KPMG

Nigeria's Tax and Regulatory Landscape:

2020 in Retrospect & Outlook for 2021

January 2021

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Glossary

CAMA – Companies and Allied Matters Act
CbCR – Country-by-Country Reporting
CGIS – Comptroller General of Immigration Service
CITA - Companies Income Tax Act
COA - Court of Appeal
DBA – Death Benefit Account
EQ – Expatriate Quota
ERGP – Economic Recovery and Growth Plan
FG – Federal Government
FHC – Federal High Court
FIRS - Federal Inland Revenue Service
FOREX / FX – Foreign Exchange
HMoFBNP - Honourable Minister of Finance, Budget and National Planning
LIRS - Lagos State Internal Revenue Service
LTO – Large Tax Office
MOU – Memorandum of Understanding
NCDMB - Nigeria Content Development Monitoring Board
NICN – National Industrial Court of Nigeria
NIS – Nigeria Immigration Service
NVP – Nigeria's Visa Policy
OECD – Organization of Economic Co-operation and Development
PAYE - Pay-As-You-Earn
PenCom – National Pension Commission
PFA – Pension Fund Administrator
PIA - Petroleum Investment Allowance
PITA – Personal Income Tax Act (as amended)
PRA – Pension Reform Act
RSA – Retirement Savings Account
RTA – Relevant Tax Authority
SDA - Stamp Duty Act
SEP – Significant Economic Presence
SME – Small and Medium Enterprise
TAT – Tax Appeal Tribunal
TCC – Tax Clearance Certificate
TP – Transfer Pricing
TWP – Temporary Work Permit
VAT – Value Added Tax
VOA – Visa on Arrival
WHT – Withholding Tax

Introduction

Nigeria's tax and regulatory landscape experienced significant changes in 2020 largely due to the implementation of the Finance Act, 2019 and the impact of COVID-19 pandemic. The pandemic affected almost every sector of the Nigerian economy, with the aviation, oil and gas, and hospitality sectors amongst the worst impacted by the pandemic. However, companies operating in the telecommunications industry and fast-moving consumer goods sector have been less impacted due to the essential nature of their services and products.

The oil and gas sector, which was projected to generate about 28% of Nigeria's revenue in the 2020 approved budget, experienced challenges during the year as a result of sustained decline in crude oil prices. This led the Federal Government (FG) to revise the 2020 budget and shift focus to non-oil sources to finance the revised budget. Consequently, the FG implemented several fiscal and monetary policies, in line with the economic realities of the time, to improve the economic decline caused by the twin impact of the pandemic and continued drop in crude oil price.

This publication provides a summary of the significant events that occurred in the Nigerian tax and regulatory space in 2020 and highlights the outlook for 2021 which should be anticipated by all stakeholders as the year unfolds.

2020
in Retrospect

Federal Tax Issues

1.1. Value Added Tax (Modification Order), 2020

The Honourable Minister of Finance, Budget and National Planning (HMoFBNP), Mrs. Zainab Shamsuna Ahmed, signed the Value Added Tax (Modification Order), 2020 (*"the Order"*) pursuant to her powers under Section 38 of the Value Added Tax (VAT) Act, Cap. V1, Laws of the Federation of Nigeria, 2004 (as amended).

The Order, which commenced on 3 February 2020, modifies the First Schedule to the VAT Act by defining and expanding the list of goods and services exempted from VAT, and provides clarity on the interpretation of the VAT Act, as amended by Finance Act, 2019.

Click here to read our Newsletter on the order.

1.2. Companies Income Tax (Significant Economic Presence) Order 2020

The Federal Government of Nigeria published the Companies Income Tax (Significant Economic Presence) Order, 2020 ("the Order") in its Official Gazette No. 21, Vol 107 of 10 February 2020. The Order was signed by the HMoFBNP, pursuant to her powers under Section 13(4) of the Companies Income Tax Act, 2004 (as amended) (CITA), and commenced on 3 February 2020.

The Order provides guidance on the definition of significant economic presence (SEP) in relation to income earned by non-resident companies doing business in Nigeria, in line with the Section 13(2)(c) and (e) of CITA, as amended by Finance Act, 2019.

Please click here to read our Newsletter on the Order.

1.3. Companies and Allied Matters Act, 2020

In August 2020, His Excellency, President Muhammadu Buhari, GCFR, assented to the Companies and Allied Matters Act (CAMA), 2020. The Act repeals and replaces CAMA, 1990, and introduces measures to ensure efficiency in the registration and regulation of corporate entities, reduce the compliance burden of small and medium enterprises (SMEs), enhance transparency and stakeholders' engagement in corporate organizations and, overall, improve the ease of doing business in the country.

