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TEMPLARS Transcript: Tax Market Review

Policy and Tax Administration

- Federal Inland Revenue Service (FIRS) approves waiver of late return penalty and interest imposed on established tax liabilities by TaxPromax:** The Federal Inland Revenue Service ("FIRS" or the "Service") issued a public notice approving a one-off waiver of all outstanding interest and penalties imposed by the Service's tax administration software, TaxPromax, on liabilities emanating from monitoring, desk review, tax audit and investigation exercises until 31 December 2022.
- Federal Inland Revenue Service (FIRS) appoints telcos and banks as VAT withholding agents:** The FIRS issued a public notice appointing MTN, Airtel and deposit money banks (DMBs) as agents for the purpose of collecting VAT on all taxable supplies from vendors with effect from 1 January 2023. From that date, the appointed agents will withhold VAT at source on all taxable supplies made to them by their vendors and failure to comply with the new directive attracts a penalty of 150% and 5% interest above the Central Bank of Nigeria (CBN) minimum rediscount rate. By this appointment, DMBs and the selected Telcos join taxable persons in the oil and gas industry as well as government Ministries, Departments and Agencies as FIRS VAT collection agents.

Judicial Decisions

- Federal High Court (FHC) rules that FIRS is the appropriate agency for collection of stamp duty on bank transfers:** The FHC in Guaranty Trust Bank Plc (GTBank) v. Anambra State Internal Revenue Service (AIRS) ruled that stamp duty applicable to electronic transfer of money between customers is collectible by the FIRS and not the state internal revenue service on the basis that electronic transfer of money is a banking transaction of which the bank is a party.

The Finance Act 2020 introduced the Electronic Money Transfer Levy (EMTL) on electronic receipts or transfers of N10,000 and above in any bank. Since the introduction of the EMTL, there has been a controversy as to the agency empowered to collect stamp duty on EMTL applicable to electronic money transfer between individual customers – between the state and federal internal revenue services.

Legislative Advancements

- **FIRS Amendment Bill 2022 passes second reading at the Nigerian Senate:** On 6 December 2022, a bill to amend the Federal Inland Revenue Service Act 2007 (FIRS Act), (the Bill) scaled the second reading in the Senate. The objective of the Bill is to provide for a single agency administration of corporate tax holidays, import duty waivers and investment incentives.

The Bill amongst others seeks to:

- introduce provisions which seek to give the FIRS power to keep up-to-date data and information on all taxable persons, individuals and corporate bodies and agencies of government involved in revenue generation for the purpose of efficient and effective tax administration by deploying operational and technological infrastructure to eliminate tax fraud, evasion and avoidance.
- empower the FIRS to coordinate all matters relating to the granting and monitoring of corporate tax and investment incentives and to undertake quarterly audit of such incentives in light of prevailing economic realities and to publish the report of such audit annually for public awareness, advise government agencies and institutions on long-term/stability clauses in all cases of new corporate tax incentive agreements and ensure that all such agreements obtain legislative approval of the Senate.
- ensure that long-term/stability clauses of new corporate tax incentive agreements are referred to the Senate for scrutiny.

The Bill also proposes amendments which seek to ensure that all tax waivers, investment and other related business incentives are conducted strictly in accordance with the provisions of the Bill, notwithstanding the provisions of any existing enactment. This implies that the provisions of the Bill, if passed into law, may override the provisions of other laws governing tax incentives such as the Industrial Development (Income Tax Relief) Act (IDITRA).

Given the multi-sectorial application of the Bill, it is expected that the Bill, when passed, will ensure proactivity and reduce any possibility of overlaps or conflicts in the exercise of the powers of the FIRS and other sister government agencies which will also be affected by the provisions of the Bill, such as the Nigerian Customs Service (NCS), Nigerian Investment Promotion Commission (NIPC), as well as the National Council for Digital Innovation and Entrepreneurship which is responsible for formulating and providing policy guidelines for the realization of the objectives of the recently enacted Nigeria Start-up Act.

- **FIRS issues Non-Interest Finance (Taxation) Regulation 2022:** Pursuant to its powers under Section 61 of the FIRS Act, the FIRS, with the approval of the Minister of Finance, issued the Non-Interest Finance (Taxation) Regulation 2022 (the Regulation). The Regulation, which has a commencement date of 1 April 2022, seeks to regulate the taxation of institutions offering non-interest financial services in Nigeria in accordance with principles of Islamic commercial jurisprudence, and provide a legal framework on the tax regulation of financial institutions offering non-interest financial services in Nigeria.

The Regulation covers the tax treatments of a wide range of non-interest financial products such as Murabaha (cost plus mark-up), Istina/parallelstina (mark-up on project financing for construction of assets or manufacture of goods), lease-based products such as Ijaarah wa Iqtina (finance lease) and Ijaarah (operating lease), Sukuk etc.