



Significant Tax Developments in Nigeria

2024

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Introduction

2024 has been a pivotal period for the Nigerian tax landscape, marked by significant legislative changes, and landmark court decisions. Three broad trends emerged from these developments. First, the government took steps to address escalating inflation and the rising cost of living through fiscal instruments. Second, there was a comprehensive effort to overhaul the tax laws. Third, there were fiscal initiatives focused on enhancing investments in the oil and gas sector to boost output.

These developments have not only reshaped the tax environment but also set the stage for future reforms aimed at enhancing compliance, broadening the tax base, and fostering economic growth. This review highlights the key legislations, court decisions and rulings from tax tribunals in Nigeria during 2024.

The Review

ADMINISTRATION OF TAXES

1. Implementation of the Collection and Remittance of National Cyber Security Levy

Following the enactment of the Cybercrime (Prohibition, Prevention etc.) (Amendment) Act, 2024 (“**Cybercrime Act**”), the Central Bank of Nigeria (the “**CBN**”) issued a Circular dated May 6, 2024, on the implementation guidelines for the collection and remittance of the National Cybersecurity Levy (the “**Levy**”). The Cybercrime Act imposes a levy of 0.5% on all electronic transactions, which shall be applied at the point of electronic transfer origination, deducted and remitted by the financial institution.¹ The Levy is to be deducted and remitted by banks, financial institutions and payment service providers under the regulatory purview of the CBN. However, due to widespread concerns raised by stakeholders, the government suspended the implementation of the Cybersecurity Levy in a subsequent circular dated May 17, 2024.² Please see our publication of August 12, 2024, for further details about the levy³.

2. Migration to TaxPro Max Platform for the filing of Transfer Pricing Returns and Country-By-Country Reporting Notifications

On February 18, 2024, the Federal Inland Revenue Service (“**FIRS**”) issued a public notice stating that the annual filing of the Transfer Pricing Returns (TP Returns) and Country-by-Country Reporting (**CBCR**) notifications have been migrated from the electronic TP platform (**e-TP Plat**) to the TaxPro-Max platform. The Public Notice further granted existing and potential taxpayers a waiver of all administrative penalties that accrued prior to June 30, 2024 provided all outstanding TP returns and CBCR notifications of such taxpayers are filed on TaxPro-Max by June 30, 2024. Going forward, taxpayers are

¹ Cybercrime Act s.44(2)(a).

² The CBN Circular No. PSM/DIR/PUB/LAB/017/005 dated May 17, 2024 “Re: *Cybercrimes (Prohibition, Prevention, Etc.) (Amendment) Act 2024 – Implementation Guidance on the Collection and Remittance of the National Cybercrime Levy*”, accessible here

<https://www.cbn.gov.ng/Out/2024/CCD/WITHDRAWAL%20CIRCULAR%20ON%20CYBERSECURITY%20LEVY%2017052024.pdf>

³ https://www.linkedin.com/posts/gelias_gelias-cybersecurity-framework-activity-7228716134932316160-wjv4?utm_source=share&utm_medium=member_desktop

obligated to utilize the TaxPro-Max platform for the filing of TP returns and CBCR notifications using their regular login details.

3. **Taxpayer Self-Registration Module on TaxPro-Max**

On March 11, 2024, FIRS introduced the TaxPro-Max which allows taxpayers to complete all tax registration processes with the FIRS independently and remotely from anywhere in the world. In 2024, the FIRS updated the platform by introducing a self-registration module. The process saves time and resources. With this innovation, newly registered corporate business entities are automatically assigned a Tax Identification Number (TIN) at the point of registration with the CAC and can now finalize their registration with the FIRS on TaxPro-Max by following the on-screen prompts.

4. **2024 Tax Reform Bills**

Following the launch of the Presidential Committee on Fiscal Policy and Tax Reforms (the “**Committee**”), chaired by Mr. Taiwo Oyedele, significant steps have been taken to transform Nigeria’s tax system. The Committee submitted a set of policy recommendations to the Federal Executive Council (FEC). After reviewing and adopting these proposals, the FEC advanced four executive tax reform bills to the National Assembly. These bills are:

4.1 **Nigeria Tax Bill, 2024:**

This bill seeks to cancel all existing tax laws and establish comprehensive fiscal framework for taxing Nigerian residents. If approved, it would consolidate all tax responsibilities and expectations into a single document, eliminating variations across different types of taxes.

4.2 **Nigeria Tax Administration Bill, 2024:**

This bill is designed to create a clear legal structure for all aspects of tax administration. It covers procedures for taxpayer registration, filing returns, assessments, payments, and the use of modern technology in tax processes. Additionally, it outlines the roles and authority of tax officials, sets rules for determining tax residency for both individuals and businesses, and details offenses along with their penalties.

4.3 **Nigeria Revenue Service (Establishment) Bill, 2024:**

This bill intends to modernize the nation's tax administration, this bill proposes to repeal the 2007 Federal Inland Revenue Service Act and replace it with the establishment of the Nigeria Revenue Service. The new bill introduces updated regulations, incorporates new measures, and removes outdated provisions to enhance oversight, enforce compliance, and improve the efficiency of revenue collection and accounting.