Some notable key changes introduced by the Act include: the provision for single-member/ shareholder companies, establishment of a framework for handling insolvency issues, minority shareholders protection and enhancement of corporate governance, provision for electronic filing, share transfer and e-meetings for private companies, reduction of filing fees for registration of charges, establishment of a framework for registration of limited liability partnerships and limited partnerships, amongst other innovative changes.

Please click here to read our Newsletter on CAMA, 2020.

1.4. Tax and economic measures in response to COVID-19 pandemic

The outbreak of the Covid-19 pandemic and its rapid spread across the world posed a new wave of disruption never seen before. The pandemic had and still has significant economic impact on government revenues and policies, business growth and sustainability, and survival of families and individuals across the world. This prompted the FG to introduce fiscal and economic stimulatory measures to ameliorate the impact of the pandemic on taxpayers and contend the decline in the nation's economic fortunes. Some of these measures include:

- Waiver of penalties and interest on outstanding tax debts arising from desk reviews, tax audits and investigations.
- Exemption of medical supplies from VAT and import duty.
- Extension of the timeline for remittance of VAT from the 21st day to the last day of the month, following the month of deduction.
- Approval for taxpayers facing challenges in sourcing foreign exchange (FOREX) to settle tax liabilities on their FOREX-denominated transactions to pay the Naira equivalent, based on the prevailing Investors & Exporters FOREX window rate on the day of payment.

Please click here to read our Newsletter on some of the tax economic measures introduced by Nigeria, and here to access KPMG Business Impact Series on COVID-19.

1.5. Implementation of the Finance Act, 2019

On 29 April 2020, following the President's assent to Finance Act 2019, the FIRS issued the following Information Circulars numbered 2020/02 – 08 containing its interpretation of some of the key amendments to tax laws by Finance Act 2019 and guidance on the implementation of the provisions of the amendments:

1. Clarification on the Implementation of the VAT Provisions of the Finance Act, 2019;
2. Circular on Tax Implications of the Operation of Regulated Securities Lending Transaction (SEC Lending) in Nigeria;
3. Clarifications on Sundry provisions of the Finance Act 2019 as it relates to Companies Income Tax Act;
4. Clarifications on the Provisions of the Stamp Duties Act;
5. Clarification on Commencement and Cessation Rules, and Business Reorganisation: - Sections 29 of CITA, 32 of CGTA and 42 of VATA (as amended by the Finance Act, 2019);

6. Circular on Tax Implications of Operation of Real Estate Investment Companies ("REIC") in Nigeria: and

7. Clarification on the Amendment to Section 16 of CITA in Relation to Taxation of Insurance Companies

Please click here to read our newsletter and here to read our publication on the Circulars.

1.6. FIRS launched tax clearance certificate application portal

In 2020, the FIRS launched a new Tax Clearance Certificate (TCC) application portal, following the decommissioning of the old TCC application portal. According to the FIRS, the new portal is designed to be more robust and with additional functionalities to service taxpayers' needs.

Consequently, taxpayers were required to update their information with the FIRS to enable a smooth transition to the new portal, ease the processing of TCC applications from 2021 and have access to their receipts and credit notes.

Please click here to read our Tax Alert on the subject.

1.7. Transfer pricing e-filing portal

The FIRS in March 2020 launched an electronic transfer pricing (TP) filing portal named E-TP PLAT 2.0 to automate TP compliance. The E-TP PLAT 2.0 enables taxpayers to complete and file their TP compliance documentation, including TP Declaration and TP Disclosure forms, Country-by-Country notification forms and Country-by-Country report.

Please click here to access the E-TP PLAT 2.0

1.8. Reallocation of tax offices to companies in Lagos

The FIRS established a Large Tax Office (LTO) (Non-Oil) in Apapa, Lagos ("Apapa LTO") to cater to the following categories of taxpayers whose revenues exceed ₦2 billion:

- All domestic aviation companies in Lagos
- All construction companies in Lagos
- All domestic shipping companies in Lagos
- All logistics, haulage and transportation companies in Lagos
- All concessionaires at the Lagos ports

Consequently, the tax files of affected taxpayers were reassigned to the Apapa LTO as their new tax liaison office, effective 15 May 2020.

Please click here to read our Tax Alert on the subject.

