Nigeria’s Tax and Regulatory Landscape: 2019 in Retrospect and Outlook for 2020
The global tax landscape is constantly evolving, thus exerting pressure on tax authorities and businesses to implement acceptable measures to drive improved compliance and optimize tax costs. The recently published World Bank’s Doing Business 2020 Report shows that Nigeria moved up 15 places from its 2019 ranking in the Ease of Doing Business Index. One of the 12 indicators considered in this Report is “paying taxes”, which measures payments, time, and total tax and contribution rate for a business to comply with all tax regulations as well as post-filing processes. To consolidate, Nigerian tax authorities must continue to implement policies and practices that would engender business growth in the country. Such policies should reflect global trends that can attract foreign direct investment, encourage businesses to pay their share of taxes, institute best tax practices and, ultimately, contribute to achieving the Federal Government’s tax-to-gross domestic product target ratio of 15% by 2023.

This publication provides a summary of significant events that occurred in the Nigerian tax and regulatory space in 2019 and highlights the outlook for 2020 which should be considered by all stakeholders in shaping a robust tax and regulatory landscape in Nigeria.
1. International tax issues

1.1. Guidelines on Mutual Agreement Procedure (MAP) in Nigeria

The FIRS issued the Nigerian MAP Guidelines in the first quarter of 2019 to demonstrate its commitment to implementing the minimum standards of the Organisation for Economic Co-operation and Development (OECD)’s Base Erosion and Profit Shifting (BEPS) Project. The MAP Guidelines provide detailed information on how Nigerian taxpayers can access the MAP. The Guidelines cover matters such as eligibility criteria for application, time limit for seeking assistance from the Competent Authority and initiation of the MAP process among others.

The initiative is expected to engender seamless administration of the MAP process and ensure that taxpayers can resolve tax treaty disputes in a timely manner.

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

1.2. Common Reporting Standards Guidelines and Regulations, 2019

In July 2019, the FIRS issued the Income Tax (Common Reporting Standard (CRS)) Regulations, 2019 (“the CRS Regulations”) pursuant to its powers under Section 61 of the FIRS (Establishment) Act, 2007. The CRS Regulations, which commenced on 1 July 2019, put in motion the requirements of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (AEOI) which was signed by Nigeria on 17 August 2017.

The FIRS further published the Income Tax (Common Reporting Standard) Implementation and Compliance Guidelines, 2019 to supplement the CRS Regulations.

The CRS Regulations require Nigerian Financial Institutions to file certain information on Reportable Accounts maintained during the year ended 31 December 2019 and every subsequent calendar year, with the FIRS.

Based on the provisions of the CRS Regulations, the deadline for submission of the 2019 calendar year CRS return is 31 May 2020, and the penalty for non-compliance is ₦10 million and ₦1 million for each month the default continues.

Please click here to read more on the CRS Regulations.

1.3. Non-Resident Persons’ Tax Office

The FIRS in October 2019 issued a Public Notice on the establishment of the Non-Resident Persons’ Tax Office (NRPTO) under its International Tax Department.

According to the FIRS, the NRPTO was established to enhance tax certainty, promote voluntary compliance, reduce tax disputes and avoid double taxation relating to non-resident persons who are liable to tax in Nigeria in accordance with the provisions of the Companies Income Tax Act and the Personal Income Tax Act.

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

1.4. Claim of tax treaty benefits in Nigeria

On 4 December 2019, the FIRS issued its Information Circular No.: 2019/03 on claim of tax treaty benefits in Nigeria. The Circular provides guidance and clarity on the requirements and process of accessing and computing various tax treaty benefits available to residents and non-residents deriving income from Nigeria and its treaty partners.

Click here to access our Tax Alert on the subject.

