

# Tax Administration in Nigeria – Major Tax and Fiscal events in 2019



**TAX ALERT**

The year 2019 was rife with various developments in the Nigerian Tax Space with implications on tax administration in the Country. From proposed major changes to Nigeria's tax and fiscal policy in the form of a new Finance Bill to Landmark decisions delivered by the Tax Appeal Tribunals and superior courts of record. This annual tax highlights summarises important tax events that occurred in 2019 and what can be expected in the year 2020.

## Private Sector Incentives

In 2019, the Companies Income Tax (Road Infrastructure Development & Refurbishment Investment Tax Credit Scheme) Order 2019 that seeks to incentivize private sector involvement in the construction and refurbishment of road infrastructure in Nigeria was passed. In return, participating private entities are entitled to recoup their contributions as tax credit against the corporate taxes to be paid, ordinarily.

## NOTAP Introduces Online Registration

In furtherance of the improvement of ease of doing business in Nigeria, the National Office for Technology Acquisition and Promotion (NOTAP) introduced the automated platform for registration of technology transfers through its online portal. This reform was implemented to ease the application process for registration of agreements registrable under NOTAP and took effect from 2<sup>nd</sup> September 2019.

## Federal Government offers Tax Amnesty

As part of its drive to increase non-oil revenue, the Nigerian Government introduced, by **Executive Order 008**, the **Voluntary Offshore Assets Regularization Scheme (VOARS)**. The scheme affords defaulting taxpayers the opportunity to declare their offshore assets and pay a one-time levy of 35% on same within twelve months of its issuance. The Scheme also grants immunity to compliant taxpayers from prosecution for tax and related offences.

## Federal Inland Revenue Service (FIRS) Releases CRS Regulations

Following Nigeria's subscription to a number of International conventions pertaining to mutual administrative assistance and the exchange of the financial information of tax residents of member countries, the FIRS released the Income Tax (Common Reporting Standard) Regulations 2019 (The Regulations) to give domestic effect to these international treaties. The Regulations empower the FIRS to receive information on the bank accounts held by Nigerian tax residents in over 100 countries and is obligated to provide similar information to other countries who are also parties to the agreements. These measures were put in place to reduce the likelihood of tax evasion using foreign accounts and apply to all Nigerian financial institutions, excluding government entities and other institutions described as 'Non-reporting Financial Institution' by the Domestic Law.

## JTB introduces Unified TIN Number

In order to plug the leak in the Nigerian governments efforts to increase tax revenue, created by poor tax compliance by a large majority of the country's tax base, the JTB introduced a new Tax Identification Number (TIN) initiative. This new unified TIN initiative creates a consolidated tax database for the whole country with access to the taxpayers' information contained within available to the various tax authorities. The Lagos State Internal Revenue Service (LIRS) announced its intention to integrate with the JTB's TIN shortly after. It is hoped that this initiative greatly improves effectiveness in tax administration going forward.

## CBN introduces fines on Cash Withdrawals and Deposits

In September 2019, the Central Bank of Nigeria introduced a cash policy, the effect of which was to impose charges on deposits and add to existing charges on Withdrawals from banks operating in Nigeria. Specifically, lodgment and withdrawal of amounts above N500,000 would attract processing fees of 2% and 3%, respectively, for individual accounts, while lodgments and withdrawals of amounts above N3,000,000 would be subject to fees of 3% and 5%, respectively, for corporate account holders.

## **Joint Tax Board (JTB) Launches Consolidated Tax Audit Approach in Nigeria**

The FIRS introduced a new measures aimed at improving the tax audit experience for all taxpayers in the country by reducing the tax auditing cycle from the previous 90 days cycle to 63 days. It also, as a result of a Memorandum of Understanding signed with the Joint Tax Board, did away with the need for multiple tax audits from various tax authorities from states in which taxpayer might be operating by combining them into one 'Joint Tax Audit'.

## **Lagos State Internal Revenue Service (LIRS) Launches Multi-Channel e-Tax System**

In the spirit of increased ease and effectiveness of tax administration, the Lagos State Internal Revenue Service Launched a new digital, end-to-end, multi-channel eTax system for tax filing and payments. The new system is optimized to handle tax registration, tax calculation, filing of returns, payment and processing of treasury receipts.

