases to exist or is absorbed by another related party, this cessation rule will not apply.

# 2024 Budget Review



President Bola Ahmed Tinubu's assent to the 2024 budget sets the stage for a critical year in Nigeria's fiscal landscape. With a proposed expenditure of N28.7 trillion and an estimated revenue of N19.4 trillion for the 2024 fiscal year, the government faces the challenge of bridging a significant gap while navigating a complex economic environment. An important highlight of the budget is the projected revenue of **N7.94 trillion** from oil and a remarkable **N10.38 trillion** from non-oil sources. The ambitious target from non-oil sources reflects the government's commitment to diversifying its income streams and reducing dependence on volatile oil prices.

In accordance with the Revised Medium-Term Fiscal Framework for 2024 to 2026, it is anticipated that Nigeria will attain a daily crude oil production of 1.78 million barrels. This projection is based on an average oil price of USD77.96 per barrel which considers an exchange rate of 750NGN/USD. Experts have however deemed the projections as an ambitious one considering that Nigeria has only averaged 1.2mbpd for over two years with production falling below 1mbpd in April and May 2023. Additionally, oil production is currently fazed with oil theft, insecurity, illegal operation/refineries, and volatility of the international market. Currently, Nigeria's tax revenue-to-GDP ratio stands at 10%<sup>16</sup>, positioning it among countries with the lowest ratios in Africa and globally. Addressing this gap necessitates that the Nigerian government would need to widen the tax net, improve tax collection in the informal sector, and enhance income tax collection.

## 2024 FORECAST

The implementation of some of the tax reforms initiated in the latter part of 2023, i.e., the short-term waiver on interest and penalties, the WHT/VAT compliance drive, the establishment



of the Presidential Fiscal Policy and Tax Reforms Committee, and the tax authorities drive to extend tax net to new areas of non-oil sources has witnessed notable achievements. These measures reflect concerted efforts to enhance the fiscal landscape and provides a basis for the anticipation of a favorable trajectory in the fiscal landscape for 2024. The expectation is that these initiatives will contribute positively to the management and efficiency of the tax system, fostering a conducive environment for economic growth and stability. It also means that the tax authorities will be consolidating on their compliance and enforcement efforts to deliver the 2024 budget.

The commencement of the VAT and WHT compliance monitoring exercise by the FIRS signifies a potential boost in tax revenue for Nigeria. This strategic exercise covering the audit of companies, businesses and government agencies is an indication of the government's increased revenue drive. Through this exercise, the FIRS aims to pinpoint and rectify discrepancies in its VAT and WHT collections. It is expected that the compliance monitoring exercise will help to recover

<sup>16</sup>National Bureau of Statistics, Tax-To-GDP Ratio Revised Computation" <<https://www.nigerianstat.gov.ng/pdfuploads/TAX-TO-GDP%20RATIO%20REVISED%20COMPUTATION-2021.pdf>>

unremitted taxes and enhance the efficiency of the collection processes thereby reinforcing the financial resources of the government. There is also likely to be an increase in tax assessments which may conversely also increase the tax controversies between taxpayers and the tax authorities.

We also expect to see an increase in tax revenue and compliance in 2024 with the implementation of the recommendations of the Presidential Fiscal Policy and Tax Reforms Committee. The numerous amendments under the Finance Act 2023 may also trigger an influx of circulars, notices, guidelines, and directives from relevant regulatory bodies on the implementation of these amendments.

In relation to the tax assessments of non-resident shipping companies, we foresee concerted audit engagements, compliance and possibly tax controversies between the FIRS and non-resident shipping companies in 2024, with the deadline, for the regularization of the companies tax position, fast approaching.<sup>17</sup>

Lastly, it is expected that a new date, for the commencement of the Guidelines on Simplified Compliance Regime of VAT on the supply of low-value goods through digital means, will be announced. Its implementation will follow in addition to the VAT and WHT compliance monitoring exercise by the FIRS.

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<sup>17</sup>The deadline for compliance was extended to 31 March 2024.