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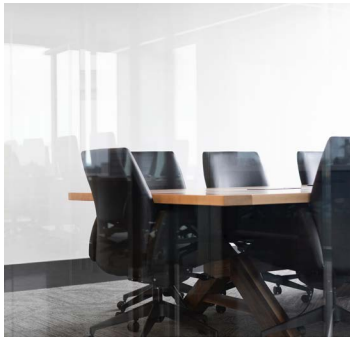

1.0 Glossary

A	
ABIRS	Abia State Internal Revenue Service
AEOI	Automatic Exchange of Financial Account Information
B	
BEPS	Base Erosion and Profit Shifting
C	
CAMA	Companies and Allied Matters Act
CBN	Central Bank of Nigeria
CbC	Country-by-Country
CbCR	Country-by-Country Reporting
CETA	Customs and Excise Tarrif, etc. (Consolidation) Act
CFO	Chief Financial Officer
CGTA	Capital Gains Tax Act
CIT	Companies Income Tax
CITA	Companies Income Tax Act
COA	Court of Appeal
CPC	Consumer Protection Commission
D	
DMB	Deposit Money Bank
DOIBPSC	Deep Offshore and Inland Basin Production Sharing Contracts
DSBIR	Delta State Board of Internal Revenue
DTA	Double Taxation Agreement
E	
EBITDA	Earnings Before Interest, Tax, Depreciation and Amortisation
ECOWAS	Economic Community of West Africa
EQ	Expatriate Quota
ESBIR	Ekiti State Board of Internal Revenue

F	
FCCPC	Federal Competition and Consumer Protection Commission
FEC	Federal Executive Council
FG	Federal Government
FGN	Federal Government of Nigeria
FHC	Federal High Court
FIRS	Federal Inland Revenue Service
FIRSEA	FIRS (Establishment) Act, 2007
FMCG	Fast-Moving Consumer Goods
FRCN	Financial Reporting Council of Nigeria
FY	Financial Year
G	
GCFR	Grand Commander of the Federal Republic
GDP	Gross Domestic Product
H	
HCD	Human Capital Development
I	
IFRS	International Financial Reporting Standards
ITF	Industrial Training Fund
J	
JTB	Joint Tax Board
L	
LFN	Laws of the Federation of Nigeria
LIRS	Lagos State Internal Revenue Service
M	
MAP	Mutual Agreement Procedure
MLI	Multilateral Instrument
MNE	Multinational Enterprise
MOF	Honourable Minister of Finance, Budget and National Planning

N	
NCDMB	Nigerian Content Development and Monitoring Board
NHF	National Housing Fund
NIMASA	Nigerian Maritime Administration and Safety Agency
NIS	Nigeria Immigration Service
NITDA	National Information Technology Development Agency
NLC	Nigerian Labour Congress
NORA	Notice of Refusal to Amend
NOTAP	National Office for Technology Acquisition and Promotion
NPTF	Nigeria Police Trust Fund
NRC	Non-Resident Company
NRTPO	Non-Resident Persons' Tax Office
NSITF	Nigeria Social Insurance Trust Fund
O	
OECD	Organisation for Economic Co-operation and Development
OGIRS	Ogun State Internal Revenue Service
P	
PAYE	Pay-As-You-Earn
PENCOM	National Pension Commission
PFA	Pension Fund Administrator
PFC	Pension Fund Custodian
PIB	Petroleum Industry Bill
PITA	Personal Income Tax Act
POR	Place of Residence
PPT	Petroleum Profits Tax
PPTA	Petroleum Profits Tax Act
PRA	Pension Reform Act
PSC	Production Sharing Contracts
R	
RMAFC	Revenue Mobilisation Allocation and Fiscal Commission
RSA	Retirement Savings Account
RTA	Relevant Tax Authority
S	
SBIR	State Board of Internal Revenue
SDA	Stamp Duties Act
SEP	Significant Economic Presence
SG	State Government
SIRS	State Internal Revenue Service
SME	Small and Medium Enterprise
T	
TAT	Tax Appeal Tribunal
TCC	Tax Clearance Certificate
TIN	Tax Identification Number
TP	Transfer Pricing
V	
VAIDS	Voluntary Assets and Income Declaration Scheme
VAT	Value Added Tax
VATA	Value Added Tax Act
VOA	Visa on Arrival
VPC	Voluntary Pension Contribution
W	
WHT	Withholding Tax
Y	
YOA	Year of Assessment

2.0 Preface

We are pleased to publish the fourth edition of the Nigerian Tax Journal. This edition features key decided tax cases (which became publicly available in 2019) that have greatly helped in addressing tax disputes between taxpayers and the Revenue. It also contains key pronouncements from tax administrators and regulatory agencies. In addition, the journal includes a compilation of select thought leadership articles on tax, TP, regulatory and compensation and benefits issues authored by KPMG Nigeria subject-matter specialists in 2019. This year's edition also features articles by external tax and legal practitioners who expressed their views on topical tax and regulatory issues.

Tax remained a front-burner issue all through the year 2019, owing to the numerous developments in the tax space. Some of these include:

- controversies surrounding the FIRS' exercise of its power of substitution to "freeze" bank accounts of alleged tax defaulters;
- the enforcement of the provisions of the Income Tax (TP) Regulations and CbCR Regulations issued by the FIRS in 2018, especially with respect to the imposition of stiff penalties for non-filing or late filing of relevant returns/notifications;
- the issuance of the Common Reporting Standard Regulations, which will give effect to the automatic exchange of information in Nigeria;
- TAT decisions on numerous tax issues;
- the change in the leadership of the FIRS upon the expiration of the four-year tenure of its erstwhile Executive Chairman; and
- the presentation of the 2020 Budget proposals together with an Executive Finance Bill, by His Excellency, President Muhammadu Buhari to a joint sitting of the National Assembly.

The curtain for 2019 was drawn with the signing into law of the 2020 Appropriation Bill, with a revenue target of ₦8.42 trillion[1]; and the passage of the Finance Bill, 2019 by the National Assembly.

The Finance Bill was signed into law by the President as Finance Act, 2019 ("Finance Act" or "the Act") on 13 January 2020. The enactment of the Act is a significant milestone for Nigeria, as it marks the first significant amendment of Nigeria's corporate and transaction tax legislation in almost thirteen (13) years. Our expectation is that the FGN would continue the practice of submitting a Finance Bill along with the Budget to the National Assembly in subsequent years, in line with global best practice.

The sweeping changes introduced by the Finance Act will undoubtedly shape the environment in which Tax Directors and Heads of Tax will operate in 2020 and beyond.

This edition of the KPMG Nigerian Tax Journal will serve as a reference material on important tax issues as they affect business decision, which will help CFOs, Tax Directors and Heads of Tax to manage their tax risks.

We hope that you find the insights in the publication useful, and encourage you to provide feedback to us via e-mail to NG-FMTaxEnquiries@ng.kpmg.com.

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[1] Office of the FMF: Public Presentation of the 2020 Approved Budget

3.0 Tax Outlook for 2020

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-GDP target ratio of 15% by 2023

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-GDP target ratio of 15% by 2023.

The following are some of the steps which the stakeholders should consider in order to shape a robust tax and regulatory landscape in Nigeria:

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.

   The 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 and SEP 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, which provided the outline of the architecture of the solution, was issued in January 2020 and 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. Impact of the Finance Act, 2019 and issuance of SEP Guidelines by the MOF

His Excellency, President Muhammadu Buhari, GCFR, 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 MOF is expected to issue an Order specifying what would constitute SEP for a non-resident company in Nigeria.

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 FHC judgement upholding the validity of the Hotel Occupancy and Restaurant Consumption Law of Lagos State may encourage some other SGs 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 inauguration 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

In a bid to facilitate the passage of the omnibus 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 Nigerian oil and gas industry and attracting investment, the Senate President has assured investors of the National Assembly's commitment to review and pass the PIB in 2020 to create an enabling environment for 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 NPTF Act

In December 2019, the President while commissioning the operational vehicles and assets of the Nigeria 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. 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 (TP) Regulations, 2018 to be tested during the 2020 TP audit cycle. For instance, the EBITDA rule for intangibles, role of regulatory bodies, such as 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 CbC reports 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 that key CbCR data that may hitherto not have been apparent to the FIRS, will now be readily available.

Also, the FIRS may continue to enforce the stiff penalties contained in the relevant Regulations where taxpayers default in filing their TP returns and CbC reports/notification.

ii. MLI Ratification

The BEPS MLI is a multilateral convention of the OECD to combat tax avoidance by MNEs 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.

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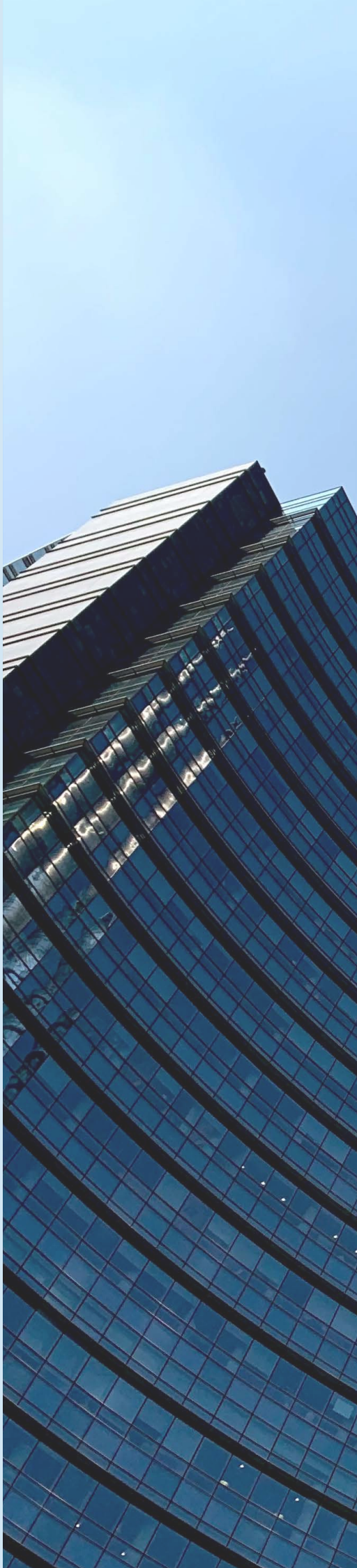
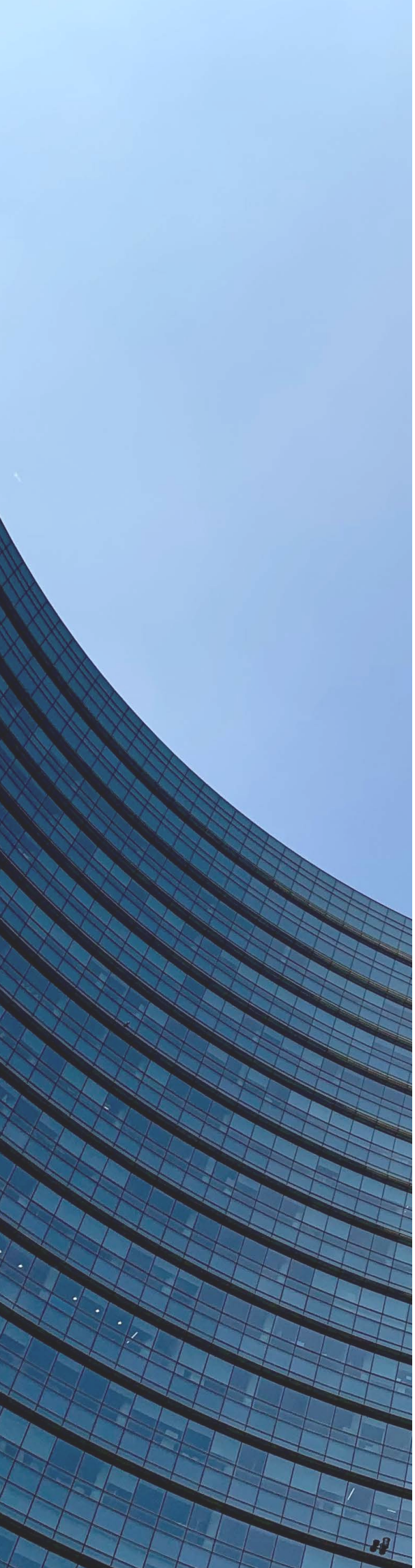




4.0 2019 in Review

4.1. Significant tax rulings

Companies Income Tax

1. Best Children International Schools Limited vs FIRS[2]

Background

Section 23(1)(c) of CITA exempts from CIT the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company.

Facts of the case

Best Children International Schools Limited ("BCISL") is a company limited by shares and provides primary and secondary educational services in Nigeria. The Company did not pay CIT liabilities for 2008 – 2012 tax years on the basis that its educational activities are exempt from income tax under Section 23(1)(c) of CITA. The Company in April 2013 received a confirmation from the FIRS through its National Association, that its profits from educational activities were exempted from CIT so long as such profits were not derived from a trade or business carried out by the Company.

However, the FIRS assessed the Company to income tax for 2008 to 2012 tax years in September 2014 on the ground that BCISL did not qualify for the exemption conferred by Section 23(1)(c) of CITA.

Consequently, BCISL instituted a lawsuit against the FIRS at the FHC and sought an order to prohibit the FIRS from enforcing its demand notice on the Company, and an injunctive order to restrain the FIRS, its staff, privies or its agents from further imposition of income tax on the Company. The FHC delivered a judgement in favour of the FIRS on the grounds that the exemption granted under Section 23(1)(c) of CITA only applies to companies that are limited by guarantee under Section 26 of the CAMA. In addition, it was held that BCISL is a company registered as a profit-making venture and was not registered as an educational institution of public character by virtue of its incorporation as a company limited by shares under CAMA.

Dissatisfied with the FHC's decision, BCISL filed an appeal at the COA, seeking the determination of the following issues:

- Whether the FHC erred in the construction of Section 23(1)(c) of CITA by holding that the subsection only contemplates companies limited by guarantee under Section 26 of the CAMA.
- Whether the FHC misdirected itself when it relied on the fact of the registration of BCISL as a private company limited by shares in determining whether the company falls under Section 23(1)(c) of CITA.

[2]Appeal No: CA/A/393/2016.

The decision

The COA ruled in favour of the FIRS on the following grounds:

- The fundamental distinctive characteristics or quality of a company are in its DNA or its make-up. This will be reached by how the company came into being and by which form of company it is. In this regard, the Company did not disclose that it was a company limited by guarantee.
- BCISL did not prove that it was an academic institution or an institution of a public character or that it does not derive profit from a trade or business carried on by it.
- BCISL is a company limited by shares and is thus a profit-making company, and as such, does not qualify for the exemption granted by Section 23(1)(c) of CITA.

2. Theodak Nigeria Limited vs FIRS[3]

Background

Generally, CIT is payable on the profits of a company "accruing in, derived from, brought into or received in Nigeria" in respect of any trade or business that may have been carried on by it. The CITA requires every company to file its tax returns for every year on a self-assessment basis, containing the amounts of profits from every source, with the FIRS.

Section 30 of CITA empowers the FIRS to assess a company on a fair and reasonable percentage of the turnover from its trade or business where the business either produces no assessable profits or produces assessable profits which in the opinion of the FIRS are less than might be expected, or where the true assessable profits cannot be ascertained.

Facts of the case

The FIRS ("the Defendant") alleged that Theodak Nigeria Ltd ("TNL" or "the Company " or "the Plaintiff") did not file its income tax returns for 2015 and thereby failed to pay its income tax liability for that year. Hence, the FIRS invoked the provisions of Section 30(1)(a) of the CITA by deeming 20% of the ascertained value of a property admitted to be owned by the Company to be the CIT payable, and issued its assessment notice for the amount.

Dissatisfied with the FIRS' action, TNL filed an appeal at the FHC arguing that Section 30(1)(a) of CITA does not empower the FIRS to assess the value of its property to CIT, as it is not listed as a taxable income in Section 9 of CITA.

Thus, the Company urged the FHC to declare that the value of its building was not the same as its turnover, and that the FIRS' action was ultra vires its statutory powers under the CITA. The Plaintiff also prayed the FHC to set aside the FIRS' assessment and restrain the Defendant from enforcing the recovery of the alleged tax liability.

The FIRS, on its part, argued that Section 30(1)(a) of the CITA gave it wide powers to assess delinquent taxpayers to tax; and that it therefore had the statutory power to impose its best of judgment assessment on TNL based on the value of the Company's property. This was on the ground that TNL had failed to file its tax returns despite several notices issued by the FIRS. The Defendant also argued that the assessment was final and conclusive because the Plaintiff failed to object within 30 days as provided by the CITA.

The decision

After considering the arguments of both parties, the FHC held that the FIRS did not act within the boundaries of Section 30(1) of the CITA in assessing the Company to tax on the basis of the value of its property. According to the FHC, the section only empowers the FIRS to assess a company to tax on a fair and reasonable percentage of its turnover. That turnover refers to the aggregate income that a business receives from its normal business activities for a given period, usually from the sale of goods and services. Hence, the value of the Company's property is not the same as its turnover or income.

The FHC also held that TNL was not under any obligation to object to the FIRS before it could challenge the assessment in court. The use of the word "may" in Section 69(1) of CITA makes it discretionary for the Plaintiff to object to the FIRS' assessment, and failing which the Company could not be denied the right of access to court as conferred by the 1999 Constitution of the Federal Republic of Nigeria.

3. Ama Etuwewe vs FIRS & Guaranty Trust Bank Plc[4]

Background

In 2018, the FIRS commenced the issuance of Letters of Substitution to banks in Nigeria, pursuant to Section 49 of CITA and Section 31 of the FIRSEA. By the letters, the FIRS alleged that certain listed customers maintaining bank

[3] Suit No: FHC/ABJ/CS/17/2017
[4] Suit No: FHC/WR/CS/17/2019

accounts with such banks failed to fulfil their tax obligations, and therefore appointed the banks as tax collecting agents for the deduction and remittance of the alleged tax liabilities. The FIRS also requested the banks to "freeze" the accounts of affected companies/account holders and restrained the banks from executing any mandate on those accounts without its prior approval.

Facts of the case

The FIRS issued a letter to Guaranty Trust Bank Plc ("the Bank") appointing it as the FIRS' collecting agent to recover an alleged CIT liability from Ama Etuwawe Esq. ("the Plaintiff"). The FIRS also requested the Bank to "freeze" the customer's account.

The decision

The FHC held that it is unlawful for the FIRS to appoint the Bank as its collecting agent to recover alleged CIT liability from the Plaintiff. The FHC further held that the Plaintiff is not liable to pay CIT, being an individual who carries on legal practice in its name; and issued an order of perpetual injunction restraining the FIRS, its agents, privies, employees, etc., from demanding the payment of CIT from the Plaintiff. The FHC awarded compensatory damages to the Plaintiff for the illegal and unlawful freezing of its bank account.

4. Actis Africa Nigeria Limited vs FIRS[5]

Background

Section 19 of CITA subjects to tax, dividend paid out of profits on which no tax is payable due to no total profits or total profits less than the amount of dividend paid. The application of this section has generated significant debate between the FIRS and taxpayers, especially where the dividend declared is from retained earnings on which tax has been paid.

Facts of the case

Actis Africa Nigeria Limited ("Actis" or "the Company") declared dividend in 2014 FY from its retained earnings for the FY ended 31 December 2013. The source of the dividend was clearly disclosed in the Company's 2014 Audited Financial Statements.

Actis did not make any profit in 2014 FY and therefore had no CIT liability for 2015 YOA. However, in 2017, the FIRS reviewed the Company's 2015 YOA income tax computations and assessed the Company to additional tax on the basis that it did not comply with the provisions of Section 19 of CITA.

The Company objected to the assessment on the grounds that the dividend paid was from retained earnings on which tax had been paid, and should therefore not be subject to further tax. However, the FIRS refused to amend the assessment notice, as result of which the Company escalated the matter to the TAT for adjudication.

The issue for determination was whether Section 19 of CITA provides any basis for the FIRS to assess the Company to income tax for 2014 FY (i.e. 2015 YOA), when it recorded no profits, using the dividend declared and paid out by the Company from its 2013 post-tax profits.

The decision

The TAT aligned its decision with the FHC and COA judgements in the case between Oando Plc and FIRS, that excess dividend tax is applicable where the dividend paid in a YOA exceeds the total profits declared in that year.

The TAT also ruled that Section 19 of CITA only considers the YOA in which the dividend is paid and the total profits of the company for that year. Therefore, where the dividend paid is more than the total profits in a year, the excess of that dividend over the total profits becomes liable to additional income tax.

5. Adriatic 1 Limited vs FIRS[6]

Background

Every company assessable to tax under the CITA is required to file annually, a CIT return comprising its duly completed CIT self-assessment form, audited accounts, tax and capital allowance computations, and evidence of payment of all or part of the tax due.

Prior to 2015, the general practice was for NRCs to submit their returns on deemed profit basis. A deemed profit tax rate of 6% (i.e. 20%*30%) of turnover was introduced by the 1996 Federal Government Budget on the assumption that a company would have

[5] Appeal No: TAT/LZ/EDT/014/2017
[6] Appeal No: TAT/LZ/CIT/023/2018

a deemed taxable profit of 20% of its turnover, which is then taxed at the standard CIT rate of 30%. The deemed profit basis was generally acceptable to the FIRS until 2015 when it issued a Public Notice mandating NRCs to submit their CIT returns on actual profit basis in line with the provisions of Section 55(1) of CITA.

Notwithstanding the above, Section 30(1) of CITA empowers the FIRS to assess and charge a company to tax on a fair and reasonable percentage of its turnover, in certain instances.

Fact of the case

Adriatic 1 Limited ("Adriatic 1" or "the Company"), an NRC operating shallow water rigs in Nigeria, prepared and filed its returns on self-assessment basis for 2015, 2016 and 2017 YOAs as required under Section 55 of the CITA. The Company had no tax payable for the relevant years.

In 2018, the FIRS issued a notice of additional CIT liabilities at a deemed rate of 6% of turnover on the basis that the Company's returns for the period reflected nil tax payable. Adriatic 1 objected to the assessments, and subsequently filed a Notice of Appeal at the TAT.

The key issues for determination were:

- whether the FIRS is required to exercise its discretion under Section 30 of CITA judicially and judiciously, and if indeed it exercised such discretion wrongfully; and
- whether the tax rate of 6% imposed on Adriatic by the FIRS for the years under review, without considering other business factors, was fair and reasonable.

The decision

The Tribunal decided that the FIRS should seek further and better particulars from the Company and carry out a more comprehensive audit of its records within a reasonable time, to enable the FIRS to come up with a revised assessment that is fair and reasonable. However, in the event that the required documents are not provided by the Company, the FIRS may resort to its discretionary powers under Section 30(1)(b) of CITA.

The Tribunal also held that the consistency of the application of the 6% deemed profit rate creates a legitimate expectation on the part of taxpayers and binds the tax authority to apply the rate in similar situations. Thus, the FIRS' application of the 6% deemed profit rate to the Appellant makes it fair, reasonable, and consistent.

Finally, the TAT stated that if a statutory discretion is applied bona fide, uninfluenced and exercised in line with the relevant considerations, and not arbitrarily, no court has the power to interfere with that discretion even if the court would have exercised the same discretion differently given the same opportunity.

6. Earth Moving International Limited vs FIRS[7]

Background

Section 69 of CITA allows taxpayers to object in writing to an FIRS assessment within 30 days from the date of service of the notice of assessment. The section does not specify or restrict the mode of writing of objection letters to just physical letters.

