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TEMPLARS Transcripts: Tax Digest

Tax Market Review

Policy and Tax Administration

- **THE NIGERIAN HOUSE OF REPRESENTATIVES PASSED THE TAX REFORM BILLS**

On 13 March 2023, the Nigerian House of Representatives (the lower legislative chamber) passed the Tax Reform Bills (the "**Bills**") which include the Nigeria Tax Administration Bill; the Nigeria Revenue Service (Establishment) Bill; the Joint Revenue Board Bill, and the Nigeria Tax Bill.

The passage of the Bills by the House of Representatives is sequel to a public hearing organized by the House Committee on Finance, during which various stakeholders and members of the public presented their views and recommendations. Following the public hearing and submissions of the committee's report, the House passed the Bills with amendments.

A key amendment was maintaining the current Value Added Tax (VAT) rate at 7.5%, contrary to the initial proposal, which suggested a phased increase from 7.5% to 12.5% between 2026 and 2029, followed by a further rise to 15% by 2030.

The Bills have now been transmitted to the House of Senate (the upper legislative chamber) for further consideration. If approved, they will be forwarded for presidential assent, which is anticipated by April 2025.

▪ FIRS COMMENCES THE IMPLEMENTATION OF PILOT PHASE OF E-INVOICING (MERCHANT BUYER) SOLUTION WITH LARGE TAXPAYERS

On 5 March 2025, the FIRS issued a public notice informing taxpayers of the commencement of the implementation of the pilot phase for the e-invoicing (Merchant Buyer) solution with selected large taxpayers.[1] The pilot phase will provide valuable insights for a broader implementation of the e-invoicing solution, ensuring the solution is responsive to the needs of taxpayers across various sectors. The initiative is a strategy aimed at promoting efficiency, transparency, and accountability in Nigeria's tax administration system.

To drive this, FIRS recently engaged large taxpayers to clarify the objectives and benefits of the e-invoicing initiative and launched a dedicated stakeholder engagement portal[2] where taxpayers can explore the e-invoicing solution, familiarise themselves with it and provide feedback for improvement.

The portal will remain open until the end of the pilot phase (although the timeline for the pilot phase is not stated), after which FIRS will commence implementing the Merchant Buyer solution across the tax paying community. In view of this, willing taxpayers can enable their businesses on the e-invoice system.[3]

▪ FEDERAL INLAND REVENUE SERVICE (FIRS) ISSUES CIRCULAR ON IMPLEMENTATION OF THE DEDUCTION OF TAX AT SOURCE (WITHHOLDING) REGULATIONS, 2024.

On 24 February 2025, the FIRS issued an information circular titled "*Guidelines on the Implementation of the Deduction of Tax at Source (Withholding) Regulations 2024*" (the "**Circular**"). The Circular was issued further to the Deduction of Tax at Source (Withholding) Regulations, 2024 (the "WHT Regulations") which took effect on 1 January 2025, and serves to provide guidance for the effective implementation of the WHT Regulations.

Highlights of provisions of the Circular

Deduction Obligation for Transactions Settled in any way other than by Direct Payment: The obligation to deduct tax at source arises at the earlier of when payment is made or when the transaction amount is settled in any other way.[4] The Circular outlines the applicable rules for WHT deduction where a transaction is settled through any means other than by payment:

a. In a **barter or exchange,** the date of the barter or exchange is the date of deduction. The obligation to deduct resides with the giver of the barter and the beneficiary of the tax is the receiver of the barter.

b. In a **stock or equity transfer** the date of the transfer is the date of deduction. The obligation to deduct resides with the person relinquishing the stock or equity and the beneficiary of the tax is the receiver of the transfer.

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[1] The FIRSMBS (eInvoice) is a digital representation of transactions between suppliers and buyers, effectively replacing traditional paper or electronic documents such as invoices, credit notes, and debit note
[2] Stakeholder Engagement Portal at https://se-einvoice.firs.gov.ng
[3] Taxpayers can visit https://einvoice.firs.gov.ng/ to enable their businesses.

[4] Regulation 6 (1) of the Regulation and Paragraph 3.2 of the Circular

c. Where **a third party is authorised to make payment**, the date of the payment is the date of deduction. The obligation to deduct resides with the third party and the beneficiary of the tax is the person receiving payment.

d. In a **debt swap**, the effective date of the swap is the date of deduction. The obligation to deduct resides with the debtor and the beneficiary of the tax is the creditor.