2. Federal tax issues

2.1. FIRS’ power of substitution

The FIRS continued to appoint banks as tax collecting agents for certain customers who allegedly defaulted in paying their taxes but maintain bank accounts with such banks. The appointment was made pursuant to Section 31 of the FIRS Establishment Act and Section 49 of the Companies Income Tax Act. Consequently, the FIRS directed the banks to place a lien on the accounts of the affected taxpayers and, in some cases, pay over the alleged tax debt on behalf of the taxpayer.

Following complaints by affected taxpayers and other stakeholders on the legality and manner of implementation, the FIRS suspended its enforcement on 15 February 2019 for 30 days, to enable affected taxpayers to regularise their tax records. Although the exercise generated tax revenue for the Government, it also led to litigation by taxpayers whose bank accounts were wrongly frozen. Notable is the Federal High Court case between Ama Etuwewe Esq. vs FIRS and Guaranty Trust Bank Plc (GTB) (Suit No. FHC/AR/CS/17/2019), where the Court held that it was unlawful, null and void for the FIRS to appoint GTB as its collecting agent to recover alleged income tax liability from the Plaintiff who is not a corporate entity. The Court also awarded cash damages jointly and severally against the FIRS and GTB.

Please read our publications on the subject via these links;

- appointment of banks as collecting agents,
- suspension of freeze order,
- resumption of freeze order on taxpayers’ account,
- FHC judgment on appointment of banks as tax collection agents.
2.2. Executive Order on the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme

On 25 January 2019, His Excellency, President Muhammadu Buhari, GCFR (“the President”) signed the Executive Order No. 007 on Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme (“the Scheme”). The Scheme, which will be operational for 10 years, is a public-private partnership scheme that enables the Federal Government of Nigeria to leverage private sector capital and efficiency for the construction, refurbishment and maintenance of critical road infrastructure in key economic areas in Nigeria.

Participants are entitled to utilize the project cost as tax credits against future companies’ income tax liabilities and a single non-taxable uplift, which is the monetary policy rate plus 2% on project cost, as an incentive.

Please click here to access our Newsletter on the subject.

2.3. Nigeria Police Trust Fund (NPTF) Act

The President signed the NPTF Act into law on 24 June 2019. The Act will operate for a period of six years subject to extension by the National Assembly.

The Act mandates companies operating in Nigeria to contribute 0.005% of their net profit to the NPTF. While the NPTF levy is another instrument of multiple taxation of Nigerian businesses, there is no provision relating to the body that will be responsible for collecting the levy, among other issues.

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

2.4. Deduction of WHT and VAT at source from compensation paid to agents, dealers, distributors and retailers by principal companies

The FIRS, via its Public Notice of 14 August 2019, directed taxpayers, particularly those in Fast-Moving Consumer Goods (FMCG) sector, to deduct and remit withholding tax (WHT) and value added tax (VAT) on compensation paid to their distributors, dealers and agents, whether granted by way of cash, credit note or goods-in-trade.

While the Public Notice was purportedly issued to block perceived WHT and VAT leakages in the FMCG sector, the legal basis and practicality of certain aspects of the directive raise questions that need urgent attention.

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

2.5. Finance Bill, 2019


Both the Senate and the House of Representatives passed the Bill on 21 November 2019 and 28 November 2019, respectively, and it was signed by the President on Monday, 13 January 2020.

Please click here to read a snapshot of the key provisions of the Finance Bill, 2019.


On 4 November 2019, the President signed the DOIBPSC Amendment Act, 2019 (“the Act”) following its passage by the National Assembly in October 2019. The Act introduced a combined production and price-based royalty system to replace the erstwhile production-based royalty system for deep offshore and inland basin fields. Further, the Act amends the timeline for the periodic review of the terms of production sharing contracts (PSCs) to every eight years. The Federal Government’s projection is to generate an estimated revenue of $500 million in 2020 and over $1 billion annually from 2021 as a result of the amendment of the DOIBPSC Act.