1.9. Finance Act, 2020

The His Excellency, President Muhammadu Buhari, GCFR, signed the Finance Bill, 2020 ("the Bill") into law on 31 December 2020, following its passage by the National Assembly. The Bill contains amendments to fourteen extant laws in Nigeria comprising: Companies Income Tax Act, Personal Income Tax Act, Custom and Excise Tariff Etc. (Consolidation) Act, Value Added Tax Act, Capital Gains Tax Act, Petroleum Profits Tax Act, Stamp Duties Act, Nigeria Export Processing Zones Act, Oil and Gas Export Free Zone Act, Industrial Development (Income Tax Relief) Act, Tertiary Education Trust Fund (Establishment) Act, Federal Inland Revenue Service (Establishment) Act, Fiscal Responsibility Act, Public Procurement Act, and Companies and Allied Matters Act.

Please click here to read our e-book on *Finance Act, 2020: Impact Analysis*.

1.10. Regularisation of the tax status of dormant companies

The FIRS issued a public notice requesting all dormant companies to regularise all their outstanding returns with the Service by 30 June 2020. In its public notice, the FIRS defined a dormant company as "*a company that has informed the FIRS of its temporary cessation of business activities due to understandable exigencies for a minimum of one financial year*".

The FIRS further stipulated sanctions for dormant companies who fail to comply with the directives, including delisting the defaulting company from the list of incorporated companies and placing a lien on its bank account(s).

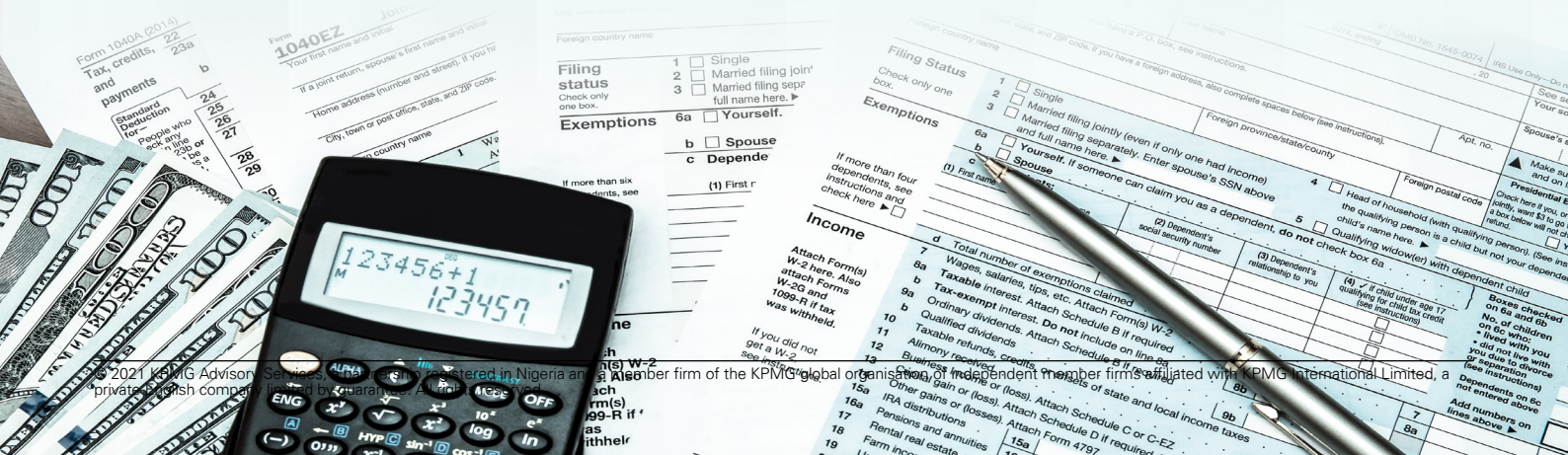
Please click here to read our Tax Alert on the subject.

1.11. MOU signed by NCC and FIRS to ascertain VAT elements of Telcos' transactions

The Nigerian Communication Commission (NCC) signed a memorandum of understanding (MOU) with the FIRS to enable the FIRS to ascertain the accuracy and completeness of VAT and other taxes payable by telecommunications operators ("the Telcos").

According the press statement released by the NCC, the MOU is part of the inter-agency collaboration aimed at improving the transparency of business operations in Nigeria. Under the MOU, the FIRS will integrate its application programme interface technology with the systems of the Telcos for independent verification of VAT payable on qualifying transactions by the mobile network operators rather than rely solely on the Telcos' book of accounts.

