Nigerian Tax Journal - 2018

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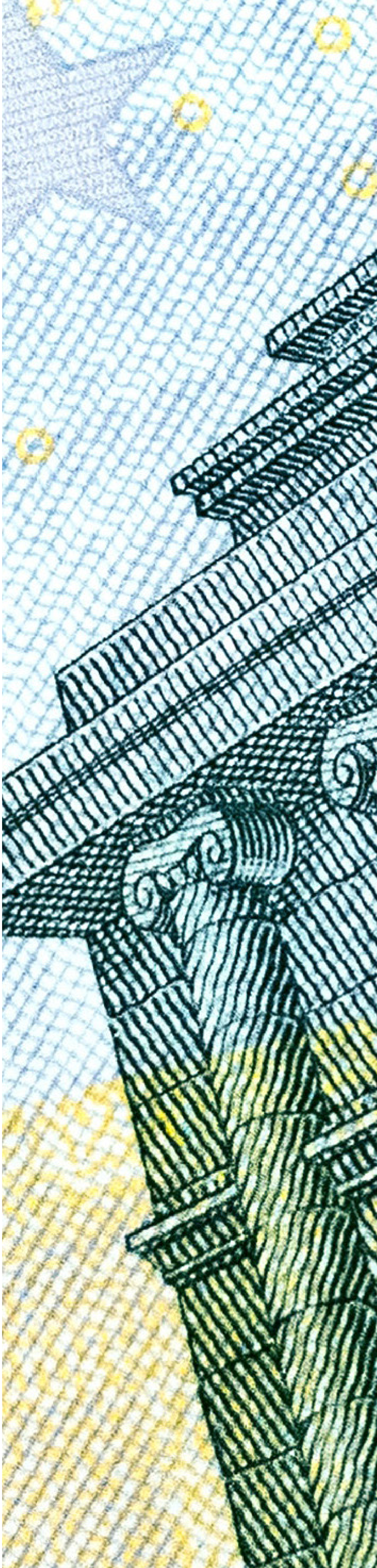


Glossary

AE	Approved Enterprise
BEPS	Base Erosion and Profit Shifting
CBN	Central Bank of Nigeria
CCI	Certificate of Capital Importation
CGIS	Comptroller-General of the Nigeria Immigration Service
CIT	Companies Income Tax
CITA	Companies Income Tax Act
COA	Court of Appeal
CRS MCAA	Common Reporting Standard Multilateral Competent Authority Agreement
DMB	Deposit Money Bank
ECA	Employees' Compensation Act
ECC	Export Credit Certificates
ECCI	Electronic Certificate of Capital Importation
ECF	Employees Compensation Fund
EEG	Export Expansion Grant
FG	Federal Government
FHC	Federal High Court
FIRS	Federal Inland Revenue Service
FIRSEA	Federal Inland Revenue Service Establishment Act
FSP	Fiscal Strategy Paper
FY	Financial Year
GDP	Gross Domestic Product
ITF	Industrial Training Fund
LASWA	Lagos State Waterways Authority
LIRS	Lagos State Internal Revenue Service
MPR	Monetary Policy Rate
MRR	Minimum Rediscount Rate
MTEF	Medium Term Expenditure Framework

NDCC	Negotiable Duty Credit Certificate
NECA	Nigeria Employers' Consultative Association
NEPC	Nigerian Export Promotion Council
NIMASA	Nigeria Maritime and Safety Agency
NIMC	National Identification Management Commission
NIWA	National Inland Waterways Authority
NPP	National Petroleum Policy
NSITF	Nigeria Social Insurance Trust Fund
NTP	National Tax Policy
OECD	Organization for Economic Co-operation and Development
OPEC	Organization of Petroleum Exporting Countries
PENCOM	National Pension Commission
PFA	Pension Fund Administrator
PFC	Pension Fund Custodian
PPT	Petroleum Profits Tax
PPTA	Petroleum Profits Tax Act
PSC	Production Sharing Contract
RSA	Retirement Savings Account
RTA	Relevant Tax Authority
SBIR	State Board of Internal Revenue
SDA	Stamp Duties Act
TAC	Tax Appeal Commissioner
TAT	Tax Appeal Tribunal
TET	Tertiary Education Tax
TP	Transfer Pricing
VAIDS	Voluntary Assets and Income Declaration Scheme
VAT	Value Added Tax
VC	Voluntary Contribution
VOA	Visa on Arrival
YOA	Year of Assessment

Preface

An important hallmark of an effective tax system is clarity. Tax laws and administration must be simple, clear and easy to understand, for them to be effective. In fact, the amount which a taxpayer has to pay should be certain and not arbitrary, and levied in a manner and at a time that is convenient to the taxpayer. Over the years, attempts at simplifying the Nigerian tax system have been made through legislative amendments, judicial decisions, regulations, information circulars and related publications by tax authorities. However, these have not been as regular as one would expect.

2017 was a rather uneventful year for tax dispute resolution. This is largely due to the non-reconstitution of the TAT by the FG since the tenure of the last set of TACs expired in 2016. This factor, coupled with others, has resulted in the prolongation of tax dispute resolution in Nigeria, as appeals filed at the TAT cannot be heard until the TAT is reconstituted. While taxpayers have no choice but to wait until the reconstitution of the TAT, the undesirable delay translates to loss of tax revenue to the Government, especially in terms of time value of money. We can only hope that the FG will expedite action to stop further losses in this regard.