Click here to read our Newsletter on the subject.
3. State tax issue

3.1. Appointment of payers of capital sum as collecting agents for capital gains tax

The Lagos State Internal Revenue Service (LIRS) issued a Public Notice on 6 January 2019 appointing employers and other payers of capital sums as “collecting agents” for deduction and remittance of Capital Gains Tax due on capital payments. The LIRS further required appointed agents to submit statements of recipients of capital sums alongside their annual returns.

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

4. Immigration issues

4.1. Electronic application for Visa on Arrival.

On Monday, 13 May 2019, the Nigeria Immigration Service (NIS) announced the migration of application for visa on arrival (VOA) to a web-based portal. According to the NIS, the initiative will improve migration and transparency in the visa application system in line with the Federal Government’s Ease of Doing Business Policy. Following the launch of the portal, applicants are required to complete relevant application form on the NIS website, make payment (using MasterCard and Visa payment cards) and obtain online visa approval. The estimated time for VOA approval is 48 hours after submission by the applicant.

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

4.2. E-registration exercise for migrants by the Nigeria Immigration Service

Following the flag-off of the e-registration exercise in Abuja in July 2019, the NIS announced its commencement of the e-registration exercise for migrants residing in Lagos State in August 2019. According to the NIS, the development is in line with its ongoing reforms aimed at addressing the security challenges currently facing the country.

The exercise excludes migrants who are either under the age of 18 or enjoying diplomatic immunity, and visitors who intend to stay in Nigeria for less than 90 days.

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

4.3. 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 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 seek to enforce the provisions of NCDMB’s "Guidelines on Application for Temporary Work Permit in the Nigerian Oil and Gas Industry" requiring any oil and gas company that intends to engage expatriates on Temporary Work Permit to obtain NCDMB’s prior recommendation.

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

5. Other regulatory issues

5.1. Nigeria Data Protection Regulation, 2019

The National Information Technology Development Agency (NITDA) issued the Nigeria Data Protection Regulation (NDPR) on 25 January 2019, which provides guidelines on the use of personal data by organizations who collect and/or process such data. The objective of the Regulation is to protect the rights of Nigerian citizens and residents with respect to data privacy and to foster safe conduct for transactions involving the exchange of personal data.

The NDPR requires Data Controllers and Data Processors to engage a Data Protection Compliance Organization to perform a Data Protection Audit and file a report with NITDA within a stipulated timeline. The Regulation also imposes penalty of up to ₦10 million for breach of data privacy rights.

Please click here to access our publication on the Regulation.

5.2. Revocation of Rule 4 by Financial Reporting Council of Nigeria

The Financial Reporting Council of Nigeria (FRCN) revoked its “Rule 4” titled “Transactions requiring registration from statutory bodies such as the National Office for Technology Acquisition and Promotion (NOTAP)” on 5 August 2019. The Rule
provided that transactions that require the approval of, and or registration with, a statutory body in Nigeria would have financial reporting implication only when the relevant regulatory approval is obtained and/or registration is completed.

The revocation followed the decision of the Court of Appeal (CoA) in Stanbic Holdings Plc vs FRCN and NOTAP (Suit No.: CA/L/208/2016) that failure to register an agreement with NOTAP does not render it illegal, null and void.

Please read our publications on the subject via the following links: CoA judgement on effect of agreements not registered with NOTAP and FRCN revokes Rule 4 5.3. National Housing Fund (Establishment) Bill, 2018

The President declined assent to the National Housing Fund (NHF) (Establishment) Bill 2018 (“the Bill”). The Bill was passed by the National Assembly to repeal and re-enact the extant NHF Act, and to provide for additional sources of funding for financing housing projects in Nigeria. These include revision of the basis of imposing NHF on employees from basic salary to monthly income, contribution of 2.5% of ex-factory price by local manufacturers and importers of cement, and contribution of 10% of profits before tax by banks and insurance companies.

Although the NHF Act is long overdue for review given its poor performance and lack of appeal to the generality of its stakeholders, the President’s denial of assent to the Bill was a welcome development in light of its many flawed and austere provisions.

Click here to access our Newsletter on the subject.