Please click here to read our Tax Alert on the subject.



State Tax Issues

2.1. Commencement of electronic tax audit reconciliation meetings

In June 2020, the Lagos Internal Revenue Service (LIRS) announced modifications to its process of conducting tax audit reconciliation committee meetings. The modifications include teleconference meetings in place of physical meetings and electronic transfer of support documents. The modifications were in response to the Covid-19 pandemic and the need to adhere to Public Health and Safety protocols announced by the Federal and Lagos State Governments, and to improve tax administration processes.

Click here to read our Tax Alert on the subject.

2.2. Some State Governments introduced tax measures in response to COVID-19 pandemic

In response to the Covid-19 pandemic, some State Governments announced various tax reliefs and incentives to cushion the impact of the COVID-19 pandemic on individuals and businesses in their States. The States include Lagos, Delta, Bayelsa, Kebbi and Ogun States.

Click here to access our Tax Alert on the Lagos State palliatives, and here for other states.

Immigration Issues

3.1. Expatriate Quota administration in the Nigerian oil and gas industry

The Federal Ministry of Interior in collaboration with the Nigeria Content Development Monitoring Board (NCDMB) issued joint resolutions for the administration of Expatriate Quota (EQ) in the Oil and Gas Industry. The resolutions reinforce extant policies on the administration of EQ approval for companies operating in the industry, in line with the provisions of the Nigerian Oil and Gas Industry Content Development Act, 2010.

The resolutions also sought to enforce the provisions of NCDMB's *"Guidelines on Application for Temporary Work Permit in the Nigerian Oil and Gas Industry"* which require oil and gas companies to obtain NCDMB's recommendation prior to engaging expatriates on Temporary Work Permit.

Please click here to read our Tax Alert on the subject.

3.2. Commencement of email-based processing of Temporary Work Permit applications

The Comptroller General of Immigration Service (CGIS), Mr. Muhammad Babandede, directed the migration of applications for Temporary Work Permit (TWP) from manual to an email-based system, with effect from Monday, 8 June 2020.

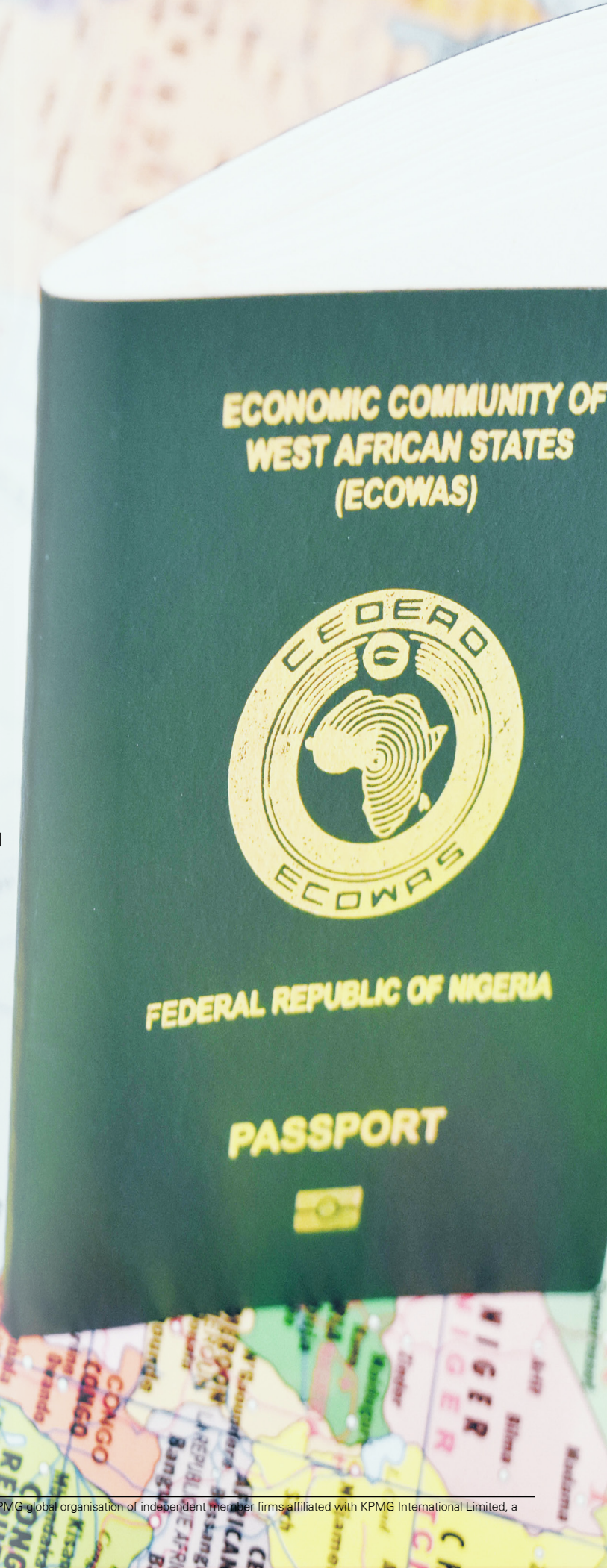
Therefore, organizations are now required to submit their TWP applications to twp@immigration.gov.ng for review and approval. Upon approval, the relevant TWP cables will be forwarded to the organization's designated email address.