There is also the need for the legislature and relevant policy makers to expedite the passage of relevant tax amendment Bills to provide a competitive tax climate for business. An efficient way of doing this is to return to the practice of enacting a Finance Act soon after the passage of the annual Federal Budget through which critical changes to the tax laws can be made proactively. This is the prevailing practice in many countries around the world, and was the norm in Nigeria during the military era.

In 2017, Nigeria improved slightly in its ranking on the Paying Taxes Indicator of the World Bank Group's Ease of Doing Business Report. The country moved up eleven (11) places from 182 in 2016 to 171. Despite the improvement, the country still needs to significantly reduce the average time it takes to prepare, file and pay taxes. Hopefully, the full deployment of e-filing and payment systems by RTAs will help in this regard.

There were a few decided tax cases in 2017. Some organs of government also initiated changes in the tax and regulatory landscape. A notable example of this was the introduction of VAIDS by the FG in July 2017. There were also administrative pronouncements by RTAs. We have summarized these developments in this edition of the Journal. We have also published extracts of articles written by our professionals during the year, with references for further reading by users of the Journal.

As with the last edition, this compendium will serve as a reference material for tax administrations, practitioners and academics. We hope that you find the insights within the publication useful to you. We encourage our readers to provide feedback on the publication to us via e-mail to NG-FMTaxEnquiries@ng.kpmg.com.

Wole Obayomi
Partner & Head
Tax, Regulatory & People Services

1.0 Executive Summary

" The Nigerian economy improved in the third quarter of 2017 when the country officially exited economic recession."

We are pleased to publish the second edition of the Nigerian Tax Journal. This edition contains a summary of significant decisions on tax cases (that became publicly available) in 2017 that have helped in clarifying some key tax issues. The Administrators' Policy section covers policy pronouncements by the FG, FIRS and LIRS, amongst others. The publication also features some of the thought leadership articles authored by KPMG Nigeria subject-matter experts during the year.

The Nigerian economy improved in the third quarter of 2017 when the country officially exited economic recession. There has also been improved accretion to the foreign exchange reserves. However, the tax revenue to GDP ratio is still abysmally low – current estimates put the ratio at between 6% and 10%. The expectation is that the VAIDS initiative, which is proposed to generate at least USD1 billion, will greatly help in bringing more people into that tax net, and thereby increase the current low Tax-to- GDP ratio. According to the Chairman of the Federal Inland Revenue Service (FIRS), the Scheme had generated about ₦23billion as at 31 December, 2017.

Given the ambitious revenue target from non-oil sources in the 2018 Budget proposal, we expect tax authorities to be more aggressive in their efforts to shore up tax revenues. This aggressiveness will significantly shape the environment in which Tax Directors and Heads of Tax operate.

This edition of the KPMG Nigerian Tax Journal will serve as a reference material on important tax issues as they affect business decision, which will help CFOs, Tax Directors and Heads of Tax manage their tax risks.

The outlook for the Nigerian tax environment looks promising. However, the FG and State Governments need to improve the ease of paying taxes by leveraging technology and implementing the much needed tax reforms aimed at improving tax administration.

We trust that you will find the Journal very useful for your purpose.

2.0 Tax Outlook for 2018

“One would expect the Government to remain resolute in its commitment to improving the business environment with particular interest on the Ease of Paying Taxes sub-index under the Ease of Doing Business index”

Based on the proposed 2018 budget, non-oil revenues (largely comprising CIT, VAT, Customs and Excise Duties, recoveries, tax amnesty, joint ventures, various recoveries) are estimated to contribute 63% to the projected aggregate revenue of ₦6.607trillion.

The Government has, therefore, intensified efforts to broaden the tax net using the VAIDS programme, which was launched in July 2017. The Scheme, which will run till March 2018, provides an opportunity for taxpayers in default of prior years' taxes, to regularize their tax status and avoid interest, penalty and criminal prosecution. The Scheme should positively impact the country's tax revenue for 2018 and beyond.

There are no proposed changes to tax laws or rates in the 2018 Budget proposals, even though the 2018 - 2020 MTEF and FSP indicate a possible increase of VAT on luxury goods from 5% to 15%.

We commend the Government's effort in improving Nigeria's ranking on the World Bank Ease of Doing Business index by 24 places, from 169th out of 190 countries in the 2017 ranking to 145th position in the 2018 report. One would expect the Government to remain resolute in its commitment to improving the business environment with particular interest on the Ease of Paying Taxes sub-index under the Ease of Doing Business index, in which Nigeria currently ranks 171 out of 190 countries, having moved up 11 places from the 2017 ranking. In this regard, we hope that, sooner rather than later, RTAs in Nigeria will address the teething problems with their deployment of technology and completely migrate all taxpayers to e-filing platforms for ease of tax returns filing and tax payment.

The decision by Government to utilize tax credits to fund road construction by private sectors should help to enhance business activities in the country by removing the bottlenecks associated with traffic congestion. This will undoubtedly drive business expansion in the country and, ultimately, increase business profits and boost tax revenue.