## **CBN Revises Bank charges on Electronic Transfers and Automated Teller Machine (ATM) Withdrawals**

Late in the year, the CBN reduced the charges applicable on electronic charges and ATM withdrawals by banks and financial institutions in Nigeria with its Revise Guide to Charges by Banks to take effect from January 1, 2020. Accordingly, electronic transfers below N5,000 will attract a maximum charge of N10, N5,001 – N50,000 will be charged N25, while transfers above N50,000 will be charged N50 maximum. ATM withdrawal charges are also reduced from N65 to N35 after the third withdrawal in a month.

## **LIRS Appoints Employers as Collecting Agents of Tax on Payment of Capital Sums**

The LIRS also issued a public notice, on the 6th of January 2019 appointing employers and other payers of capital sums as collecting agents for the purpose of deducting Capital Gains Tax (CGT) due on payments such as compensation to employees for loss of employment, and remitting same to the LIRS.

## **International Tax Administration**

The Federal Inland Revenue Service issued a public notice to bring awareness to Circular No: 2019/03 on the Claim of Tax Treaties Benefits in Nigeria. The Circular was issued to provide a description of the application of Double Taxation Treaties between Nigeria and other Countries. It sets out information such as the fourteen currently existing DTT's to which Nigeria is party, and the tax benefits that are available to be taken advantage of for residents of contracting countries. The Circular specifies the eligibility criteria and procedure to be followed for taxpayers who wish to access any of the DTTs' benefits.

## **FIRS initiates enforcement of Country-by-Country Reporting Standard (CbCR)**

In early 2019, the Federal Inland Revenue Service began enforcement of the Income Tax (Country-by-Country Reporting) Regulations 2018 which mandates multinational enterprises to provide all details of income, taxes paid and economic activity carried out by the multinational enterprise within the tax jurisdiction it conducts business.

## **FIRS Appoints Banks as Collecting Agents for Defaulting Taxpayers**

The FIRS, in the month of February, issued Letters of Substitution to banks in Nigeria, appointing them as 'Collecting agents' for certain customers who maintain accounts with them. It issued these collecting agent appointments to capture taxpayers considered to be evading the payment of their taxes.

## **FIRS Begins Enforcement of Income Tax (Transfer Pricing) Regulations 2018**

The FIRS also started enforcement of its Income tax (Transfer Pricing) Regulations promulgated in 2018, replacing the 2012 Transfer Pricing Regulations and assessing defaulters to administrative penalties.

## **FIRS Seeks to Tax Online Transactions**

In a bid to widen the tax net to capture even more sources of revenue, the FIRS announced its intention to have Nigerian banks start the charging of Value-Added Tax on online transactions, whether foreign or domestic from January 2020.

## **Tax Law & Legislation**

- Late in the year, the Senate house of the National Assembly passed the Finance Bill which was signed into law on 13 January 2019. The law amends certain tax and financial policy laws which include the Companies Income Tax Act, Value Added Tax act, Personal Income Tax Act, among others. The reforms



contained in law is an increase of VAT rate from 5% to 7.5%, a restriction on deductibility on interest on related party loans; applicability of Withholding Tax on petroleum profits dividends, amongst others.

- The List of Goods and Services exempt from Value-Added Tax (the First Schedule of the VAT Act) was expanded by the Finance Minister by power derived from Section 38(b) of the Act to include rent/lease of residential property, public transportation services, life insurance policies, etc.<sup>1</sup>
- The Oil & Gas industry was affected by the signing into law of the bill to amend the Production Sharing Contract Act (PSC). This amendment has brought about a field-based royalty rate of 10% for deep offshore and 7.5% for frontier/inland basin operations.
- On the 24<sup>th</sup> June 2019, the Nigerian Police Trust Fund Act ("the Act") was signed into law. The legislation established the Nigerian Police Trust Fund, meant to provide funds for the welfare and training of members of the Nigerian Police Force. To fund the initiative, the Act imposes a 0.005% levy on the net profits if companies carrying on business in Nigeria.
- The Senate proposed a bill, the Communications Service Tax bill that seeks to impose a 9% tax on all voice calls, data consumption, SMS, MMS and subscription television services. The bill is currently at the Second Reading stage.