Please click here to read our Tax Alert on the subject.

3.3. Introduction of Nigeria's Visa Policy 2020

His Excellency, President Muhammadu Buhari (GCFR), on 4 February 2020 signed Nigeria's Visa Policy 2020 (NVP 2020), which details the new guidelines for entry and exit of migrants. The NVP 2020 is geared towards the attainment of the Federal Government's Economic Recovery and Growth Plan (ERGP) and adoption of Security, Economy and Transparency as the government's policy thrust on ERGP. The Nigeria Immigration Service began the implementation of the provisions of the NVP 2020 effective 1 October 2020.

Please click here to read our Tax Alert on the implementation of the NVP 2020.



Other Notable Regulatory Issues

4.1. Discontinuation of death benefit accounts.

The National Pension Commission (PenCom) issued a Public Notice informing the public of its directive to all Pension Fund Administrators (PFAs) to stop opening Death Benefit Accounts (DBA) for legal beneficiaries of deceased employees, effective 31 January 2020. Such legal representatives have used DBA to access the benefits due to deceased employees who did not open retirement savings accounts (RSAs) during their lifetime. However, the DBA is not recognized by the Pension Reform Act, 2014 (PRA).

Section 11(5) of the PRA mandates employers to open RSAs with any PFA on behalf of their employees, where such employees fail to open their RSAs within 6 months after assumption of duty.

Please click here to read our Tax Alert on the subject.

4.2. Introduction of retirement savings account transfer system

PenCom announced the launch of the RSA Transfer System ("the System") on Monday, 16 November 2020. The System will enable RSA holders to transfer their accounts from one PFA to another in line with Section 13 of the PRA.

Please click here to read our Tax Alert on the subject.

4.3. CBN's directive on destination payment for all Forms M, Letter of credit and other forms of payment

The Central Bank of Nigeria (CBN) issued multiple directives on destination payment for all Form M, Letter of credit and other forms of payment. The CBN initially banned procurement companies from opening Form M's, but later eased its outright ban and introduced documentation requirements for procurement companies, to ensure transparency and address transfer pricing, over-invoicing, and other unethical practices.

Please click here to read our Newsletter on the subject.

Key judicial pronouncements on contentious tax and regulatory matters

We have highlighted some of the landmark judicial decisions that were made in 2020 below:

5.1. Prime Plastichem Nigeria Limited vs FIRS. (Suit No.: TAT/LZ/CIT/015/2017

The Tax Appeal Tribunal (TAT or "the Tribunal"), delivered the first judgment in a TP case, where it affirmed the use of the Transactional Net Margin Method by the FIRS rather than the Comparable Uncontrolled Price method used by the Company. The Tribunal also upheld the FIRS' use of Gross Profit Margin as the profit level indicator in line with best practices and as recommended by the Organization of Economic Co-operation and Development (OECD).

Please click here to read our Newsletter on the judgement.

5.2. Chief J.W. Ellah, Sons & Company Limited vs FIRS (Suit No.: TAT/SSZ/001/2019) – VAT on rental income

The TAT sitting in Benin on 9 September 2020 held that rental income derived from the lease of commercial properties is liable to VAT, to the extent that it is not exempted from the First Schedule to the VAT Act. The judgment directly conflicts with the judgement of the TAT Lagos Zone delivered a day later which held that rental income derived from the lease of real estate properties, whether for residential or commercial purposes, is not subject to VAT

Please click here to read our Newsletter on the judgement.

5.3. Ess-Ay Holdings Limited vs FIRS (Suit No.: TAT/LZ/VAT/029/2019) – VAT on rental income

The Tribunal sitting in Lagos on 10 September 2020 delivered a contrary judgement to that of the TAT Benin on the applicability of VAT on rental income.