4.4 **Joint Revenue Board (Establishment) Bill, 2024:**

This bill proposes replacing the current Joint Tax Board with a new Joint Revenue Board. In addition, it calls for the creation of a Tax Appeal Tribunal and a Tax Ombuds Office. The bill’s objectives include improving the management of taxpayer data,

ensuring consistent tax practices throughout Nigeria, and providing expert advice on tax policy through detailed research and analysis of revenue trends.

5. Economic Stabilization Bill, 2024

The Federal Executive Council has approved the Economic Stabilisation Bill, 2024. This new legislation is designed to drive economic growth and stability by implementing a comprehensive tax and fiscal reforms in key sectors of the economy. Its primary objectives are to reduce inflation, alleviate poverty, and maintain stable exchange rates, all aimed at fostering economic recovery and national prosperity.

The bill introduces several significant changes to current laws, including: (a) revamping the foreign exchange framework to improve access to foreign currency and strengthen the local currency, (b) tax relief to companies that maintain their workforce for at least three years, (c) tax reliefs for private sector employers including transport subsidies provided to their employees, and (d) tax identification consolidation and collaboration to broaden the tax base and ensure fair treatment for all businesses.

OIL AND GAS

6. Tax Credits for Non-Associated Gas Greenfield Development and Midstream Capital and Gas Utilization Investment Allowance

On February 28, 2024, President Bola Ahmed Tinubu (the “**President**”) issued the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024 (the “**Order**”). The Order provides certain fiscal incentives aimed at supporting companies within the Nigerian oil and gas industry. Further to that, the Order granted specific tax credit incentives to non-associated gas (“**NAG**”) greenfield developments in onshore and shallow water locations, with first gas production on or before January 1, 2029.⁴ It also provides for a gas tax credit at the rate of \$1.00 per thousand cubic feet or 30% of the fiscal gas price (whichever is lower) if hydrocarbon liquids (HCL) content does not exceed 30 barrels per million standard cubic feet (SCF). If HCL exceeds 30 barrels per million SCF but does not exceed 100 barrels per million SCF, a gas tax credit at the rate of \$0.50 per thousand cubic feet or 30% of the fiscal gas price is applicable⁵.

For other greenfield NAG projects with the first commercial production after January 1, 2029, the Order grants a gas tax allowance at a rate of \$0.50 per thousand SCF or 30% of the fiscal gas price (whichever is lower). The gas tax credit shall apply for a maximum duration of ten years, after which it shall transition into a gas tax allowance.

Another tax incentive introduced by the Order is the midstream capital and gas utilization investment allowance (“**the Investment Allowance**”). This incentive is granted to gas companies on qualifying expenditure on plants and equipment incurred by the company in respect of any new and ongoing project in the midstream oil and gas industry, subsisting on the effective date of the Order, being February 28, 2024. The rate of the Investment Allowance is 25% of the actual expenditure incurred on qualifying plants and equipment.⁶ The Order further empowered the Minister for Finance to introduce other

⁴ The Order, paragraph 1(1).

⁵ The Order, paragraph 1(2).

⁶ The Order, paragraph 5.

incentives to ensure that investments in deep water oil and gas projects achieve a competitive internal rate of return.⁷

7. Petroleum Tax Incentives on Deep Offshore Oil and Gas Production

In exercise of the powers conferred under para. 10 of the Order and s. 2 of the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act, 2004, the Minister of Finance on February 28, 2024, issued the Notice of Tax incentives on Deep Offshore Oil & Gas Production, 2024 (the "Notice").

The Notice introduces production tax credit incentives applicable to two distinct categories of deep offshore developments within Oil Mining Leases (OMLs) and Petroleum Mining Leases (PMLs) regimes on production sharing contracts (PSC) or profit-sharing contracts. The categories are (a) existing leases with an approved field development plan where the lessee makes a Final Investment Decision (FID) between February 28, 2024, and January 1, 2029; and (b) future leases awarded after February 28, 2024, including those emanating from existing and future oil prospecting licenses or petroleum prospecting licences.⁸ The Notice stipulates that any company desirous of taking benefit of the incentives must notify the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) within thirty (30) days of their final investment decision to qualify for these incentives.

Additionally, the incentives extend to non-associated gas developments, with specific tax credit rates depending on the hydrocarbon liquids content.⁹ This inclusion is particularly significant as it encourages the development of gas resources, which are crucial for Nigeria's energy diversification and economic growth.

EXCISE DUTY

8. Implementation of the Customs, Excise Tariff, Etc. Variation Order 2024

In a move to address food price inflation and promote domestic agricultural growth, the Federal Government announced the introduction of the Regulation for the Implementation of the Customs, Excise Tariff, Etc. Variation Order 2024. The Regulation outlines the framework for implementing the 2024 Customs and Excise Tariff Order. The objective is to reduce food price inflation in the country by introducing waivers to levies, duties, value-added taxes, and tariffs on essential food imports.

9. Zero tariffs and excise duties on specific pharmaceutical machinery, equipment, goods and accessories

On June 28, 2024, President Bola Tinubu signed an Executive Order entitled "*the Presidential Executive Order to Increase Local Production of Healthcare Products, Reduce Costs of Healthcare Equipment and Consumables, and Promote Local Investments, 2024*". The Executive Order seeks to remove excise duty/tariffs, and value-added tax on specified (A) active pharmaceutical ingredients (API) and other life science raw materials for essential medicines, including antibiotics, anti-diabetic, anti-hypertensive and

⁷ The Order, paragraph 10.