Also, under the Interpretation Act, notable exceptions apply to the interpretation of statutory timelines. For instance, where the last day of a statutory timeline for performing an obligation falls on a Sunday or public holiday, the act would be deemed properly done if performed on the following workday.

Facts of the case

The FIRS conducted a desk review on the records of Earth Moving International Limited ("EMI" or "the Company") for 2016 FY, and thereafter issued a report assessing the Company to additional tax liabilities. The Company objected to these liabilities, in response to which the FIRS issued a revised assessment notice. The Company again objected to the assessment, following which the FIRS issued a NORA on the basis that the objection was filed late. The Company rebutted the FIRS' position and requested that its objection letter be considered on its merit. However, the FIRS denied the request and issued a second NORA. Consequently, EMI filed a Notice of Appeal before the TAT with the following issues for determination:

- Whether the Company can communicate its written Notice of Objection by electronic means;
- Whether the Company can communicate its written Notice of Objection by electronic means;
- Whether the statutory timeframe of 30 days

[7] Appeal No. TAT/C2/CIT/030/2018

to object to a Notice of Assessment excludes public holidays and days on which there is a nationwide strike of the NLC; and

- Whether the FIRS in issuing two separate NORAs, can insist on relying exclusively on the earlier of the two NORAs for the purpose of determining the Company's compliance with the statutory timeframe for lodging an appeal at the TAT.

The decision

The TAT relied on Section 69(2)(a) of CITA to determine that the 30-day statutory timeline for objecting to an assessment was exclusive of public holidays and the NLC warning strike, which fell within the period. The TAT further held that EMI was within its rights to rely on the second NORA issued by the FIRS in computing the timeframe for filing its Notice of Appeal at the TAT.

The FIRS was, therefore, precluded from relying on its first NORA in ascertaining the validity of the timing of the Company's appeal at the TAT.

7. Ponticelli Upstream vs FIRS[8]

Background

Section 69 of CITA prescribes the basis for revision of an assessment in case of objection. Specifically, a company that is dissatisfied with an assessment raised by the FIRS may object to that assessment in writing within thirty days from the date of service of the notice of assessment, stating the grounds of the objection.

The FIRS may accept all or some of the grounds of the objection and amend accordingly. Otherwise, the company will be issued with a NORA. In such cases, the company may appeal the disputed assessment to the TAT.

Facts of the case

Ponticelli Upstream ("Ponticelli" or "the Company") a French NRC, was jointly awarded a contract with Ponticelli Nigeria Limited (PNL) to execute engineering, procurement, construction and installation of tie-in and integration works.

The FIRS flagged the contract during its review of PNL's TP returns, and assessed Ponticelli to CIT (including penalty and interest charges) for 2012 to 2016 YOAs. The notice of assessment issued by the FIRS included an indication of its refusal to amend the assessment notices. Accordingly, the Company regarded the letter as a NORA and filed a notice of appeal at the TAT. The key issue for determination was whether the FIRS was not in breach of the Company's right to fair hearing in the circumstances of this case.

The decision

The TAT ruled in favour of Ponticelli and held that, in substance, the FIRS issued a NORA simultaneously with the notices of assessment, thereby depriving the Company of its right to objection under Section 69 of CITA, and right to fair hearing under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria. Accordingly, the Tribunal set aside the assessment notices.

However, the Tribunal refused to grant Ponticelli's request that the FIRS and its agents be restrained from further assessing the Company to CIT, as the FIRS is a statutory body that cannot be restrained from performing its statutory duties.

8. Siem Offshore Rederi AS vs FIRS[9]

Background

Section 55 of CITA requires every company assessable to tax under the Act to file an annual CIT return that comprises amongst other things, its audited accounts and a duly completed CIT self-assessment form which contains a declaration that it reflects a true and correct statement of the company's profits in respect of all sources.

Section 32 of the FIRSEA and Section 85 of CITA prescribe penalty and interest on taxes that are due but not paid within the prescribed periods. The TAT had ruled in a number of cases that such penalty and interest charges should not apply to additional tax assessments raised by the FIRS in respect of tax audit exercises, unless the taxpayer fails to settle such tax liabilities after they have become final and conclusive .

Facts of the case

The FIRS revised the profit attributable to the PE of Siem Offshore Rederi AS ("Siem" or "the Company") for 2014 FY. Based on this revision, the FIRS assessed the Company to an additional CIT liability as well as interest and penalty charges. Siem settled the principal portion of the additional liability, but objected to the interest and penalty on the grounds that the Company paid the liability within two months of receiving

[8] Appeal No. TAT/LZ/CIT/029/2017
[9] Appeal No. TAT/LZ/CIT/016/2017

the notice of assessment as provided in Section 77 of CITA. Upon receipt of the Company's objection, the FIRS refused to amend the assessment notice, prompting Siem to file an appeal at the TAT for the determination of the following issues:

- Whether interest and penalty should accrue given that Siem objected to the assessment and also paid the principal tax liability within two months of receiving the notice of assessment, having considered the provisions of Sections 85 and 77 of CITA
- Whether the decision of the honourable Tribunal in the case of Weatherford vs FIRS is on all fours with the instant case given the circumstances and provisions of Sections 55(1) and (2) and 59 of CITA and Section 32 of FIRSEA.
- Whether the Company's failure to file its tax returns by the due date validates the penalties and interest imposed by the FIRS as provided by CITA and FIRSEA.
- Whether the Company's admission of not paying taxes as and when due evokes the FIRS' powers under Section 32 of FIRSEA.

The decision

The Tribunal ruled in favour of the FIRS and upheld its imposition of interest and penalty on the Company, as it did not avail itself of the opportunities in the law by correctly and accurately filing its returns. Also, the TAT ruled that the instant case is dissimilar to the Weatherford case, given that Siem was assessed by the FIRS specifically based on untrue and incorrect declaration of taxable income.

In addition, the TAT held that the Company's failure to file tax returns by the due date, and failure to pay taxes as and when due validates the penalties and interest imposed by the FIRS, as provided by the CITA and FIRSEA.

Consequently, the FIRS directed the Company to pay the interest and penalty, as they were legally and validly raised by the FIRS.

9. United Capital Assets Management Limited vs FIRS[10]

Background

The CIT (Exemption of Bonds and Short-Term Government Securities) Order, 2011 ("the Order") was issued pursuant to Section 23(2) of CITA. The Order exempts from CIT, short-term government securities such as treasury bills, promissory notes, bonds issued by the three tiers of government and their agencies, as well as bonds issued by corporate bodies.

Section 19 of CITA is an anti-avoidance provision that treats the dividend paid by a company as its total profits in any YOA where it has no total profits or has total profits that are less than the amount of dividend paid.

Furthermore, in 2017, the FG issued Executive Order No. 004 of 2017 on VAIDS, which provided a one-year tax amnesty window (from 1 July 2017 to 30 June 2018) for taxpayers to fully and honestly declare previously undisclosed assets and income streams relating to various taxes, including those payable to the FIRS. In return, taxpayers were guaranteed forgiveness of overdue interest and penalty charges and ability to pay tax liabilities by instalment, whilst enjoying immunity from prosecution for tax offences and tax audits.

Facts of the case

The FIRS conducted a desk query on the financial records of United Capital Asset Management Limited and United Capital Trustees Limited ("the Companies") for 2011 to 2016 and 2012 to 2016, respectively. The FIRS assessed them to additional liabilities based on Section 19 of CITA, on the grounds that they distributed dividend in excess of their taxable profits for the years.

The Companies disagreed with the additional assessments and met with the FIRS to resolve the issue, but failed to formally object to the assessments within the statutory 30-day period. Consequently, the FIRS maintained that the assessments had become final and conclusive, and pasted non-compliance stickers at the Companies' headquarters. The Companies subsequently negotiated a payment plan with the

[10] CONSOLIDATED APPEAL NOS. TAT/LZ/CIT/006/2018 and TAT /LZ/CIT /007 /2018

FIRS and filed individual appeals at the TAT. The TAT consolidated the appeals as they relate to similar issues and the entities belong to the same group.

The Companies argued in their notices of appeal that the FIRS wrongly assessed the income they derived from government and corporate bonds to tax under Section 19 of CITA when such income is specifically exempted from CIT by the Order.

Also, the FIRS rejected the Companies' application to regularise their tax positions under VAIDS in order to enjoy exemption from payment of interest and penalties on outstanding tax liabilities, on the basis that the Companies did not meet certain requirements of the Scheme.

The key issues for determination at the TAT were:

- Whether the provision of Section 19 of the CITA was properly applied by the FIRS in assessing the Companies to income tax; and
- Whether the Companies were entitled to the relief sought under the Executive Order on VAIDS.

The decision

After considering the arguments of both parties, the TAT held that Section 19 of CITA does not concern itself with the source or origin of the dividend paid. Rather, the section is applicable once the dividend declared and paid is higher than total profits.

The Tribunal also held that Executive Orders, in the nature of the Order, are inferior to CITA. Therefore, its provisions cannot override or supersede the provisions of CITA, including Section 19 of CITA.

Finally, the TAT ruled that the principal tax liabilities had become final and conclusive due to the Companies' failure to file an objection notice to the FIRS within the statutory timeline. However, the TAT held that the Companies were not liable to interest and penalty on the outstanding tax liabilities, as they had the right to seek amnesty under Paragraph 4(f) of the Executive Order on VAIDS, which the FIRS prematurely denied.

10. UAC of Nigeria Plc vs FIRS[11]

Background

Section 80(3) of the CITA describes dividend income received net of WHT as franked investment income which should not be charged to further tax as part of the profits of the recipient company. Accordingly, the WHT already suffered is treated as the final tax on the income.

However, Section 19 of CITA is an anti-avoidance provision that treats dividend paid by a company as its total profits in any YOA where it has no total profits or has total profits that are less than the amount of dividend paid.

Facts of the case

The FIRS issued notices of additional assessment for 2014 to 2016 YOAs to UAC of Nigeria Plc ("UAC" or "the Company") pursuant to Section 19 of CITA, in respect of the dividend distributed by the Company in 2013 to 2015 FYs. UAC objected to the assessments on the grounds that the dividend were paid from franked investment income which is not liable to any other tax, except the WHT of 10%. The FIRS refused to amend the assessments, as a result of which the Company appealed to the TAT.

The main issue for determination was whether a company whose total profit exceeds the dividend distributed in each of the relevant YOAs is liable to excess dividend tax on the dividend, pursuant to Section 19 of CITA, merely because its total profits include franked investment income in respect of which the tax has been paid at the rate of 10% specified in Section 80(2) of CITA.

The decision

The TAT aligned with its earlier ruling in the case between Actis and FIRS and ruled that the FIRS had duly observed the conditions precedent before the application of Section 19 of CITA to the dividends distributed by UAC for 2014 to 2016 YOAs, which exceeded the Company's total profits for those years.

The TAT further held that Section 19 of CITA is very clear and unambiguous as it relates to the main controversy between UAC and the FIRS. Accordingly, the TAT ordered the Company to liquidate the sums raised in the assessment notices served on it.

[11] Appeal No: TAT/LZ/CIT/025/2018

Petroleum Profits Tax

1. Nigeria Agip Oil Company Limited vs FIRS[12]

Background

The PPTA grants tax incentives to oil exploration and production companies for the utilization of associated gas. One of these incentives, which is provided for in Section 11(2)(d) of the PPTA, is for such companies' profits from their natural gas operations to be taxed under the provisions of CITA.

In addition, Section 60 of the PPTA exempts from any tax, income or dividend paid out of any profits which are taken into account under the provisions of the Act. However, Section 80 of CITA provides for the deduction of WHT on dividend paid by a company.

Facts of the case

Nigeria Agip Oil Company Limited ("the Company"), a company engaged in petroleum operations, assessed its gas income and profit to CIT at the rate of 30%, in line with Section 11 (2)(d) of the PPTA. The Company also relied on Section 60 of the PPTA, and did not deduct WHT on the dividend paid out to its shareholders from the profits from its gas operations.

In 2013, the FIRS assessed the Company to WHT on the dividend paid from its gas profits for 2006 to 2009 YOAs, in line with Section 80 of CITA. Agip objected to the assessment and subsequently filed an appeal at the TAT. However, the TAT ruled in favour of FIRS that the Company misconstrued Section 11(2)(d) of PPTA as merely creating an incentive of 30% tax rate on its gas income, when the provision means that CITA governs gas income. The TAT therefore upheld the validity of the WHT assessments.

Dissatisfied with the TAT's ruling, the Company filed an appeal at the FHC. The issues submitted for determination were:

- Whether the Tribunal's failure to consider material legal arguments submitted for its determination by the Company amounts to a breach of the Company's constitutional right to fair hearing, and thereby renders the judgment of the Tribunal thereon liable to be set aside.
- Whether having regard to the relevant provisions of the PPTA, the Tribunal was right to hold that the Company's gas income is subject solely to the tax regime under CITA thereby precluding the Company from taking benefit of the incentive conferred by Section 60 of the PPTA.
- Whether in view of the Company's objection to the FIRS' WHT assessment on it and the Company's subsequent appeal to the Tribunal, the Company is liable to interest and penalties.

The decision

After evaluating the issues for determination by both parties, the FHC dismissed the appeal on the basis that it lacked merit. The FHC also upheld the judgement of the TAT and ordered the Company to pay the additional WHT assessment for the 2006 to 2009 YOAs.

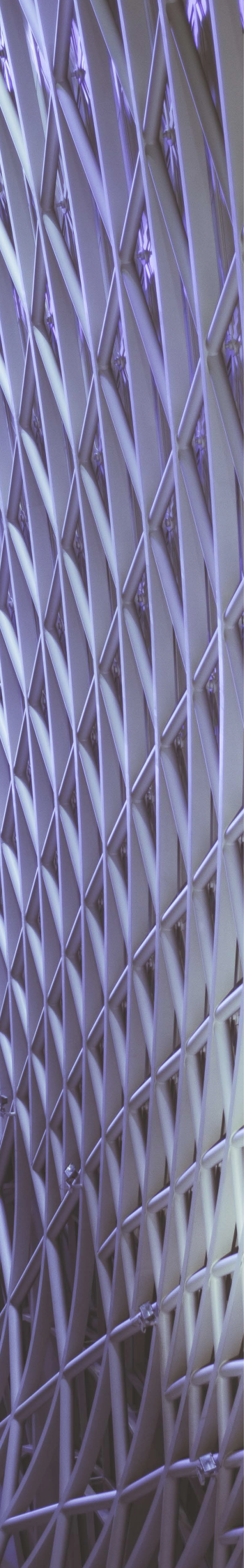
Personal Income Tax

1. Guaranty Trust Bank Plc vs ESBIR[13]

Background

Section 55 of PITA empowers an RTA to assess a taxable person to additional assessment in respect of areas of non-compliance relating to taxes covered under the PITA. The Section provides that the recovery of such tax should be made within six (6) years. However, where any form of fraud, willful default or neglect has been committed by or on behalf of the taxable person, the six-year limit may be set aside. In addition, Section 104 of PITA grants the RTA power to distrain for non-payment of tax.

[12] Suit No: FHC/L/4A/2015
[13] Appeal No: CA/EK/25/2017



Facts of the Case

The ESBIR applied to Ekiti State High Court ("ESHC" or "the State High Court") to obtain an ex-parte motion to enable it to obtain certain documents (such as branch general ledgers, customers' deposit liability accounts, audited accounts, etc.) from Guaranty Trust Bank ("GTB" or "the Bank"), to enable it to carry out an investigation in respect of the WHT on interest deducted by the Bank from 29 May 1999 to April 2016. The ESHC granted the motion to the ESIR.

Dissatisfied with the development, GTB sought redress at the COA. The major issues for determination were whether the ESHC was right when it entertained and granted the ex-parte application of ESIR; and whether or not it was right when the State High Court held that the ESBIR complied with the provisions of Sections 55 and 104 of the PITA.

Decision

The COA held that an ex-parte application under Section 104 of PITA, can be filed and entertained by the ESHC, where a taxable person fails to pay tax assessed, but only after the steps provided in Section 55 of PITA have been taken.

Therefore, the COA set aside the ruling of the ESHC on the basis that the Bank was not granted the opportunity provided under the PITA before the order for distrain was granted against it.

2. Honeywell Flour Mills Plc vs OGIRS[14]

Background

Under the PITA, the POR of a taxable individual is defined as "*a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest-house or other place at which he is temporarily lodging unless no more permanent place is available for his use on that day ….*" Based on this definition, the PIT due from an employee with a single POR is payable to the SBIR in the State in which the POR is located.

Facts of the case

The OGIRS issued a notice of additional assessment to Honeywell Flour Mills Plc ("Honeywell" or "the Company") in respect of PAYE tax and Development Levy for 2011 to 2016. This was based on the outcome of the enumeration exercise for certain employees of the Company resident in Ogun State, but whose taxes were not remitted to the OGIRS.

Honeywell objected to the assessments stating that the employees whose names were included in the demand notice are resident in Lagos State. However, the Company did not provide any proof to substantiate its claim. Upon receipt of the objection letter, the OGIRS issued a NORA. The Company subsequently filed a notice of appeal at the TAT seeking an order to set aside the demand notice.

The main issue for determination was whether Honeywell had shown that the Best of Judgement assessment issued by the OGIRS is invalid and null and void as a result of the fact that the employees referred to in the notice of assessment were either not resident in Ogun State, or are unidentified persons who the Company has no issues with.

The decision

The TAT ruled in favour of the OGIRS and dismissed the Company's appeal. Specifically, the Tribunal relied on the provisions of Paragraph 15(6) of the Fifth Schedule to the FIRSEA that provides that the onus of proving that an assessment complained of is excessive shall be on the Company. Consequently, the Tribunal upheld the additional assessments as the Company failed to discharge the evidential proof of burden on it to prove that none of its employees were resident in Ogun State between the period under review.

[14] Appeal No: TAT/IB/034/2018

3. Ikeyi & Arifayan vs LIRS[15]

Background

Section 81 of PITA requires an employer to make deductions from emoluments paid by him to an employee, and account to the RTA in the prescribed manner. In the event of failure by the employer to make or properly account for such deduction, Section 82 of PITA empowers the tax authority to recover the amount, together with a penalty of 10% per annum of the amount plus interest at the prevailing commercial rate.

Similarly, Section 32 of the FIRSEA prescribes a penalty at 10% of the amount of tax payable and interest at the prevailing minimum rediscount rate on taxes that are due but not paid within the prescribed periods.

The non-specification of the base on which interest charges should be computed in the above provisions, has resulted in a debate between taxpayers and some RTAs, especially the LIRS.

Facts of the case

The LIRS raised a demand notice on Ikeyi & Arifayan ("I&A" or "the Firm") for outstanding tax liabilities for 2013 tax year, inclusive of penalty and interest. After series of correspondence between the parties, the LIRS issued the Firm a NORA in respect of the alleged tax liability. Consequently, I&A filed a notice of appeal at the TAT seeking an order to set aside the demand notice.

While the issue was before the TAT, the parties entered into settlement discussions and agreed on the principal liability due to the LIRS. However, the parties could not resolve the dispute relating to the penalty and interest imposed on the principal liability, and thus filed an appeal with the TAT on the issue. The issues submitted for determination include whether the LIRS could impose penalty and interest on a tax liability that was not final and conclusive and whether interest should be levied on the principal tax liability or the net tax payable after the addition of 10% penalty to the principal tax amount.

The decision

The TAT held that interest and penalty were validly imposed as the Firm did not fully remit the tax liability as and when required by the PITA. Therefore, having accepted under-remittance of PAYE tax (consent judgement debt) due to the LIRS, the Firm was liable to interest and penalty on the established tax liability.

However, the TAT held that interest on additional tax assessment should be computed only on the principal tax liability before adding penalty to that principal liability, given that Section 40 of the FIRSEA and Section 82 of PITA are silent on the base on which interest should be computed.

4. Nexen Petroleum Nigeria Limited vs LIRS[16]

Background

The PRA is the regulatory framework for the administration of the pension scheme in Nigeria. Section 4(1) of the Act mandates every employer and employee to contribute a minimum of 10% and 8%, respectively, of the employee's monthly emoluments to the Contributory Pension Scheme ("the Scheme") established under the PRA. Section 4(3) of the PRA further allows employees to make VPCs to the Scheme, in addition to the mandatory pension contribution. The PRA requires employers to deduct and remit both the statutory contributions and VPCs to the credit of the employee's RSA monthly.

Section 10(1) of the PRA provides that contributions to the Scheme shall form part of tax-deductible expenses in the computation of income tax payable by an employer or employee under the relevant income tax law.

In addition, Section 20(1)(g), and Paragraphs 2 and 3 of the Fourth Schedule to the PITA guarantee tax deductions for contributions made by any employee to an approved pension scheme, in determining their PAYE tax liabilities. However, Section 10(4) of the PRA subjects the income earned on VPC to tax at the point of withdrawal, if the withdrawal is made within 5 years of the contribution.

Facts of the case

The LIRS imposed additional PAYE tax liabilities on Nexen Petroleum Nigeria Limited ("Nexen" or "the Company") following a tax audit exercise conducted on its financial records for 2013 and 2014 YOA. The liabilities arose partly because the LIRS disallowed deduction of the VPCs made by Nexen's employees on the ground that they withdrew the VPCs within 5 years of making the contributions. The Company objected to the demand notices for the additional assessments, but the LIRS issued a NORA. Dissatisfied with the LIRS' action, Nexen filed an appeal at the TAT with the following issues for determination:

- Whether the Company has fulfilled its statutory obligation of deducting and

[15] Appeal No: TAT/LZ/022/2018
[16] Appeal No: TAT/LZ/PIT/031/2018

remitting the correct PAYE tax for 2013 and 2014 YOAs, hence exculpating itself from any additional tax obligation arising from the VPCs made by its employees;

- Whether an agency relationship exists between the parties, thus making the Company merely an agent of the LIRS for the PAYE scheme and not a taxpayer for the purposes of any future actions of its employees on the earned income on their VPC or statutory deductions;
- Whether VPCs qualify as tax-deductible contributions and remain so in relation to the Company as an agent of the LIRS;
- Whether for a VPC remitted on behalf of employees to be treated as tax-exempt undersection 10(4) of the PRA, it must be shown that the VPC was not withdrawn by the employee affected for a period not less than 5 years

The decision

The TAT entered judgement in favour of the Company, that having fully satisfied its statutory obligation of deducting PAYE taxes and remitting same to the LIRS, the Company has no further obligation in that regard. The Company's legal obligation was to deduct and remit PAYE tax of its employees after deducting all the statutory reliefs in compliance with the relevant provisions, which Nexen has done in this case.

The TAT also held that as a statutory agent of the LIRS, Nexen has fulfilled all the statutory obligations imposed on it by the relevant laws. Therefore, the responsibility to recover any further tax on the income of the employees that is not in the custody or control of the Company automatically reverts to the LIRS.

In addition, the TAT ruled that the Company, having fulfilled its statutory obligations and paid over all the pension contributions (both the compulsory and voluntary), to the PFC specified by the PFA, is not under any further obligation to account for subsequent dealings by the employees, with the VPCs. Finally, the TAT held that VPCs are allowable deductions by the relevant provisions of the PRA and PITA for the purpose of determining the income tax liability of employees in a given employment.

5. Nigeria Breweries Plc vs ABIRS[17]

Background

Section 3 of PITA includes gratuities as an income chargeable to PAYE tax. However, Paragraph 18 of the Third Schedule to the Act exempts gratuity up to only ₦100,000 from tax, and thereby makes gratuity above ₦100,000 liable to PAYE tax.

