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**Recent Development in International Taxation**

**Nigeria**

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## **Recent tax developments in Nigeria**

Nigeria has witnessed mind-blowing political and economic changes in the last couple of months. The new political administration of President Bola Ahmed Tinubu has continued to reel out policies for national transformation and renewed hope. A major turning point in the country's economic policy was the removal of the subsidy on premium motor spirit (PMS), and the unification of the official and parallel market foreign exchange rate, which has resulted in inconceivable hardship to businesses and individuals across the nation, with high inflation rates being the immediate outcome. Several meetings have been held by the Monetary Policy Committee (MPC) towards reviewing the country's economic and financial developments. One of the major decisions reached at the last MPC session was the upward review of the monetary policy rate (MPR) from 18.75 to 24.75. All these changes being rolled out are probably stifling the business environment; however, there is a popular belief that these policies are expected to bring about a rebound in the country's economy and we all look forward to that.

One of the strategies deployed by the President to foster socio-economic development is to reduce borrowing and increase internally generated revenue. The President approved the establishment of a Presidential Committee on Fiscal Policy and Tax Reforms, whose responsibilities, among others, are to design and coordinate fiscal policy, harmonise the tax revenue administration, manage and coordinate the effective utilisation of tax revenue to boost taxpayers' morale, cultivate a healthy tax culture and promote voluntary compliance. Since the coming into effect of this committee, there has been a lot of grassroots engagement regarding how petty traders, transporters and other small businesses can be captured in the tax net using a model that works. The committee has since swung into action and we expect to see a lot of fiscal changes under this new administration.

### **Significant increase in tax collection**

The Federal Inland Revenue Service (FIRS) has unveiled its plans to significantly increase tax revenue collection by 57 per cent to NGN 19.4tn in 2024, with a focus on increasing oil and non-oil revenue through organisational restructuring, internal reallocation, tax compliance and enhanced efficiency to align with the President's revenue-increasing reforms, which many have criticised regarding their appropriateness at this time. The FIRS has made known its intention to increase oil revenue to NGN 9.96tn, while setting non-oil tax revenue at NGN 9.45tn. One of the ways to achieve this is to prioritise taxpayers and implement additional automation measures for tax collection, as well as effective dispute management mechanisms.

The FIRS also has other plans aimed at carrying out an internal reallocation from oil to non-oil, which appears to be a shift in status quo considering the fact that oil revenue seems to have taken the spotlight for so long, with little or no attention paid to other sectors of the economy (tax revenue loss). Moreover, oil budget revenue for 2024 increased by 214 per cent compared to actual figures for 2023, while non-oil budget revenue increased by only three per cent, but with this shift in focus, non-oil revenue will be getting more attention. These reforms are geared towards increasing revenue accruing to the Federal Government's coffers.

### **VAT on imported goods**

The FIRS postponed its intended commencement of the automated collection of VAT on imported goods purchased through digital platforms. The 2020 Finance Act amended the Value Added Tax Act to require non-residents that sell taxable supplies of goods and services to Nigerian customers to register and account for VAT on supplies to Nigeria. Following this amendment, the FIRS issued 'Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers' on 11 October 2021, with an effective date of 1 January 2022 with respect to the supply of services and intangibles, and 1 January 2024 for goods.

The FIRS had initially planned to roll out the regime with respect to the supply of goods by non-resident suppliers by 1 January 2024. However, the FIRS decided to postpone it to allow more time to develop a seamless process and collaborate more effectively with key stakeholders, such as the Nigeria Customs Service, on how to seamlessly operationalise the process. In view of this, the FIRS pointed out that existing guidelines for services and intangibles provided by non-resident suppliers continue to remain in effect.