⁸ Notice of Tax Incentives on Deep Offshore Oil and Gas Production, 2024, s.1.

⁹ Notice of Tax Incentives on Deep Offshore Oil and Gas Production, 2024, s. 3.

oncology drugs, and (B) raw materials and machinery for manufacturing of insecticidal nets, rapid diagnostic kits and reagents. The objective of the Executive Order is to significantly reduce operational costs and encourage local production of essential pharmaceuticals and medical products.

The Executive Order requires the Ministers of (A) Health, (B) Finance and (C) Industry, Trade and Investment to collaborate for the development of a harmonized implementation framework to guide relevant agencies in the operationalization and implementation of the Executive Order.

BANKING

10. Imposition of 70% Windfall Tax on Realized Profits From all Foreign Exchange Transactions by Banks.

On August 13, 2024, the Federal Government enacted the Finance (Amendment) Act, 2024, which introduced a windfall tax on profits realized from foreign exchange transactions by banks during the 2023 financial year. The rate of the tax is a one-off 70% tax on realized profits from all foreign exchange transactions by banks applicable for the financial year 2023.

11. CBN Suspends Charges on Deposits

On December 20, 2019, the CBN issued a revised “*Guide to Charges by Banks, Other Financial Institutions and Non-Bank Financial Institutions*” effective on January 1, 2020, which made provisions for processing charges on cash deposits exceeding specific amounts. For individuals, 2% processing fees for cash deposit transactions above ₦500,000 and 5% processing fees for cash withdrawals above ₦500,000. For Corporate, 2% processing fees for cash deposit transactions above ₦3,000,000 and 5% processing fees for cash withdrawals above ₦3,000,000

The CBN subsequently suspended the charges until April 30, 2024. The CBN in another circular dated May 6, 2024, announced the extension of the suspension of these processing fees on cash deposits of individuals and companies exceeding the above stated threshold until 30 September 2024.

12. Tax Treatment of Foreign Exchange Transactions

On June 14, 2024, the FIRS issued a circular on the tax treatment for foreign exchange transactions in Nigeria. This circular provides guidelines for assessing foreign exchange differences in determining assessable profit, clarifying the tax treatment of realised and unrealised exchange differences.

Unrealised exchange differences arise from currency revaluations without actual cash movement, while realised differences result from currency fluctuations affecting payments, receipts, or settlements.

For tax purposes, realised exchange gains or losses are either taxable income or deductible expenses. In contrast, unrealised gains or losses are excluded from taxation. Additionally, exchange differences related to tax-exempt items are neither taxed nor deducted but must be recorded in the tax computation schedule.

WITHHOLDING TAX

13. The Deduction of Tax at Source (Withholding) Regulations, 2024

On July 2, 2024, the Minister issued the Deduction of Tax at Source (Withholding) Regulations, 2024. Subsequently, on October 2, 2024, the Federal Government published the official gazette containing the Regulations with slight modifications from the version initially issued by the Minister. Following the release of the Regulations, the FIRS, through a public notice issued on October 3, 2024, confirmed that the Regulations will officially take effect on January 1, 2025. The Regulations introduced many novel provisions that significantly change and unify the existing withholding tax (WHT) regime in Nigeria. These changes include new withholding rates on certain transactions, deductions timing, exempt transactions, and offences and penalties against defaulters.

VALUE ADDED TAX

14. VAT (Modification) Order, 2024

The Value Added Tax (VAT) (Modification) Order, 2024 was published on September 1, 2024. The Order amends Parts I and II of the First Schedule to the VAT Act to expand the list of VAT-exempt items. They include equipment related to Compressed Natural Gas (CNG), Liquefied Petroleum Gas (LPG), Electric Vehicles, and clean energy solutions. The Order also extends exemptions to services such as CNG and LPG conversions, electric vehicle manufacturing, and sales. This aligns with the Nigerian government's push to promote domestic gas production and utilization in response to fuel subsidy removal. Additionally, the Order expanded the definition of petroleum products, which now include various gas forms, aviation fuel, motor oil, and crude petroleum oils.

15. Nigeria Customs Service Guidelines for the Implementation of the Zero Percent Duty Rate and VAT Exemption on Selected Basic Food Items

On August 14, 2024, the Nigeria Customs Service (“NCS”) released the *“Guidelines for Implementation of Zero Duty Rate on Some Basic Food Items”*. The guidelines set out zero-duty rate for essential food items such as husked brown rice, grain sorghum, millet, maize, wheat, and beans, excluding seeds. To qualify for the rate set out in the guidelines, the importer must be a Nigerian company with at least five years of operation and adequate farmland or agro-processing facilities. The importers of certain items, such as maize, wheat, and beans, must, in addition, have an out-grower network for cultivation. Other compliance requirements include registration with the Federal Ministry of Finance, keeping records, and trading 75% of imported items on recognized exchanges. Failure to meet these conditions results in forfeiture of waivers and payment of applicable duties and penalties for foreign sales.