Following amendments introduced by the Finance (Miscellaneous Taxation Provisions) (No. 3) Decree 1996 ("the 1996 Decree"), the term "gratuities" was deleted from the list of chargeable incomes under Section 3 of the PIT Decree. This was reflected in the PITA, LFN, 2004 and retained in the PITA as amended in 2011. Nonetheless, the provision of Paragraph 18 of the Third Schedule to the PITA remained unchanged, making the tax treatment of gratuities a subject of controversy.

Facts of the case

The ABIRS imposed additional PAYE tax liabilities, inclusive of interest and penalties, on Nigerian Breweries Plc ("NB Plc" or "the Company") following a tax audit conducted for the 2014 and 2015 tax years. The additional PAYE tax liabilities arose because the ABIRS subjected gratuities paid by the Company to its retired employees, to tax. NB Plc objected to the ABIRS' revised assessment, after which the ABIRS issued a NORA.

Dissatisfied with the ABIRS' decision, NB Plc filed an appeal at the TAT. The main issues for determination were whether the Company is liable to pay penalty and interest in the circumstances of the appeal; and whether gratuities are wholly tax-exempt under the PITA (as amended).

The decision

The TAT ruled in favour of NB Plc to the effect that penalty and interest are not applicable as the Company objected and appealed against the assessment within the statutory period. The TAT also ruled that gratuities are wholly tax-exempt under PITA, as income item has been deleted from Section 3 of PITA which is the charging section of the Act, and the provisions of a schedule to a statute cannot override the plain words in a section of the statute.

[17] Appeal No: TAT/SEZ/002/17

6. Polaris Bank Plc vs ABIRS[18]

Background

Section 55 of PITA empowers an RTA to assess a taxable person to additional assessment in respect of areas of non-compliance relating to taxes covered under the PITA. The Section provides that the recovery of such tax should be made within six (6) years. However, where any form of fraud, willful default or neglect has been committed by or on behalf of the taxable person, the six-year limit may be set aside.

Section 58 of PITA also requires an RTA to take certain steps upon receipt of a notice of objection from a taxable person, in order to decide whether or not to accept it; whilst Section 68 specifies the circumstances under which an assessment would be final and conclusive.

Facts of the case

The ABIRS conducted a tax audit on the records of Polaris Bank Plc ("Polaris" or "the Bank") for 2006 to 2011, and issued additional assessments amounting to N1.5 billion in respect of PAYE tax, Staff Development Levy, and Business Premises Levy. Polaris objected to the assessments but agreed to an undisputed PAYE tax liability of ₦39 million, which it later paid. The ABIRS subsequently demanded ₦254 million as part-payment of the alleged tax liability. This was purportedly based on the outcome of a tax reconciliation meeting with the Bank. However, Polaris refused to pay the revised assessment, as a result of which the ABIRS issued a further revised Demand Notice in which it reverted to its earlier assessment of ₦1.5 billion. The tax authority also failed to take cognizance of the undisputed tax liability payment made by the Bank.

Dissatisfied with the ABIRS' position, the Bank filed an appeal at the TAT. The major issues submitted for adjudication were:

- Whether the ABIRS can validly assess Polaris for taxes allegedly outstanding and statute-barred;
- Whether the ABIRS can impose Development and Business Premises Levies on the Bank;
- Whether a tax assessment can become final and conclusive before the resolution of the objection to the assessment by the taxpayer under the provisions of the PITA; and
- Whether the ABIRS can validly impose interest and penalties on the Bank.

The decision

The TAT ruled in favour of the Bank and held that the ABIRS did not follow the relevant provisions of PITA, particularly Section 58 of the Act, which requires the ABIRS to take certain steps upon receipt of a notice of objection from the Bank. The TAT also held that:

- The ABIRS does not have the statutory power to impose Development and Business Premises Levies on the Bank. The TAT noted that, although these levies were listed in the Taxes and Levies (Approved List for Collection) Act as part of those collectible by SGs, there is no primary tax legislation in Abia State providing for the imposition, assessment, collection, and accounting of the taxes or levies.
- Since the precise date in which the tax audit was conducted on the Bank could not be determined from the exhibits presented by the parties, the year in which ABIRS issued the tax assessments would be deemed to be the year in which the tax audit was conducted (i.e. 2017). Consequently, the tax assessments relating to 2006 to 2010 were statute-barred, as the years were deemed to have been audited by the ABIRS after the 6-year period stipulated in Section 55 of the PITA. Most importantly, the TAT held that simply describing an exercise as a "tax investigation" – presumably to circumvent the 6-year limitation period – would not be sufficient as the whole exercise and related documentation must support this.
- The assessments were not final and conclusive as the Bank objected to the assessments within 30 days in line with the provisions of PITA.
- Interest and penalties would not apply to the alleged tax liabilities to the extent that they were statute-barred.

7. Shell Nigeria Exploration and Production Company Limited vs LIRS[19]

Background

Paragraph 8 of the PAYE Regulations requires an employer to remit PAYE tax deducted on self-assessment basis from its employees, to the RTAs within 10 days of the end of any month. The law imposes similar obligation on taxable persons to deduct WHT on qualifying transactions and remit same to the RTAs.

RTAs are empowered to review taxpayers' records and assess them to additional tax

[18] Appeal No: TAT/SEZ/001/17
[19] Appeal No: TAT/LZ/PIT/084/2014

liabilities where shortfalls are observed. However, such additional assessments are subject to objection and appeal as provided in the relevant laws. Where the taxpayer objects to or appeals an assessment, the collection of the disputed tax should remain in abeyance until the objection or appeal is determined based on Section 68(2) of PITA and Paragraph 13(3) of the FIRSEA.

Although Sections 76 and 77 of the PITA provide for imposition of penalty and interest on outstanding tax liabilities, such power can only be validly exercised where the taxpayer fails to pay an undisputed liability within two months after the date of service of the assessment notice, or where the taxpayer fails to pay a revised liability within one month after the liability has been determined through an objection or appeal process. In this instance, the assessment is deemed to be final and conclusive.

Notwithstanding the above, RTAs have relied on Section 32(1) and Section 74 of the FIRSEA and the PITA, respectively to impose interest and penalties on assessments against which valid objections were filed.

Facts of the case

The LIRS issued demand notices to Shell Nigeria Exploration and Production Company ("SNEPCO" or "the Company") for outstanding PAYE tax, WHT and State Development Levy for 2009 to 2012 YOAs inclusive of penalty and interest. SNEPCO submitted a notice of objection to the demand notices, upon receipt of which the LIRS issued a NORA. Consequently, the Company filed a Notice of Appeal at the TAT seeking an order setting aside the demand notices.

The Company and the LIRS subsequently held reconciliation meetings and reached an agreement on the settlement of the principal portion of the alleged outstanding tax liabilities based on which the Tribunal entered a consent judgement. However, the parties could not resolve the dispute regarding the penalty and interest imposed on the additional PAYE and WHT liabilities, which was the crux of the appeal before the TAT.

Accordingly, the main issues for determination were:

- Whether or not the demand notice is final and conclusive;
- Whether or not interest and penalties are applicable to an assessment which is not final and conclusive; and
- Whether or not the Company is liable to pay penalties and interest on the unremitted PAYE and WHT arising from the assessments.

Decision

The TAT held that a demand notice could not become final and conclusive until and unless the grounds of the objection are fully resolved; and that penalties and interest would not apply to an assessment that is not final and conclusive.

However, the TAT ruled that the LIRS has a right in law to charge the Company both penalty and interest on the PAYE and WHT which were collected by the Company as an agent of the LIRS but were not remitted within the statutory timeline, especially given that the Company agreed to the principal tax liability.

Transaction Taxes

1. Allan Gray Investment Management Nigeria Limited vs FIRS[20]

Background

In Nigeria, VAT is chargeable on the supply of goods and services, other than those exempted under the VATA. Specifically, Part II of the First Schedule to the VATA exempts "All exported services…" from VAT.

Section 46 of the VATA defines exported service as "a service performed by a Nigerian resident or a Nigerian company to a person outside Nigeria".

Facts of the case

Allan Gray Investment Management Nigeria Allan Gray Investment Management Nigeria Limited ("Allan Gray" or "the Company") had executed a marketing and distribution agreement with its parent, Allan Gray International (Pty) Limited (AGI), an investment management company incorporated and resident in South Africa. The agreement required the Company to market and distribute AGI's African Equity Funds in Nigeria for a fee. Allan Gray, therefore, considered its services to AGI as exported services which should be exempted from VAT. However, in 2017, the FIRS conducted a routine desk review exercise for 2015 to 2017, and issued an assessment for non-remittance of VAT. The FIRS issued a NORA in response to Allan Gray's notice of objection, as a result of which the Company proceeded to the TAT for the adjudication of the dispute.

[20] Appeal No: TAT/LZ/VAT/019/2018

The main issue for determination was whether the services rendered by the Company to its non-resident parent company qualified as "exported services" under the VATA and were, therefore, exempted from VAT.

The decision

Having considered arguments of both parties, the TAT held that although AGI is not physically present in Nigeria, it is legally present through the appointment of the Company as an agent to market and distribute its services in Nigeria.

Further, the court stated that AGI is effectively carrying on business in Nigeria based on its appointment of Allan Gray as the sole and exclusive local representative of its African Funds in Nigeria. Hence, the services performed by Alan Gray in Nigeria on behalf of its related non-resident parent company do not qualify as exported services and are, therefore, liable to VAT in Nigeria.

2. Infinity Trust Mortgage Bank Plc vs FIRS[21]

Background

The VAT Act exempts services rendered by Community Banks, People's Banks and Mortgage Institutions from VAT. However, the VAT Act does not describe nor list the services meant to be carried out by Mortgage Institutions. The Mortgage Institutions Act 1989 and the CBN Guidelines for Primary Mortgage Institutions provide more clarity on services that qualify as Mortgage Business.

Facts of the case

The FIRS issued a VAT assessment notice to Infinity Trust Mortgage Bank Plc ("Infinity" or "the Company") in respect of the other income earned by the Company, which included management fees, investment income, rental income, other commissions and other incomes which in the FIRS' view did not relate to Mortgage Business. Infinity objected to this assessment on the grounds that the sources of the other income fall within the definition of services rendered by Mortgage Institutions which are VAT-exempt under the VATA. The Company, being dissatisfied with the FIRS' position, filed an appeal before the TAT seeking the annulment of the FIRS' assessment and demand notices.

The issue for determination was whether the Company is liable to charge VAT on services rendered by virtue of the clear provisions of Sections 2 and 3 of the VATA and Paragraph 2 of Part II of the First Schedule to the Act.

The decision

The Tribunal held that the Company is not liable to charge VAT on services rendered or remit VAT to the FIRS, based on the provisions of Sections 2 and 3 of the VATA, Paragraph 2 of Part II of the First Schedule to the Act, and the FIRS Information Circular No. 9503. This is, however,

[21] Appeal No: TAT/ABJ/APP/044/2018

subject to the Company's compliance with Section 26 of the Mortgage Institutions Act 1989 and the CBN's Guidelines for Primary Mortgage Institutions which state the scope of operations of Mortgage Institutions and their services.

Consequently, the TAT discharged the VAT assessment notices on the grounds that the FIRS was unable to prove that the services attracting the Company's other income are VATable.

Other Tax and Regulatory Matters

1. Transocean Support Services Nigeria Limited & 3 Ors. and NIMASA & Minister of Transport[22]

Background

Section 43(a) of the Cabotage Act ("the Act") imposes a 2% surcharge of the contract sum performed by any vessel engaged in coastal trade in Nigeria. Also, Section 2 of the Act defines vessels to include "any description of vessel, ship, boat, hovercraft or craft, including air cushion vehicles and dynamically supported craft, designed, used or capable of being used solely or partly for marine navigation and used for the carriage on, through or under water of persons or property with regard to method or lack of propulsion".

In April 2007, the Federal Ministry of Transportation ("the Ministry") issued "Guidelines on Implementation of the Cabotage Act, 2003" ("the Guidelines") wherein drilling rigs were included as eligible vessels liable to the 2% Cabotage levy. Following the Guidelines, NIMASA issued assessment notices to operators of drilling rigs in Nigeria. Some of the operators challenged the assessments and subsequently sought judicial reliefs.

Facts of the case

The common issues submitted by the operators of drilling rigs to the courts for determination are

- Whether "drilling rigs" fall within the definition of "vessel" under the Cabotage Act; whether "drilling operations" fall within the definition of "coastal trade" or "cabotage" under Section 2 of the Cabotage Act; and
- Whether the Minister of Transport ("the Minister") acted ultra vires when he classified drilling rigs as vessels in the Cabotage Guidelines and thus, liable to the 2% surcharge under the Act.

[22] Appeal No: CA/L/503/2016

The decision

The court held that drilling rigs are not used for marine navigation and are also not engaged in the transportation of goods or passengers from one point in Nigeria to another. Rigs are used to locate and extract water, oil, gas or any other product from the earth. Hence, they are not vessels used for coastal trade as envisaged under Section 2 of the Cabotage Act. In addition, it was held that a rig is not expressly listed in Section 22(5) of the Cabotage Act and it cannot be deemed to be a vessel eligible for registration under Section 22(1) of the Cabotage Act. Finally, the Minister, when issuing a guideline, cannot deviate from the provisions of the principal legislation and cannot expand or curtail the provisions of the substantive statute. Therefore, the inclusion of rigs as "foreign vessels" in the Guidelines is improper.

2. Stanbic IBTC Holdings Plc vs FRCN & NOTAP[23]

Background

Rule 4 of the FRCN regulation 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. Consequently, companies which failed to meet these requirements were unable to recognize the related expenses in their financial statements.

Facts of the Case

Stanbic IBTC Holdings Plc ("Stanbic IBTC" or "the Company") entered into an agreement to sell a locally developed/enhanced software to its majority shareholder, Standard Bank of South Africa (SBSA). It was agreed between both parties that Stanbic IBTC would license the same software from SBSA, after the sale had been completed. The terms of the sale and licensing transactions were contained in a Sale, Purchase and Assignment ("the First Agreement") signed in 2012.

Stanbic IBTC submitted the First Agreement to NOTAP for approval and registration. NOTAP did not approve the agreement on the basis that it does not have regulatory oversight over such agreements. NOTAP separately advised that Stanbic IBTC license the software to SBSA rather than sell it. Stanbic IBTC, however, disregarded NOTAP's advice and proceeded with the transaction as planned.

After NOTAP's initial response, Stanbic IBTC submitted a Software License Agreement ("the Second Agreement") to NOTAP for approval and registration. The Second Agreement was for the licensing of the same software from SBSA to Stanbic IBTC. NOTAP approved and registered the Second Agreement in 2013. The period covered by NOTAP's approval was 2012 to 2015 FYs. The FRCN reviewed Stanbic IBTC's financial records for 2013 and 2014 and directed that the company withdraw and re-issue its financial statements for the respective years. In addition, the FRCN levied Stanbic IBTC with a fine. The directive to withdraw and reissue its financial statements and pay a fine was premised on the facts that the Sale

[23]Appeal No: CA/L/208/2016

Purchase and Assignment Agreement (the First Agreement) was not approved and registered by NOTAP. Furthermore, FRCN took the view that the Software Licensing Agreement was illegal since the First Agreement was not approved by NOTAP.

Dissatisfied with the judgement, the Appellant appealed to the COA and submitted the following issues for consideration;

- Whether the NOTAP Act 1979 applies to agreements for the export of technology from Nigeria to a foreign country;
- Whether the Appellant's affiliate software licence agreement of 2 September 2013 was approved/registered by NOTAP;
- What is the effect of the failure to register an agreement that is registrable under the NOTAP Act 1979?"

The decision

The COA held that the title, establishment and functions assigned under Section 4 of the NOTAP Act leaves no doubt that the purpose for which NOTAP was established was to regulate and monitor the execution of contracts or agreements entered into by parties, for the importation into Nigeria and acquisition of foreign technology. The COA underscored this point by stating that there is no reference to exportation of technology in the NOTAP Act.

On issue two, the COA concluded that Stanbic obtained the relevant approval from NOTAP. This conclusion was reached by relying on the evidence of NOTAP approval presented by the Appellant. NOTAP did not refute the Appellant's claim.

The court also declared that failure to register an agreement with NOTAP does not render it illegal, null and void. Rather, the implication of non-registration of an agreement is a prohibition from making payments from Nigeria through any licensed bank in Nigeria to any person outside Nigeria. To render an agreement illegal, null and void because of a failure to register it with NOTAP would be stepping out of the limits of the provisions of the NOTAP Act.

3. ITF Governing Council & Director General ITF vs The Incorporated Trustees of Pan-Atlantic University Foundation[24]

Background

Section 6(1) of the ITF Amended Act, 2011 requires every employer having either 5 or more employees in its establishment or having less than 5 employees but with a turnover of ₦50 million and above per annum, to contribute one percent (1%) of its total annual payroll cost, into the industrial training Fund.

Facts of the Case

The ITF filed a law suit at the FHC to claim an alleged contribution of ₦450,000,000 due from the Incorporated Trustees Pan-Atlantic University Foundation ("the University" or "the Foundation") for the 2010 – 2015 FYs.

The University however argued that it is a non-profit institution registered as an incorporated trust under Part C of CAMA and stated that the object of the Foundation is not to make profit but amongst other things as stated in its constitution to provides facilities for learning, promote by research, the advancement of learning, etc. It also claimed that it does not engage in any commercial activity and hence does not fall within the purview of "employers" as defined in the ITF Act.

ITF however argued that the University is an employer of labour that pays its employees salaries/wages which is for livelihood, and provides educational services.

The decision

After considering the arguments of both parties, the FHC held that the University being a non-profit organization, cannot fall under the ambit of Section 16(1) of the ITF Act. The FHC further held that the ITF does not have a cause of action against the University.

[24] Suit No: FHC/L/CS/172/2017

4. The Registered Trustees of Hotel Owners and Managers Association of Lagos (RTHMAL) vs the Attorney-General of Lagos State and FIRS[25]

Background

Lagos State issued the Hotel Occupancy and Restaurant Consumption (HORC) Law and Regulations, as a basis for the imposition of consumption tax on hotels and restaurants. Meanwhile, the VAT Act, an Act of the National Assembly, also imposes tax on the consumption of goods and services in Nigeria. The overlap between both tax types has generated significant debate for years.

Facts of the Case

The primary issue for determination was whether the HORC Law and Regulations issued by Lagos State is legal and valid.

The decision

The FHC ruled that Lagos State has statutory authority to impose consumption tax on hotels and restaurants. Accordingly, the HORC Law and Regulations issued by Lagos State is valid and must be complied with by RTHMAL.

The FHC, relying on the provisions of the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria, stated that consumption tax neither falls under the Exclusive Legislative List nor the Concurrent Legislative List. Rather, it is a residual matter on which States are empowered to legislate. The FHC supported this point by referring to the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015, which includes "Hotel, Restaurant or Event Centre Consumption Tax" as one of the taxes that may be collected by SGs.

Lastly, the FHC issued an injunction restraining the FIRS from imposing VAT on goods and services consumed in hotels, restaurants and events centres in Lagos State. The injunction was issued on the premise that Lagos State is the appropriate authority, under the law, to assess such goods and services to consumption tax.

4.2 Updates on tax and regulatory issues

1. LIRS appoints payers of capital sum as collecting agents for capital gains tax

The LIRS issued a Public Notice on 6 January 2019, appointing employers and other payers of capital sums as "collecting agents" for deducting and remitting CGT due on capital payments made to employees. The Public Notice was issued pursuant to Sections 43 and 50 of the CGTA and PITA, respectively and became effective from 1 January 2019.

According to the LIRS, employers are required to withhold and remit CGT on "capital sums" paid to employees as "compensation for loss of employment". The Public Notice also requires appointed agents to file alongside their annual returns, a statement of the recipients of capital sum in a prescribed format and "nil" returns where applicable.

Please refer to our Tax Alert on this development.[26]

2. NITDA issues Nigeria Data Protection Regulation, 2019

NITDA issued the Nigeria Data Protection Regulation ("NDPR" or "the Regulation") on 25 January 2019 to provide guidelines on the collection and use of personal data by organizations who collect and/or process such data. The main objectives of the Regulation are to protect the rights of Nigerian citizens and residents with respect to data privacy, and foster safe conduct for transactions involving the exchange of personal data.

The NDPR requires all public and private organizations in Nigeria that control data of natural persons, to document and publish their Data Protection Policies in line with the requirements of the Regulation. Such organizations are also required to engage a Data Protection Compliance Organization to perform a Data Protection Audit within six months after the date of issuance of the Regulation, and file a summary of the audit report with NITDA where they meet the stipulated threshold.

Failure to comply with the Regulation attracts stiff sanctions, including a fine of up to ₦10 million or 2% of annual gross revenue of the preceding year, whichever is higher.

Please refer to our publication on the Regulation.[27]

[25] Suit No: FHC/L/CS/360/2018
[26] https://home.kpmg/ng/en/home/insights/2019/02/LIRS-Public-Notice-appointing-payers-of-capital-sum-as-collecting-agents-for-capital-gains-tax.html
[27] https://home.kpmg/ng/en/home/insights/2019/08/the-nigeria-data-protection-regulation.html

3. President signs Executive Order 007 on the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme

On 25 January 2019, President Muhammadu On 25 January 2019, President Muhammadu Buhari 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 from its commencement date, is a public-private partnership that will enable the FGN to leverage private sector capital and efficiency for the construction, refurbishment and maintenance of critical road infrastructure in key economic areas in Nigeria. A participant in the Scheme can be a company registered in Nigeria, a pool of companies or institutional investors.

The key benefits to participants of the Scheme are as follows:

a. The cost incurred in construction and refurbishment of the roads under the Scheme will be granted as a tax credit for future CIT liabilities until the full construction cost is utilized.

b. Participants will be granted a single non-taxable uplift on the project cost equivalent to the prevailing CBN MPR plus two (2) per cent of the project cost. The uplift will be included in the total tax credit available to each participant.

c. The amount of tax credit claimable in any YOA is limited to fifty (50) percent of the CIT payable, except in the case of tax credit relating to an eligible road in an economically disadvantaged area. In this case, there is no restriction on the claim of tax credit.

d. Participants are guaranteed 100 percent recovery of project cost as unutilized tax credits can be carried forward indefinitely until they are fully utilized.

Please refer to our publication on the Scheme.[28]

4. FG announces the commencement date for revised excise rates on tobacco and alcoholic beverages

The MOF ("the Minister"), Mrs. Zainab Shamsuna Ahmed, via a communiqué announced the commencement date for 2019 excise rates on alcoholic beverages and tobacco products as 4 June 2019.

The Minister equally issued clarification on the applicable excise rate on items included under Heading 22.06 of the ECOWAS Common External Tariff (2015 - 2019).

The affected items include:

- Other fermented beverages (e.g. cider, perry, mead),
- Mixtures of fermented beverages; and
- Mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included.

The excise rates on these items shall be at a specific rate of ₦0.30 per centilitre for 2018, and ₦0.35 per centilitre for 2019 and 2020. This is similar to the current excise regime for beer and stout products.

Please refer to our publication on the development.[29]

5. FIRS appoints banks as collecting agents for recovery of alleged tax liabilities

In February 2019, the FIRS issued Letters of Substitution, pursuant to Section 49 of the CITA and Section 31 of the FIRSEA, to banks in Nigeria ("the Substitution Banks" or "SBs"), appointing them as tax collecting agents for certain listed customers ("affected companies") maintaining bank accounts with such banks.