6. Key judicial pronouncements on contentious tax and regulatory matters –

We have highlighted some of the landmark judicial decisions that were made in 2019 below:

6.1. Shell Nigeria Exploration and Production Company Limited vs LIRS (Suit No.: TAT/LZ/PIT/084/2014)- applicability of interest and penalty on unremit taxes

The Tax Appeal Tribunal (TAT) affirmed that a demand notice is not final and conclusive where a valid objection was raised until and unless the grounds of the objection are fully resolved.

Nonetheless, the TAT held that the Respondent has a right in law to charge the Appellant both penalty and interest on the PAYE tax and WHT collected by the Appellant on its behalf and were not remitted as and when due, as required by the relevant provisions of the law.

Please click here to read our Newsletter on the judgement.


The TAT affirmed that voluntary pension contribution (VPC) is a valid deduction for calculating Pay-As-You-Earn (PAYE) tax due on employees’ emoluments. The TAT, in delivering the judgement, noted that VPC is statutorily exempted from PAYE tax by the provisions of Sections 4(3) and 10 of the Pension Reform Act 2014 (as amended) and Section 20(1) of the Personal Income Tax Act 2011 (as amended).

Also, the TAT ruled that Nexen is not under statutory obligation to account for tax payable on the amount of VPC withdrawn by its employees. The responsibility to recover the tax due on such withdrawals is that of the tax authority.

Please click here to read more about this judgement.

6.3. The Registered Trustees of Hotel Owners and Managers Association of Lagos (RTHMAL) v. the Attorney-General of Lagos State and FIRS (Suit No.: FHC/L/CS/360/2018) - Consumption Tax

The Federal High Court (“the Court”) sitting in Lagos State upheld the imposition of consumption tax on goods and services consumed in hotels, restaurants and events centres. The Court affirmed that the Hotel Occupancy and Restaurant Consumption Law of Lagos State is legal and valid. Further, the Court restrained the FIRS from imposing VAT on goods consumed in hotels, restaurants and event centres on the premise that Lagos State is the competent authority to assess such goods and services to consumption tax.

Please click here to read our Tax Alert on the judgement.
Outlook for 2020

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

   We expect the work of the OECD Inclusive Framework on BEPS Action Point 1 on taxation of the digital economy set up in 2016 to conclude its assignment in December 2020 by issuing a consensus approach to taxing the digital economy globally.

   Progress made, so far on this includes:

   - issuance of a policy note titled *Addressing the Tax Challenges of the Digitalisation of the Economy*, in January 2019 aimed at finding a consensus-based solution to the problem among member countries
   - publication of draft proposals titled “Pillar 1” and “Pillar 2” in October 2019 for public consultation. Pillar 1 consultation was held in Paris from 21-22 November 2019 while Pillar 2 consultation held in Boulogne-Billancourt on 9 December 2019
     - Pillar 1 – addresses the allocation of taxing rights between jurisdictions or countries and proposes profit allocation and nexus rules based on user participation, marketing intangibles, significant economic presence principles.
     - Pillar Two – introduces a coordinated set of rules to prevent establishment of structures that enable MNEs to shift profits among jurisdictions.

   The Inclusive Framework is expected to agree on the outline of the architecture of the solution by January 2020 which will drive further activities towards reaching a consensus by the stakeholders on digital taxation. Meanwhile, the number of countries taking unilateral action remains on the increase with Turkey and Nigeria being among the countries that recently enacted laws on digital taxation. It is hoped that such unilateral measures will, ultimately, be discarded and replaced by new laws aligned to the consensus-based solution.

2. **Enactment of the Finance Bill, 2019 and issuance of Significant Economic Presence (SEP) Guidelines by the MoF**

   The President assented to the Finance Bill, 2019 on Monday, 13 January 2020. Following this, taxpayers will need to evaluate the impact of the changes on their businesses to ensure adequate compliance with the law. The Honourable Minister of Finance is expected to issue an Order specifying what would constitute SEP for a non-resident company in Nigeria.