To improve the overall tax environment in Nigeria, there is need for the FG and State Governments to implement the following initiatives in 2018:

- Enactment of the other components of the Petroleum Industry Bill, such as the Petroleum Industry Fiscal Bill and Petroluem Host Community Bill. The National Assembly has only passed the Petroleum Industry Governance Bill (PIGB), which is awaiting the assent of the President as at the time of publication of this Journal.
- Reconstitution of the TAT.
- Ratification of outstanding Double Tax Treaties and the domestication of the provisions of the BEPS action points issued by the OECD.
- Elimination of multiple taxes which stifle the growth and survival of small-and- medium-sized enterprises.
- A shift to indirect taxation, given the low cost of collection of indirect taxes. Government may consider reducing the income tax rate while increasing VAT rate to manage the burden on taxpayers.
- Implementation of an effective tax risk management process, given the resource constraints faced by RTAs. This will help streamline tax audit processes, and enable RTAs to bring more individuals and informal sector players into the tax net.

The implementation of the initiatives suggested above will help make the Nigerian tax environment competitive and the outlook for 2018 promising.

Adewale Ajayi
Partner
Tax Energy & Natural Resources and People Services

3.0
2017 in Review

3.1. Selected Tax Cases

Companies Income Tax

1. Citibank Nigeria Limited vs FIRS[1]

Background

Prior to 2012 financial year[2], profits earned by companies from investing or trading in short-term FG bonds were taxable under CITA in line with Section 9(1)(g) of the Act. The section provides that "*subject to the provisions of this Act, the tax shall for each year of assessment be payable at the rate specified under section 40(1) of this Act upon the profits of any company accruing in, derived from, brought into, or received in Nigeria in respect of … any amount of profits or gains arising from the acquisition and disposal of short-term money instruments like Federal Government securities, treasury bills, or savings certificates, debenture certificates, or treasury bonds*".

Facts of the case

Citibank Nigeria Limited ("Citibank" or "the Company") held FG long-term bonds with maturity periods ranging from 3 to 20 years, during its 2008 to 2010 accounting years. The Company subsequently disposed of the bonds to manage its interest rate exposures and meet its liquidity needs. The Company did not subject the gains accruing from the disposal to CIT, as it was of the view that its disposal of the bonds before their maturity did not change their long-term nature.

The FIRS assessed the Company to additional CIT and TET on the basis that disposal of the FG bonds before their maturity made them short-term in nature, and that the gains arising from the disposal of the bonds, therefore, fell within the purview of Section 9(1)(g) of CITA. Citibank objected to the assessment, and subsequently appealed the FIRS' decision at the TAT in 2014[3].

The TAT ruled in favour of the FIRS in 2015, on the basis that trading in the FG bonds made them lose their long-term attributes and brought them under the ambit of Section 9(1) of CITA[4]. Citibank consequently appealed the case at the FHC.

1. Appeal No. FHC/L/01A/2016
2. Under the CIT (Exemption of Bonds and Short Term Government Securities) Order, 2011, short-term FG securities (Treasury Bills and Promissory Notes), bonds issued by Federal, State and Local Governments and their Agencies, bonds issued by corporate bodies including supra-nationals, and interest earned from these investments, are exempt from CIT. The exemption was effective from 2 January 2012 and is, generally, for a period of 10 years. However, bonds issued by the FG will continue to enjoy the exemption after the 10-year term.
3. Consolidated Appeal No. TAT/LZ/CIT/EDT/043-047/2014
4. Please refer to page 12 of the 2017 Nigerian Tax Journal

The decision

The FHC set aside the TAT's ruling on the matter, and held that the disposal of the FG bonds before maturity did not change their character as a long-term money instrument. Therefore, profits/gains from long-term money instruments are not liable to CIT under Section 9(1)(g) of the CITA.

2. FIRS vs TSKJ Construcoes Internacional Sociadade Unipersoal LDA[5]

Background

The TAT's jurisdiction to decide on matters pertaining to the revenue of the FG and the taxation of companies has generated significant debate over the last decade. Section 59 of the FIRSEA and the Fifth Schedule to the Act provide for the establishment, jurisdiction, authority and procedures of the TAT.

Paragraph 13(1) of the Fifth Schedule to the FIRSEA provides that "*A person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws referred to in paragraph 11 may appeal against such decision or assessment or demand notice within the period stipulated under this Schedule to the Tribunal*"

Facts of the case

TSKJ Construcoes Internacional Sociadade Unipersoal LDA ("TSKJ" or "the Company"), a non-resident company, won a contract for the construction of the Liquefied Natural Gas (LNG) plant from Nigeria Liquefied Natural Gas Limited (NLNG). TSKJ entered into a Service Agreement with TSKJN (its Nigerian subsidiary), to render logistic support service to it in the course of executing the contract.

The FIRS assessed TSKJ to tax for the years 2004 to 2007, which TSKJ fully paid. In September 2009, the FIRS issued additional assessments for these years on the basis that the monies paid by TSKJ to TSKJN in respect of costs incurred in performing the LNG contracts (i.e. recharges), were not allowable deductions from TSKJ's revenue, and therefore taxable.

TSKJ objected to the additional assessments and filed an appeal at the TAT. The TAT dismissed the appeal and upheld the FIRS' assessments. Dissatisfied with the TAT's decision, TSKJ filed an appeal at the FHC. The FHC set aside the TAT's ruling as well as the FIRS' additional assessments. The FHC also made an ancillary order restraining the eight (8) Zones of the TAT in the country from adjudicating on tax matters relating to companies, being illegal bodies set up contrary to Section 251 of the 1999 Constitution of the Federal Republic of Nigeria.