The TAT held that rental income derived from the lease of real estate properties, whether used for residential or commercial purposes, is beyond the scope of the VAT Act and, therefore, not subject to VAT. The TAT also reiterated that FIRS Information Circulars do not constitute a delegated or subsidiary legislation and have no enforceable legal basis.

Please click here to read our Tax Alert on the judgement.

5.4. Tetra Pak West Africa Limited vs FIRS (Suit No.: TAT/LZ/WHT/007/2019) – WHT on sales in the ordinary course of business

The TAT Lagos Zone on 30 November 2020 affirmed that sales in the ordinary course of a company's business are exempt from withholding tax (WHT) in line with the provisions of the WHT Regulations pursuant to the Companies Income Tax Act, C21, LFN, 2004 (as amended) (CITA). The TAT in arriving at its decision formulated a series of key questions to determine whether or not a sale is in the ordinary course of business of a company.

Please click here to read our Newsletter on the judgement.

5.5. Mr. Maroof Abdul Giwa vs ARM Pension Managers (PFA) Ltd. & National Pension Commission (Suit No.: NICN/ABJ/218/2018) - Legality of the basis for computing the lump sum payable by PFAs

The National Industrial Court of Nigeria (NICN) held that Section 7(2) of the PRA 2014 (as amended), which stipulates a 25% lump sum payment, applies only to a person who voluntarily retires, disengages, or is disengaged from employment at age 50 or below.

The NICN ruled that retirees above 50 years are entitled to any percentage for lump sum withdrawal, on the condition that the amount left in their retirement savings account after the withdrawal of the lump sum is sufficient to procure a life annuity for the retiree.

Please click here to read our Newsletter on this judgement.

5.6. Citibank Nigeria Limited v. Rivers State Board of Internal Revenue (Appeal No.: TAT/SSZ/017/2018) – Tax investigation beyond six-year statute barred period

The TAT sitting in Benin held that tax authorities must prove that a taxpayer has committed fraud, wilful default or neglect in order to invoke the provisions of Section 55 (2) of PITA (as amended) to investigate the taxpayer beyond the six-year statutory period.

The TAT's decision reaffirms the provisions of the extant tax laws for conducting back-duty tax investigation exercise, and the conditions that must be established before such exercise can be initiated by the tax authorities for statute-barred periods as provided by PITA.

Please click here to read our Newsletter on the TAT's judgement.

5.7. The Registered Trustees of Hotel Owners and Managers Association of Lagos (RTHMAL) v. the Attorney-General of the Federation & Minister of Finance (Suit No.: FHC/L/CS/1082/19) - Taxes and Levies (Approved List for Collection) Act

The Federal High Court (FHC) sitting in Lagos State nullified the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015, which was issued by the HMoFBNP in the exercise of the power conferred on her by Section 1(2) of the Taxes and Levies (Approved List for Collection) Act, Cap. T2, LFN 2004.

The FHC held that the Minister is not the appropriate authority with the power to revise or rewrite the laws of the Federation under the Constitution. Therefore, the Schedule to the Act, being part of the Act, cannot be amended except in the same way that the Act itself can be amended.

Please click here to read our Newsletter on the judgement.

5.8. FIRS v. Total E&P Nigeria Limited (Appeal No.: FHC/L/29A/2016) - Basis for computing balancing charge on petroleum assets

The FHC sitting in Lagos overturned the judgement of the TAT, by ruling that petroleum investment allowance (PIA) should be included in the computation of balancing charge on disposal of assets used for petroleum operations.

Specifically, the FHC held that PIA granted by Paragraph 5 of the Second Schedule to the Petroleum Profit Tax Act Cap P13, Laws of the Federation of Nigeria, 2004 (as amended) should be added to the annual allowance claimed on assets for the purpose of computing balancing charge for disposed assets.

Please click here to read our Newsletter on this judgement.

5.9. Mr. Rupert Irikefe (trading as Abimbola Energy Ventures) v. Central Bank of Nigeria (CBN), Zenith Bank Plc & Attorney General of the Federation (Suit No.: FHC/ASB/CS/139/2019) - Illegality of stamp duty deductions prior to amendment of the SDA

The FHC sitting in Asaba, Delta State ruled that that the collection of stamp duties on teller deposits or electronic transfers of monies prior to the amendment of the Stamp Duty Act (SDA), Cap. S8, Laws of the Federation of Nigeria, 2004 (as amended) was arbitrary, unlawful, illegal and contemptuous of the lawful orders of superior courts of competent jurisdictions.