   Please click [here](#) to read our e-book on the *Finance Act, 2020 - Impact Analysis*

3. **Issuance of Guidelines by the FIRS to operationalize taxation of the Digital Economy**

   Taxation of the Digital Economy is novel in Nigeria, and it is expected that the FIRS will issue administrative guidelines for the effective administration of digital tax in Nigeria. The guidelines will specify its expectations from the affected taxpayers and the compliance process.

4. **Imposition of consumption tax by other States**

   It is anticipated that the recent Federal High Court judgement upholding the validity of the Hotel Occupancy and Restaurant Consumption Law of Lagos State may encourage some other States to enact their Consumption Tax Law. This is especially if the FIRS has not appealed the judgement prohibiting it from assessing and collecting VAT from goods and services consumed in hotels, restaurants, etc., in Lagos State or, ultimately, loses the appeal.

5. **Tax dispute resolution**

   We expect that the level of activities, including tax appeals instituted at, and judgements issued by, the TAT since its reconstitution in 2018 will be sustained in 2020 while parties also explore ways for out-of-tribunal settlement of their disputes, where possible. The improved pace of resolution of tax disputes by the TAT will further strengthen the Nigerian tax system and improve overall investor confidence in the country.

6. **Passage of the Petroleum Industry Governance Bill (PIGB)**

   In a bid to facilitate the passage of the omnibus Petroleum Industry Bill (PIB) which has been pending before the National Assembly for over 16 years, the PIB was unbundled into four different pieces of legislation guiding specific aspects of the oil and gas industry, namely, Governance, Fiscal, Host Community and Administration.

   Considering the potential positive impact of the PIB in reforming the oil and gas industry and attracting investment, the Senate President has assured investors of the National Assembly’s commitment to the review and pass the PIB in 2020 to create an enabling environment for the affected businesses. It will be a landmark achievement for the 9th National Assembly to do this successfully where all its predecessors had failed.

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

   In December 2019, the President while commissioning the operational vehicles and assets of the Nigerian Police Force, directed the Minister of Police Affairs to fast track the implementation of the NPTF Act, (“the Act”). The Act, among other things, requires companies operating in Nigeria to contribute 0.005% of their “net profit”.

   Therefore, we expect the Board of the NPTF to issue appropriate guidelines that would provide clarity on certain gray areas of the Act for ease of compliance by the affected taxpayers.
8. **Transfer Pricing (TP) Outlook**

   **i. Continued intensive TP Audit**

   We expect the FIRS to intensify its TP audit programme in 2020 by leveraging the experience garnered in the seven years of TP implementation in Nigeria.

   Further, we expect various aspects of the Income Tax (Transfer Pricing) Regulations, 2018 to be tested during the 2020 TP audit cycle. For instance, the earnings before interest, taxes, depreciation, and amortization (EBITDA) rule for intangibles, role of regulatory bodies, such NOTAP, and procurement arrangement may be some of the notable TP issues during the year.

   Considering the December 2019 deadline for filing of the first set of Country-by-Country Report (CbCR) in Nigeria, we expect to see the impact of the CbCR disclosures on how the FIRS carries out its audit exercise. Taxpayers undergoing TP and tax audits may have more explanations to make considering key CbCR data that may hitherto not have been apparent to the FIRS.

   **ii. MLI Ratification**

   The BEPS Multilateral Instrument (MLI) is a multilateral convention of the OECD to combat tax avoidance by Multinational Enterprises through the prevention of BEPS. The MLI was negotiated within the framework of the OECD/G20 BEPS Project and enables jurisdictions to modify existing bilateral tax treaties and align same with the outcomes of the BEPS Project.

   Although Nigeria signed the MLI on 17 August 2017, it is yet to be ratified by the National Assembly. We expect Nigeria to continue the trend of tax reforms recently launched by the Finance Act by ratifying the MLI and depositing the instrument of ratification at the OECD Secretariat in 2020.

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