The FIRS appealed the FHC's decision at the COA. The main issues for determination were whether the TAT had jurisdiction to entertain the action in line with the provisions of the FIRSEA and if the payments paid to a contractor would qualify as allowable deductions.

The decision

The COA ruled in favour of the FIRS on the above issues, and affirmed the TAT's earlier decision. The COA ruled that the TAT is an administrative tribunal, as prescribed by the enabling statute, and serves as a condition precedent to instituting an action before the FHC. The COA's judgment on the latter issue was on the premise that the Notice of Appeal filed by TSKJ did not comply with the provisions of the FIRSEA.

5. Appeal No. CA/A/122/2014, Tax Law Reports of Nigeria, Volume Thirty Two 2017, Pages 58 - 93

Petroleum Profits Tax

CNOOC & SAPETRO vs NNPC & FIRS[6]

Background

Under the PPTA, an aggrieved exploration and production company can appeal a disputed assessment to the appropriate Appeal Commissioners within thirty (30) days after the receipt of the FIRS' notice of refusal to amend the assessment.

With the enactment of the FIRSEA in 2007, the TAT effectively replaced the erstwhile Body of Appeal Commissioners. Specifically, Section 59 of the FIRSEA empowers the TAT to adjudicate on all tax disputes. However, since its establishment in 2007, there have been legal controversies surrounding the powers of the TAT to adjudicate on matters relating to the taxation of companies and the revenue of the FG. This is in view of the seeming contradiction between the provisions of the FIRSEA and Section 251 of the 1999 Constitution of the Federal Republic of Nigeria.

Facts of the case

CNOOC Exploration and Production Nigeria Limited (CNOOC) and South Atlantic Petroleum Limited (SAPETRO) (hereafter collectively referred to as "the Companies" or "the Appellants") together with Nigerian National Petroleum Corporation (NNPC) are parties to a Production Sharing Contract (PSC) in respect of OML 130 contract area. CNOOC and SAPETRO are the contractors to the contract area, while Total Upstream Nigeria Limited (Total Nigeria) is the Operator.

In accordance with the requirements of the OML 130 PSC, Total Nigeria prepared the contract area's PPT returns for the 2010 accounting period and forwarded the returns to the NNPC for filing with the FIRS. However, instead of filing the PPT returns prepared by Total Nigeria with the FIRS, the NNPC unilaterally amended the PPT returns and filed same with the FIRS.

The FIRS assessed the contract area to TET based on the amended PPT returns filed by the NNPC. The assessment notice dated 2 August 2011 was forwarded by the FIRS to the NNPC, which subsequently forwarded it to the Companies on 26 October 2011. Total Nigeria objected to the assessment on behalf of the Companies on 15 November 2011. However, the FIRS ignored the objection.

The Companies subsequently filed an appeal at the TAT in 2012[7] on the grounds that the FIRS' computations were wrong in law. The FIRS challenged the appeal on the bases that the assessment had become final and conclusive, and that the Companies lacked locus standi to appeal the

6. Appeal Nos. CA/L/1144/2015 & CA/L/1144/2015
7. Appeal No. TAT/LZ/003/2012

assessment, as the returns were not filed by them, but by NNPC. However, the TAT dismissed the FIRS' objection and joined NNPC as a party to the Appeal.

Dissatisfied with the TAT's decision, the FIRS filed another notice of preliminary objection at the TAT to challenge its jurisdiction to preside over cases connected to taxation of companies carrying on business in Nigeria. On 8 February 2013, the TAT ruled that it had jurisdiction to adjudicate on such cases.

The NNPC appealed against the TAT's ruling at the FHC, and obtained a favourable judgment from the FHC to the effect that the TAT encroached on the FHC's exclusive jurisdiction (under the 1999 Constitution) to determine matters connected with the taxation of a Nigerian company.

The Companies, being dissatisfied with the FHC's judgment, appealed the ruling at the COA. The key issue in dispute was whether the jurisdiction of the TAT to entertain the Appellants' appeal, as provided under the FIRSEA, infringes on the exclusive jurisdiction of the FHC to hear tax disputes relating to companies in Nigeria and the revenue of the FG, as stipulated in the Constitution.

The decision

The COA ruled in favour of the Appellants that the TAT has jurisdiction to adjudicate on tax matters relating to companies and the revenue of the FG.

In resolving the issue, the COA referred to its earlier decisions in the cases of Shell Nigerian Exploration and Production & Ors vs. FIRS and Esso Exploration and Production Nigeria Limited & Anor vs. Nigerian National Petroleum Corporation. The position of the COA in the referenced cases was that a taxpayer could only approach the FHC on a tax dispute after exhausting the objection and appeal process set out in sections 38 and 41 of the PPTA, which includes an appeal to the appropriate Appeal Commissioners (now TAT).

Transaction Taxes

1. Retail Supermarkets Nigeria Limited vs Citibank Nigeria Limited & Central Bank of Nigeria[8]

Background

In January 2016, the CBN issued a circular (reference no. CBN/GEN/DMB/ 02/006) to all DMBs mandating them to collect stamp duties on bank deposits.

