

Key contacts



Dipo Komolafe
Partner and Head
Tax
isaac.komolafe@templars-law.com



Igonikon Adekunle
Partner
Dispute Resolution and Tax
igonikon.adekunle@templars-law.com



Sesan Sulaiman
Partner
Dispute Resolution and Tax
sesan.sulaiman@templars-law.com

TEMPLARS Transcripts: Tax Digest

Policy and Tax Administration

1. Federal Inland Revenue Service (FIRS) Circular on Tax Treatment of Foreign Exchange Transactions

On 24 June 2024, the FIRS issued circular no: 2024/04 explaining the applicable treatment of foreign exchange transactions (the “**Circular**”). The Circular withdrew and replaced the previous information circular No 2024/3 on treatment of foreign exchange transactions dated 14th June 2024 as reported in our July Transcript. In the Circular, the FIRS recognized that the International Financial Reporting Standards (the Standards) provided for the accounting treatment of foreign currency transactions and noted that though sufficient for accounting purposes, the Standards are not in line with the provisions of the tax laws. Based on this, the FIRS through the Circular clarified the relevant adjustments required to determine the tax position of an entity following a foreign exchange transaction.

According to the Circular, a foreign exchange difference arises where the exchange rate used in booking the transaction differs from the rate used at the date of reporting or settling the transaction.

The foreign exchange difference can either be classified as realized or unrealized depending on whether the sum resulting in the difference (i.e., gain or loss) has been actually paid or received.

Below are highlights of the clarifications provided by the FIRS:

- ❖ Unrealized exchange differences¹ do not increase or decrease the tax liability as they must be ignored in the computation of the assessable profits.
- ❖ Realized exchange differences² would either increase (in the case of a gain) or decrease (in the event of a loss) tax due as they are included in the computation of the assessable profits.
- ❖ For monetary and non-monetary items, exchange differences will be treated as follows:
 - a) Exchange differences on the settlement or recovery of a monetary item is a realised exchange difference.
 - b) Exchange differences on foreign currency cash balances are now realized upon conversion to another currency or another class of monetary or non-monetary item.
 - c) Exchange differences on any item which is monetary in nature is treated as taxable income or deductible expense for income tax purposes
- ❖ The tax treatment of exchange currency transactions and translations also applies to the Tertiary Education Tax (TET). This means that exchange differences which are taxable income or deductible expenses for Companies Income Tax (CIT) purposes shall be similarly treated in arriving at assessable profits for TET purposes.
- ❖ Unrealized differences recognized for accounting purposes shall not be adjusted in computing the following taxes:
 - a) National Agency for Science and Engineering Infrastructure (NASENI) levy at 0.25% of the profit before tax
 - b) National Information Technology Development Agency (NITDA) Levy at 1% of profit before tax, and
 - c) Minimum tax payable under section 33(2) of CITA at the rate of 0.5% of gross turnover.

The implication of this is that unrealized gains or profit will be considered in the profit of the company for the above tax purposes.

- ❖ Exchange differences arising from items exempt from tax are also not taxable in the case of a gain, and not deductible in the case of a loss.
- ❖ Every company is now mandated to keep detailed records of all foreign currency transactions, stating the dates, amounts, counterparty, and applicable exchange rates. Additionally, every company must provide a reconciliation of exchange differences recognised in the income statement, statement of comprehensive income or equity including associated deferred tax analysis.

2. VAT Enforcement on Cryptocurrency Platform Service Providers

The FIRS indicated its readiness to tax cryptocurrency platform service providers whose market are targeted to Nigerian residents by the issuance of non-compliance notices to several companies running such platforms in Nigeria.

In response to this, some affected cryptocurrency platform service providers have begun to show willingness to comply with the directive. It remains to be seen whether the FIRS, and other regulators, will issue robust guidelines around the operation and taxation of cryptocurrency platforms to foster clarity of regulation and ease of compliance.

3. Federal Government Suspends Tax on Importation of Food Commodities

On July 8, the minister of agriculture and food security, Abubakar Kyari (the "**Minister**") disclosed the suspension of duties, tariffs, and taxes on the importation of maize, husked brown rice, wheat, and cowpeas through Nigeria's land and sea borders for a period of 150 days.

He noted that, the 150-day duty-free import window for food commodities will be enforced as part of measures to be implemented over the next 180 days to ameliorate food inflation in Nigeria. He also announced that imported food commodities will be subjected to a recommended retail price (RRP).

According to the Minister, the above measures are part of the accelerated stabilisation and advancement plan presented to President Bola Tinubu by the economic management team (EMT) which operates under the Presidential Economic Coordination Council (PECC) constituted by the President in March.

4. Lagos State Mandates Tax Clearance for Housing Transactions

The Lagos State Government has announced that tax clearance is now mandatory for all housing transactions to prevent fraud and safeguard the interests of allottees. This development was made known by the Permanent Secretary of the Ministry of Housing, Abdulhafis Toriola, in a statement released by the Chief Public Affairs Officer of the Ministry.

Toriola emphasized that all applications related to housing transactions in Lagos State must be accompanied by evidence of a valid tax clearance certificate, regardless of whether the applicant is in public or civil service. Toriola stressed that the ministry would not process any application lacking these documents.

¹ This occurs when the revaluation of a foreign currency transaction arose from accounting (reporting) purposes and does not result into payment or receipt of the revalued sum.

² This occurs when a foreign-currency transaction is closed at an exchange rate different from the booking rate, thereby resulting into payment or receipt of the revalued sum.

Legislative Advancements

1. Finance Act (Amendment) Act, 2024

On 23 July 2024, the Finance (Amendment) Bill 2024 (the “**Bill**”) was passed by the National Assembly. The Bill seeks to amend the Finance Act 2023, to impose a windfall tax on foreign exchange gains realized by banks within the 2023 to 2025 financial year. Below are highlights of the provisions under the Bill:

- ❖ Introduction of a one-time tax on profits earned by banks from foreign exchange transactions conducted within their 2023 to 2025 financial year. The tax rate is set at 70% of the realized profits from all foreign exchange transactions completed by banks within the relevant period.
- ❖ The Federal Inland Revenue Service (FIRS) will be saddled with the responsibility of administering the tax and will be allowed to enter into a deferred payment agreement with affected banks which is to be executed on or before 31st December 2024.
- ❖ Failure to pay the tax or enter into a deferred payment agreement with the FIRS before 31st December 2024 is an offence which upon conviction attracts (in addition to the tax), a penalty of 10% per annum of the tax not paid and interest at the prevailing Central Bank of Nigeria (CBN) minimum rediscount rate and imprisonment of principal officers of the affected bank for a period of not more than three months.
- ❖ The Bill seeks to make the windfall of retroactive application as its commencement date is 1 January 2023.