CORPORATE TAX

16. Introduction of Expatriate Employment Levy and its Suspension

On February 27, 2024, the Federal Government introduced the Expatriate Employment Levy (“**the Levy**”). This is a mandatory financial contribution for employers hiring expatriate workers. The aim of the Levy is to promote skill transfer, enhance public-

private collaboration, and address demographic shifts. The Levy was set at USD15,000 for expatriate directors and USD10,000 for other expatriates working in Nigeria for 183 days or more within a fiscal year, excluding exempted diplomatic staff. As part of the implementation conditions, employers must maintain accurate records and report expatriate employment details in a timely manner.

Additionally, the Federal Government released the Expatriate Employment Handbook, which outlined the Levy requirements, including annual payments by Nigerian entities for expatriates and the obligation to keep comprehensive records. The Handbook also included penalties for non-compliance. However, due to public feedback, the Ministry announced the suspension of the Levy on March 8, 2024, for further consultation with stakeholders.

17. Guidelines for Approved Enterprises in Nigerian Export Processing Zones

On February 21, 2024, the Nigerian Export Processing Zones Authority (NEPZA) issued a Circular informing approved enterprises in the NEPZA of the recent guidelines jointly approved with the FIRS. This guideline focuses primarily on the regularisation of outstanding tax obligations as outlined in the Finance Act 2020.

Pursuant to the Circular, (a) approved enterprises, including those exempted from incorporation or income tax, are now required to file their income tax returns with the FIRS in line with the provisions of CITA, (b) approved enterprises are by the guidelines required to file Value Added Tax, Withholding Tax, Transfer Pricing, Country-by-country reporting and other returns as may be required from time to time, (c) profits of approved enterprises arising from activities within the relevant zones shall continue to enjoy tax exemption in line the provisions of NEPZA Act, and (d) approved enterprises that provide services to individuals/companies that are resident in the customs territory or to unapproved enterprise within the zones are now required to include Value Added Tax (VAT) in their invoice and remit same to the FIRS.

INTERNATIONAL TAX

18. Nigeria signs Tax Treaty Agreement with ECOWAS Member Countries

On May 1, 2023, the Minister of Finance issued an order titled the “Community Rules for the Elimination of Double Taxation (Taxes on Income, Capital, and Inheritance) Order 2023.” The Order gives effect to the ECOWAS treaty titled the “Supplementary Act A/SA.6.12/8 Adopting Community Rules for the Elimination of Double Taxation with respect to Taxes on Income, Capital and Inheritance and the Prevention of Tax Evasion and Avoidance within the ECOWAS Member States.”(the “**ECOWAS Treaty**”) The ECOWAS Treaty is designed to establish a comprehensive framework between Nigeria and other ECOWAS member states to eliminate double taxation and streamline regional tax policies within the ECOWAS region. The Order took effect on January 1, 2024, and applies to the existing classes of taxes in Nigeria.¹⁰

¹⁰ Personal Income Tax, Companies Income Tax, Petroleum Profits Tax, Capital Gains Tax, Tertiary Education Tax, the National Information Technology Development Levy, and other similar taxes imposed after December 6, 2018. See Community Rules for the Elimination of Double Taxation (Taxes on Income, Capital, and Inheritance) Order 2023, Order 3.

The ECOWAS Treaty introduced a six-month threshold for establishing a permanent establishment (PE). It specifies that construction, installation, or assembly projects, including supervisory activities conducted in Nigeria by an enterprise, will only create a PE where such activities exceed six months within a twelve-month period.¹¹ In addition, dividends, interest, and royalties paid to beneficial owners in ECOWAS member states will be subject to withholding tax at a maximum rate of 10%.¹² This is to promote fairness and cross-border investment. Within the ECOWAS region.

Additionally, the ECOWAS Treaty stipulates that the profits earned by a resident of a member state from operating ships, aircraft, boats, rail or road transport vehicles in international traffic will be taxed only in the resident's country.¹³ Further, gains on share disposals will generally be taxed in the shareholder's country of residence unless the company whose shares are being disposed of derives more than 50% of its value from immovable property situated in another member state.¹⁴

Finally, the ECOWAS Treaty ensures equitable treatment of taxpayers in Nigeria by relieving them from more burdensome taxes. This landmark international agreement is expected to boost economic integration, encourage investment, and harmonize tax policies across the ECOWAS region. By implementing the ECOWAS Treaty, Nigeria has expanded its network of tax treaties.

19. FIRS Releases Guidelines on Advance Pricing Agreements

The FIRS has introduced the Guidelines on Advance Pricing Agreements (APA). The guidelines regulate the process and conditions under which taxpayers can obtain APAs in Nigeria, effective from January 1, 2025. The guidelines are in line with the Income Tax (Transfer Pricing) Regulations of 2018.

The key provisions of the APA Guidelines include: (a) APA duration - The APA is valid for up to three years, with the possibility of applying the agreed methodology for up to three prior years if a rollback is granted, (b) costs and fees - the taxpayer is responsible for covering all costs directly incurred by the FIRS in processing the APA application, which includes a non-refundable application fee of \$20,000 and a renewal fee of \$5,000, (c) threshold for application - the minimum threshold for a single covered transaction is USD 10 million, or USD 50 million for a group of transactions in a year, (d) eligibility - only companies with a taxable presence in Nigeria are eligible to apply for an APA, and (e) audit scope - the APA does not exempt the FIRS from auditing the periods covered under the agreement.