The FIRS, in the said Letters of Substitution, alleged that the affected companies had breached their tax obligations by failing to pay tax to the FIRS as and when due, and provided the SBs with an indication of a specific amount owed by each said company. The SBs were directed to set aside the indicated sums and pay such over to the FIRS in full or partial payment of the alleged tax debt. Furthermore, the FIRS demanded that the banks should not execute any mandates on those accounts without its prior approval.

The FIRS subsequently suspended the "freeze order" on 15 February 2019, for a 30-day period, to allow the affected large number of taxpayers with frozen bank accounts to regularize their tax positions and alleviate the inconveniences they were going through.

However, upon the expiration of the above "grace period", the FIRS notified the general public on 15 March 2019 of its intention to recommence imposition of liens on the bank accounts of delinquent taxpayers. The notice targeted taxpayers with a minimum annual turnover of

[28]https://home.kpmg/ng/en/home/insights/2019/01/Road-Infrastructure-Development-and-Refurbishment-Investment-Tax-Credit-Scheme.html
[29]https://home.kpmg/ng/en/home/insights/2019/02/FG-announces-commencement-date-for-revised-excise-rates-on-tobacco-and-alcoholic-beverages.html

₦100 million who had failed to register for taxes but had been collecting VAT and deducting WHT without remitting the taxes to the Government.

Please refer to our publication on the development.[30]

6. President signs the Federal Competition and Consumer Protection Act

The Federal Competition and Consumer Protection Act ("the Act") was enacted by the National Assembly in December 2018, and subsequently signed into law by President Muhammadu Buhari in January 2019.

The Act repealed the CPC Act, dissolved the Consumer Protection Council, and established the FCCPC in its stead. Unlike the defunct CPC, the FCCPC's oversight extends beyond just consumer protection issues, and covers all entities in Nigeria – whether they are engaged in commercial activities as bodies corporate, or as government agencies and bodies.

The Act gives the FCCPC oversight powers in every sector, and in the event of any conflict, the Commission would share concurrent oversight with the industry specific regulator. The Act also empowered the FCCPC to regulate mergers; and prohibits restrictive agreements, monopolies and abuse of a dominant position in any industry by any business undertaking.

Please refer to our Newsletter on the Act.[31]

7. FIRS issues Guidelines on MAP in Nigeria

On 21 February 2019, the FIRS issued the MAP Guidelines which is aimed at providing guidance and clarity on the procedures for accessing MAP as a means of dispute resolution, pursuant to the DTA between Nigeria and each of its Treaty Partners. The Guidelines specify that a taxpayer resident in Nigeria is eligible to apply for MAP, if it considers that the actions of either or both Nigeria and its Treaty Partner's tax authorities result or will result in a taxation for it that is not in accordance with the provisions of the Tax Treaty, irrespective of the remedies provided by Nigerian domestic law.

A MAP application can be made in respect of matters relating to TP, dual residence status, WHT, permanent establishment and characterization or classification of income, and it involves pre-filing consultation, submission of formal request, review of a MAP request and acceptance of a MAP request.

Please refer to our Tax Alert on the guidelines.[32]

8. President dissents to the NHF (Establishment) Bill

His Excellency, President Muhammadu Buhari declined assent in April 2019, to the NHF (Establishment) Bill, 2018. The Bill was passed by the National Assembly to repeal the NHF Act and provide additional sources of funding for the effective financing of housing projects in Nigeria. However, some of the provisions of the Bill were considered onerous by the stakeholders and they include:

- the revision of the basis of imposing NHF on employees from basic salary to monthly income which would adversely affect the cashflow of employees;
- contribution of 2.5% of ex-factory price by local manufacturers and importers of cement which would increase the cost of cement in the market and invariably, the cost of housing in Nigeria;
- the requirement for banks and insurance companies to contribute 10% of their profit before tax
- reduction of the interest rate on contributions from 4% to 2% which is significantly below the average interest rate paid by banks;
- exponential increase in the penalty for non-compliance which ranged from ₦5,000 to ₦50,000 in the NHF Act 2004, to between ₦10 million to ₦100 million. .

Please refer to our Newsletter on the Bill.[33]

9. FIRS issues Public Notice on Joint Tax Audit Exercise

In May 2019, the FIRS notified the general public of its plan to conduct joint tax audit exercises with SIRS of jurisdictions where taxpayers conduct their businesses, based on agreement with the JTB. The FIRS noted that the joint tax audit would improve the tax audit experience of taxpayers in Nigeria, reduce tax audit cycle and eliminate the incidence of multiple tax audits by various tax authorities.

Based on the Public Notice, taxpayers who operate in multiple tax jurisdictions can now elect to go through a joint tax audit exercise for taxes payable to the FG and the relevant SGs by applying to the JTB, the Office of the Executive

[30] https://home.kpmg/ng/en/home/insights/2019/02/appointment-of-banks-by-firs-as-collecting-agents-for-recovery-o.html
https://home.kpmg/ng/en/home/insights/2019/03/FIRS-suspends-directive-to-freeze-taxpayers-bank-accounts.html
https://home.kpmg/ng/en/home/insights/2019/04/FIRS-issues-Public-Notice-on-resumption-of-freeze-order-on-taxpayers%E2%80%99-bank-accounts.html
[31] https://home.kpmg/ng/en/home/insights/2019/03/federal-competition-and-consumer-protection-act.html
[32] https://assets.kpmg/content/dam/kpmg/xx/pdf/2019/04/tnf-nigeria-apr3-2019.pdf
[33] https://home.kpmg/ng/en/home/insights/2019/04/National-Housing-Fund-Establishment-Bill,-2018-Post-mortem.html

Chairman of FIRS, or the Office of the Chairman of the SIRS where the taxpayer's head office is domiciled

10. NIS announces electronic application for Visa on Arrival.

The NIS announced the migration of application for VOA to a web-based portal on Monday, 13 May 2019. According to the NIS, the initiative will improve migration and transparency in the visa application system in line with the FG's Ease of Doing Business Policy. Following the launch of the portal, applicants are required to complete the 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 refer to our Tax Alert on the development.[34]

11. RMAFC announces plans to audit DMBs over stamp duty collections

In May 2019, the RMAFC indicated its intention to commence forensic investigation on 22 DMBs over their stamp duty collections from 2000 to 2018.

According to RMAFC, the exercise became necessary in view of the perceived failure of DMBs to adequately charge and collect stamp duties on qualifying transactions, particularly the ₦50 stamp duties collectible by DMBs on qualifying bank transactions. The Commission, therefore, sought and obtained the approval of the FEC to probe stamp duty-related accruals to the Federation Account in line with its constitutional mandate.

Please refer to our publication on the subject.[35]

12. Integration of taxpayers into the nationwide TIN system

In a bid to leverage technology in facilitating tax administration in Nigeria, the JTB introduced the National TIN Registration System and Consolidated National Taxpayers' Database. The TIN system is a novel initiative of the JTB which presents a consolidated tax database for all taxpayers, and issues unique TIN to both individual and corporate companies. The system harmonises taxpayers' data and would enhance automatic exchange of information among relevant agencies and institutions in Nigeria.

13. LIRS issues Public Notice on TIN Registration

The LIRS issued a Public Notice on 4 June 2019 informing taxpayers of its intention to integrate the existing Taxpayers Identification Digit (PID) into the nationwide TIN system with the JTB. The LIRS intends to leverage the existing BVN database to achieve this objective. Consequently, access to LIRS electronic platform for all transactions, such as registration and creation of PID for new taxpayers, payment of taxes and validation of taxpayers' profile, will now compulsorily require BVN validation.

The Public Notice further requires every self-employed individual to provide their BVN to the LIRS for creation of their unique PID, while corporate organisations are to ensure that their employees provide their BVNs for processing of their TCCs.

Please refer to our Tax Alert on the development.[36]

14. FRCN revokes its "Rule 4"

On 5 August 2019, the FRCN announced the revocation of its "Rule 4" titled "Transactions requiring registration from statutory bodies such as the NOTAP". Prior to the revocation, the Rule stated 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 closely followed the decision of the COA in the case of Stanbic Holdings Plc vs FRCN and NOTAP where the COA held that failure to register an agreement with NOTAP does not render it illegal, null and void.

Please refer to our Tax Alert on the subject.[37]

15. FIRS issues Public Notice on deduction of WHT and VAT at source from compensation paid to agents, dealers, distributors and retailers by principal companies

On 14 August 2019, the FIRS issued a Public Notice directing taxpayers, particularly those in the FMCG sector, to deduct and remit WHT and VAT on compensation paid to their distributors, dealers and agents. The Public Notice defined compensation to include commission, rebates, etc., granted in any form, whether by way of cash, credit note or goods-in-trade.

[34] https://home.kpmg/ng/en/home/insights/2020/01/nigeria-immigration-service-commences-electronic-application-for.html
[35] https://home.kpmg/ng/en/home/insights/2019/05/rmafc-set-to-audit-deposit-money-banks-over-stamp-duty-collectio.html
[36] https://home.kpmg/ng/en/home/insights/2019/06/lirs-public-notice-on-tin-registration.html
[37] https://home.kpmg/ng/en/home/insights/2019/08/financial-reporting-council-of-nigeria-revokes--rule-4-.html

According to the FIRS, the issuance of the Public Notice is in furtherance of the directive contained in the CIT (Rates, etc. Deduction at Source (Withholding Tax) Regulations S.1 10 1997 (sic) and Paragraph 3.8 of its Information Circular No. 2006/02 of February 2006. The FIRS further indicated that it would soon commence monitoring taxpayers' compliance with the directive and solicited the cooperation of all stakeholders in this regard.

Please refer to our Newsletter on the Public Notice.[38]

16. NIS commences e-registration exercise for migrants

Following the flag-off of its e-registration exercise in Abuja in July 2019, the NIS announced the 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 ongoing reforms of the NIS aimed at addressing the security challenges currently facing the country. It is also aimed at creating a conducive environment for migrants while facilitating the integration of migration management in Nigeria.

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

Please refer to our Tax Alert on this development.[39]

17. DSBIR issues Public Notice on tax treatment of compensation for loss of employment

The DSBIR issued a Public Notice stipulating compliance requirements for employers who pay "compensation for loss of employment" to employees who reside in Delta State. According to the DSBIR, the Public Notice became necessary in view of perceived ambiguity in the provision of Paragraph 26 of the Third Schedule to the PITA, which exempts any compensation for loss of employment from tax under the PITA.

The DSBIR classifies compensation for loss of employment as either "terminal benefit" or "termination benefit". According to the DSBIR, terminal benefit refers to a retirement or resignation lump sum payment (e.g. pension and gratuity) and is usually based on pre-defined terms and satisfactory performance of employment duties. Termination benefits, on the other hand, is a redundancy lump sum payment accruable on premature termination of an employment or contract.

The DSBIR's view is that terminal benefit is revenue in nature and taxable under the PITA, while termination benefit is capital in nature and taxable under the CGTA. The DSBIR further states that compensation for loss of employment will only qualify for tax exemption under the PITA if the amount paid was not pre-agreed, and that any pre-agreed payment would be liable to CGT in line with Section 6(1)(a) of the CGT Act.

The Public Notice further provides that gratuities paid under the PRA or a scheme approved by the PENCOM are tax deductible; while those paid outside such schemes are only tax-deductible subject to a maximum of ₦100,000 and other restrictions imposed by Paragraph 18 of the Third Schedule to PITA.

The Public Notice also mandates every employer, who pays a capital sum as compensation of loss of employment, to deduct and remit the CGT due on such payments, to the DSBIR, within 7 days from the date the payment was made.

18. FIRS issues the Income Tax (Common Reporting Standards) Regulations 2019 and Income Tax (Common Reporting Standard) Implementation and Compliance Guidelines, 2019

The FIRS issued the Income Tax (Common Reporting Standard) Regulations, 2019, pursuant to its powers under Section 61 of the FIRS (Establishment) Act, 2007. The Regulations, which took effect from 1 July 2019, gives effect to the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (AEOI), and CRS & its Commentaries contained in the Standard for AEOI in Tax Matters . The Regulations requires covered financial institutions to file annual returns with respect to reportable accounts of individuals and companies.

Subsequent to the issuance of the Regulations, the FIRS published the Income Tax (Common Reporting Standard) Implementation and Compliance Guidelines, 2019 on 1 July 2019. The Guidelines was issued to give effect to Nigeria's commitment under the Inclusive Framework

[38] https://home.kpmg/ng/en/home/insights/2019/08/firs-public-notice-on-deduction-at-source-of-wht-and-vat-on-comp.html
[39] https://home.kpmg/ng/en/home/insights/2019/09/nigeria-immigration-service-commences-e-registration-exercise-fo.html

on BEPS and other Exchange of Information Instruments.

Please refer to our Newsletter on the development.[40]

19. President signs the NPTF Act

His Excellency, President Muhammadu Buhari, GCFR, signed the NPTF (Establishment) Act, 2019 into law on 24 June 2019. The NPTF was established to, among others, cater for the training and welfare needs of the personnel of the Nigeria Police Force. The NPTF was established to exist for a period of six years from the date of commencement of the Act and may be extended by the National Assembly.

The NPTF would be funded through grants, aids and assistance from Federal, State and Local Governments, international agencies, non-government organisations, etc. In addition, companies operating in Nigeria are required to contribute 0.005% of their annual net profit to the NPTF.

Please refer to our Tax Alert on the Act.[41]

20. House of Representatives investigates non-compliance with NSITF remittance

The Ad-Hoc Committee of the House of Representatives on the "Investigation of Non-remittance of Contributions into the NSITF" issued a Public Notice on Monday, 23 September 2019 inviting 1,124 organizations across the Federal, State and Local Governments, and the private sector to an investigative hearing. The hearing was held on 7 – 11 October 2019 to enable the Committee to ascertain the level of compliance by the affected organizations with their obligation to make contributions to the NSITF from 2010.

Please refer to our Tax Alert on the Public Notice.[42]

21. LIRS launches e-tax

On 25 September 2019, the LIRS issued a Public Notice informing the general public of the launch of its Enterprise Tax Administration System (eTax). According to the LIRS, eTax is a digital tax administration and payment solution which would enable payment of all types of taxes due to the Lagos State Government.

Some of the features of eTax include taxpayer registration with unique identification, instant issuance of treasury receipts, online annual returns filing for both individuals and corporate taxpayers, notification of taxpayer assessment, audit reports and liabilities, access to assessment details and objection status, ability to upload PAYE schedules, payments and print out treasury receipts, in-built tax calculator for estimated self-assessment etc.

22. FIRS introduces e-TP filing

The FIRS gave a demonstration of its electronic TP (e-TP) solution to stakeholders on Friday, 27 September 2019. When operational, the e-TP filing portal would enable taxpayers to complete and submit their TP Declaration and TP Disclosure forms, CbC notification forms and CbC reports.

Nevertheless, taxpayers will still have the option to file hard copies of their returns at the relevant tax offices.

Please refer to our Tax Alert on the development.[43]

23. FIRS establishes NRPTO

On 20 October 2019, the FIRS issued a Public Notice announcing its establishment of the NRPTO. According to the Public Notice, 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 CITA and PITA.

Consequently, all non-resident taxpayers (corporate and individuals) shall, effective 1 January 2020, be required to submit their tax returns, correspondence and enquiries to the NRPTO where their files shall be domiciled.

Please refer to our publication on the development.[44]

24. FG introduces the Finance Bill, 2019

On 8 October 2019, His Excellency, President Muhammadu Buhari presented the Finance Bill, 2019, along with the 2020 National Budget, to a joint session of the National Assembly. The Finance Bill, seeks to, among others, promote fiscal equity, reform domestic tax laws, support small businesses and raise revenues for the government.

[40] https://home.kpmg/ng/en/home/insights/2020/01/income-tax--common-reporting-standard--regulations-.html
[41] https://home.kpmg/ng/en/home/insights/2019/09/companies-operating-in-nigeria-are-to-contribute-0-005--of-their.html
[42] https://home.kpmg/ng/en/home/insights/2019/09/house-of-representatives-investigates-alleged-non-remittance-of-.html
[43] https://home.kpmg/ng/en/home/insights/2019/10/firs-to-introduce-e-tp-filing-in-2020-.html
[44] https://home.kpmg/ng/en/home/insights/2019/10/firs-establishes-non-resident-persons--tax-office.html

In addition, the Act introduces vast changes to the Nigerian fiscal laws such as CITA, VATA, PITA, CGTA, PPTA, SDA, and Custom and Excise Tariff Act.

Please refer to our publication on the Finance Act.[45]

25. FIRS issues information circular on the claim of tax treaty benefits in Nigeria

On 4 December 2019, the FIRS issued a Public Notice informing the public of the issuance of its Information Circular No.: 2019/03 on claim of tax treaty benefits in Nigeria ("the Circular"). The Circular was issued pursuant to Sections 45 and 46 of the CITA, Sections 38 and 39 of PITA, Sections 61 and 62 of PPTA and Section 41 of the CGTA.

The Circular is aimed at providing guidance and clarity on the requirements and process for accessing and computing various tax treaty benefits available to residents and non-residents deriving income from Nigeria and its treaty partners. According to the Circular, Nigeria currently has effective DTAs with fourteen countries.

The issuance of the Circular is a welcome development as it provides the much-needed clarity on the procedure to access tax reliefs and concessions as provided in the tax laws and under the various DTAs between Nigeria and its treaty partners.

Please refer to our Tax Alert on the Circular.[46]

26. President signs the amendment of DOIBPSC Act

His Excellency, President Muhammadu Buhari signed the DOIBPSC (Amendment) Act, 2019 into law on 4 November 2019. The Act introduced a combined production and price-based royalty system for deep offshore and inland basin fields, thereby replacing the erstwhile production-based royalty system. Further, the Act provides for a review of the terms of PSCs every eight years, a departure from the prior requirement to review the terms of the PSCs after fifteen years from the date of commencement and every five years thereafter. The Amendment Act is aimed at maximizing government take from PSCs in the face of changing prices of oil and gas. In the 2019 budget, the Federal Government estimated ₦320 billion as revenue from the revision of PSC terms.

Please refer to our Newsletter on the Act.[47]

27. Passage of the 2020 National Budget

On 17 December 2019, His Excellency, President Muhammadu Buhari, GCFR, signed the 2020 Appropriation Bill into law, following its passage by the National Assembly on 5 December 2019. The revenue and expenditure budgets are ₦8.31 trillion and ₦10.59 trillion, respectively, resulting in ₦2.28 trillion fiscal deficit.

The prompt passage of the budget effectively returned Nigeria to the January to December budget cycle.

Please refer to our Newsletter on the Budget [48]

28. EQ administration in the Nigerian oil and gas industry

The Federal Ministry of Interior in collaboration with the NCDMB issued joint resolutions for the administration of 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", which requires any oil and gas company that intends to engage expatriates on Temporary Work Permit to obtain NCDMB's prior recommendation.

Please refer to our Tax Alert on the development.[49]

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[45] https://home.kpmg/ng/en/home/insights/2020/01/finance-act--2020.html
[46] https://home.kpmg/ng/en/home/insights/2019/12/FIRS%20issues%20Information%20Circular%20on%20the%20claim%20of%20Tax%20Treaty%20Benefits%20in%20Nigeria.html
[47] https://home.kpmg/ng/en/home/insights/2019/12/deep-offshore-and-inland-basin-psc--amendment--act--2019.html
[48] https://home.kpmg/ng/en/home/insights/2020/02/national-budget-2020.html
[49] https://home.kpmg/ng/en/home/insights/2019/12/NCDMB%20and%20FMI%20issue%20joint%20resolutions%20on%20Expatriate%20Quota%20administration%20in%20the%20Nigerian%20oil%20and%20gas%20industry.html

5.0
Featured Articles

A. External articles

1. 2019 Finance Bill and the Clarity Paradox

by Sebastine Odimma

Sebastine Odimma
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Why do most projects with good intentions end up not meeting the desired objectives? One important explanation is what can be termed "the clarity paradox" which can be summed up as follows: when we have clarity of purpose, it leads to success, success leads to more options and opportunities, increased options and opportunities lead to a diffused effort and the diffused efforts will undermine the efforts that led to success in the first place.

Nigerian tax professionals have long clamoured for updates to our tax laws, arguing that they are not fit for purpose for current-day business transactions. Some of the provisions in the tax laws are either outdated or have outlived their intended usefulness. Experts have also suggested that the lack of regular updates to the tax laws is one of the reasons for increased tax avoidance schemes in Nigeria. Thus, the announcement that a Finance Bill would henceforth accompany the Appropriation Bill was a welcome development. However, squeezing more than fifty changes through a Finance Bill in a year will not provide enough time to thoroughly evaluate the impact of the bill and its capacity to meet the desired objectives.

The 2019 Finance Bill was presented alongside the 2020 Appropriation Bill to a joint session of the National Assembly in October 2019 with sweeping changes to relevant tax laws. This article reviews some of the unintended consequences of select changes proposed in the Finance Bill presented to the joint session of the National Assembly.[50]

Please note that any changes included in the Bill by the respective houses before presenting to the President for assent has not been considered in this write-up.

VAT registration threshold

The Bill 'as is' includes a registration threshold of an annual turnover of NGN25 million and above. Specifically, section 15(1) of the VAT Act is amended as follows: "*a taxable person who in the course of a business has made or expects to make taxable supplies, the value of which, either singularly or cumulatively in any calendar year is NGN25 million or more, shall render to the Service, on or before the 21st day of every month in which the threshold is achieved and on or before the same day in successive*

[50] The author is aware that a harmonized version of the Bill was presented to the President for assent in December 2019, and the Bill was signed into law on 13 January 2020.

months thereafter, a return of the input VAT collected by him in the preceding month in such a manner as the Service may from time to time prescribe."

The above proposal is in line with international best practice. However, there are some issues that should be considered in the above.

1. When the threshold is achieved, what will constitute the taxable supplies rendered in the month the threshold is achieved? Will this be the entire value of the threshold or just the taxable supplies made in the month the threshold was achieved? There is lack of clarity on this and an ambitious taxman can stretch this provision as he sees fit.
2. If a taxable person is below the threshold, VAT will not be included in the supplies made as this only applies when the threshold is achieved. Thus, the correct wording of the provision presupposes that VAT would have been collected in the month the threshold is made. It then implies that the person making taxable supplies will have to account for VAT that was not collected as it was never charged.
3. There is also a potential for this to be abused by the taxpayers. A taxpayer that wants to perpetually remain below the threshold may set up several companies to ensure it remains below the threshold. It may be necessary to amend the provision to extend the threshold to related companies under the same control in Nigeria.
4. Another potential issue with the above amendment is that a small company that incurs input VAT will not be able to recover the VAT charged to it and this will lead to increase in the cost of doing business that the amendment was supposed to address. To circumvent this, most jurisdictions include a provision for voluntary registration. This ensures that small companies that source inputs from large suppliers who charge them VAT will have the option to register for VAT even if they are yet to meet the threshold. Alternatively, companies below the threshold could be granted exemption from VAT.

There is also a need to include transitional provisions on the VAT registration. Given that Nigeria came to the party late, existing small businesses are already registered for VAT. It will be efficient to have transitional arrangements to prevent avoidable cost to the small businesses.

Non-resident companies to include VAT on its invoices

The Bill 'as is' proposes to amend section 10 of the VAT Act to include self-accounting of VAT by Nigerian residents when they receive services from a foreign company. The amendment, which is consistent with recent tax judgments, requires non-resident companies to include VAT on their invoices to Nigerian companies and where they fail to do so, the Nigerian recipient of the service is required to self-account for the tax. This provision may present some unintended consequences. For instance, a company that is not registered for VAT cannot include VAT on its invoices. Although, the recipient is obliged to report the VAT whether or not it was included on the invoice.