Section 89 of the SDA ("the Act") imposes stamp duties on receipts, subject to the exemptions provided under the Schedule to the Act. Specifically, the Schedule to the Act exempts from stamp duties, "*the receipt given for money deposited in any bank…or for money withdrawn from a savings bank account*".

Facts of the case

Retail Supermarkets Nigeria Limited ("RSNL" or "the Company") runs a chain of supermarkets across Nigeria. Citibank informed RSNL of its decision to comply with the directive of the CBN with respect to charging ₦50 on all electronic transfers and teller deposits of ₦1000 and above.

8. Suit No. FHC/L/CS/126/2016

RSNL disagreed with the CBN's directive and consequently filed an appeal at the FHC. The issues for determination were:

- whether Citibank can implement the provisions of the CBN's circular in respect of deposits into the Company's bank accounts in light of the provisions of the Schedule to the SDA; and
- whether the stamp duty rate of ₦50 per deposit into the Company's bank accounts in excess of ₦1000 per transaction is inconsistent with the provisions of the SDA.

The decision

In determining the case, the FHC relied on a binding precedent of the COA dated 21 April 2016, on a similar issue in the case of Standard Chartered Bank (Nig) Ltd vs Kasmal International Service Limited. On this basis, the FHC ruled that the CBN's circular is inconsistent with the provisions of the Schedule to the Act and is, therefore, invalid, null and void. Accordingly, the FHC set aside the provisions of the circular.

2. Mable Arch Hotel Ltd vs Chairman Federal Inland Revenue Service & Federal Inland Revenue Service[9]

Background

The VAT Act stipulates the timeline for filing VAT returns. Specifically, Section 15 of the VAT Act states that "*A taxable person shall render to the Board, on or before the 21st day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine.*"

Facts of the case

Mable Arch Hotel Ltd ("Mable" or "the Company") is a Nigerian company engaged in hotel business. On 15 January 2016, the FIRS pasted a "notice of non-compliance" on the premises of the Company for failing to file its VAT returns from 2008 to 2013.

Mable was of the view that it had been remitting VAT and stopped remitting the tax when it became non-operational due to renovation and economic challenges. Hence, the FIRS was wrong to have pasted the above notice. Moreover, the Company claimed that the FIRS' action caused some of its guests to check out of the hotel for fear of being molested.

Consequently, Mable vented its grievance via an originating summons at the FHC. The issues submitted for determination were:

- Whether Mable had complied with the VAT Act, Cap V1, Laws of the Federation of Nigeria, 2004
- Whether the FIRS was right in pasting the notice despite the fact that the Company had complied with the law
- Whether an injunction could be granted in favour of the Company
- Whether the Company was entitled to damages.

The FIRS countered Mable's position and justified its action on the grounds that the Company had not complied with the VAT Act, and asked the court to dismiss the case. The FIRS further submitted

9. Suit No. FHC/AWK/CS/27/2016, Tax Law Reports of Nigeria, Volume Thirty One 2017, Pages 46 - 55

that it was empowered by Section 33(1)(a) and (b) of the FIRSEA to distrain the Company of its property.

The decision

The FHC dismissed the case on the basis that the evidence provided by Mable was insufficient to convince the court that the Company had been complying with the VAT Act. The FHC also noted that Mable's claim (that it stopped paying VAT because it was no longer operational) contradicted its assertion that the FIRS' action caused some of its guests to leave the hotel.

Other Tax & Regulatory Matters

1. Industrial Training Fund vs Nigerdock Nigeria Plc FZE & Nigeria Export Processing Zones Authority[10]

Background

Section 6(1) of the ITF Act (as amended in 2011) states that "*every employer having either 5 or more employees in his establishment or having less than 5 employees but with a turnover of ₦50 million and above per annum, shall in respect of each calendar year or the prescribed date, contribute to the fund one per centum of its total annual payroll*".

Section 6(3) of the Act further provides that "*any liable organization, public or private including companies situate in the free trade zone requiring approval for expatriate quota and/or utilizing custom services in matters of export and import, must show proof of compliance with this Act in respect of payment of training contribution of its employees and all regulatory agencies of the Federal Government shall ensure compliance with Section 6 (1) - (3) of this Act*".

Section 6(3) of the ITF Act (as amended) contradicts the provisions of Section 8 of the NEPZA Act which exempts approved enterprises operating in the FTZ from all Federal, State and Local Government taxes[11], levies and rates.

Facts of the case

Nigerdock Nigeria Plc FZE ("Nigerdock FZE" or "the Company") is an AE within the Snake Island Integrated Free Zone. The ITF alleged that the Company had more than 5 employees, and was therefore liable to register for ITF purposes and pay the ITF due for the 2011 to 2013 FYs at the rate of 1% of its annual payroll. The ITF also claimed that the Company was liable to late payment penalty of 5% per month of its unpaid ITF contributions. Nigerdock FZE disagreed with the ITF's position. Thus, the ITF filed a suit at the FHC on the above basis.

Nigerdock FZE contended in court that, as an AE operating within an FTZ, it is exempt from all Federal levies, including ITF contributions.

The FHC considered the submissions made by both parties as well as the relevant legislative provisions. On this basis, the FHC formulated a singular issue, which was whether Nigerdock FZE is liable to pay contributions within the context of Section 6(3) of the ITF Act (as amended).