With the promulgation of the guidelines, there is now clarity and structure in place for taxpayers seeking certainty on their transfer pricing arrangements in Nigeria. The

¹¹ Schedule to the Community Rules for the Elimination of Double Taxation (Taxes on Income, Capital, and Inheritance) Order 2023, art. 7(3).

¹² Schedule to the Community Rules for the Elimination of Double Taxation (Taxes on Income, Capital, and Inheritance) Order 2023, art. 12(2), 13(2) and 14(2).

¹³ Schedule to the Community Rules for the Elimination of Double Taxation (Taxes on Income, Capital, and Inheritance) Order 2023, art. 10.

¹⁴ Schedule to the Community Rules for the Elimination of Double Taxation (Taxes on Income, Capital, and Inheritance) Order 2023, art. 16.

limitations of the guidelines are the exorbitant costs and fees, the minimum threshold of the transaction and the short duration.

SIGNIFICANT CASE LAWS

20. **Effect of non-attendance of all proceedings of the Tax Appeal Tribunal by a Commissioner who participated in decision making and signed the judgment of the Tribunal: *Daudu SAN v. FIRS*¹⁵**

On September 19, 2023, the Federal High Court, Abuja, overturned the Judgment of the Tax Appeal Tribunal and consequently nullified the entire proceedings in the case for non-compliance with the principles of fair hearing. The Court ruled that, as a statutory requirement, a member of the Tax Appeal Tribunal must be consistent and participate in all stages of the proceedings to qualify that member to deliberate on the processes and proceedings before arriving at a decision or judgment of the panel. This reinforces the principle that a man cannot be a judge in a matter he never heard. Accordingly, the Court ruled that it was a grave error for one of the panel members to have endorsed and/or delivered judgment in the appeal without participating in all the stages of the proceedings.

21. **Evidence Act Not Strictly Applicable at the Tax Appeal Tribunal: *Lekki Concession Company of Nigeria Ltd. v. FIRS*¹⁶**

The Tax Appeal Tribunal sitting at the Lagos Zone decided that the Evidence Act does not regulate the proceedings of the Tax Appeal Tribunal like those of the regular courts. According to the Tribunal, the Evidence Act is only a guide to assist the administrative tribunal for the conduct of trials. The Tribunal relied on the provision of the ss. 256(1) and 258(1) of the Evidence Act, which restricts the application of the statute to judicial proceedings *stricto sensu* and does not extend to administrative proceedings. According to the panel, the requirement of the Tribunal exercising quasi-judicial functions is to predicate its decision on evidence upon materials, which tends logically to show the existence or non-existence of facts relevant to the issue to be determined. The Tribunal also ruled that the mere fact that a document emanates from a government body or sent from the government to a private person does not make it a public document. According to the Tribunal, the hallmark of a public document is its openness and accessibility to the public. Hence, a document sent by FIRS to a private individual is not a public document.

22. **Tax Appeal Tribunal's Power to Pass Criminal Information to Criminal Prosecuting Authorities: *Tourist Company of Nigeria PLC v. FIRS*¹⁷**

The Tax Appeal Tribunal sitting at the Lagos Zone relied on the provisions of para. 12 of the Fifth Schedule of the Federal Inland Revenue Service (Establishment) Act 2007, to rule that where the Tribunal obtains information of a criminal nature in its proceedings, the Tribunal is obliged to pass such information to the appropriate criminal prosecuting authorities, such as the office of the Attorney General of the Federation or the Attorney General of any state of the Federation or any relevant law enforcement agency. The limit of the power of the Tribunal with respect to discovery of evidence of possible criminality

¹⁵ (2024) 79 TLRN 07.

¹⁶ (2024) 79 TLRN 44.

¹⁷ (2024) 79 TLRN 68

is to pass on the information to relevant authorities. The obligation of the Tribunal to hear and determine the appeal is not hindered.

23. Utilization of Withholding Tax Credit: *Bibby Maritime Nigeria Ltd v. FIRS*¹⁸

The Tax Appeal Tribunal, sitting at the Lagos Zone ruled that the FIRS must always provide credible evidence showing that taxpayers have utilised their withholding tax credit. According to the Tribunal, it is not enough for the FIRS to state in a tax report that the WHT credit available to a taxpayer has been used to offset its income tax liability—which can hinder the ability of a taxpayer to challenge disputed administrative tax assessments. Consequently, when determining their income tax liability, taxpayers must authorize the FIRS to apply either the entire WHT credit or a portion of it to defray the income tax liability.

24. Students on Industrial Training are not employees under the Personal Income Tax Act: *Bertola Machine Tools Ltd. v. LIRS*¹⁹

The Lagos Zone of the Tax Appeal Tribunal held that students undertaking industrial training and attachments do not qualify as employees under the Personal Income Tax Act, as they do not have regular employment contracts. Hence, payments of stipends to such students do not qualify as emolument within the context of the law, like salaries payable in a regular employment. The Tribunal also ruled that, under a contract of employment, an employer has the obligation to deduct and remit the pay-as-you-earn tax throughout the duration of the employee’s contract. The employer is also obligated to notify the tax authorities of the termination or cessation of an employee’s contract of employment.