However, there is no clarity on whether the non-resident company will still be required to render VAT returns. Under the current VAT Act, a non-resident company doing business in Nigeria is required to submit monthly returns even though companies in Nigeria normally withhold the VAT on such companies' invoices. This may lead to a situation where the FIRS seeks to collect penalties for non-rendering of VAT returns by the foreign service provider.

Introduction of SEP

The introduction of SEP as additional criteria for determination of nexus is a welcome development and is in line with some of the proposals of the OECD for the taxation of digital services. *However, the second part of the amendments, (new section 13f) provides thus… 'if the trade or business comprises the furnishing of technical, management, consultancy or professional fees outside of Nigeria to a person in resident in Nigeria to the extent that the company has significant economic presence and profit can be attributable to such activity'.*

Previously, services performed outside Nigeria for a person in Nigeria were not considered taxable in Nigeria where it can be shown that no fixed base was created in Nigeria. A lot of companies, especially those in the oil and gas sector, normally adopt the split contract option to optimize their tax affairs and ensure that the offshore company providing the service is duly compensated without the additional

cost of 'net of tax' clauses. The additional provision 'as is' will impact accounting firms and other professional services that provide advisory services to companies in Nigeria as they will suddenly fall within the Nigerian tax net while remaining taxable in their home country. This will of course depend on the definition of SEP, which the Bill proposes to be determined by the Minister of Finance. This will impact affected companies' cost of doing business in Nigeria.

Conclusion

The changes proposed in the Finance Bill are far-reaching and targeted at increasing government revenue while promoting ease of doing business in Nigeria. However, for this to be achieved, transitional provisions and/or regulations will be required to ensure clarity on some of the changes. This is more so important given that it will take a minimum of three years for some of the ambiguities to be tested during an audit, and possibly litigated. Thus, the FIRS and relevant stakeholders should work together to identify pain points in the administration of the Bill to ensure the objectives of the changes are achieved. Further, it is important to ensure that FIRS personnel are properly trained on the changes and their intended objectives, to ensure that the focus and objectives of the legislature and administrators are aligned.

Going forward, we hope that the passage of Finance Bills will not be a one-off process, but that relevant changes will be made annually to make Nigerian tax laws dynamic and consistent with the best global tax practices.

2. Vestiges: Do We Still Need the ITF?

by Afolabi Elebiju, Principal, LeLaw Barristers & Solicitors[51]

Afolabi Elebiju
Principal, LeLaw Barristers & Solicitors

The ITF Act, Cap. I9, LFN, 2004 (ITFA), originally enacted in 1971, established the ITF to cumulate sums provided by the FG and contributions by employers with the sole objective of "promoting and encouraging the acquisition of skills in industry or commerce with a view to generating a pool of indigenously trained manpower sufficient to meet the needs of the economy."[52] In June 2011, the ITF (Amendment) Act (ITFAM) was enacted to amend the ITFA, to further amplify its implementation.

Whilst it has been argued that the ITFAM rather drives the ITFA away from its sole objective, the more pertinent question is: does Nigeria actually still need the ITF? This article will attempt to show that the ITF is an anachronism and a regulatory overhang, as its underlying objective could still be achieved without the institution. We will preface our discussion with an overview of the ITF regime.

Overview of the ITF Regulatory Regime

The ITF regime mandates employers meeting prescribed thresholds (of turnover and employee numbers)[53] to contribute one percent (1%) of their annual payroll cost to the ITF, not later than 1st April of the following year.[54] "Contribution" includes "underpayment and any interest or penalty payable or for late payment, as the case maybe" (section 14 ITFAM); whilst penalty for non- or late payment is 5% monthly interest on the unpaid amount(s). Two key requirements merit special mention: training prescriptions and refund of contribution.

A. Training

All employers are mandated to comply with set guidelines for systematic and effective training of their employees.[55] They include, having:

a. *Training Policy (TP):* The TP should specify various types of training including orientation and induction of new employers. A written TP approved by the management should be made known to the employees either by means of induction courses, hand-outs, manuals and

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[51] The author acknowledges the input of his **LeLaw** colleagues, particularly Chuks Okoriekwe to this article, but is wholly responsible for the views expressed herein.

[52] See **section 2 ITFA,** as amended by **section 3 ITFAM.**

[53] **Sections 16 ITF** and **ITFAM** define 'employer' as "any person engaged in industry or commerce with whom an employee entered into a contract of service or apprenticeship and who is responsible for the payment of wages or remuneration to the employee." Prior to June 2011, employers having at least 25 employees were subject to ITFA; subsequently, the requirement became at least 5 employees or a minimum turnover of N50 million. See sections **Section 6(1) ITFA** and **6 ITFAM**. Note that **section 16 ITFAM** defines employees as "all persons whether or not they are Nigerians, employed in any establishment in return for salary, wages or other consideration, and whether employed full time or part time, and includes temporary employees who work for periods not less than thirty days." Consultants, being "independent contractors", and excluded from "payroll", would not be regarded as employees.

[54] "Payroll" has been defined by **section 16 ITFAM** as "the sum total of **all** basic pay allowances **and other entitlements payable within and outside Nigeria** to any employee in an establishment, public or private." ITF Form 7A (Employer Registration and Payment of Training Contribution Form) clarifies the coverage of the various types of entitlements. A pertinent (and maybe moot) question is: **should training costs be included as part of payroll cost for the purposes of computing the 1% contribution?** Excluding training as part of "payroll cost" reduces the base for making the 1% contribution and vice versa.

[55] See Section 8 ITFAM. Employer's refusal to train indigenous staff shall be seen as a breach of this provision and such an employer shall be guilty and liable on conviction.

bulletins and submitted to the Fund at the beginning of each year.

b. *Training Plan:* An Annual Training Plan (ATP) should be submitted to ITF and approved before the beginning of the training year. Any amendments to the approved ATP must be communicated to ITF not later than one month after such amendments or changes. Adhoc training programmes must be communicated two or four weeks prior to local and foreign training programmes, respectively.[56]

c. *Training Records:* Employers are expected to keep and update all necessary records relevant to the training.

B. Obtaining Refunds from the ITF

Every employer is entitled to up to 50% refund of their contributions based on their approved ATP by the ITF,[57] upon the ITF being satisfied that the employer's training is adequate and meets the ITF's onerous reimbursement criteria.

Is there still a need for ITF in Nigeria?

It goes without saying that human capital is critical to national development, and this truism is real across all geographies. However, whilst the objective behind the ITF is a noble one, this objective can be achieved even more efficiently without the ITF for the following reasons:

- ***The ITF represents an 'unnecessary' incentive:*** Employers – as often reflected by their long-term business strategy – already have sufficient motivation to develop their staff. They realise that people are their most important factor of production, and that the employer's long-term sustainable future (anchored on growth, profitability and competitiveness), cannot be achieved without people. Therefore, they will take a disciplined approach to HCD because it makes unassailable business sense to do so;
- ***ITF contribution is an unnecessary addition to the list of taxes in Nigeria:*** The ITF contribution swells the number of payments to government by Nigerian businesses. In a sense, it smacks of double taxation because the typical employer would have already or will incur employee training costs, whilst still being required to contribute 1% of its annual payroll cost to government. Whilst it may be argued that the prospect of 50% refund enables employers to claw back some of their ITF contributions, the considerable administrative energy and resources required to process the refund could, more often than not, have been better focused on the employer's core business;
- ***ITFA's requirements detract from reform efforts to improve ease of doing business:*** The requirement for ITF compliance contributes its quota to inhibiting Nigeria's investment attractiveness. In other words, Nigerian tax system would be much simpler without the ITF; similarly Nigeria's unimpressive ranking under the Paying Taxes indicator in the annual global tax comparative study[58], will likely be better without ITF. As highlighted above, the ITF compliance requirements could be significant, both for small and big businesses. The latter would have more people to cover in their reports to the ITF whilst the former, even if they have few employees, may be burdened with ITF compliance at the expense of existential business issues. Alternatively, a small-sized employer is likely to take a pragmatic view and prioritise existential business issues over ITF compliance. The recently signed Finance Act, 2019 has eased tax burden on SMEs, for example, by lowering corporate income tax rate to 20% for businesses with turnover between ₦25 million and ₦100 million, and relieving businesses with less than ₦25 million turnover from CIT payment and VAT filing obligations. However, the ITFAM sought to bring smaller employers (having at least 5 employees) into the ITF compliance net: it imposed compliance obligations on small enterprises that in other climes, ought to be beneficiaries of government grants;
- ***The ITF is more of a clog in the wheel and unsuited regulator of specialist training:*** It is preposterous that in this day and age, employers would be required to provide prior notifications of training programmes to ITF before they could qualify for refunds or the quantum of refunds that ITF would grant to them. It is foreseeable that business exigencies may necessitate sending staff for training at short notice, including sometimes when the employer becomes aware of a training programme close to the training date. It is also a notorious fact that the wheels of public sector service delivery moves slowly in Nigeria. If as contemplated by ITFAM, all employers having at least 5 employees in Nigeria were to be ITF-compliant, will the ITF be able to discharge its regulatory functions effectively? Even if it were to leverage technology, it would probably need to massively increase its personnel numbers – to solve an arguably unnecessary problem. Finally, given the specialised knowledge, cutting edge expertise and fast-moving (obsolescence) trends in many sectors, what capacity does ITF have to evaluate the adequacy or otherwise of their training programmes? In the circumstances, the ITF as a regulator is most

[56] The TP of every employer must clearly provide the employer's areas of emphasis for any particular period. The purpose of a TP is to define strategies, methods and processes that will be utilised to achieve the training provided, objectives of employee training, types of training and faculties, the methods of implementation and the duration of training.

[57] Pursuant to section 7 ITFA, albeit ITFAM has now reduced the maximum refund amount to 50% from 60%. In practice, employers may not get the maximum refund threshold if the ITF is not satisfied that they have covered all the areas of training needs. It is not just based on the amount spent on training.

[58] Doing Business report by World Bank Group.

probably lagging behind its regulated entities especially in specialist sectors.

- ***ITF presumes that on-the-job training is not a significant contributor to HCD:*** The requirements for claiming refund of employers' contribution from the ITF does not give the necessary recognition to on-the-job training. Rather, it emphasises formal, almost classroom-type (offsite and onsite) training, by stipulating evidence of training and receipts etc. as part of documentation requirements. Meanwhile, on-the-job training vide observance and practice is perhaps the most effective mode of training in some sectors. ITF's one-size-fits-all prescriptions in this regard are therefore unrealistic;
- ***'Lean' government considerations:*** Globally, lean government, which focuses on creating a business-friendly environment for regulated enterprises to enable them to make their optimal contribution to the economy, is becoming the more popular regulatory model. In recent history, the FG has at one time sought to streamline its ministries, departments and agencies. Maybe the functions of the ITF could be performed by agencies such as the National Directorate of Employment (NDE)? Can ITF not be rationalised/merged with agencies under the Ministry of Labour and Productivity, such as NDE and/or the Small and Medium Enterprise Development Agency of Nigeria (SMEDAN)?;
- ***Government should focus on developing public sector workers:*** It creates a moral burden for government that has not made an excellent showing in the training of its own public sector workers, to seek to regulate the training of private sector workers. If the FG were to focus on HCD in the public sector, it would have set a great example for private sector players (who have enough business rationale to develop their staff) to follow;
- ***Government can fund ITF's interventions from corporate and other tax sources:*** Doubtless, the government may want to continue ITF's interventions like the Students Industrial Work Experience Scheme in line with its Social Investment Programme (SIP). However, that can be done by budgetary allocations, which always reflects government's priorities. Instructively, no employer is directly mandated to fund the FG's SIP initiatives like N-Power, social transfers and school meals – these are funded from the budget. It is also trite that businesses that are not overly burdened with regulation are likely to be more profitable and therefore pay more taxes from which government would fund its budgets;
- ***Many employers are already helping with HCD beyond their organisations:*** Most of the major employers already fund student scholarship and bursary programmes, 'adopt' some public schools, provide other episodic significant assistance, undertake or sponsor apprenticeship schemes, offer internship and National Youth Service Corps members work experience amongst other corporate social responsibility initiatives that they do not benefit from directly. Some of the staff they invest heavily in training and developing leave to work for other employers (including sometimes the public sector), or to start their own ventures. All these are examples of laudable contributions by employers. Not the least is that all corporate employers also pay 2% of their assessable profits to the coffers of the Tertiary Education Trust Fund, via the FIRS. Rather than granting tax deduction for ITF contributions, would it not be more efficient to scrap same or at least totally exempt employers from contributing, if they can show in the previous year that they fully trained their employees?;
- ***Refund is an acknowledgement that ITF contributions is unnecessary/inefficient:*** In 2017, NSITF reimbursed ₦6.4 billion to ₦430 companies.[59] As mentioned earlier, given the strong imperatives for employers to develop their staff, provision for refund in the ITFA smacks of buyer's remorse – that the contributions should not have been mandated in the first place;
- ***Nigeria has liberalised its investment environment:*** Further reinforcing the thesis that the ITF is an anachronism is the fact that Nigeria has been liberalising its investment environment since the mid-1980s. The time of "command and control", paternalistic thinking driven economy, typified by strict foreign exchange controls, restriction or curtailing of foreign investments into certain sectors, excessive regulatory burden, etc. is gone. ITF is part of that obsolete architecture and ought to be either removed or at least revamped, given our current investment promotion stance.

Conclusion

Given government's recognition of the need to promote a free market economy as a fulcrum for accelerating Nigeria's development – where growth and expansion would largely be driven by innovation and competition – the ITF idea has become outdated. Today's global reality is that private sector capacity development initiatives, rather than public sector-led variants, are more optimal and impactful and should therefore be promoted. Since employers with the more value-adding staff development plans will attract, motivate and retain the best talent, and consequently enjoy competitive market advantage, there is no need for any 'extraneous' regulatory interventions a la ITF in the business landscape.

It is respectfully submitted that the ITF has outlived its usefulness and should therefore be scrapped, or at the very least restructured, to make the counter-arguments against its utility (as discussed above) less forceful. Government should focus more on creating the enabling environment for exceptional operational performance by employers. This will in turn lead to increased tax contributions to the public fisc, for government spending accordingly, on determined priority areas.

[59] See Friday Olokor, 'ITF Spends N6.4bn on 430 Companies', The Punch, 8 March 2018: <https://www.pressreader.com/nigeria/the-punch/20180309/281887298820309>.

3. Vodacom v FIRS: What the case did not decide

by Nduka Ikeyi & Abdullateef Abdul, Ikeyi Shittu & Co.)

Nduka Ikeyi

Introduction

Vodacom v FIRS [60]("Vodacom") decided as a general principle that a service provided by a non-resident entity and consumed by a person in Nigeria constitutes a vatable transaction under the VATA;[61] and that the consumer of the service in Nigeria is liable to pay VAT on the transaction whether or not the non-resident supplier of the service invoiced the VAT to the Nigerian consumer. The case also decided as a specific principle that the "supply of satellite bandwidth capacities" by a non-resident entity to a Nigerian entity for the use of its telecommunications business, through its transponder located in Nigeria, is a service provided in Nigeria.

In this article, it is contended that although the general principle established in Vodacom is unassailable, the application of the specific principle should depend on the peculiar facts of each transaction, especially the nature of the agreement under

Facts of Vodacom

AA company based in the Netherlands called New Skies Satellites ("NSS") entered into a contract with Vodacom Business Nig. Ltd (the "appellant" or "Vodacom") for the supply of satellite bandwidth capacities for the appellant's use in Nigeria (the "transaction"). Apart from the provision that "the supplier (NSS) contracted its VAT liability to the Appellant", the judgment did not disclose any other key terms of the contract. NSS did not invoice Vodacom for VAT; and Vodacom therefore did not remit VAT to the FIRS (the "respondent"). The FIRS subsequently assessed the transaction to VAT and raised a notice of additional tax assessment on the appellant. When the appellant's objection to the assessment was rejected by the respondent, the appellant filed an appeal at the TAT. The TAT dismissed the appeal; and the appellant's further appeals to the FHC and the COA were also dismissed.

The appeal

The appeal was fought on the appellant's contentions, two of which are that: (a) the satellite bandwidth capacity were supplied from outside Nigeria, and as such was not chargeable to VAT in Nigeria; and (b) its obligation to pay VAT was contingent upon NSS invoicing it therefor: since no VAT invoice was issued on it by NSS, it had no obligation to pay VAT to the respondent. The appellant relied largely on ss. 10 and 46 of the VATA in arguing these points.

The respondent on the other hand argued that: (a) by ss. 2, 3 and 46 of the VATA,[63] any goods and services not listed in the First Schedule to the Act was liable to VAT – and that supply of

[61] (2019) LPELR- 47865(CA).
[61] Cap V1 LFN, 2004.
[63] VAT Act, s. 2 charges tax on the supply of all taxable goods and services other than goods and services exempted by s. 3 thereof.

bandwidth capacities was not listed in that schedule; and (b) s. 10 of the VAT Act does not have the effect urged upon the court by the appellant: the appellant was liable to pay VAT whether or not NSS invoiced it for the tax.

In our opinion, at the foundation of the COA's decision is the difference between (a) the imposition of a tax, and (b) the administration or collection of a tax,[64] elements of which were conflated in the appellant's arguments starting from the TAT to the COA.[65] And having relied on s. 2 of the VATA to determine that VAT was imposed on the appellant, the determination of other questions that arose in the appeal (which bothered on the mechanism for the collection of the tax) naturally followed the appellant's obligation to pay that tax. Indeed, the determination of the question of whether the charge to VAT was imposed on the appellant did not require any analysis of s. 10 of the VAT, since s. 10 of the VATA is concerned with the mechanism for collection of VAT.[66] This is because it is the charging clause in a taxing statute (which s. 2 is) that determines liability to pay tax.[67] The relevant questions should therefore have been (i) whether the appellant is a taxable person under the VATA,[68] and (ii) whether the supply of satellite bandwidth capacity is the supply of a good or service.

The fact that the appellant is a Nigerian company, which carries on business in Nigeria, resolves question (i) in the affirmative.[69] To argue otherwise will require a special provision in the VATA subjecting similar companies to VAT in respect of transactions that have no cross-border element. And whilst we agree with the general conclusions reached by the COA in regard to question (ii), a different set of facts may require a different analysis, and may perhaps yield a different conclusion.

What Vodacom did not consider or decide

All the courts that considered the appellant's appeal proceeded on the basis that the transaction from which the tax dispute arose was a supply of service transaction. Indeed, the court of appeal framed the issue thus: "The pertinent question is: whether given the nature of service provided by the satellite network bandwidth capacities, it is a Vatable transaction".[70]

But, although not canvassed in Vodacom, an issue that could arise in a similar situation is whether a contract for the provision of bandwidth capacity is (a) a contract for the lease of bandwidth capacity or the grant of a right to use bandwidth capacity (an incorporeal property), (b) a contract for the supply of a service, or (c) a combination of both.

The relevant accounting standard draws a distinction between the lease of bandwidth capacity and a contract of service for the provision of bandwidth capacity services, or a combination of both, i.e. a lease transaction coupled with a service contract.[71] And the classification or characterization of the transaction in each case will depend on the terms and substance of the arrangement. In accounting practice, the determination of whether the transaction is a lease depends on whether (a) the performance of the contract is tied to the use by the purchaser of one or more specific assets, and (b) the contract conveys a right in the specific assets to the purchaser. The resolution of the question (i) whether the vendor has undertaken to transmit data on behalf of the purchaser using the vendor's facility or available bandwidth capacity, or (ii) whether the vendor has undertaken to provide a facility or capacity to the purchaser by which the purchaser by itself will transmit its (purchaser's) data without any further intervention of the vendor, may be a relevant question in this inquiry.[72]

It is therefore submitted that if the court determines that an arrangement relating to use of bandwidth capacity is a lease and not a service contract, the subject matter of the transaction will be an incorporeal property; and so the decision in Vodacom will not apply to it (since Vodacom did not decide that question). The relevant decision will be the decision of the FHC in CNOOC Exploration & Production Nigeria Limited v AG Federation & 2 ors[73] in which it was held as follows[74]:

> "…I agree entirely with the submissions of Learned Senior Advocate of Nigeria that the 3rd Defendant's contractor rights in the PSC do not constitute either goods or services as contemplated by the VAT Act and consequently, the assignment of such rights does not fall under the VAT Act. I hold that the Plaintiff is therefore not liable to the 2nd Defendant for any sum whatsoever as VAT on the purchase of the 3rd Defendant's contractor rights in the PSC.

[64] On the difference between the power to "impose" taxes and the power to "collect" and or "administer" taxes, see Elias, "*Company Mergers and Land Transfer Taxes*" (unpublished position paper) pp 3 – 4. See also *Nigerian Agricultural and Cooperative Bank v Jigawa State Board of Internal Revenue* [2000] 1 NRLR 62

[65] The courts adopt a different approach to the interpretation of provisions of taxing statute relating to collection or administration of taxes, and will accordingly resolve any ambiguity in any such provision in a manner that will not defeat the tax: *IRC v Longmans Green & Co. Ltd* (1932) 17 TC 272; *Colquhoun v Brooks* (1889) 14 App Cas. 493. And this is set upon the simple logic that once a legislative intention to impose the tax on the subject or subject matter has been ascertained, the taxpayer should not be permitted to avoid the tax by setting up a technical defence.

[66] Indeed, the use of the words "are supplied in Nigeria" in VATA, s. 10(2) is redundant to the extent that this sub-section is not a charging clause.

[67] VATA, s. 2 is however qualified by the exemptions created by s. 3 thereof. It may therefore be said that VAT Act, ss. 2 and 3 constitute the charging clauses of the VATA.

[68] VAT is a consumption tax, the burden of which is borne by the consumer: *Lagos State Board of Internal Revenue v Nigeria Bottling Co. Ltd* (1960 – 2010) 2 N.T.L.R 783,785.

[69] Although the definition of a taxable person in VATA, s. 46 has no territorial limitation and is not limited by nationality, such limitations must necessarily be read into it, as the Act cannot be intended to apply to the entire world.

[70] Underlining provided.

[71] The courts are likely to follow this distinction and the accounting rules relating thereto. In Odeon Theatres Ltd v Jones [1972] 1 All ER 681, 693 – 694, Buckley LJ observed as follows: "*In answering that question of law [i.e. whether a particular expenditure is a revenue expenditure or a capital one] it is right that the court should pay regard to the ordinary principles of commercial accounting so far as applicable. Accountants are after all, the persons best qualified by training and practical experience to suggest answers to the many difficult problems that can arise in this field*". This decision was followed in Western Soudan Exporters v FBIR 1NTC 239, 249, the High Court of Lagos State, per Taylor, CJ.

[72] In Vodacom the court of appeal found as a fact that "*By its very nature the satellite is located in orbit and the transmission of the bandwidth capacities to and fro the satellite is done by the Appellant's transponder located in Nigeria.*"

[73] (2011) 4 TLRN 185 at 194.