10. Suit No. FHC/L/CS/2005/2014

11. The National Tax Policy defines tax as any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called a tax or not.

The decision

The FHC dismissed the case on the basis that the ITF failed to provide evidence that the Company fell within the purview of the organisations contemplated in Section 6(3) of the Act i.e. whether the Company required and sought approval for expatriate quota and/or utilized custom services in matters of its exports and imports, during the period under review.

2. Lagos State Waterways Authority & Others vs The Incorporated Trustees of Association of Tourist Boat Operators & Water Transportation in Nigeria & Others[12]

Background

For a long time, there was lack of clarity on who was the rightful regulator of the waterways within Lagos State. Whilst this ambiguity lingered, operators of boats and dredgers on the waterways were groaning under the heavy burden of double taxation, as they were licensed, regulated and taxed by the LASWA, NIWA and NIMASA.

Facts of the case

In May 2012, operators of boats and dredgers instituted action at the FHC to challenge the FG's power to assess cabotage fees and levies on vessels, boats and dredgers working in the intra-inland and inter-inland waterways.

The FHC decided that that the activities of the boat operators and dredgers fall under the purview of the power vested in the NIWA to regulate maritime and shipping in the country. Essentially, the FHC ruled that the FG and its agencies were the competent authorities to license, register and regulate transportation and tourist boat operators on the inland waters, waterways and waterfronts within Lagos State.

Dissatisfied with the FHC's ruling, the Lagos State Government appealed the case at the COA in 2014. The main issue for determination in the case was whether the regulation and taxation of intrastate waterways fall under the Exclusive Legislative List over which the FG has jurisdiction, based on a correct interpretation of Part 1 of the Second Schedule to the Constitution.

The decision

The COA resolved the case in favour of Lagos State and set aside the earlier judgment of the FHC. In deciding the case, the COA agreed with Lagos State's position that the Constitution was silent on the classification of intra-waterways in the State; and that the matter consequently falls under the Residual Legislative List, which only the State's House of Assembly has legislative powers over. Thus, the Lagos State House of Assembly is competent to make laws in respect of the intra-inland waterways in Lagos State.

The appellate court also highlighted that no conflict was pointed out by the FG between the provisions of the National Inland Waterways Act and the LASWA Law as to render the latter void to the extent of its inconsistency with the former.

12. Appeal No. CA/L/886/2014

3.2. Updates on tax and regulatory issues

1. Introduction of VAIDS

On 29 June 2017, the Acting President of the Federal Republic of Nigeria, Prof. Yemi Osinbajo, signed Executive Order No. 004 ("Order") authorizing the Federal Ministry of Finance to set up a VAIDS programme ("the Scheme") for all categories of taxpayers in default of taxes.

The Scheme provides a 9-month window commencing 1 July 2017, during which taxpayers in default of prior year taxes can declare their assets and income from all sources within and outside Nigeria for the preceding 6 years (i.e. 2011 – 2016 YOAs), regularize their tax status and ensure full compliance.

To participate, a taxpayer must make full and frank disclosures verifiable in all material respects using the VAIDS declaration forms or any other form prescribed, after which an assessment of the tax payable would be carried out by the RTA[13]. In exchange, the taxpayer would benefit from certain incentives, which include immunity from prosecution for tax offences, immunity from tax audit, and waiver of penalties and interest charges. These are in addition to the option of spreading the payment of outstanding liabilities over a maximum period of three years, subject to any agreement reached with the RTA.

Any eligible taxpayer who fails to take advantage of the opportunity provided by the Scheme, shall upon its expiration, be liable to pay in full, the principal tax liability due, penalty and interest thereon. The taxpayer may also be subject of a comprehensive tax audit exercise and prosecution.

The FG has indicated that it expects to generate revenue of about US$1 billion from the Scheme. According to the FIRS Chairman, the scheme had generated about ₦23 billion as at December 2017.

2. Changes to the Export Expansion Grant Scheme

Following the recent decision of the FG to resume the EEG scheme, the NEPC in 2017, issued revised guidelines for the operation of the EEG Scheme. As part of the prerequisites for participating in the scheme, eligible exporters must provide an Export Expansion Plan, scanned copies of their EEG application and evidence of fully repatriating proceeds from qualifying export transaction within 300 days from the date of export.

EEG claims would now be administered by way of tax credits, and certificates issued under the EEG scheme would be called ECC in lieu of the erstwhile NDCC. While the NDCC was used for the settlement of import and excise duties only, the EEC can be used to purchase FG bonds or settle liabilities with certain collecting agencies such as the CBN, FIRS, Bank of Industry, Nigerian Export-Import Bank, and the Asset Management Corporation of Nigeria.

The EEC would be valid for two years and transferrable once to the final beneficiary during the two-year window. Beneficiaries of the Scheme would be required to pay 2% of the approved EEC value upon collection of the EEC and 4% of the cost of collection upon utilization.

13. The RTAs under the Scheme include the Federal Inland Revenue Service and all State Boards of Internal Revenue

During the year, the NEPC issued a communiqué to all eligible exporters interested in the Scheme to submit baseline data for 2013 to 2017 financial years. In addition, the NEPC requested beneficiaries to return unutilized NDCC for verification in preparation for the Promissory Note Program approved by the Federal Executive Council in July 2017.