WHT Deduction for Non-Cash Transactions

Transaction Type	Deduction Date	Who Deducts?	Who Benefits?
Barter/Exchange	Barter Date	Giver of Barter	Receiver
Stock Transfer	Transfer Date	Stock Owner	Receiver
Third-Party Payment	Payment Date	Third Party	Payee
Debt Swap	Swap Date	Debtor	Creditor

Further, the Circular states that where transactions occur between related parties and no consideration or payment is made or required, the market value of the transaction would be used to determine the value of the transaction, and the applicable WHT rate will apply.[5]

Administrative Penalty for Non-Deduction of Tax Due to the Federal Inland Revenue Service (FIRS): The WHT Regulations provide an administrative penalty as the only penalty where a person required to deduct at source fails to do so and pays the portion of the required deduction to the recipient. Although the WHT Regulations did not specify what the administrative penalty would be, the Circular now prescribes the administrative penalty to be 10% of the tax not deducted.[6]

Sanction for Failure to Deduct or Remit Tax Due to the State Internal Revenue Service (SIRS):

Where a person fails to fulfil its WHT obligations to a SIRS and pays the required deduction to the recipient of the gross payment, a fine of ten percent (10%) of N5,000 or ten percent (10%) of the amount not deducted, whichever is higher, shall be the applicable penalty. Further, where the tax is withheld but not remitted, this penalty shall apply in addition to interest at the prevailing commercial rate.[7]

Limitation of Exemption from WHT on Interest and Fees paid to a Nigeria Bank: Further to the exemption granted to interest payments and fees paid to a Nigerian bank by way of direct debit from funds domiciled in the bank,[8] the Circular now clarifies that where a corporate customer pays interest or fees to a bank other than by way of direct debit on its account with the bank, the customer has the obligation to deduct tax.[9]

[5] Paragraph 3.3 of the Circular
[6] Regulation 9 (2) of the WHT Regulation
[7] Paragraph 11 of the Circular
[8] Regulation 10 (1) (d) of the WHT Regulation and Paragraph 9.1 of the Circular.
[9] Paragraph 9.1 of the Circular

Judicial Decision

- **FEDERAL HIGH COURT IMPOSES PENALTIES AND INTERESTS ON MTN'S UNPAID VAT LIABILITIES, RULES THAT THE PROVISIONS OF THE COMPANIES INCOME TAX ACT ARE NOT APPLICABLE TO VALUE ADDED TAX**

  The Federal High Court in **FIRS v MTN Nigeria Communications Plc**, overturned the decision of the Tax Appeal Tribunal (the "**TAT**") and held that penalties and interest on unpaid Value Added Tax (VAT) are mandatory under the Value Added Tax Act (VAT Act). The case arose from an appeal by FIRS against the TAT's decision, which had set aside penalties and interest imposed on MTN for unpaid VAT liabilities. The TAT had held that penalties and interest could only accrue after a VAT assessment became final and conclusive, relying on Section 13(2) & (3) of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act (FIRSEA) and Section 76 of the Companies Income Tax Act (**CITA**). The TAT concluded that since MTN had objected to the assessment, the penalties and interest were not applicable.

  At the Federal High Court, the FIRS argued that the TAT erred by applying CITA and the FIRSEA to determine when penalties and interest on VAT liabilities should accrue. FIRS contended that the VAT Act, being a specific legislation, governs VAT administration and clearly stipulates that penalties and Interest are due when VAT is not remitted by the 21st day of the following month. FIRS further argued that the TAT's reliance on CITA and the FIRSEA was misplaced, as these laws do not regulate VAT. FIRS emphasised that the VAT Act is clear and unambiguous, and its provisions on penalties and interest are mandatory, not discretionary.

  The Respondent, MTN, disagreed, arguing that the TAT correctly applied Section 13(2) & (3) of the Fifth Schedule to the FIRSEA, which states that penalties and interest only accrue after an assessment becomes final and conclusive. MTN argued that since it had objected to the assessment, the penalties and interest were not applicable. MTN maintained that the VAT Act should be read in conjunction with the FIRSEA, and the TAT's decision was consistent with the law.