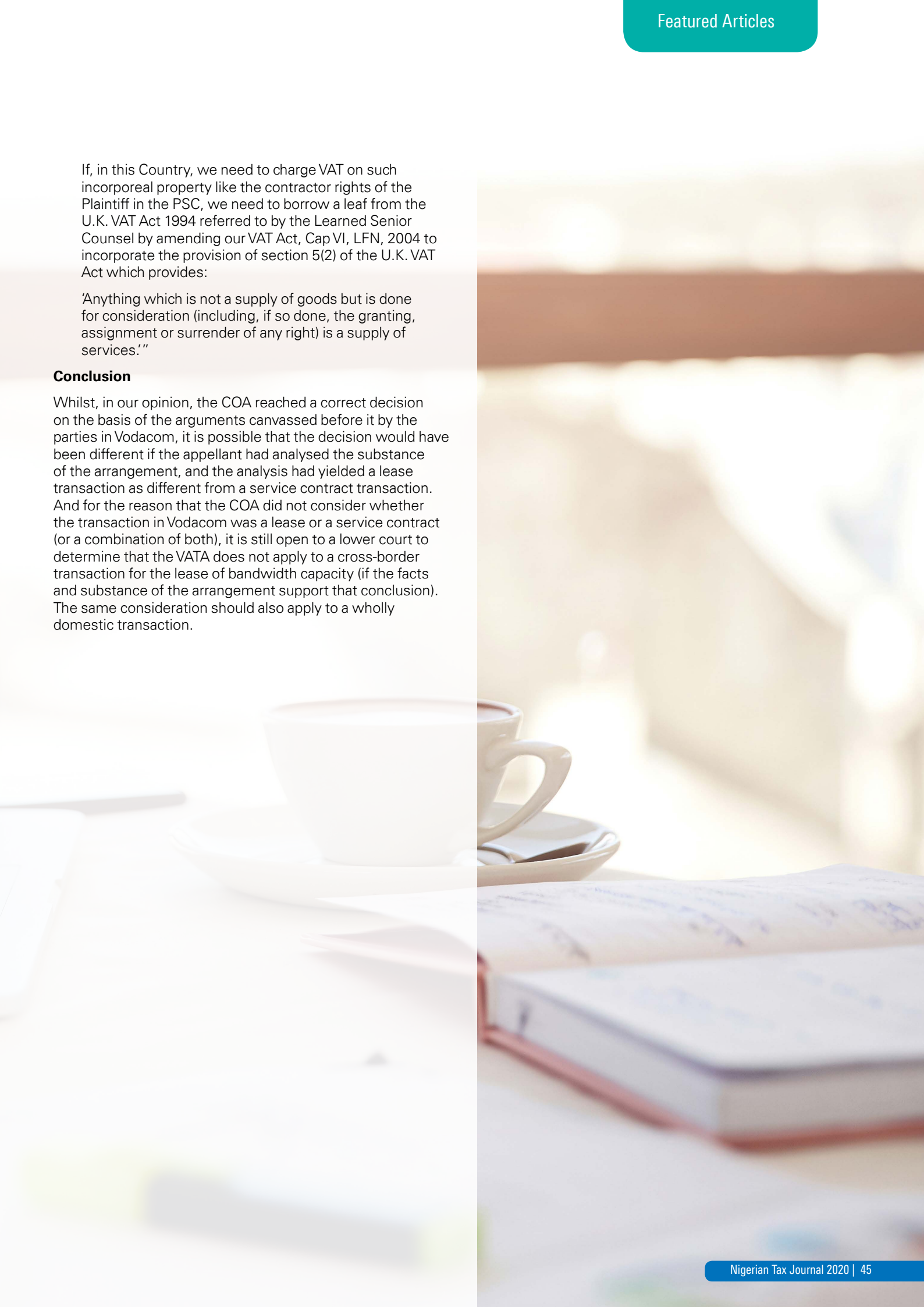
[74] The author is aware that some of the amendments made by the Finance Act, 2019 to the VATA, particularly in relation to "place of supply" and the definition of "goods" and "services", may impact the applicability of this case to transactions occurring after the effective date of the Act.

If, in this Country, we need to charge VAT on such incorporeal property like the contractor rights of the Plaintiff in the PSC, we need to borrow a leaf from the U.K. VAT Act 1994 referred to by the Learned Senior Counsel by amending our VAT Act, Cap VI, LFN, 2004 to incorporate the provision of section 5(2) of the U.K. VAT Act which provides:

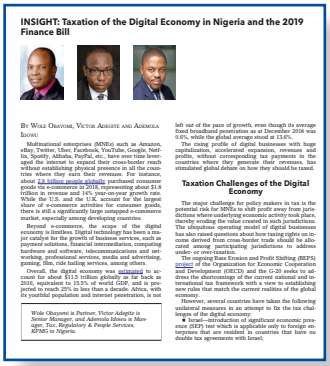
'Anything which is not a supply of goods but is done for consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services.'"

Conclusion

Whilst, in our opinion, the COA reached a correct decision on the basis of the arguments canvassed before it by the parties in Vodacom, it is possible that the decision would have been different if the appellant had analysed the substance of the arrangement, and the analysis had yielded a lease transaction as different from a service contract transaction. And for the reason that the COA did not consider whether the transaction in Vodacom was a lease or a service contract (or a combination of both), it is still open to a lower court to determine that the VATA does not apply to a cross-border transaction for the lease of bandwidth capacity (if the facts and substance of the arrangement support that conclusion). The same consideration should also apply to a wholly domestic transaction.



B. Articles authored by KPMG Professionals



INSIGHT: Taxation of the Digital Economy in Nigeria and the 2019 Finance Bill

By Wole Obayomi, Victor Adegite and Ademola Idowu

Multinational enterprises (MNEs) such as Amazon, eBay, Twitter, Uber, Facebook, YouTube, Google, Netflix, Spotify, Alibaba, PayPal, etc., have over time leveraged the internet to expand their cross-border reach without establishing physical presence in all the countries where they earn their revenues. For instance, about 2.8 billion people globally purchased consumer goods via e-commerce in 2018, representing about $1.8 trillion in revenue and 14% year-on-year growth rate. While the U.S. and the U.K. account for the largest share of e-commerce activities for consumer goods, there is still a significantly large untapped e-commerce market, especially among developing countries.

Beyond e-commerce, the scope of the digital economy is limitless. Digital technology has been a major catalyst for the growth of business services, such as payment solutions, financial intermediation, computing hardware and software, telecommunications and net-working, professional services, media and advertising, gaming, film, ride hailing services, among others.

Overall, the digital economy was estimated to account for about $11.5 trillion globally as far back as 2016, equivalent to 15.5% of world GDP, and is projected to reach 25% in less than a decade. Africa, with its youthful population and internet penetration, is not left out of the pace of growth, even though its average fixed broadband penetration as at December 2018 was 0.6%, while the global average stood at 13.6%.

The rising profile of digital businesses with huge capitalization, accelerated expansion, revenues and profits, without corresponding tax payments in the countries where they generate their revenues, has stimulated global debate on how they should be taxed.

Taxation Challenges of the Digital Economy

The major challenge for policy makers in tax is the potential risk for MNEs to shift profit away from jurisdictions where underlying economic activity took place, thereby eroding the value created in such jurisdictions. The ubiquitous operating model of digital businesses has also raised questions about how taxing rights on income derived from cross-border trade should be allocated among the relating jurisdictions to address under- or over-taxation.

The ongoing Base Erosion and Profit Shifting (BEPS) project of the Organization for Economic Cooperation and Development (OECD) and the G-20 seeks to address the shortcomings of the current national and international tax framework with a view to establishing new rules that match the current realities of the global economy.

Moreover, several countries have taken the following unilateral measures in an attempt to fix the tax challenges of the digital economy:

- Israel—introduction of significant economic presence (SEP) test which is applicable only to foreign enterprises that are resident in countries that have no double tax agreements with Israel;

Wole Obayomi is Partner, Victor Adegite is Senior Manager, and Ademola Idowu is Manager, Tax, Regulatory & People Services, KPMG in Nigeria.

1. Taxation of the digital economy in Nigeria and the 2019 Finance Bill

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Victor Adegite

Ademola Idowu

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The rising profile of digital businesses with huge capitalization, accelerated expansion, revenues and profits, without corresponding tax payments in the countries where they generate their revenues, has stimulated global debate on how they should be taxed.

You can read the full article in Bloomberg International Tax News of 31 December 2019.

2. Significant Economic Presence - matters arising on new tax nexus for multinational entities

by Adewale Ajayi

Adewale Ajayi

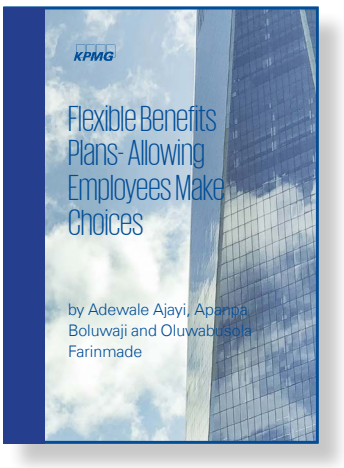
Undoubtedly, the digital economy has created some challenges for tax administrators globally. The digital companies pay little or no tax in the countries where they derive their profits. This practice is not illegal as it is based on the generally accepted principle that a MNE can only pay tax in a country where it has some form of physical presence. In other words, where there is no such presence, the companies do not have any obligation to pay tax. This rule has, therefore, proved insufficient in this era of globalization and digitization as the source countries are seeking new rules to tax the profits generated from their jurisdictions by MNEs even where there is no physical nexus. This is the genesis of the phrase: fair amount of tax.

The OECD has sought to address these challenges through its BEPS project. It realizes that a consensus-based approach, rather than a unilateral move that will lead to retaliatory measures, is required. It has, therefore, identified three profit allocation proposals for the purposes of reallocating a proportion of an MNE's profits to the market jurisdiction. These proposals are based on user participation, marketing intangibles and significant economic presence. The OECD plans to present a unified approach this year.

Nigeria, like other countries, is proposing to adopt the concept of SEP to tax business profits of MNEs based on the 2019 Finance Bill, which the President is yet sign into law. This simply means that the country can tax a MNE where a virtual presence can be proved based on yet-to-be determined revenue threshold and possibly other thresholds such as existence of a user base, billing and collection in local currency, sustained marketing and sales promotion activities either online or otherwise to attract customers. Once the Bill becomes law, any MNE that has significant economic presence in the country and to which profits can be attributable will be liable to tax in Nigeria. In addition, Nigeria is proposing to tax any MNE whose business comprises the furnishing of technical, management, consultancy or professional services outside Nigeria to a person resident in Nigeria and to the extent that it has SEP in Nigeria to which profits can be attributable.

This article's focus is on the matters arising from the proposed introduction of the SEP principle in Nigeria. These are issues that the MoF should take into consideration to arrive at a coherent and practical definition of SEP while avoiding or minimizing retaliatory measures from our trading and treaty partners.

You can read the full article via this https://www.pulse.ng/bi/finance/significant-economic-presence-matters-arising-on-new-tax-nexus-for-multinational/q3xvj6p



3. Flexible benefits plans - allowing employees make choices

by Adewale Ajayi, Apanpa Boluwaji and Oluwabusola Farinmade

Adewale Ajayi

Boluwaji Apanpa

Busola Farinmade

Being an employer of Choice emphasizes competitiveness, equity, affordability and creativity in leveraging effective rewards strategies. The need for creativity stems from the desire to meet employees' diverse needs, amidst scarce and competing resources. The employee wishes to have a say in how his/her total package is sliced and spent. Particularly, with respect to benefits, employees desire programmes that are tailored to their respective needs, as much as possible. This calls for flexibility, on the part of the employer, in responding to such demands. The idea of flexibility is further strengthened by the argument that if employees are required to bring unique talent to the organisation, then employers should also be prepared to provide "unique" rewards programmes to the employees.

Flexible benefit plans allow employees to choose from an array of benefits. This is gaining popularity, especially amongst "millennials" that want the opportunity to choose benefits that align to their lifestyle. Also flexible benefit programs, especially flexible medical benefits that align with or address the high cost of health care, may appeal more senior employees. Therefore, there is increasing pressure on organisations to provide robust array of benefits to employees.

The possibilities offered by flexible benefit arrangements are potentially enormous. A company can meet a wide range of needs by adopting Flexible Benefits, without necessarily over-bloating cost. For example, you will fine unique benefits such as free meals for pets, pampering massages and free tickets to art and music events.

This article explores the types of flexible benefits plans, pros & cons of flexible benefit plans, factors and considerations for implementing flexible benefit plans.

You can access the full article on KPMG Website.


Tax Issues

Managing pay transparency

4. Managing pay transparency

by Adewale Ajayi and Yewande Alli


Adewale Ajayi


Yewande Alli

The Chartered Institute of Personnel and Development (CIPD), in its 2017 Reward Management Survey, stated that pay was becoming more transparent in most organisations. The study showed that 69 percent of the 715 organisations surveyed were open about pay levels, with 31percent favouring 'great' transparency in form of written policies.

Similarly, in the 2016/17 HR/Reward Practices Survey conducted by KPMG Nigeria, 53percent of employees believed that their companies' performance management systems were more than fair.

Pay Transparency is a controversial concept with varying definitions across different bodies and organisations. Some define it using the literal word "transparency" and therefore interpret it as the act of revealing employee compensation information to other employees.

Others interpret it as transparency of pay processes i.e. the process of being clear and open about compensation decisions, and providing all required information to understand these decisions.

With the advent of technology and social media where people discuss and share all aspects of their lives, it is inevitable people will begin to seek platforms to share compensation information. It is important to note that there is no perfect level of pay transparency. As with other organisational decisions, it should be dependent on the organisational culture, brand strategy, goals, organisational philosophy, amongst other factors.

You can read the full article in "Business Day Newspaper" of 14 November 2018 (Page 33).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Nigeria

INSIGHT: Revised Transfer Pricing Regulations in Nigeria–Implications for MNEs

BY TAYO OGUNGBENRO, VICTOR ADEGITE AND OMOJO OKWA

The recent Transfer Pricing Regulations in Nigeria have introduced some major changes which impose additional obligations and requirements for taxpayers. Significant administrative penalties have also been introduced for non-compliance with any aspect of the TP Regulations.

Nigeria's Federal Inland Revenue Service ("FIRS") released the revised Income Tax (Transfer Pricing) Regulations (2018) ("the revised Regulations"), which became effective on March 12, 2018, and apply to a company's transactions commencing after that date.

The major changes introduced by the revised Regulations are considered below.

Significant Administrative Penalties The Income Tax (Transfer Pricing) Regulations are subsidiary to the main income tax laws such as the Companies Income Tax Act ("CITA"), Petroleum Profits Tax Act, Personal Income Tax Act and Value Added Tax. The Transfer Pricing (TP) Regulations enable the tax authority to enforce the provisions contained in the main legislation relating to related party transactions.

Thus, the Income Tax (Transfer Pricing) Regulations (2012) ("the maiden Regulations") did not have separate penalties for non-compliance with any aspect of the TP Regulations.

Rather, the authority envisaged that the penalties contained in the main legislation should suffice as an indirect deterrent to wilful non-compliance with any aspect of the TP Regulations.

For instance, where a company fails to file an annual TP Disclosure Form, which should form part of annual tax returns, the penalty is the same as where a taxpayer filed complete tax returns and therefore to be liable to penalties imposed by the CITA.

However, it appears that this approach has not been effective. Thus, the revised Regulations now impose significant penalties for even minute infractions, separate from what is applicable in the main legislation. The penalties are the highest in the history of taxation in Nigeria. The tax authority does not appear to be ready to condone any form of non-compliance with the revised Regulations. It is therefore

Tayo Ogungbenro is a Partner, Victor Adegite is a Senior Manager and Omojo Okwa is a Senior Adviser with Global Transfer Pricing Services of KPMG in Nigeria.

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5. Nigeria's Finance Bill - Transfer Pricing implications for MNEs

by Tayo Ogungbenro, Victor Adegite and Omojo Okwa

The Finance Bill (the Bill) seeks to amend some provisions of the Nigeria tax code with a view to enabling the government to generate the much-needed revenue required to execute the 2020 budget. The Bill was presented with the 2020 proposed budget to the National Assembly in October 2019, and passed its third reading on Thursday, November 21, 2019.

The tax laws to be amended by the Bill include the CITA, VATA, PPTA, and the SDA.

Since 1999, Nigerian budgets have been passed without any accompanying changes to the law to ensure that the government was able to generate sufficient revenue through taxation to fund the budget. More recently, however, it has become increasingly clear that significant work is required to enable the government to meet its revenue targets, and that the tax laws need to be revamped if the 2020 budget were to be fully implemented.

Similarly, the Bill afforded the policy makers and stakeholders the opportunity to remove several redundant provisions in the Nigerian tax code. This article discusses some of the proposed amendments that have transfer pricing implications for MNEs with operations in Nigeria.

You can read the full article in Bloomberg International Tax News of 30 December 2019.


Tayo Ogungbenro


Victor Adegite


Omojo Okwa

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Nigeria

INSIGHT: Nigerian Petroleum Industry Fiscal Bill—Encouraging Investment?

By Ayo Salami and Funke Oladoke

If there is a sector of the Nigerian economy that has contributed significantly to revenue generation for the government, it is the oil and gas sector. Yet, for over four decades, this sector has operated under dated and often misinterpreted laws such as the Petroleum Act of 1969, the Petroleum Profits Tax Act (PPTA) of 1959 and the Nigerian National Petroleum Corporation (NNPC) Act of 1977, among others.

Pockets of change introduced to the laws in the past were at best, cosmetic, as they neither addressed the fundamental flaws in those laws, nor the problems with the institutions set up under them.

However, the first major attempt to craft a new, fully-fledged fiscal legislation around the taxation of gas as an independent resource was made in 2005, with the drafting of the Gas Fiscal Reform Bill (GFRB)—which seeks to provide fiscal incentives for the taxation of natural gas as a stand-alone resource, as opposed to treating it as a by-product of oil operation. Based on a clamor that the existing PPTA was out of tune with the realities of the time, the government sought to expand the remit of the GFRB to cover a new set of rules for the taxation of crude oil.

At about the same time, there were voices in support of a holistic overhaul of the state institutions charged with the responsibility of overseeing the activities of the oil and gas industry. Eventually, an omnibus bill, the Petroleum Industry Bill (the PIB), was fashioned to cater to all the various facets of the industry—the institutions, the fiscal regime and community concerns, among others.

The PIB was an all-encompassing piece of legislation into which was put a set of new provisions in respect of about 16 pieces of existing legislation. It was meant to be a game changer—to significantly impact the regulation and administration of Nigeria's oil and gas sector.

The PIB, which was first introduced to the National Assembly in 2008, has passed through several iterations and debates by successive law-making bodies since then. However, it has not been passed into law because of its size and the inability of various stakeholders to agree on all the fundamentals that the law was supposed to address.

Consequently, and to facilitate the passage of the legislation, the PIB was split into four parts:

- the Petroleum Industry Governance Bill;
- the Petroleum Industry Administration Bill;
- the Petroleum Industry Host Community Bill; and
- the Petroleum Industry Fiscal Bill (PIFB).

The Petroleum Industry Governance Bill was passed by the Nigerian legislature in the second quarter of 2018, and sent to the President for assent. Unfortunately, the President returned the Bill to the legislature citing some constitutional and legal issues. In April

Ayo Salami is a Partner and Funke Oladoke is an Associate Director with KPMG Advisory Services, Lagos Nigeria.

6. Nigerian Petroleum Industry Fiscal Bill - Encouraging Investment?

by Ayo Salami and Funke Oladoke

Ayo Salami

Funke Oladoke

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You can read the full article in Bloomberg International Tax News of 5 June 2019

VAT: Should the rate increase, when and how?

Tayo Ogungbenro, Elizabeth Olaghere and Busayo Amoo

The authors are partner and staff of KPMG in Nigeria. The opinion expressed in this article is that of the authors.

7. VAT: Should the rate increase, when and how?

by Tayo Ogungbenro, Elizabeth Olaghere and Busayo Amoo

Tayo Ogungbenro

Elizabeth Olaghere

Busayo Amoo

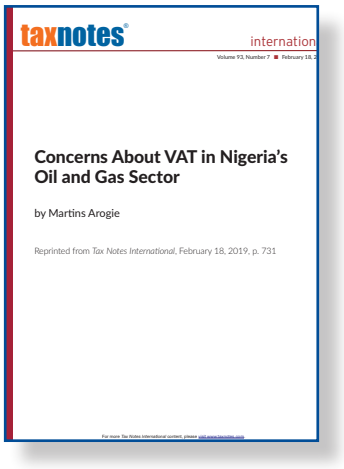
On September 11, 2019, the FEC approved an increase in the rate of VAT by 50 per cent. The MOF, Mrs Zainab Ahmed, later explained that the new rate would only become effective after approval by the National Assembly. One can assume that the FG is using the opportunity of seeking approval from the lawmakers in order to build consensus since the enabling legislation empowers the minister to amend the rate. Thus, in the event that the new rate is 'approved', taxable persons will soon be required to charge and account for VAT to the FIRS at 7.5 per cent.

VAT was introduced in Nigeria in 1993 and had been chargeable at five per cent. The FG had tried, on various occasions, to increase the rate. On each occasion, the public vehemently resisted it. Indeed, in 2015, the FG doubled the rate to 10%, but retracted due to public outcry.

There is however no doubt that there is an urgent need for the FG to shore up its revenue base if the country would not be plunged into debt trap very soon. The current budget

deficit is not sustainable, there are strong indications that the country currently borrows to finance recurrent expenditure, thereby putting developmental programmes in jeopardy. One can therefore understand the dilemma of the FG to increase tax revenue especially from the non-oil and gas sector as a basis for diversifying of the economy.

You can read the full article in The Punch Newspaper of 4 October 2019.


taxnotes international

Volume 93, Number 7 ■ February 18, 2

Concerns About VAT in Nigeria's Oil and Gas Sector

by Martins Arogie

Reprinted from *Tax Notes International*, February 18, 2019, p. 731

For more Tax Notes International content, please visit www.taxnotes.com

8. Concerns about VAT in Nigeria's oil and gas sector

by Martins Arogie

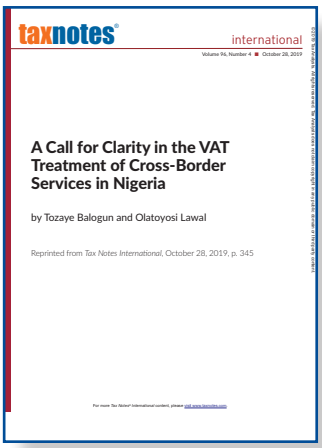
Martins Arogie

The oil and gas industry is the lifeblood of Nigeria's economy. The sector accounted for about 69 percent of government revenue in 2017. Therefore, any issue that affects the sector will affect the entire Nigerian economy.

While data isn't readily available, it isn't a stretch to assume that the oil and gas sector also contributes a significant share of the taxes paid by companies in Nigeria. Notably, the industry's tax liabilities go beyond the PPT that exploration and production companies pay, and also include CIT and VAT. Acknowledging the importance of the oil and gas sector to the economy and tax administration, the government passed amendments to the VAT Act in 2007. Before the amendments, every Nigerian company that engaged in the sale of taxable goods and services was expected to include VAT on its invoices, collect the tax along with the fee it charged for the goods or services, and remit the tax to the FIRS.

The government realized that there were significant leakages in the VAT system and in the amount of VAT remitted, a situation some would argue continues today. Allegedly, some smaller companies that fell outside the tax net were collecting — but not remitting — VAT. To address this problem, the government amended the VAT Act in 2007 to obligate companies in the oil and gas industry to deduct VAT at the source and remit it to the tax authorities. The thinking was that the industry drove Nigeria's economy and thus a significant share of VAT payments must originate from the sector. By shifting the burden of accounting for VAT to the organizations driving spending in the economy, the government assumed that collections should increase.