### **President's position on the international tax system**

The President expressed his view with respect to international taxation at the United Nations Sustainable Development Group (UNSDG) Summit themed 'leave no one behind' held in January 2024. The President called for a review of the global tax system, affirming his commitment to multilateralism. 'The current international tax systems, largely shaped by the interests of more affluent nations, often leave developing nations at a disadvantage and sometimes unfavourable especially in taxing digital economies. This systemic imbalance has led to significant revenue losses, hampering our efforts towards sustainable development and economic self-reliance', argued the President, who was represented by the Minister of Budget and Economic Planning, Abubakar Bagudu.

Nigeria, alongside other member states of the African Group, championed a historic initiative at the UN, calling for a Framework Convention on Tax. The President reiterated his commitment towards a multilateral approach for addressing global tax challenges, which is an essential step towards establishing an equitable and inclusive global tax system. This is a revolution in the international tax system. Developing nations are seeking inclusion and rectification of the current tax system like never before to foster an equitable economic order.

### **Introduction of a single digit tax system in Nigeria**

Over the years, taxpayers and tax authorities have had to put up with a cumbersome, lengthy and burdensome tax process across all levels of government, ranging from Federal Government taxes, state government taxes and local government taxes, totalling 80 function tax types. The President recently directed the creation of a single digit tax system, with a maximum of nine taxes to be affected on the completion of the works of the Presidential Committee on Fiscal Policy and Tax Reforms. This is an absolute relief in my opinion because the concept of simplicity in taxation cannot be overemphasised.

The importance of the single unit tax is to harmonise taxes such that the total number of taxes a business entity or individual must pay will not exceed nine. This is a historic move away from the double-digit tax systems Nigerians have had to painstakingly endure. This development is geared towards simplifying the tax codes and potentially reducing the aggregate tax burden, thereby making it easier for businesses to flourish. This tax harmonisation makes it easy to track and ensure the compliance of taxpayers, as well as a strategic means of getting many into the tax net.

The FIRS has also renewed its commitment towards a more customer-centric tax system by providing specialised support and a one-stop shop for all tax-related matters. Taxpayers have been classified into large, medium and small to aid effective service delivery. There is an ongoing plan to upgrade and streamline platforms to simplify the payment process for imports. All of these approaches are expected to improve the tax system workflow. This is also a good way to bring many into the tax nets. While we await the actual implementation of this initiative, taxpayers can look forward to a better, cheaper and less burdensome tax system. This is against the backdrop of over 17 taxes covered by the Federal Government, a total of 38 categories of taxes enforced by the state government and another 25 tax lines covered by local government. Indeed, this is a whole lot of relief for taxpayers and administrators.

### **Incentives for growth**

### *Exemption of imports of liquefied petroleum gas (LPG) from import duty and VAT*

The petroleum industry has experienced a surge in investment because of the new incentives directed at the oil and gas industry. At the end of 2023, the Federal Government reiterated the exemption from the payment of import duties and VAT on the importation of LPG, LPG machinery and equipment, such as LPG dispensers, gas generators and LPG trucks. The directive is aimed at increasing the supply of LPG to meet local demand and promote clean cooking practices. This is part of the measures taken by the new political administration towards stimulating economic growth.

Part 1 of the Fiscal Incentive Order provides for tax incentives to non-associated gas (NAG) greenfield development in onshore and shallow waters, which achieve gas production on or before 1 January 2029 and shall be entitled to a gas tax credit at the rate of \$1 per thousand cubic feet or 30 per cent of the fiscal gas price, whichever is lower, provided the hydrocarbon liquid content does not exceed 30 barrels per million standard cubic feet (SCF) or a gas tax credit of \$0.50 per thousand cubic feet or 30 per cent of the fiscal gas price, whichever is lower, where the hydrochloric acid (HCL) content exceeds 30 barrels per million SCF, but not exceeding 100 barrels per million SCF. These incentives will apply for a period of ten years, after which they will become a gas tax allowance.

