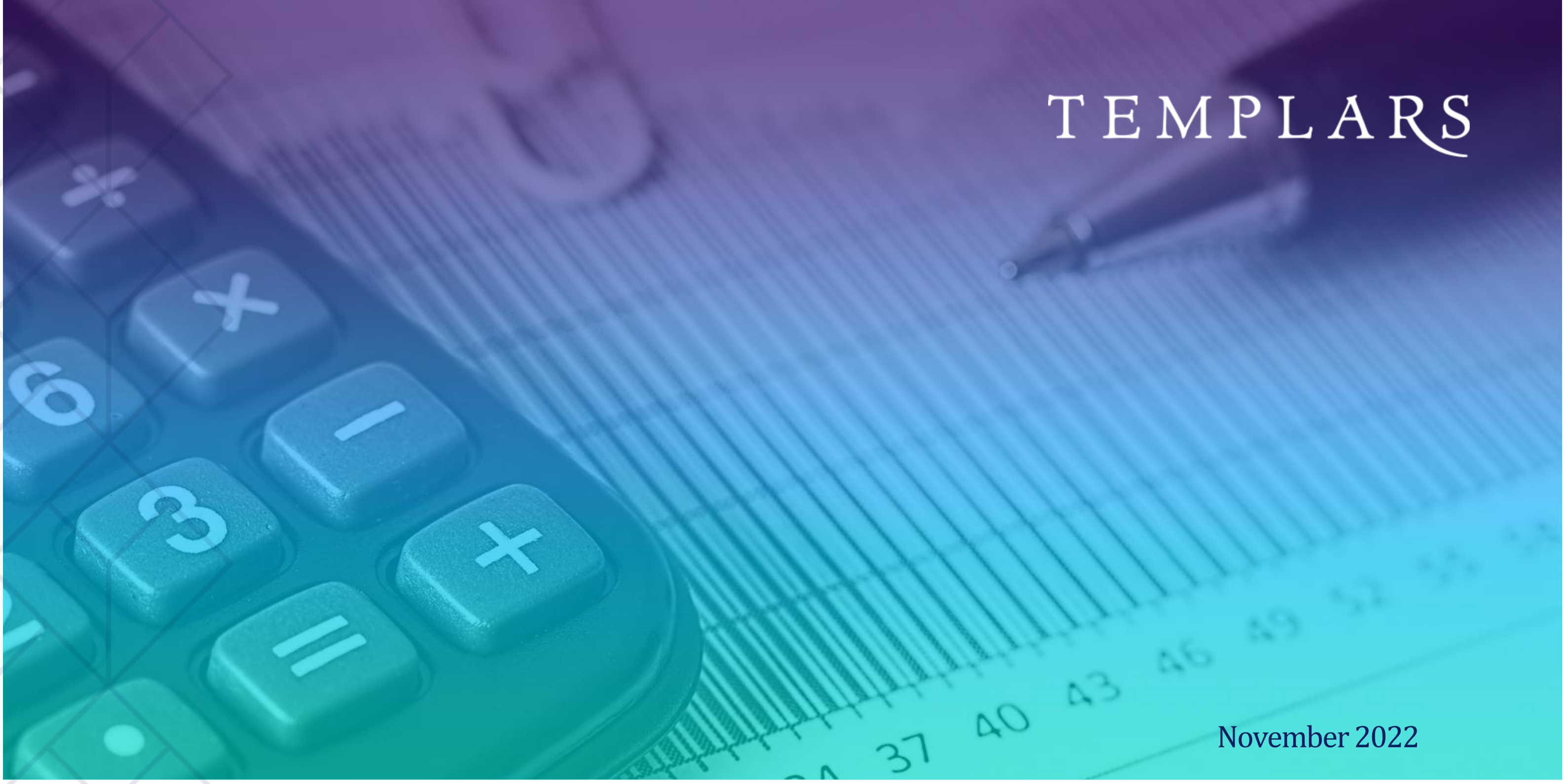

TEMPLARS Transcript: Tax Market Review

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Policy and Tax Administration

- **Federal Inland Revenue Service (FIRS) to Automate Direct Tax Collection from Online Gaming Companies:** The Federal Inland Revenue Service (FIRS) issued a public notice informing the general public that it will automate tax collection for Nigeria's online gaming companies from Q1 2023 in a bid to simplify tax administration in Nigeria. FIRS will engage the services of Sentinel National Payment Gateway, a payment transaction processing system, to facilitate deduction of taxes directly from resident and non-resident online gaming companies at transaction points and remit the taxes to the Federal Government.