You can read the full article in Tax Notes International of 18 February 2019 (Volume 93, Number 7).


taxnotes international

Volume 96, Number 4 ■ October 28, 2019

A Call for Clarity in the VAT Treatment of Cross-Border Services in Nigeria

by Tozaye Balogun and Olatoyosi Lawal

Reprinted from *Tax Notes International*, October 28, 2019, p. 345

9. A call for clarity in the VAT treatment of Cross-Border services in Nigeria

by Tozaye Balogun and Olatoyosi Lawal

Tozaye Balogun

Olatoyosi Lawal

The world is a global village. Trading in goods, services, and intangibles occurs more frequently than we can even begin to reasonably estimate. The quest to expand commercial activities across borders is not without its complications. These challenges have inspired the development of impressive technology-based solutions that enable the digitalization of economic activities and change the conventional way goods and services are provided. Digitalization of the economy, however, presents its own difficulties. Determining how VAT applies to the cross-border provision of services is one such challenge.

When applying VAT to cross-border service transactions, often the first question is where VAT should be levied. Should VAT be levied in the jurisdiction of consumption, the jurisdiction of the service provider, both, or neither? Another question follows closely from the first: How should the tax be collected and administered?

You can read the full article in "Tax Notes International" of 28 October 2019 (Volume 96, Number 4).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TAX ISSUES

FIRS extends bank accounts substitution exercise

...eyes firms with ₦100mn and above; targets ₦750bn from 55,000 millionaire tax defaulters

Addressing the challenges of the Digital Economy – New thinking and possible pitfalls

10. Addressing the challenges of the digital economy - new thinking and possible pitfalls

by Funke Oladoke and Victor Adegite

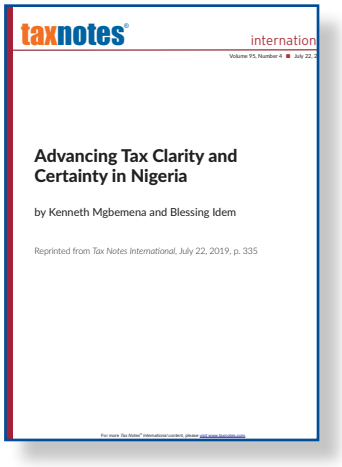
Funke Oladoke

Victor Adegite

Over the last 25 years, the face of businesses has been rapidly transformed by technology. What was thought as a separate sector (digital /Information Technology) has transformed every other sector to what is now known as the digitization of the economy. Unable to resolve the question of tax challenges of the digital economy, the OECD recently put forward new proposals. This became necessary as the ability of business entities to transact with customers internationally, without a local presence in the user's jurisdiction is on the increase.

Consequently, there has been a huge debate amongst tax administrators across the world on who has the taxing right over such cross-border transaction or at best, how should the profit be shared/allocated to the relevant jurisdictions.

You can read the full article in the 10 April 2019 and 17 April 2019 editions of BusinessDay Newspaper (Pages 58 and 56, respectively).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Volume 95, Number 4 ■ July 22, 2

Advancing Tax Clarity and Certainty in Nigeria

by Kenneth Mgbemena and Blessing Idem

Reprinted from *Tax Notes International*, July 22, 2019, p. 335

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11. Advancing tax clarity and certainty in Nigeria

by Kenneth Mgbemena and Blessing Idem

Kenneth Mgbemena

Blessing Idem

Nigeria operates a self-assessment tax regime, which requires that taxpayers compute their tax liability, make tax payments, and file the relevant returns on or before the applicable due dates. The regime expects taxpayers to act accurately and honestly when assessing their own taxes. However, given the apparent ambiguities in Nigerian tax law, it is not surprising to see taxpayers taking wide-ranging, diverse approaches to interpreting and applying the same rules. While the law prescribes corrective mechanisms to address these varied interpretations — mechanisms that include tax desk queries, reviews, audits, investigations, and even litigation between taxpayers and tax authorities — there is still need for greater clarity in Nigeria's tax laws.

The sometimes vague and often complex provisions of the tax laws leave too much room for the tax authorities to apply differing interpretations and take arbitrary action, leading to uncertainty in the minds of taxpayers struggling to comply with these ambiguous provisions. This article highlights some tax provisions that exemplify the inherent ambiguities in Nigeria's tax laws. It also suggests practical ways to address them for the good of taxpayers, tax authorities, and the economy alike.

You can read the full article in Tax Notes International of 22 July 2019 (Volume 95, Number 4).


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BUSINESSWORLD PERSPECTIVE

Agribusiness in Nigeria: The Ground is Set

12. Agribusiness in Nigeria: The ground is set

by Peter Nwaobi and Hallelujah Ojo

Peter Nwaobi

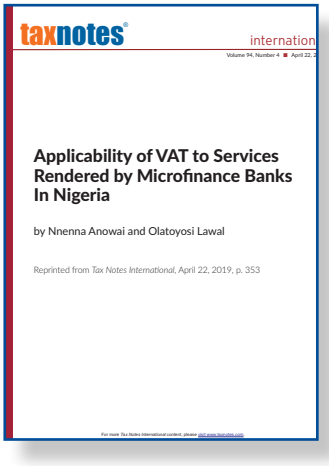
Hallelujah Ojo

Nigeria is a key player in the West African region, with an estimated population of about 201 million. The country accounts for 47% of West Africa's population, and has one of the largest youth populations in the world. Economists, both home and abroad, have continued to clamor for Nigeria to promote her agricultural sector (the Sector).

According to the World Bank 77.7 per cent of Nigeria's land is arable and capable of producing key (cash) crops, including beans, sesame, cashew nuts, cassava, cocoa beans, groundnuts, maize (corn), melon, rice, millet, palm kernels, palm oil, plantains and rubber, amongst others. Nigeria also has quality manpower to complement the fertile land mass and drive the Sector, judging from her teeming population of able-bodied youths.

The sector is, however, largely plagued by several limiting factors, such as obsolete farming methodologies, lack of access to cheap finance, inadequate storage facilities, defective power supply and poor transport infrastructure amongst others. Nevertheless, a cursory review of the fiscal framework for the sector indicates that the Government is keen on developing agribusiness and has backed this up with several incentives, schemes and policies aimed at jump-starting the moribund sector and improving the yield from it. This article provides an overview of the Agribusiness in Nigeria, Government's intervention so far, as well as the incentives available to investors in the Sector.

You can read the full article in ThisDay Newspaper of 13 September 2019 (Page 26).



13. Applicability of VAT to services rendered by Microfinance Banks in Nigeria

by Nnenna Anowai and Olatoyosi Lawal

Olatoyosi Lawal

Nnenna Anowai

In December 2005 the CBN introduced the Microfinance Policy, Regulatory and Supervisory Framework for Nigeria (revised in 2011), which established microfinance banking in Nigeria and directed all community banks to convert to microfinance banks. Through the directive, the CBN hoped to develop the institutional and structural integrity of the microfinance industry and enhance the inclusivity of Nigeria's financial system by ensuring that the nation's poor could access financial services. However, the conversion requirement generated unintended tax consequences — namely, the applicability of VAT to services rendered by the successor microfinance banks.

Section 2 of the VAT Act, Cap V1, LFN, 2004 (as amended) imposes VAT on the supply of taxable goods and services unless they are specifically exempt. The list of specifically exempt services in the First Schedule to the VAT Act includes services rendered by community banks, people's banks, and mortgage institutions. Because this list does not include microfinance banks, their services are not exempt, and the FIRS subjects services rendered by microfinance banks to VAT.

The FIRS practice raises the question: By mandating that community banks recapitalize and become microfinance banks, did the directive deprive those institutions of favorable tax attributes previously assigned by law?

You can read the full article in Tax Notes International of 22 April 2019 (Volume 94, Number 4).


Tax Issues

FIRS generates N5trn, targets N5.3trn by year-end

CTN update:

Suit between Afolabi Igbarola & other versus FIRS & other

Ease of Doing Business: Impact of multiplicity of tax audits

14. Ease of doing business: Impact of multiplicity of tax audits

by Adedolapo Adebayo


Adedolapo Adebayo

Audits of companies have always been a way by which tax authorities ensure that companies and individuals pay the appropriate taxes due from them. Audits typically require that tax authorities cross check the records of a company vis a vis the returns filed with the authority and evaluate the existence or lack of a tax liability. In the Nigerian tax system, there are usually three ways by which the records of tax payers are verified. These three methods are desk query (which is usually done via mail correspondence), a field tax audit at the office of the tax payer and tax investigations, where there is a probability of fraud or willful neglect by the taxpayer.

While all three methods are aimed at ensuring that the tax payer is appropriately taxed, the difference is in the complexity of information required. The key drivers for carrying out tax audits are to ensure that a business maintains proper books of accounts and other similar records; get a proper understanding of the income and expense of taxpayers as well as their tax deductions; ensure the accurate application of tax laws; and ensure that the tax credit refund being applied for is valid.

You can read the full article in the 19 December 2018 and 2 January 2019 editions of BusinessDay Newspaper (Pages 22 and 23,respectively).


TAX ISSUES

Enforcement of anti-tax avoidance powers of tax authorities – how far is too far?

"Tis impossible to be sure of anything but death and taxes" – Christopher Bullock (1716)

15. Enforcement of anti-tax avoidance powers of tax authorities - how far is too far?

by Ademola Idowu, Samuel Yisa and Chinyere Nwachukwu


Ademola Idowu


Samuel Yisa


Chinyere Nwachukwu

There is hardly any government that can thrive without tax revenue, as tax provides the "cheapest" source of funding for public projects. Thus, governments, through their legislature, often enact tax laws to provide frameworks for effectively assessing taxpayers to tax. These include establishment of tax authorities for the administration and enforcement of tax laws, designation of certain taxpayers as collection agents of the government, establishment of tax dispute resolution mechanisms, etc. Tax authorities, however, have varying degrees of powers in different jurisdictions.

In Nigeria, tax legislation empowers tax authorities to assess taxpayers on best of judgment basis given certain circumstances; appoint taxpayers as agents for collection of taxes; distrain properties of taxpayers, and so on. The overriding objective of these provisions is to discourage tax evasion, while respecting taxpayers' rights to object against arbitrary imposition of tax liabilities. As we are in an era of

increasing clamour for tax reforms and ambitious tax revenue targets, it is little wonder that tax authorities often seek to pull every weight of the law, albeit inappropriately in some cases, to enforce tax compliance and bolster government revenue.

This article examines the manner of enforcement of statutory powers by Nigerian tax authorities in certain instances, impacts of such practices on businesses, and best practices that tax authorities can adopt in promoting sound tax systems and an enabling business environment.

You can read the full article in the Business Day Newspaper of 11 September 2019 (Page 16).

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TAX ISSUES

Evaluating FIRS' proposed directive requiring banks to deduct VAT on payments made for 'online transactions'

Given that the payments made through the banks for supply of WAable goods and services would typically be inclusive of VAT, there exists a risk that the banks will compute and deduct VAT on the

16. Evaluating FIRS' proposed directive requiring banks to deduct VAT on payments made for 'online transactions'

by Ademola Idowu and Oladimeji Taiwo

Ademola Idowu

Oladimeji Taiwo

The FGN has been perennially faced with the problem of shortage of funds to provide critical infrastructure for its teeming populace. This challenge has been aggravated by the vagaries of the international crude oil market as the country has for too long been mono-cultural with crude-oil sustaining its financial veins. Successive governments have made attempts to diversify the economy with suggestions being made in the areas of agriculture and mining, but these will require sustained commitment to infrastructure development, political will-power, targeted foreign direct investment inflows, etc. In this circumstance, tax revenue has naturally become the key focus to ramp up the FG's revenue.

To this end, the FIRS has taken several commendable steps towards improving the FG's revenue base in recent years by widening the tax net. One of the most recent propositions by the FIRS is its intention to direct Nigerian banks to commence the collection and remittance of VAT on "online transactions" paid for through the banks' electronic platforms. This effectively implies that the FIRS intends to appoint the banks as its agent for VAT collection. While this is one of the FIRS' ways of fixing perceived VAT leakages and eliciting VAT compliance on online transactions, Nigeria currently has no enabling legislative framework for the taxation of online businesses/transactions. The directive, as it is and without detailed clarity from the FIRS, is ambiguous. Hence, the legal basis and practicality of the proposed directive raise concerns that the FIRS should address before its implementation.

You can read the full article in Business Day Newspaper of 18 September 2019 (Page 32).


Bloomberg Tax

International Tax News®

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INSIGHT: Nigeria—Fair Valuation and Minimum Tax Implications

BY KENNETH MGBEMENA AND TOBI DAVID

The adoption of the International Financial Reporting Standards (IFRS) in Nigeria has led to some unforeseen issues that have significant cash flow implications for companies if not properly managed. One tax issue is the impact of asset revaluation and fair valuation on minimum tax computation.

Companies in Nigeria have embraced the International Financial Reporting Standards ('IFRS' or 'the Standards') for financial reporting, after the Federal Executive Council approved the roadmap for IFRS adoption in July 2010.

This article addresses some of the challenges taxpayers now face as a result of the adoption of revaluation and fair valuation models as the basis for subsequent recognition of property, plant and equipment ("PPE") and investment property in the financial statements.

Impact of Asset Revaluation and Fair Valuation on Net Assets. Under the Standards, companies can now choose to recognize such changes in the historical cost of their assets through a concept known as fair valuation. Companies, in the past, were required to recognize such assets at their historical cost value. Such valuations, however, will not have any cash implication in the financials of a company.

However, the "net assets" position of a company, which is the excess of a company's assets over its liabilities, will increase or decrease with the corresponding increase or decrease in the asset position arising from the valuation.

This occurrence has serious implications on the minimum tax position of a company, as the "net asset" value is one of the parameters used in determining minimum tax. A company may find itself paying significantly higher taxes, as a result of the increase in its net assets, which is only notional. This impact is examined in greater detail below.

Minimum Tax Implication of Asset Revaluation and Fair Valuation. The minimum tax provision in the Nigerian Companies Income Tax Act ("CITA") (the Companies Income Tax (CIT) Act, Cap. C21, Laws of the Federation of Nigeria (LFN), 2004 (as amended by the CIT (Amendment) Act, 2007) provides the legal basis for the imposition of taxes on the income of companies in Nigeria, other than those involved in the exploration and production of petroleum. It is one of the tax anti-avoidance provisions in the Nigerian tax laws. It combines several parameters (including net assets) to define the minimum tax payable by a company.

By the provision, companies with no taxable profit or taxable profit on which the amount of tax payable is less than the exemption criteria, are required to pay income tax based on the minimum tax computed.

Specifically, section 33(1) of the Act provides that:

"Notwithstanding any other provisions in this Act where in any year of assessment the ascertainment of total assessable profits from all sources of a company other than profits from petroleum operations or such profits results in no tax payable or tax payable which is less than the minimum tax, there shall be levied and paid by the company the minimum tax as prescribed by subsection (2) of this section."

In calculating this minimum tax, section 33(2) provides that:

Kenneth Mgbemena and Tobi David are Senior Tax Advisers with KPMG Advisory Services, Lagos, Nigeria.

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17. Fair Valuation and Minimum Tax Implications

by Kenneth Mgbemena and Oluwatobi David


Kenneth Mgbemena


Oluwatobi David

The adoption of the IFRS in Nigeria has led to some unforeseen tax issues that have significant cash flow implications for companies if not properly managed. One tax issue is the impact of asset revaluation and fair valuation on minimum tax computation.

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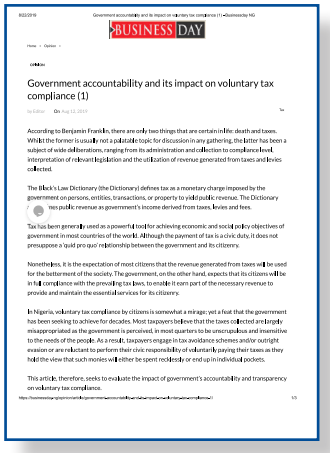
You can read the full article in Bloomberg International Tax News of 13 February 2019.


8/22/2019 Government accountability and its impact on voluntary tax compliance (1) – Businessday NG

BUSINESS DAY

Home » Opinion »

OPINION

Government accountability and its impact on voluntary tax compliance (1)

by Editor — On Aug 12, 2019

Tax

According to Benjamin Franklin, there are only two things that are certain in life: death and taxes. Whilst the former is usually not a palatable topic for discussion in any gathering, the latter has been a subject of wide deliberations, ranging from its administration and collection to compliance level, interpretation of relevant legislation and the utilization of revenue generated from taxes and levies collected.

The Black's Law Dictionary (the Dictionary) defines tax as a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue. The Dictionary also defines public revenue as government's income derived from taxes, levies and fees.

Tax has been generally used as a powerful tool for achieving economic and social policy objectives of government in most countries of the world. Although the paymnt of tax is a civic duty, it does not presuppose a 'quid pro quo' relationship between the government and its citizenry.

Nonetheless, it is the expectation of most citizens that the revenue generated from taxes will be used for the betterment of the society. The government, on the other hand, expects that its citizens will be in full compliance with the prevailing tax laws, to enable it earn part of the necessary revenue to provide and maintain the essential services for its citizenry.

In Nigeria, voluntary tax compliance by citizens is somewhat a mirage; yet a feat that the government has been seeking to achieve for decades. Most taxpayers believe that the taxes collected are largely misappropriated as the government is perceived, in most quarters to be unscrupulous and insensitive to the needs of the people. As a result, taxpayers engage in tax avoidance schemes and/or outright evasion or are reluctant to perform their civic responsibility of voluntarily paying their taxes as they hold the view that such monies will either be spent recklessly or end up in individual pockets.

This article, therefore, seeks to evaluate the impact of government's accountability and transparency on voluntary tax compliance.

https://businessday.ng/opinion/article/government-accountability-and-its-impact-on-voluntary-tax-compliance-1/ 1/5

18. Government accountability and its impact on voluntary tax compliance

by Dayo Adeniji and Aminat Jegede


Dayo Adeniji


Aminat Jegede

According to Benjamin Franklin, there are only two things that are certain in life: death and taxes. Whilst the former is usually not a palatable topic for discussion in any gathering, the latter has been a subject of wide deliberations, ranging from its administration and collection to compliance level, interpretation of relevant legislation and utilization of revenue generated from taxes and levies collected.

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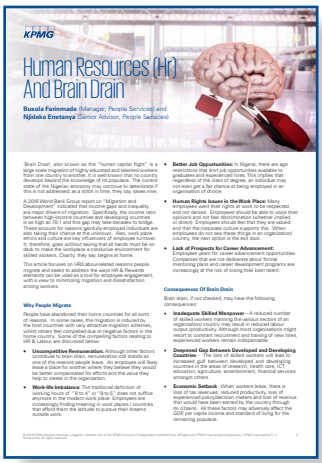
You can read the full article in the 12 and 20 August 2019 editions of Business Day Newspaper .


KPMG

Human Resources (Hr) And Brain Drain

Busola Farinmade (Manager, People Services) and Njideka Enetanya (Senior Advisor, People Services)

19. Human Resources and Brain Drain

by Busola Farimade and Njideka Enetanya

Busola Farinmade

Njideka Enetanya

'Brain Drain', also known as the "human capital flight" is a large scale migration of highly educated and talented workers from one country to another. It is well known that no country develops beyond the knowledge of its populace. The current state of the Nigerian economy may continue to deteriorate if this is not addressed; as a stitch in time, they say, saves nine.

A 2016 World Bank Group report on "Migration and Development" indicated that income gaps and inequality are major drivers of migration. Specifically, the income ratio between high-income countries and developing countries is as high as 70:1 and this gap may take decades to bridge. These account for reasons gainfully-employed individuals are also taking their chance at the unknown. Also, work place ethics and culture are key influencers of employee turnover. It, therefore, goes without saying that all hands must be on deck to make the workplace a conducive environment for skilled workers. Charity, they say, begins at home.

This article focuses on HR/Labour-related reasons people migrate and seeks to address the ways HR & Rewards elements can be used as a tool for employee engagement, with a view to minimizing migration and dissatisfaction among workers.

The article can also be accessed via https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/Human-Resources-and-Brain-Drain.pdf

Wednesday 10 July 2019 BUSINESS DAY 45

TAX ISSUES

Improving tax administration in Nigeria: Building on recommendations of the forum on taxation

20. Improving tax administration in Nigeria: Building on recommendations of the forum on taxation

by Olufemi Babem

Olufemi Babem

The financial crisis faced by Government at all levels in Nigeria, evidenced by their inability to fund budgeted expenditure and increasing debt profile, has forced many of them to focus on ramping-up internally generated revenues through taxes. For example, the FIRS, the tax collection agency of the Federal Government of Nigeria, grew its tax collection from N4trillion (i.e., about $13 billion) in 2017 to NGN5.3trillion (that is, about $17.3billion) in 2018. The amount collected in 2018 represents about 7percent and 73percent of the total GDP and budgeted revenue for the year respectively.

The Nigerian Constitution provides for fiscal federalism – with each tier of government having its tax institution to administer the taxes collectible by that tier of government (Federal, State and Local government). Thus, tax administration in the country is decentralized.

While the FIRS administer and collects taxes due to the Federal government (e.g., income tax on corporate entities), the States Boards of Internal Revenue (SBIR) of each state of the federation collect taxes due to the state government (principally income tax on employees and individuals resident in that state). The Local Government also administers the collection of duties and levies as specified in the relevant laws.

You can read the full article in Business Day Newspaper of 10 July 2019 (Page 45).


BUSINESS DAY

Tax Issues

Increased tax compliance obligations for employers in Lagos State

21. Increased tax compliance obligations for employers in Lagos State

by Ann Olalere and Mayowa Adeloye

Ann Olalere

Mayowa Adeloye

The Presidential Enabling Business Environment Council (PEBEC) was set up in July 2016 under the leadership of Professor Yemi Osibanjo with the objective of removing delays and restrictions associated with doing business in Nigeria. This is to enable the ease of starting and growing a business which would improve the economy and make Nigeria attractive to investors.

One of PEBEC's core areas of focus is "payment of taxes" and two of the issues with paying taxes, according to World Bank's Report on the Ease of Doing Business were number of tax payments per year and time required to comply with three (3) major taxes. From the last report, Nigeria has moved up 11 places in paying taxes

and taxpayers can see some improvements from the tax authorities.

However, the number of tax payments per year has also increased, creating additional tax compliance obligation especially for employers. While much attention has been focused on corporate taxes, the requirement for employers to comply and fulfill their tax obligations with respect to their employees have also grown over the years. This is also as a result of the public notices released recently by the LIRS. This has translated to increased compliance obligations for employers, both financially and in terms of administration. In our view, this can create more hurdles for doing business in Nigeria. In this article, we have evaluated the increase in tax compliance obligations for Nigerian employers and the need for employers to evaluate and mitigate any tax risk with respect to their employees.

You can read the full article in Business Day Newspaper of 20 March 2019 (Page 34).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Nigeria

INSIGHT: International Fiscal Agreements and the Nigerian Nexus

22. International Fiscal Agreements and the Nigerian Nexus

by Victor Adegite, Gali Aka and Olusegun Adefolaju


Victor Adegite


Gali Aka

With the emergence of international fiscal conventions and agreements, Nigeria, like any other jurisdiction, has signed up to a number of agreements, as outlined below.

OECD and the UN Tax Model Conventions Double tax treaty models are generally used by countries as a starting point when negotiating bilateral tax treaties. The OECD and UN Model Conventions are the two most widely used models and form the source for the majority of the more than 3,000 tax treaties currently in force, with a profound influence on international tax treaty practice.