25. FIRS cannot Serve Taxpayer a Notice of Assessment and Notice of Refusal to Amend in a single document: *Ponticelli Upstream v. FIRS*²⁰

The Tax Appeal Tribunal decided that the FIRS breached a taxpayer’s constitutional right of fair hearing by simultaneously serving a Notice of Assessment and a Notice of Refusal to Amend in a single document. By so doing, the FIRS deprived that taxpayer of the statutory right to object to the assessment under CITA s. 69, thereby denying the taxpayer the right to a fair hearing under the Constitution s. 36.

26. Deposit of 50% of Disputed Tax Assessment not a Condition for Appeal: *Daudu SAN v. Minister of Finance et al.*²¹

The Federal High Court, Abuja, has struck out and deleted the provisions of (a) paragraph V Rule 3 of the Federal High Court (FIRS) Practice Direction, 2021, (b) Order V Rule 1 of the Federal High Court (Tax Appeal) Rules 2022, and (c) Order III Rule 6(a) of the Tax Appeal Tribunal (Procedure) Rules, 2021. These statutory provisions had, in effect, mandated taxpayers to deposit 50% of a disputed tax assessment in an interest-yielding account maintained by the Chief Registrar of the Federal High Court before they could file an appeal against the decision of the Tax Appeal Tribunal. The Court ruled that the provisions are unconstitutional, null and void for restricting taxpayers’ access to the court. Please read our article on this issue on

¹⁸ (2024) 80 TLRN 05

¹⁹ (2024) 80 TLRN 49

²⁰ (2024) 80 TLRN 91

²¹ (2024) 81 TLRN 13

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3907267, published in 2021 where we argued that these provisions violate the 1999 Constitution by unlawfully restricting taxpayers' access to the court.

27. Companies under Liquidation are not Exempted from Tax Obligations: *Oladotun et al. v. Executive Chairman, FIRS et al.*²²

The Tax Appeal Tribunal sitting at the Lagos Zone decided that a taxpayer in the process of liquidation is not exempted from the filing of tax returns and payment of all rightly assessed taxes, pursuant to CITA s. 55. In addition, the Tribunal also emphasised that the provisions for limitation of actions under the Public Officers Protection Act (POPA)²³ do not apply to appeals brought before the Tribunal for recovery of taxes that have been validly assessed. This ruling does not cover limitation of action for other matters, including tax assessment and appeal.²⁴

28. Condition Precedent for the Validity of the Best-of-Judgment Assessment - *Popham Walter Oduote Ltd. v. Balyesa State et al.*²⁵

The Tax Appeal Tribunal, sitting in Benin Zone, ruled that before the FIRS can issue a best-of-judgment assessment, it must request a taxpayer to render returns, and the waiting time must have elapsed. This is to enable the taxpayer ample opportunity to disclose his income and other matters. According to the Tribunal, any assessment which does not fulfil either of the above conditions is null and void. The Tribunal further decided that an employer who claims that its employees are residents of another state other than the state alleging that they are liable to tax has the duty to show evidence of payment of tax in that other state.

29. Taxation of Itinerant Workers: *Bayelsa State v. MI Nigeria Ltd.*²⁶

The Tax Appeal Tribunal, sitting in Benin-City, decided that an itinerant worker can be taxed in two different tax jurisdictions in a particular year of assessment. According to the Tribunal, once a taxable person, individual, company operates a business in the territory of a tax authority, the tax authority will become the relevant tax authority under the law notwithstanding that the individual or business will eventually be liable to tax to another tax authority under the Personal Income Tax act s. 108. By that decision, the issue of whether or not the itinerant taxpayer who is found in the territory of the relevant tax authority will pay tax to that authority will be determined by the relevant tax authority based on the information and documents at its disposal.

30. Tax Appeal Tribunal Cannot Entertain Criminal Issues Arising From Tax: *Accion MicroFinance Bank v. Anambra State et al.*²⁷

The Tax Appeal Tribunal, sitting at Enugu Zone, ruled that it does not have the jurisdiction to try someone accused of committing a tax crime. Furthermore, under PITA s. 49 (as amended by the Finance Act 2022), bankers are obliged to make quarterly returns and

²² (2024) 81 TLRN 58

²³ (No. 39) (Chapter 379), Laws of the Federation of Nigeria, 1990.

²⁴ For tax assessment-six years and appeals-thirty days. See FIRS Act, fifth schedule, para 13(1), s. 26 and CITA, s. 66.

²⁵ (2024) 84 TLRN 06

²⁶ (2024) 84 TLRN 88

²⁷ (2024) 82 TLRN 29

not monthly returns to the relevant state internal revenue service. Importantly, the failure to make quarterly returns is no longer an offence requiring conviction and payment of a fine, as it was previously the case.

31. FIRS discretionary power to issue a Best of Judgment (“BoJ”) assessment must be Exercised Reasonably: *FIRS v Agromix (Nig.) Ltd*²⁸:

The Court of Appeal held that the FIRS has the authority to issue a BoJ assessment based on what it reasonably considers to be a company's total profits for a given tax year. When issuing a BoJ assessment, the tax authority is not required to conduct exhaustive investigations into the taxpayer's affairs. Instead, it must fairly consider all relevant material facts presented and, based on those facts, make a reasonable and non-arbitrary decision regarding the tax liability. Furthermore, if a taxpayer refuses or neglects to provide the necessary documents for tax assessment, the proper course of action for the FIRS is to seek a court order compelling the taxpayer to submit the required records and information.