The second part of the Fiscal Incentive Order grants a gas utilisation investment allowance to gas companies at the rate of 25 per cent on qualifying expenditure on plants and equipment incurred with respect to projects in the mid-stream oil and gas industry. This allowance shall be deductible from assessable profits from the year plants and equipment were purchased, without reducing the tax written down value of the referred asset. More importantly, the asset shall continue to enjoy a capital allowance under the Company and Income Tax Act (CITA).

### **Landmark case laws**

The Tax Tribunal rounded off 2023 with some astounding decisions, while laying to rest some of the arguments tax lawyers have had to battle with for many years. It is without doubt that the Nigerian tax system is fast evolving, while setting the tone for 2024. Unequivocally, the Tax Tribunal/Court has continued to contribute to tax laws and development in Nigeria, and this is as it should be. Highlighted below are some case laws in which the decisions of the Tax Tribunal have helped to provide clarity on the actual position of the law.

*JB Daudu SAN v Hon Minister for Finance, Budget, and National Planning & Anor*

The question surrounding the constitutionality or otherwise of the provisions of the Rules and Practice Directions that prescribe the payment of half or 100 per cent of disputed assessments prior to the hearing of an appeal was laid to rest in this case. The Federal High Court (FHC) ruled that the provision was unconstitutional, null and void on the basis, among others, that it impaired the constitutionally guaranteed rights to a fair hearing and appeal. Prior to this decision, various provisions of the FIRS (Procedure) Rules 2021, FHC (FIRS) Practice Direction 2021 and FHC (Tax Appeals) Rules 2022 were cumulatively to the effect that an applicant challenging a tax assessment was mandated to deposit half or 100 per cent of the assessed amount into an interest yielding federal account pending the hearing and resolution of the appeal.

This important decision of the Federal High Court has put a shape to the rule of law in Nigeria. The focus on tax disputes has shifted from prehearing recovery to actual resolution before recovery.

#### *MTN Communications v FIRS*

In this case, the Tax Appeal Tribunal (TAT) ruled that the provision of software licensing and upgrades qualified as VAT-able supply in Nigeria. The TAT founded its decision on the fact that the software licensed by MTN was meant for value addition to the assets of MTN. The TAT also found that the FIRS is empowered to initiate a tax investigation on any violation of tax laws and such a violation need not be fraudulent. In addition, it held that training provided by offshore facilitators is subject to VAT if enjoyed in Nigeria.

This appears to be a welcoming development with respect to VAT and e-commerce, as well as other services provided by non-residents.

#### *Lafarge Plc v Ogun State Internal Revenue Services*

The TAT upheld the six-year limitation period for the issuance of a tax assessment by authorities and ruled that tax authorities could delegate tax investigation functions to a third party. This was a matter brought before the Ogun State Inland Revenue Service (OGIRS). Lafarge Africa Plc was subject to a tax investigation spanning 2010 to 2014; meanwhile, the assessments for this tax investigation were issued at different times between 2019 and 2020. In 2021, a different assessment was issued by OGIRS, which was connected to the previous assessment. The company appealed to the TAT, arguing that it exceeded the prescribed six-year limitation period specified in section 55 of the Personal Income Tax Act (PITA) and that OGIRS unlawfully delegated its responsibilities to a private entity, hence making the assessments invalid.

The TAT upheld the six-year limitation period for the issuance of an assessment against a taxpayer, except where the taxpayer has committed fraud, wilful default or neglect. It further decided that there is no statutory restriction on the delegation power for tax investigation.

### **Conclusion**

In the wake of the new administration, Nigeria remains bustling with fiscal activities as the Federal Government and its agencies are continuously making efforts to increase revenue, as well as ensuring optimum tax compliance. Worthy of mention is the effort to simplify and streamline tax processes across the board, investment in a digital one-stop shop for tax matters, and harmonisation of tax types for ease of compliance and efficiency. The tax tribunal continues to put up a good show in shaping Nigeria's tax landscape, especially in cases where there is a lacuna in the law. We hope to see a lot of development in this area.