The UN model tends to be relied upon by developing countries, while the OECD model tends to be relied upon by developed countries. While many provisions of the two model conventions are similar, the models diverge in important areas, reflecting the different memberships and priorities of the two organizations.

You can read the full article in Bloomberg International Tax News of 19 June 2019


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INSIGHT: Nigeria—Review of MAP Guidelines

23. Nigeria - Review of MAP Guidelines

by Funke Oladoke, Victor Adegite and Barbara Mbaebie


Funke Oladoke


Victor Adegite


Barbara Mbaebie

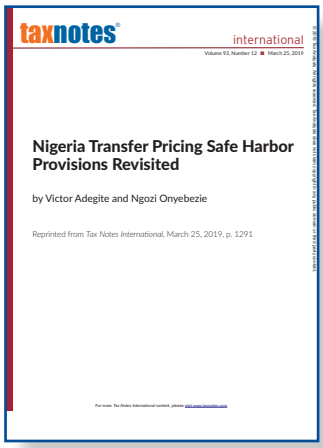
The FIRS has published guidelines on its MAP. This is regarded as another crucial step by the FGN in demonstrating its commitment to implementing the minimum standards of the OECD's BEPS Project.

The MAP essentially allows designated representatives (i.e. the competent authorities) of two countries with a subsisting tax treaty to interact with a view to resolving tax disputes arising from the inconsistencies in the interpretation or application of a tax treaty or situation. This is especially applicable where the taxation of an individual or entity is unclear.

Prior to the issuance of the guidelines on February 21, 2019, there were limited directives on how Nigerian taxpayers could access the MAP. The conclusion of the

BEPS Action 14 (Making Dispute Resolution Mechanisms More Effective) report and Nigeria's membership of the BEPS Inclusive Framework has made it possible to adopt the MAP in Nigeria.

You can read the full article in Bloomberg International Tax News of 6 September 2019.


taxnotes international

Nigeria Transfer Pricing Safe Harbor Provisions Revisited

by Victor Adegite and Ngozi Onyebezie

Reprinted from Tax Notes International, March 25, 2019, p. 1291

24. Nigeria transfer pricing safe harbor provisions revisited

by Victor Adegite and Ngozi Onyebezie


Victor Adegite


Ngozi Onyebezie

Taxpayers have been fulfilling the requirements of the TP Regulations requirements since their introduction into Nigeria in 2012. The requirements include filing statutory returns and keeping TP documentation. The documentation is used to demonstrate to the tax authority that a taxpayer's related-party transactions have been conducted in line with the arm's-length principle.

However, putting the documentation together involves carrying out detailed and structured analysis and collecting significant amounts of data. This is especially true for taxpayers with many associated enterprises and several related-party transactions. TP documentation compliance requirements can therefore be time- and resource-intensive. Safe harbor provisions exist to address some of the practical difficulties associated with keeping documentation.

You can read the full article in Tax Notes International of March 25, 2019 (Volume 93, Number 12)


Bloomberg Tax International Tax News

Nigeria

INSIGHT: Nigeria's Multi-Agency Tax Audits and Investigations—Issues Arising

25. Nigeria's Multi-Agency Tax Audits and Investigations - Issues Arising

by Kenneth Mgbemena and Ikechukwu Enekwe


Kenneth Mgbemena

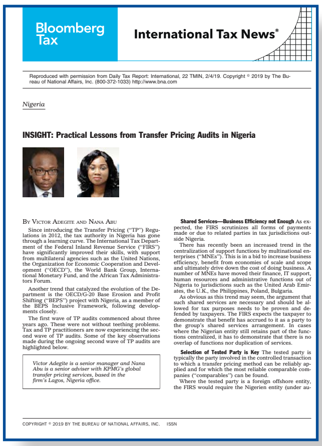

Ikechukwu Enekwe

With a tax to GDP ratio of about five percent—one of the lowest in the world—the FGN has continued to take steps towards raising non-oil revenue in the country.

One such step is the ratcheting up of tax collection mechanisms, through tax reviews, audits and investigations of taxpayer records, by both tax and non-tax authorities. This multi-agency approach to taxpayer audits has inadvertently put the Nigerian tax administration system in the spotlight and calls into question the rationale and legality of non-tax bodies becoming involved in tax administration.

The current tax administration system in Nigeria is structured such that tax administration cuts across the three tiers of government. The purpose of this is to enable the different tiers of government to administer the taxes under their scope, to ensure efficiency in tax collection and reduce multiple taxation.

You can read the full article in Bloomberg International Tax News (30 April 2019)


Bloomberg Tax International Tax News

Nigeria

INSIGHT: Practical Lessons from Transfer Pricing Audits in Nigeria

26. Practical lessons from Transfer Pricing Audits in Nigeria

by Victor Adegite and Nana Abu

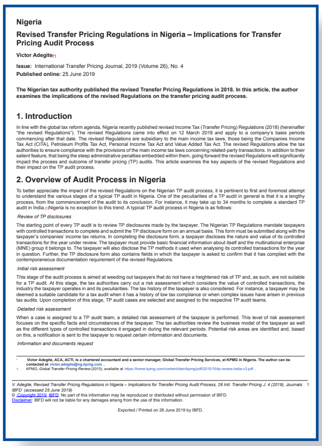

Victor Adegite


Nana Abu

Since introducing the TP Regulations in 2012, the tax authority in Nigeria has gone through a learning curve. The International Tax Department of the FIRS have significantly improved their skills, with support from multilateral agencies such as the United Nations, the OECD, the World Bank Group, International Monetary Fund, and the African Tax Administrators Forum.

Another trend that catalyzed the evolution of the Department is the OECD/G-20 BEPS project with Nigeria, as a member of the BEPS Inclusive Framework, following developments closely. The first wave of TP audits commenced about three years ago. These were not without teething problems. Tax and TP practitioners are now experiencing the second wave of TP audits.

You can read the full article in Bloomberg International Tax News of 4 February 2019.


Nigeria

Revised Transfer Pricing Regulations in Nigeria – Implications for Transfer Pricing Audit Process

Victor Adegite

1. Introduction

2. Overview of Audit Process in Nigeria

27. Revised Transfer Pricing Regulations in Nigeria – Implications for Transfer

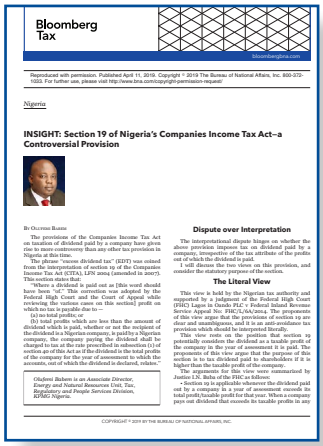
by Victor Adegite


Victor Adegite

In line with the global tax reform agenda, Nigeria recently published revised Income Tax (TP) Regulations (2018) (hereinafter "the revised Regulations"). The revised Regulations came into effect on 12 March 2018 and apply to a company's basis periods commencing after that date. The revised Regulations are subsidiary to the main income tax laws, those being the CITA, PPTA, PITA and VATA The revised Regulations allow the tax authorities to ensure compliance with the provisions of the main income tax laws concerning related-party transactions. In addition to their salient feature, that being the steep administrative penalties embedded within them, going forward the revised Regulations will significantly impact the process and outcome of TP audits. This article examines the key aspects of the revised Regulations and their impact on the TP audit process.

To better appreciate the impact of the revised Regulations on the Nigerian TP audit process, it is pertinent to first and foremost attempt to understand the various stages of a typical TP audit in Nigeria. One of the peculiarities of a TP audit in general is that it is a lengthy process, from the commencement of the audit to its conclusion. For instance, it may take up to 34 months to complete a standard TP audit in India. Nigeria is no exception to this trend.

You can read the full article in International Transfer Pricing Journal of 25 June 2019 (Volume 26, No. 4)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Nigeria

INSIGHT: Section 19 of Nigeria's Companies Income Tax Act–a Controversial Provision

28. Section 19 of the Nigeria's Companies Income Tax Act - a Controversial Provision

by Olufemi Babem


Babem Olufemi

The provisions of the CITA on taxation of dividend paid by a company have given rise to more controversy than any other tax provision in Nigeria at this time. The phrase "excess dividend tax" (EDT) was coined from the interpretation of section 19 of the CITA. This section states that: "Where a dividend is paid out as [this word should have been "of." This correction was adopted by the FHC and the COA while reviewing the various cases on this section] profit on which no tax is payable due to (a)no total profits; or (b)total profits which are less than the amount of dividend which is paid, whether or not the recipient of the dividend is a Nigerian company, is paid by a Nigerian company, the company paying the dividend shall be charged to tax at the rate prescribed in subsection(1) of section 40 of this Act as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates."

You can read the full article in Bloomberg International Tax News of 11 April 2019.


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Nigeria

INSIGHT: Tax and Transfer Pricing in Nigeria—Major Changes to Have Impact in 2019

29. Tax and transfer pricing in Nigeria – major changes to have impact in 2019

by Victor Adegite and Ngozi Onyebezie

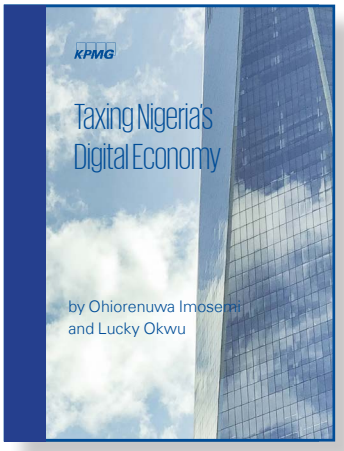

Victor Adegite


Ngozi Onyebezie

Major changes in the tax and TP landscape driven by the implementation of the recommendations of the OECD's BEPS were introduced in Nigeria. These changes will significantly impact taxpayers in the conduct of their business and so far, are already driving increased tax compliance.

TP Regulations finally happened in the second half of 2018. The new TP Regulations were made public by the FIRS on August 28, 2018. As expected, the contents of the TP Regulations largely align with the recommendations of the OECD's BEPS Actions 8–10 and 13. The new TP Regulations have an effective date of March 12, 2018, and apply to taxpayers' basis periods commencing after that date.

You can read the full article in Bloomberg International Tax News of 3 January 2019.



30. Taxing Nigeria's Digital Economy

by Ohiorenuwa Imosemi and Lucky Okwu

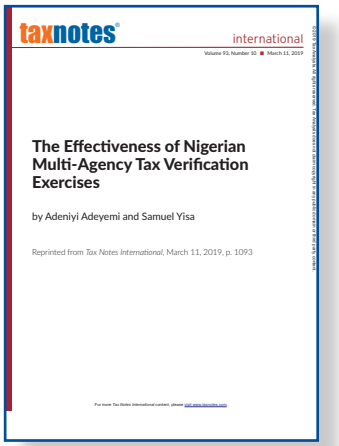
Ohiorenuwa Imosemi

Lucky Okwu

Recently, the Executive Chairman of the FIRS, Mr Babatunde Fowler, disclosed the Nigeria government's intention to collect VAT on bot domestic and international online transactions from January 2020. This proposal may be attributed to the Nigeria government's efforts to shore up tax revenue to reduce budget deficit. The effort is also in consonant with the initiatives by the OECD (i.e. Action 1) to reduce tax leakages under the BEPS project.

This article reviews the proposal by the FIRS within the BEPS framework and examines similar initiatives in some of other jurisdictions. It also evaluates the timeliness and suitability of the effort by the Nigeria government to commence the taxation of the nation's digital space.

You can read the full article in the "ThisDay Newspaper" of 17 October2019.



31. The Effectiveness of Nigerian Multi-Agency Tax Verification Exercise

by Adeniyi Adeyemi and Samuel Yisa

Adeniyi Adeyemi

Samuel Yisa

On October 31, 2018, the World Bank released its Doing Business 2019 report. The report, which provides a comparative assessment of 190 countries' regulatory environment, indicated that Nigeria had moved up 14 places in its Ease of Paying Taxes Index rankings (Nigeria was 171st the previous year). This is a laudable achievement, reflecting the unflinching effort by Nigerian revenue authorities — particularly the FIRS — to automate tax filing and other compliance requirements through technology. However, there is still room for significant improvement within tax administration. One of the key areas of focus should be tax audits carried out by disparate government agencies.

This article seeks to assess multi-agency tax verification exercises, particularly at the federal level, within the context of the Nigerian tax system. It will highlight the effect of these exercises on both the government and taxpayers and then make recommendations for an improved tax administration system.

You can read the full article in Taxnotes International (Volume 93, Number 10) of 11 March 2019.

TAX ISSUES

CITN inducts 560 new members, emphasises on professional conduct

The Nigerian Transfer Pricing Regulations: A tool for enhancing tax competitiveness

32. The Nigerian Transfer Pricing Regulations: A tool for enhancing tax competitiveness

by Omojo Okwa and Gali Aka

Omojo Okwa

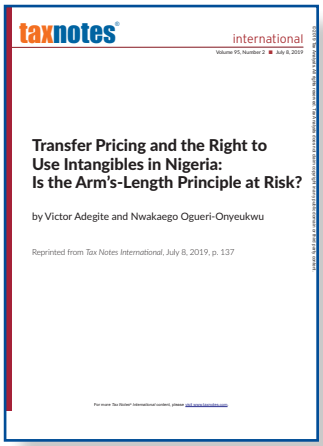
Gali Aka

According to Adam Smith, a good tax system must possess the qualities of equity, certainty, economy and convenience. All tax laws and accompanying tax regulations must be written with the intention of balancing these qualities with meeting the core objective of taxation, which is to enable the collection of all monies due to government.

The Income Tax (TP) Regulations, 2018 (the TP Regulations) highlights the provision of certainty of transfer pricing treatment in Nigeria (certainty) and a level playing field for both multinational enterprises and independent enterprises carrying on business in Nigeria (equity) as some of its core objectives.

This article seeks to review the potential effectiveness of the current TP Regulations in enabling the accomplishment of the objectives stated above and suggests ways by which the Regulations can enable the realization of these objectives.

You can read the full article in Business Day Newspaper of 29 May 2019 (Page 35).



taxnotes international

Transfer Pricing and the Right to Use Intangibles in Nigeria: Is the Arm's-Length Principle at Risk?

by Victor Adegite and Nwakaego Ogueri-Onyeukwu

Reprinted from *Tax Notes International*, July 8, 2019, p. 137

33. Transfer Pricing and the right to use intangibles in Nigeria: Is the Arm's-Length principle at risk?

by Victor Adegite and Nwakaego Ogueri Onyeukwu

Victor Adegite

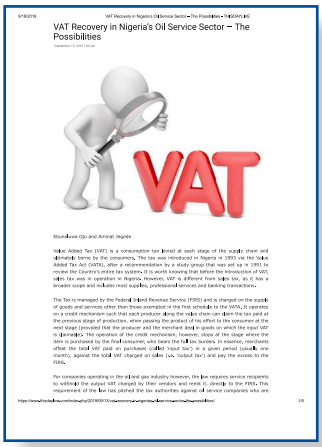
Nwakaego Ogueri-Onyeukwu

In 2018 Nigeria's FIRS issued new Income Tax (TP) Regulations along with guidelines providing information on the transfer pricing documentation requirements. The revised regulations took effect on March 12, 2018 and repealed the Income Tax (TP) Regulations, 2012, which had taken effect on August 2, 2012.

One of the changes to the regulations involves compensation for the use of intangibles. Regulation 7(5) of the 2018 regulations states that: where a person engages in any transaction with a related person that involves the transfer of rights in an intangible, other than the alienation of an intangible, the consideration payable in that transaction that is allowable for deduction for tax purposes shall not exceed 5 [percent] of the earnings before interest, tax, depreciation, amortisation and other consideration, derived from the commercial activity conducted by the person in which the rights transferred are exploited.

Thus, regulation 7(5) restricts the amount of a royalty that a recipient of intangible assets in Nigeria can claim as tax-deductible and the base on which this royalty is calculated. This may present several issues that affect the application of the arm's-length principle the cornerstone of transfer pricing.

You can read the full article in Tax Notes International of July 8, 2019 (Volume 95, Number 2)



34. VAT recovery in Nigeria's oil service sector - the possibilities

by Aminat Jegede and Ebunoluwa Ojo

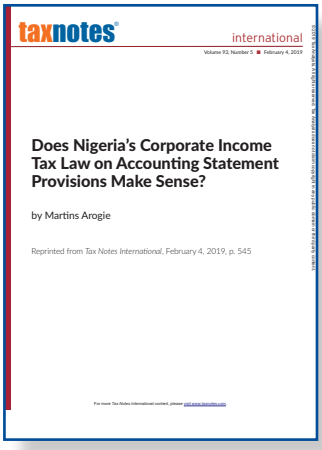
Aminat Jegede

Ebunoluwa Ojo

VAT is a consumption tax levied at each stage of the supply chain and ultimately borne by the consumers. The tax was introduced in Nigeria in 1993 via the VATA, after a recommendation by a study group that was set up in 1991 to review the Country's entire tax system. It is worth knowing that before the introduction of VAT, sales tax was in operation in Nigeria. However, VAT is different from sales tax, as it has a broader scope and includes most supplies, professional services and banking transactions.

The Tax is managed by the FIRS and is charged on the supply of goods and services other than those exempted in the first schedule to the VATA. It operates on a credit mechanism such that each producer along the value chain can claim the tax paid at the previous stage of production, when passing the product of his effort to the consumer at the next stage (provided that the producer and the merchant deal in goods on which input VAT is claimable). The operation of the credit mechanism, however, stops at the stage where the item is purchased by the final consumer, who bears the full tax burden. In essence, merchants offset the total VAT paid on purchases (called 'input tax') in a given period (usually one month), against the total VAT charged on sales (i.e. 'output tax') and pay the excess to the FIRS.

You can read the full article in the "ThisDay Newspaper" of 13 September 2019.



35. Does Nigeria's Corporate Income Tax Law on Accounting Statement Provisions make sense?

by Martins Arogie

Martins Arogie

The distinction between deductible and nondeductible expenses is as old as tax law itself. Arguably, it is the bedrock of direct taxation as a practice and a profession. Without it, companies might not need tax specialists to help them compute direct tax liability: They could apply the tax rate to their profit before tax (as listed in their audited financial statements) and move on. Unfortunately for the companies, that is not reality. Deductible expenses — that is, expenses the tax law considers when determining the taxable profits for a particular period — and nondeductible expenses — those the law does not consider — coexist.

In Nigeria, section 27 of the CITA addresses nonallowable deductions, including the depreciation of assets and any capital repaid or withdrawn. The income tax laws seek to treat as non-deductible any sum reserved out of profits (provisions) unless they relate to bad debt, doubtful debts to the extent that the FIRS has estimated them to have become bad, and donations that would otherwise have been allowable.

You can read the full article in Tax Notes International of 4 February 2019 (Volume 93, Number 5)


Wednesday, 12 June 2019 BUSINESS DAY 19

TAX ISSUES

Transparency initiative uncovers pool of taxable offshore funds

... 47 million offshore accounts information exchanged

Understanding tax evasion, avoidance, mitigation: The ethical stance on avoidance in Nigeria

36. Understanding tax evasion, avoidance, mitigation: The ethical stance on avoidance in Nigeria

by Omojo Okwa and Gali Aka

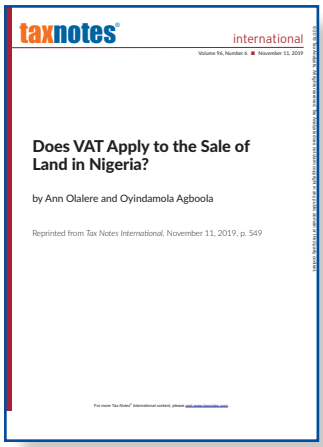

Omojo Okwa


Gali Aka

Tax evasion and avoidance indisputably have implications for most jurisdictions all over the world. When taxpayers do not comply with their tax obligations, economic activities may be distorted. Against this background, tax avoidance and evasion also have a psychological impact on those individuals who pay their fair share to the development of a country.

Addressing the problem of tax avoidance and evasion is particularly pressing at this moment, given Nigeria's present economic situation. Nigeria is a monoculture country and it is vulnerable to negative fluctuations in price of crude oil. According to the 2019 report of the International Monetary Fund, a large infrastructure gap, low revenue mobilization, and high dependence on hot money has constrained our growth as a country below the level needed to reduce vulnerabilities and improve development outcomes.

You can read the full article in the 12 & 19 June 2019 editions of Business Day Newspaper.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Volume 96, Number 6 ■ November 11, 2019

Does VAT Apply to the Sale of Land in Nigeria?

by Ann Olalere and Oyindamola Agboola

Reprinted from *Tax Notes International*, November 11, 2019, p. 549

37. Does VAT aply to the sale of land in Nigeria?

by Ann Olalere and Oyindamola Agboola


Ann Olalere


Oyindamola Agboola

One of the fundamental issues facing the real estate industry in Nigeria is whether VAT should apply to the sale of land by property development companies. This has been a topic of debate between tax authorities and taxpayers. On the one hand, the tax authorities argue that property transactions are subject to VAT because they are not specifically exempted in the first schedule to the 2004 VAT Act. On the other hand, taxpayers — that is, real estate companies — argue that the VAT Act does not consider the sale of land to be within the ambit of taxable goods and services.

Despite several debates and court rulings, the controversy rages on with no end in sight, since each court ruling seems to only increase taxpayers' confusion.

This article, therefore, discusses different perspectives on this issue. We find the argument against the applicability of VAT to land sales to be the stronger position, but we highly recommend that the legislature and courts step in to clarify the matter.

You can read the full article in Tax Notes International of 11 November 2019 (Volume 96, Number 6)


44 BUSINESS DAY Wednesday 15 May 2019

TAX ISSUES

Taxation of Not-For-Profit Organisations – matters arising

38. Taxation of not-for-profit organisations

by Isah Aruwa and Cynthia Ibe

Isah Aruwa

Cynthia Ibe

Not-for-Profit Organizations (NPOs) are organizations formed for promoting a common cause, e.g., human rights, environmental conservation, improving health care services/ delivery, girl child education, developmental work, etc., without a profit motive. They are mostly funded by donations and grants, and run by its promoters and volunteers under the supervision of a management team. The Management Team (MT) is responsible for the day-to-day administration of such organizations. In most cases, the MT, usually led by an Executive Secretary, an Executive Director, or whatever nomenclature is adopted by the NPO, reports to the Board of Trustees (BOT) who takes strategic decisions for achievement of the NPO's overall goals. NPOs are organized on a local, national or international level, focusing on specific issues/ areas.

In Nigeria, there are two forms of registration adopted by NPOs. They could be registered as an Incorporated Trustee (INT) or a Company Limited by Guarantee (CLG). The CAMA, 2004 refers to NPOs registered as INT as: "…community of persons bound together…" by a common objective other than profit, while those registered as CLG are viewed as organizations formed for promoting a common cause, for which the income and property are applied strictly towards promoting the defined cause.

This article focuses on NPOs formed under the CLG structure. We will review the income tax filing requirements of this type of NPOs, the level of disclosures required on the returns submitted to the FIRS and the need for the FIRS to revisit the statutory income tax filing obligations of the NPO, given the nature of their operation and tax exemption status.

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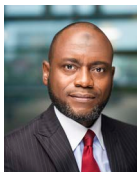

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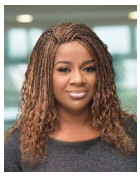

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