The FHC reaffirms that a judgement that has not been appealed against or set aside by a higher court remains valid, subsisting and is binding on all parties, agents and privies. The FHC therefore awarded exemplary damages against the CBN and Zenith Bank to set an example to tax and regulatory authorities that wilfully disobey decisions of competent courts of law.

Please click here to read our Newsletter on the judgement.

Outlook for 2021

Tax Outlook

1. ***Digitalization of tax administration and enforcement***

   The Finance Act, 2020 amends the CITA to recognize emails and other electronic means as approved channels for the FIRS to serve notices of assessments and for taxpayers to submit their objections, respectively. Further, the Act grants the FIRS power to use digital platforms for tax collection and administration.

   Consequently, it is expected that the introduction of electronic communication with tax authorities in 2021 will lead to faster resolution of tax audits. Also, taxpayers, especially those operating in the digital economy, should expect the FIRS to embed its application user interface in their systems for tax administration and collection.

2. ***Regulatory changes to foreign exchange (FX) environment***

   The FX environment will likely remain under pressure due to low FX inflows occasioned by the drop in the crude oil prices and the prevailing exchange controls. It is expected that the CBN will reform and implement FX policies which, coupled with improvement of the business environment, will stimulate inflow of the much-needed foreign capital into the country.

3. ***Consensus-based solution to the challenges of taxation of the Digital Economy under the OECD Inclusive Framework***

   The OECD Inclusive Framework on BEPS Action Point 1 on taxation of the digital economy set up in 2016 was expected to conclude its assignment and issue a consensus approach by December 2020. However, this has been delayed due to the Covid-19 pandemic. The impact of the pandemic on several economies has also led the governments to increase the demand for fair taxation of large internationally operating and profitable businesses.

   In October 2020, members of the OECD Inclusive Framework approved the release of the Blueprints of Pillar One and Pillar Two ("the Blueprint Reports") to the public.

   The Blueprint Report for Pillar One is designed to deliver a sustainable taxation framework reflective of today's digitalising economy, with the potential to achieve a fairer and more efficient allocation of taxing rights. The Report reflects the extensive technical work that has been done and provides a solid foundation for a future agreement that would adhere to the concept of net taxation of income, avoid double taxation and be as simple and administrable as possible.

   The Blueprint Report for Pillar Two provides a solid basis for a systemic solution that would address the remaining BEPS challenges and sets out rules that would provide jurisdictions with a right to *"tax back"* where other jurisdictions have not exercised their primary taxing rights, or the payment is otherwise subject to low levels of effective taxation.

   These rules would ensure that all large internationally operating businesses pay at least a minimum level of tax.

   The members of the Inclusive Framework have reaffirmed their commitment to conclude the Inclusive Framework on BEPS Action Point 1 and issue a consensus approach to taxing the digital economy globally by mid-2021.

4. ***Issuance of Significant Economic Presence (SEP) Guidelines by the MoF for the Personal Income Tax Act Cap. P8, LFN, 2011 (as amended) (PITA)***

   The Finance Act, 2020 introduces the SEP rule under the PITA for taxation of income derived by non-resident individuals that provide technical, management, consultancy or professional services to persons resident in Nigeria. The HMoFBNP is expected to issue an Order specifying what would constitute SEP for non-resident individuals, executors, or trustees in Nigeria.

5. ***Enactment of the Petroleum Industry Bill, 2020***

   On 28 September 2020, the President presented the Petroleum Industry Bill, 2020 (PIB or "the Bill") to the National Assembly for consideration. The Bill, which was first presented to the National Assembly in 2008 but yet to be enacted over 12 years after, has heightened uncertainty in the oil and gas sector and hindered inflow of the desired investments thereto. The Bill seeks to introduce pertinent changes to the governance, administrative, regulatory and fiscal framework of the Nigerian oil and gas industry, to ensure transparency, strengthen the governing institutions and attract investment capital, among other objectives.

   Currently, the PIB is awaiting the report of the Petroleum Upstream, Downstream and Gas Committee for further deliberation after it passed the second reading at the Senate. However, it is yet to pass the first reading in the House of Representatives. Nonetheless, it is hoped that the National Assembly will complete its review and enact the Bill in 2021.