32. Capital Assets are not liable to Companies Income Tax : *FIRS v Agromix (Nig.) Ltd*²⁹

The Court of Appeal ruled that a company's capital assets cannot be classified as “taxable profit” or business income and, therefore, cannot be used to determine the total taxable profits of a company. Furthermore, even if a company sells such assets, the FIRS can only apply the BOJ assessment to the sale proceeds if the company fails to file its tax returns. Any BOJ assessment based on a company's capital assets rather than its actual profits exceeds the FIRS' authority and is invalid.

33. Only the National Inland Waterways Authority is Empowered to Regulate Inland Waterways in Nigeria: *National Inland Waterways Authority et al. v Lagos State Waterways Authority et al.*³⁰

In a landmark decision, the Supreme Court ruled that the regulation of all inland waterways in Nigeria falls within the exclusive legislative competence of the National Assembly. Therefore, activities on the inland waterways are within the jurisdiction of the National Inland Waterways Authority (NIWA). In its judgment, the apex Court annulled the Lagos State Waterways Authority Law 2008, which purported to regulate waterways within Lagos State, to the extent of its inconsistency with federal law on the subject. This decision effectively resolves the long-standing issues of multiple taxation, levies and regulation faced by inland waterways operators in Nigeria, especially in Lagos State.

34. Proper Procedure for Resolving Filing Errors on TaxPro-Max: *Tratrix Engineering Limited v. Federal Inland Revenue Service.*³¹

The TAT held that it is the duty of the FIRS to ensure that complaints in respect of errors or mistakes made in filing of tax returns on TaxPro-Max are promptly dealt with, so as not to overburden taxpayers or discourage voluntary compliance. It is sufficient that a taxpayer writes a letter to the FIRS in respect of the errors made in filing returns, in compliance with section 24 of the FIRS Act and section 90 of the CITA. Therefore, any

²⁸ (2025) 1 NWLR (Pt. 1974) 649.

²⁹ *ibid.*

³⁰ (2024) 14 NWLR (Pt. 1959) 435.

³¹ (Appeal No: TAT/SSZ/026/2023).

internally developed procedure within the offices of the FIRS is incapable of superseding the clear provisions of statute.

35. Withholding Tax on Deemed Dividends - *Rand Merchant Bank Nigeria Limited v. FIRS*³²

The TAT in Lagos recently ruled in favor of the FIRS against Rand Merchant Bank (RMB). The dispute arose after the FIRS demanded ₦602.59 million—including penalties and interest—from RMB for its decision to reinvest its 2017 profits instead of distributing them as dividends to shareholders. The Tribunal determined that the onus was on RMB to demonstrate that issuing dividends would have harmed its business, a burden that the bank could not satisfy. As a result, the TAT confirmed the FIRS's decision to assess withholding tax based on a deemed distribution of profits, based on the language of Section 21 of CITA.

36. FIRS Authority to Impose Turnover Assessment - *BJ Pumping Services SA Panama v. FIRS*

The Company appealed the decision of the TAT to the Federal High Court, arguing that the tribunal had overstepped its boundaries by introducing issues—such as adjustments to sales revenue and a re-examination of related-party transactions—that were never raised by the FIRS. The company maintained that this approach denied it the chance to address these matters, thereby undermining its right to a fair hearing.

However, the FHC held in favour of the FIRS, ruling that the TAT had acted within its proper jurisdiction. The court noted that the TAT was entitled to draw conclusions from the facts available, even if certain issues were not explicitly mentioned by either party, and affirmed that BJ Pumping's right to a fair hearing remained intact. Additionally, the FHC confirmed the FIRS's power under Section 30 of the Companies Income Tax Act to impose a turnover-based tax without the need to justify the 6% rate. Consequently, BJ Pumping was ordered to comply with the tax assessment, which the court deemed both lawful and valid.

37. Taxpayer acknowledgment of an assessment can revive a claim even after the statutory deadline: *Axankosi Limited v. FIRS*.³³

Axankosi challenged an additional ₦38 million Companies Income Tax assessment for the 2013–2015 period, arguing it was statute-barred and that ₦133 million in Withholding Tax credits should offset the tax. The FIRS maintained that it was legally entitled to reassess within the prescribed timeframe, noting that the disputed assessment was revised in 2022 after an initial assessment in 2019. The Tax Appeal Tribunal ruled that by using its WHT credits to reduce its tax liability, Axankosi had implicitly acknowledged its tax debt, reviving the cause of action. Consequently, the TAT dismissed the appeal in favor of the FIRS.

38. Insurance Companies are Subject to Excess Dividend Tax - *FBN Insurance Limited v. Federal Inland Revenue Service* ³⁴

FBN Insurance contested a CIT assessment, arguing that Section 16 of CITA, which governs insurance companies, should override general provisions like Section 19 on

³² (Appeal No. TAT/LZ/WHT/007/2023)

³³ (Appeal No. TAT/LZ/CIT/114/2022)

³⁴ (TAT/LZ/ CIT/030/2022)

excess dividend tax. FIRS argued that Section 16 only prevails in cases of conflict and does not address excess dividend taxation, making Section 19 applicable. The Tribunal ruled in favor of FIRS, affirming that both sections apply since they are not contradictory. Consequently, the assessment was upheld, and FBN Insurance was held liable for excess dividend tax under Section 19.