- **FG Approves Tax Incentives for Investors in Nigeria's Agricultural Industry:** The Federal Government of Nigeria (FG) has approved additional tax incentives for investors in Nigeria's agricultural sector to boost domestic and foreign investment in Nigeria's agricultural sector. The incentives include (i) tax and duty-free holidays for a period of five years for agricultural processing in Nigeria, (ii) tax-free agricultural loans with a moratorium period of 18 months and repayment period of not more than seven years, and (iii) zero tariff rates on the importation of agro chemicals.

- **FIRS Provides Clarification on the Administration of the National Agency for Science and Engineering Infrastructure (NASENI) Levy:** The NASENI Act ("NASEIA") imposes a 0.25% levy on the profits of companies in the banking, telecommunications, ICT, aviation, marine, and oil and gas sectors with turn-over exceeding N100,000,000 (the Levy). In its circular, FIRS clarified that the Levy is applicable to resident and non-resident companies operating in the highlighted sectors, and that the Levy is not tax deductible in determining assessable profits under the Companies Incomes Tax Act.

Judicial Decisions

- **TAT Rules on Staff Benefits which can be Deducted for Tax Purposes:** The Tax Appeal Tribunal (TAT) in Stanbic IBTC Bank Plc v. FIRS ruled that expenses incurred by Stanbic IBTC Bank (the Bank) under a compensation package for senior staff – the Home Loan Subsidised Interest Programme (the "SIP") – should not be deducted as part of its allowable labour costs in the computation of tax. The TAT made this ruling on the basis that the SIP costs did not satisfy the threshold of having been wholly, reasonably, exclusively, and necessarily" incurred because (i) a cost-benefit analysis which shows that the SIP contributed positively to the income of the Bank should have been provided, (ii) the expense must be in relation to the senior staff and executives of the company, and (iii) the expense must align with the collective agreement approved by the Federal Labour Ministry. It remains to be seen whether the TAT's ruling will be upheld on appeal.

- **TAT Rules On Excess Dividend Tax and Applicability of VAT to Reimbursable Expenses:** The TAT, sitting in Lagos, ruled in Dangote Industries Limited v. FIRS, that (i) the excess dividend tax (EDT) rule does not apply to franked investment income and profits paid out of pioneer profits of a company, and (ii) VAT is not applicable to reimbursable expenses. The decision of the Tribunal on the applicability of excess dividend tax to franked investment income and pioneer profits differs from its previous decisions on similar matters where it had held that EDT is payable on certain dividends even when the dividends were paid out of retained earnings on which the company had already suffered tax, and that EDT applies to dividends paid out of tax-exempt profits.

- **Tax Appeal Tribunal rules on Permanent Establishment Definitions for Non-Resident Entities under a DTT:** The TAT interpreted, in New Skies Satellite B.V (NSS) v. FIRS, the permanent establishment provisions contained in Nigeria's double taxation treaty with Netherlands ("the DTT"). The Tribunal stated that the non-resident company will be deemed to have created a permanent establishment in Nigeria because it derived income in Nigeria via the use of a building to which it had unfettered access during the provision of its services. In addition, NSS created a permanent establishment through its Nigerian subsidiary which appeared to have the authority to conclude contracts on its behalf.

Legislative Advancements

- **President signs the Nigerian Start-Up Bill into law:** On Wednesday, 19 October 2022, President Muhammadu Buhari signed the Nigeria Start-up Bill (now Nigerian Start-up Act) into law. The Act makes comprehensive provisions for the regulation of technology focused start-ups in Nigeria including providing fiscal and non-fiscal incentives to start-ups in Nigeria such as: (i) Access to government grants, loans and facilities, (ii) pioneer tax relief, (iii) reduced tax for employers of workers with minimal experience, (iv) tax credits for investors, (v) reduced tax for employees of start-ups. To enjoy the incentives under the Act, the start-up must be a registered limited liability company which has been in existence for 0-10 years and must have at least one Nigerian as a founder or co-founder.