3. FG approves 27 new pioneer industries

The FG approved 27 new industries for inclusion in the list of pioneer industries and pioneer products, as part of its efforts to diversify the economy. Companies operating in the industries would be eligible to apply for pioneer status, once the list is published in the Official Gazette.

Pioneer status is a fiscal incentive provided under the Industrial Development (Income Tax Relief) Act, Cap I7, Laws of the Federation of Nigeria, 2004. Eligible companies operating in designated pioneer industries and or producing pioneer products, which apply for and are granted pioneer status, are entitled to income tax holiday for up to five (5) years – three (3) years in the first instance, renewable for an additional maximum period of two (2) years. In addition to income tax holiday, pioneer companies enjoy other benefits, such as the exemption from withholding tax on dividends paid out of pioneer profits.

You can download a copy of the list at: https://assets.kpmg.com/content/ dam/kpmg/ng/pdf/tax/ng-list-of-new-pioneer-industries.pdf

4. FG approves new interest rate spread on unpaid taxes

The FG approved a new interest rate spread of 5 per cent on unpaid taxes for 2017. The spread was approved by the Honourable Minister of Finance ("the Minister"), Mrs. Kemi Adeosun, in exercise of her powers under Section 32(1) of the Federal Inland Revenue Service (Establishment) Act, 2007. Based on the section, unpaid taxes (other than the transaction taxes covered by Section 40 of the Act) in both Naira and foreign currencies[14], are liable to interest charges at the prevailing CBN Minimum Re-Discount Rate (MRR) plus the spread determined by the Minister. The CBN Monetary Policy Rate (MPR), which replaced the MRR in December 2006, is currently 14%.

Consequently, taxpayers would be liable to interest charges for non-payment and late payment of taxes at the rate of 19% with effect from 1 July 2017. Rates for future periods would modulate based on changes in the MPR and subsequent pronouncements by the Minister.

5. Implementation of electronic certificate of capital importation

The CBN issued an Information Circular on Friday, 7 September 2017, on its deployment of an eCCI platform with effect from Monday, 11 September 2017.

CCIs are issued by Nigerian banks, pursuant to the CBN Foreign Exchange Manual, as evidence of direct foreign capital investment into Nigeria. Such capital inflows may relate to debt or equity, and can be in the form of cash or goods. Foreign investors can use the CCI as a guarantee for

14. The interest rate applicable to foreign currency liabilities is the higher of the CBN MPR and the London Inter-bank Offer Rate (LIBOR), plus spread to be determined by the Minister. However, the comparison is moot, as the LIBOR has consistently been lower than the MPR since its introduction.

unconditional repatriation of capital and profits, as well as any interest and/or dividend attributable to their investments.

The transition from hard copy CCIs to eCCIs is part of CBN's efforts to promote transparency and process efficiency, and digitise its database of CCIs issued to investors.

6. Approval of the NPP

The Federal Executive Council of Nigeria, on 19 July 2017, approved the NPP ("the Policy") which articulates the vision for the Nigerian petroleum industry to serve as a catalyst for economic growth, and not merely a source of government revenue. The NPP demonstrates FG's resolve to transform the oil sector, as it covers a broad range of issues

One of the key bases of issuing the NPP was that the previous policy was not designed for development as it encouraged rent-seeking, leaving the country as the only member of the Organisation of Petroleum Exporting Countries without an effective oil refining capacity. The Policy is broken down into various implementable items, the main ones being Governance, Industry structure and Market structure.

7. Agreement between NSITF and NECA on the implementation and administration of the ECA

The NSITF and NECA signed an Agreement on 22 November 2016, on the implementation and administration of the ECA with effect from 1 January 2017.

The highlight of the Agreement is the definition of "payroll" for the purpose of computing employer's contribution to the ECF ("the Fund"). Under the ECA, employers are required to make a minimum monthly contribution of 1% of their total monthly payroll to the ECF. However, the term "payroll" is not defined in the Act.

The Agreement defines "payroll" to mean "remuneration" as defined in the Act, excluding pension contributions, bonuses (performance-related payments), overtime payments, and irregular one-off payments (such as driver's allowance, medicals, 13th month payment, etc.). Section 73 of the ECA defines "remuneration" as "*basic wages, salaries or earnings designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law which are payable by an employer to an employee for work done or to be done or services rendered or to be rendered; and allowances which include rental, transport, meals and utility or other allowances as may be determined by the Board, from time to time*".

The definition of "payroll" in the Agreement leaves room for uncertainty in the determination of the base for ECF contributions. For instance, it is unclear whether allowances (e.g. leave allowance, housing allowance, etc.) paid annually by some employers to their staff, will qualify as irregular one-off payments to be excluded in determining the total monthly "payroll". It is also uncertain if the monetary value of benefits-in-kind, such as employer-provided meals and official cars, will be excluded from the computation of ECF contribution. The Standing Committee charged with the responsibility of making appropriate recommendations should, therefore, consider clarifying these grey areas, amongst others.

8. Recent developments at the Nigeria Immigration Service

The Honourable Minister for Interior, Lt. Gen. Abdulraham Dambazau on Monday, 20 March 2017, announced the release of the Immigration Regulations, 2017 ("the Regulations") effective from 27 February 2017.

The objectives of the Regulations are to provide a legal framework for the effective implementation of the Immigration Act, 2015 and consolidate existing Immigration Regulations in Nigeria.