### The 2020 Budget Signed into Law

On the 17<sup>th</sup> of December 2019, the President of Nigeria signed into law the 2020 Appropriation Bill (the 2020 Budget). Within, the National Assembly had increased planned spending from N10.33 Trillion to N10.59 Trillion, the ground for which were stated as provision for urgent national needs including security, social amenities and healthcare. The signing of this bill on the 17<sup>th</sup> of December 2019 effectively puts Nigeria back on the 'calendar year' budget cycle, i.e. spanning from January to December, and this is quite commendable.

### Tax Dispute Resolution

A number of judgements were delivered by the Tribunals and Courts of record which have emphasized or changed the rules of engagement with regard to tax administration in Nigeria. A few of these cases have been highlighted below:

1. In **Ponticelli Upstream Limited v FIRS**, the Tax Appeal Tribunal (TAT) set aside the assessment/additional assessment and demand notes issued by the FIRS and held that the simultaneous issuance of a Notice of Assessment/additional Assessment alongside a Notice of Refusal to Amend (NORA) in the same document without allowing for an objection to be raised against said assessment is a violation of a taxpayer's right to fair hearing guaranteed under the

laws of Nigeria.

2. **Theodak Nig. Ltd v. FIRS**, the Federal High Court ruled that the FIRS could not assess companies to CIT based on the value of properties when the taxpayer is not in the business of selling property.
3. In the case of **Ama Etuwawe Esq. v FIRS**, the Federal High Court held that it is unlawful for the FIRS to appoint banks as collecting agents to deduct and remit or otherwise recover CIT liability from the plaintiff, raising issues attendant to such a directive, such as appointment of banks as agents to recover unproven taxes, opening such banks to risk if said taxed are not actually due.
4. **Stanbic IBTC Holdings v Financial Reporting Council of Nigeria (FRCN)**, the Court of Appeal overruled the decision of the Federal High Court when it held that failure to obtain NOTAP approval on a registrable contract did not render the contract illegal or void and payment could in fact be made on an unregistered contract. The Court of Appeal also held that no NOTAP approval was needed for the transfer of technology from Nigeria to a foreign country.
5. In **Vodacom v FIRS**, the Court of Appeal held that imported services are subject to Value Added Tax. It relied on the "Destination principle" stating that VAT is charged on a service "where the person receiving the service is resident". This ruling is in contrast with the Tax Appeal Tribunal's ruling in the case of Alan Gray v FIRS, where it held that VAT should only be charged on the source of the service provided, or "where the service was performed and not the location of the consumer".
6. The Federal High Court ruled, in the matter between **The Registered Trustees of Hotel and Managers Association of Lagos (RTHMAL) v. Attorney General of Lagos State and FIRS**, on the validity or otherwise of the Hotel Occupancy and Restaurant Consumption (HORC) law passed by the Lagos State legislature, affirming same as a legal and binding law with authority to impose Consumption tax on all Hotels and Restaurants within the State. The court also outlawed the collection of VAT by the FIRS on goods and services consumed in Hotels, Restaurants and Event centers in the State.
7. In the case of **West Atlantic Shipyard (WAS) v. FIRS**, the FIRS, via a preliminary objection, challenged the jurisdiction of the Tax Appeal Tribunal to hear WAS' Appeal on the grounds that the latter had not served a pre-action notice on the FIRS before instituting the appeal and that WAS had not sought recourse to the Oil and Gas Export Free Zone Authority (OGEFZA) within whose jurisdiction WAS operated as a Free Zone Entity before filing the Appeal. The TAT struck out the objection, holding that

it had jurisdiction to hear the matter as no pre-action notice is required to be served before WAS could file the appeal; the TAT also held that WAS did not need recourse to the OGEFZA before it could competently file the appeal.

### Conclusion

The Year 2019 saw major changes, reforms and disputes spanning the entire year that have worked to change and continue to affect the administration of tax in present day Nigeria. Perhaps principal of all the changes expected are those introduced by the Finance Bill 2019 that has now been signed by the President.

A rise in tax disputes between taxpayers and the various tax authorities can be expected in 2020, as tax payers adjust to the changes and adjustments to be made to the tax administration system in Nigeria and the tax authorities' apparent resolve to adopt aggressive measure to raise revenues to meet the budgets. The existence of the reinstated Tax Appeal Tribunal will go a long way towards the quick and beneficial disposal of these disputes in the interest of all parties involved.

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