  The Federal High Court, in its judgment, agreed with the FIRS, holding that the TAT erred in applying CITA and the FIRSEA to VAT matters. The Court ruled that the VAT Act is a specific legislation that governs VAT administration, and its provisions on penalties and interest are clear and mandatory. The Court emphasised that once VAT is due, penalties and interest must follow, regardless of whether the assessment is final and conclusive. The Federal High Court set aside the TAT's decision and granted FIRS's reliefs, mandating MTN to pay the outstanding penalties and interest on the unpaid VAT.

- **THE FEDERAL HIGH COURT RULES THAT THE APPROVAL FOR IMPLEMENTATION OF THE 2022 FISCAL POLICY MEASURES AND TARIFF AMENDMENTS CIRCULAR ISSUED BY THE MINISTER OF FINANCE IS NULL AND VOID**

  In **Nigeria Employers' Consultative Association (NECA) & Ors v Nigerian Customs Service Board (NCSB) & Anor,** the Federal High Court ruled on the validity of the Approval for the Implementation of 2022 Fiscal Policy Measures and Tariff Amendments (the "**Circular**") issued by the Minister of Finance, Budget and National Planning ("**Minister of Finance**") and the enforceability of excise duties on non-alcoholic, carbonated, and sweetened beverages. The Finance Act of 2021 introduced a new subsection to Section 21 of the Customs, Excise Tariffs etc (Consolidation) Act by inserting a new subsection (3) which provides that "*Excise duty on non-alcoholic, carbonated and*

sweetened beverages shall be charged at a specific rate of N10 per litre". The Minister following this amendment issued the Circular to provide among other things, clarity on the full implementation and enforcement of excise duty on non-alcoholic, carbonated and sweetened beverages.

The Plaintiffs challenged the Circular arguing that it was issued without proper legal authority and that the Nigerian Customs Service Board (NCSB) lacked the power to enforce excise duties on non-alcoholic, carbonated, and sweetened beverages without an enabling Act. The Plaintiffs maintained that the Circular was invalid and unenforceable because it was not issued pursuant to any statute and was not signed by the President, as required by Section 13 of the Customs and Excise Tariff (Consolidation) Act (CETA). They contended that the Minister of Finance, who issued the Circular, did not have the authority to amend or vary the schedules to CETA, as only the President, acting on the recommendation of the Tariff Review Board, could do so. Additionally, the Plaintiffs argued that the NCSB could not enforce excise duties on non-alcoholic, carbonated, and sweetened beverages without a specific enabling Act charging such duties and empowering the NCSB to enforce them. They maintained that the Finance Act, 2021, which introduced the excise duty, did not create a charging provision and therefore could not be enforced.

The Defendants, on the other hand, argued that the Circular was valid and enforceable because it was issued pursuant to the Finance Act, 2021, which amended Section 21 of CETA to impose excise duties on non-alcoholic, carbonated, and sweetened beverages. They contended that the Minister of Finance had the authority to issue the Circular under the delegated powers of the President, as provided in the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act, 1958. The Defendants also argued that the NCSB was empowered to enforce the excise duties under the Finance Act, 2021, and that the Circular was merely an administrative document to guide the implementation of the new excise duty regime.

The Federal High Court ruled in favour of the Plaintiffs, holding that the Circular issued by the Minister of Finance was null and void. The Court found that the Circular was not issued in compliance with Section 13 of CETA, which requires the President, acting on the recommendation of the Tariff Review Board, to issue an order to amend or vary the schedules to CETA. The Court emphasised that the Minister of Finance did not have the authority to issue the Circular, as the power to amend the schedules was vested exclusively in the President.

Furthermore, the Court ruled that the NCSB could not enforce excise duties on non-alcoholic, carbonated, and sweetened beverages without a specific enabling Act charging such duties and empowering the NCSB to enforce them. The Court held that the Finance Act, 2021, merely specified the rate of excise duty but did not create a charging provision, rendering the enforcement of the excise duties by the NCSB unlawful. Consequently, the Court declared the Circular invalid and void and ordered the NCSB to cease the collection of excise duties on non-alcoholic, carbonated, and sweetened beverages.