Tax Outlook for 2025 Financial Year

By 2025, Nigeria's tax landscape is poised for substantial transformation, driven by a series of ambitious tax reforms aimed at improving efficiency, promoting compliance, and fostering economic growth. These reforms are designed to simplify tax administration, ensure a more transparent and predictable tax system, and create a business-friendly environment that encourages both local and foreign investments.

The anticipated changes will largely be influenced by key developments that took place in 2024, as these events have laid the foundation for the evolution of Nigeria's tax framework. Several legislative and policy measures introduced during the year are expected to play a crucial role in shaping the future of tax administration and enforcement. These initiatives, coupled with ongoing fiscal policy adjustments, are intended to enhance revenue generation while minimizing bottlenecks that have historically hindered tax collection and compliance.

Some of the most impactful occurrences in 2024 that are expected to set the stage for this transformation include:

1. Enforcement of the WHT Regulations, 2024

The enforcement of the WHT Regulations is scheduled to begin on January 1, 2025. These regulations are designed to streamline tax compliance processes, improve transparency, and enhance the overall efficiency of Nigeria's tax system. Key changes introduced under the new WHT framework include variations in applicable tax rates and the inclusion of additional qualifying persons and transactions. These modifications are expected to broaden the tax base, ensuring a more equitable distribution of tax responsibilities while also increasing government revenue to support economic development initiatives.

2. Enactment of the Nigerian Tax Bill, 2024 into Law

A key component of Nigeria's ongoing tax transformation is the 2024 Tax Reform Bills, which are expected to become law in the 2025 financial year. Once passed by the National Assembly and signed into law by the President, these four distinct bills will take effect from the date designated by the government, typically following a 90-day transition period in accordance with the National Tax Policy. The progressive nature of these bills is expected to yield significant benefits for the economy, introducing reforms that will improve the business environment, support small and medium enterprises (MSMEs), and enhance overall tax efficiency.

Some of the key anticipated impacts include; (a) the harmonization of multiple taxes under the new framework is expected to reduce administrative burdens, simplifying tax compliance and making Nigeria a more attractive destination for businesses, (b) the income tax threshold for companies will be increased to ₦50 million, allowing small

businesses to reinvest profits into expansion without immediate tax liabilities, (c) a gradual reduction in corporate income tax from 30% to 25% will improve business sustainability, reducing the risk of liquidation and encouraging investment, (d) the VAT rate is expected to rise to 10% in 2025, essential goods and services will remain exempt to shield low-income earners from additional financial strain, and (e) Companies operating at a loss will no longer be subject to minimum tax requirements, offering relief to struggling businesses.

3. Expanding Non-Oil Export Incentives

The Nigerian Government is intensifying efforts to diversify its economy away from oil by prioritizing non-oil sectors such as agriculture, solid minerals, and manufacturing. The government plans to offer targeted incentives and policy support to boost non-oil exports, stabilize revenue, and promote long-term growth. This strategy is expected to improve the balance of trade by increasing foreign exchange inflows, strengthen the local currency, and create more jobs, ultimately fostering a resilient and sustainable economic base.

4. Expanding oil and gas operations

Despite ongoing efforts to diversify the economy, the oil and gas sector remains pivotal for Nigeria's fiscal stability. Facing a significant budget deficit, the government is prioritizing deep offshore exploration and production and enhancing incentives—especially for gas production—to attract investment and boost revenue. With global oil prices projected to fall below US\$70 per barrel, Nigeria will need to ramp up production beyond its current target of 2 million barrels per day to offset revenue shortfalls and meet fiscal demands in 2025.

5. Boost in renewable energy investments

The Nigerian government has introduced tax incentives to support the transition to cleaner energy. Exempting VAT on electric vehicles, their parts, semi-knock-down units, and equipment for biogas, biofuels, and clean cooking is aimed at driving interest in sustainable energy solutions. These incentives are expected to attract both local and foreign investments in Nigeria's renewable energy market. This policy shift aligns with global sustainability goals and helps Nigeria's broader energy transition strategy.

6. Possibility of Reinstating Suspended Taxes

The Nigerian government suspended several taxes in 2024 to ease economic hardships and support businesses. However, with rising fiscal pressures and the need for sustainable revenue generation, some of these suspended taxes may be reinstated in 2025. Factors such as debt servicing and infrastructure spending could drive this decision. If economic conditions improve, the government may argue that businesses and individuals can now comply. Some of the suspended taxes include: (a) Cybersecurity Levy, (b) the Expatriate Employment Levy, (c) 5% Excise Tax on Telecommunication Services, and (d) excise tax on single-use plastics, including containers and bottles, to allow for more comprehensive consultations and to mitigate potential negative impacts on businesses.

Conclusion

This review highlights the key legislative developments in 2024, including enacted laws and significant bills shaping Nigeria's legal, economic, and social landscape. In 2025, these reforms have the potential to enhance governance, economic stability, and investor confidence. Our commitment to tracking legislative changes remains strong, ensuring stakeholders stay informed and prepared for emerging legal and policy trends. Adapting to these transformations will be essential for navigating Nigeria's evolving regulatory environment.

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