6. ***Implementation of the Nigeria Police Trust Fund (NPTF) Act***

   In December 2019, the President signed the NPTF Act ("the Act") into law and directed the Minister of Police Affairs to fast track the implementation of the Act. The Act, among other things, requires companies operating in Nigeria to contribute 0.005% of their *"net profit"* to the Fund. Therefore, it is expected that the Board of the NPTF will issue appropriate guidelines that would provide clarity on certain grey areas of the Act for ease of compliance by taxpayers.

Transfer Pricing (TP) Outlook

1. ***Increased TP compliance and audit drive by the FIRS***

   In the fourth quarter of 2020, more taxpayers received letters from the FIRS requesting for TP documentation. Based on experience and current practice, such requests indicate the FIRS' intention to commence an audit of the taxpayer's TP records. Also, we are aware that the FIRS has issued letters imposing penalties on defaulting taxpayers for failure to file their TP returns and Country-by-Country Reporting (CbCR) notification forms within the stipulated timelines. It is, therefore, expected that the FIRS will increase its drive to ensure full compliance with all TP compliance requirements in 2021.

   Further, with the FG projecting to earn 69% of its budgeted revenue for 2021 from non-oil sources due to the drop in oil price and the economic impact of the Covid-19 pandemic, it is expected that focus will be turned to taxation as the main source of revenue to finance the budget. We, therefore, expect to see more traction on tax audits from the FIRS. Hence, it is predictable that taxpayers will continue to receive notifications for TP audit exercises and/ or assessments for penalties for non-compliance from the FIRS.

2. ***More judgements on TP cases***

   The first judgement on TP in Nigeria delivered by the TAT in 2020 is expected to be the first of many forthcoming TP rulings. As the effect of the Covid-19 pandemic decreases, it is expected that the TAT and the superior courts will sit and rule on more TP cases.

3. ***TP implications of COVID-19***

   In December 2020, the OECD issued a report providing guidance on the TP implications of the Covid-19 pandemic ("the Report").

   The Report recognizes the areas where the additional practical challenges posed by Covid-19 pandemic are most significant and focuses on the following priority issues:

   i. comparability analysis;

   ii. losses and the allocation of Covid-19 specific costs;

   iii. government assistance programmes; and

   iv. advance pricing agreements

   We expect that the Report will play a key role in 2021 as both taxpayers and tax authorities analyse the impact of Covid-19 on related party transactions.

Immigration Outlook

1. *Digitization of Immigration Processes by the NIS*

In June 2020, the Nigeria Immigration Services (NIS) automated the mode of applications for both Visa on Arrival (VOA) and TWP pre-approval and introduced electronic visa (e-Visa) as a separate channel for processing and obtaining Nigerian visas alongside the existing channels.

Based on the FG's intention to automate the administrative processes of all its agencies, it is expected that other existing manual immigration processes will be migrated to online platforms in 2021.

2. *Full Implementation of the NVP, 2020*

The NVP 2020 was officially launched in February 2020. However, it was not until October 2020 that the NIS began the implementation of some of the policy guidelines. A key feature of the new policy, which is yet to be implemented, is the expansion of the visa classes from six (6) to seventy-nine (79) to accommodate migrants' additional travel requirements.

It is expected that the all the guidelines of the policy would become fully operational in 2021 which will help to expand Nigeria's opportunities regarding bilateral and multilateral relations with other countries and improve the ease of doing business in the country.

3. *An Intensified Drive for Compliance with Immigration Laws and Regulations*

In 2020, the Federal Ministry of Interior (FMI) inaugurated a special ministerial taskforce to drive compliance in the administration of EQ and allied matters, including incidences of abuse and gross violation of the EQ policy by foreign investors.

Against this backdrop, it is predictable that NIS will put measures in place to ensure that companies with expatriate employees comply fully with expatriate employment regulations in Nigeria. Therefore, companies should expect the NIS to enforce the implementation of the relevant sanctions and penalties for defaults.

4. *Immigration implications of COVID-19*

The COVID-19 pandemic has catalysed the evolution of new regulatory administration systems globally. In Nigeria, the following developments are expected in the immigration and global mobility space in 2021:

- introduction of automated processes at the ports of exit and entry to minimize physical contact in response to social distancing policies and restrictions on physical contact.
- adoption of a more forward-looking approach of running watchlist checks to determine admissibility of foreigners into the country.
- introduction of additional requirements for issuance of entry visas into the country, such as evidence of vaccination for COVID-19.

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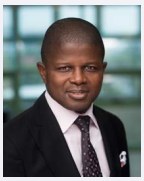

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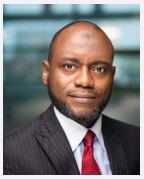

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