Also, as part of the ongoing Government initiatives for improving ease of doing business in Nigeria, it is now possible for business visitors to obtain VOA in Nigeria with ease. VOA is a short-term visa issued to frequent business travelers at the port of entry in Nigeria and has a maximum validity of 30 days. The scheme was first introduced in 2015 as an incentive to attract foreign direct investment into the country and boost tourism.

Furthermore, the CGIS, Mr. Muhammed Babandede, MFR, on 1 August 2017, announced his intention to harmonise the records of the NIMC and that of the Nigeria Immigration Service effective from 1 January 2018.

With the proposed data harmonization, it will become mandatory for all Nigerians and foreigners resident in the country to obtain a National Identification Number as this will be a prerequisite for obtaining a Nigerian passport or resident permit.

9. Recent developments on Voluntary Contribution

Section 10(1) of the Pension Reform Act 2014 provides for the tax-deductibility of pension contributions – including VC. Section 10(4) of the Act, however, provides that any income earned on VC made and withdrawn within 5 years would be subject to tax at the point of withdrawal. This provision is more liberal than that of the repealed Pension Reform Act, 2004, which fully taxed VC withdrawn within 5 years.

With the approval of PFAs and PenCom, the above tax law provision became a common tax avoidance scheme under which employees made uncapped VC from their monthly salaries, claimed reliefs on the contributions made, and subsequently withdrew the VC from their RSA.

In reaction to this, tax authorities issued Public Notices on their position on the adverse effect of VC on tax revenue. Consequently, PenCom issued a Circular on 16 November 2017 to all licensed PFAs and PFCs in Nigeria, to curb the abuse of VC.

Based on the Circular, which has an effective date of 1 December 2017, mandatory contributors [i.e. contributors obliged to make pension contributions] who make VC into their RSA can withdraw their VC once in every two (2) years from the last approved withdrawal date. Subsequent withdrawals will only be on the incremental contributions from the date of last withdrawal.

50% of VC in an RSA will be treated as contingent and can be withdrawn once in two years, while the balance will be fixed as pension and can only be withdrawn on retirement. The income on any VC withdrawn will be taxed if the VC is withdrawn within 5 years from the date of the contribution.

The Circular also highlighted that exempted/expatriate contributors who opt to participate in the Nigerian pension scheme (though they are not obliged to make pension contributions) can withdraw their entire contribution after 2 years. However, such withdrawals would be subject to tax deduction on both the principal and income earned thereon where withdrawal is less than 5 years from the date of the contribution.

PFAs are obliged, by the Circular, to remit taxes deducted from contributors to the RTAs within 21 days after the end of the month of deduction. The PFAs and PFCs are also required to report any single lodgment of ₦5million and above to the Economic and Financial Crimes Commission.

10. Recent developments on Nigerian Content Law in the oil and gas industry

The Nigerian Oil and Gas Industry Content Development Act was enacted in 2010. Its main thrust is to increase indigenous companies' participation in the oil and gas industry. The implementation of the law has been acclaimed by the Nigerian Content Development and Monitoring Board to have attracted investments worth US$2 billion into the country, and created about 38,000 job opportunities

Key recent developments on Nigerian Content in Nigeria include:

1. Appointment of a new Executive Secretary
2. Launch of the Nigerian Content Intervention Fund
3. Nigerian Content Performance Audits
4. Nigerian Assembly's Foray into Nigerian Content Compliance Review
5. Public Hearing on the Implementation of Local Content in Nigeria

11. Public Notices on tax matters recently issued by Lagos State Internal Revenue Service

During the course of 2017, the LIRS issued a series of Public Notices on tax matters. This is with a view to curtailing abuse of tax avoidance schemes and providing clarifications on grey areas in certain provisions of the Personal Income Tax Act. The Public Notices cover the following subject matters:

- Tax relief on voluntary pension contribution
- Tax treatment of employees outsourcing arrangements
- Allowable interest deduction on owner-occupied residential houses
- Exemption of compensation for loss of employment
- Tax treatment of employee loan
- Taxation of employees' stock options
- Taxation of non-residents
- Tax treatment of savings element on insurance premium
- Valuation of accommodation provided by employers
- Determination of reasonable removal expenses

In light of these Public Notices, many employers may need to update their staff policies/hand books and review their payroll computation process in relation to the affected employee arrangements and benefits. It should be noted that these circulars represent the position of the LIRS on the issues covered. There is nothing that precludes an aggrieved taxpayer from appealing to the TAT or relevant courts.

12. Property valuation by the FIRS as a basis for tax assessment

In 2017, the FIRS commenced valuation of some companies' properties as part of its basis of assessing them to income tax. According to the FIRS, the aim of the valuation process was not to impose property tax, but rather to determine the basis of taxation of companies that have not been filing their tax returns on best-of-judgment basis. The FIRS issued Public Notices to companies that refused to pay tax assessments raised on them based on their property valuation, threatening to distrain them where they fail to settle the assessments within the stipulated time.

The FIRS' position is clearly driven by the FG's resolve to ramp up non-oil revenue. However, the legality of the FIRS' property-value-based assessments is questionable.

Section 9 of CITA provides for the taxation of companies on "profits accruing in, derived from, brought into, or received in, Nigeria". The CITA also requires corporate taxpayers to file annual tax returns on self-assessment basis. However, where a company fails to file its returns, or reports assessable profits in its returns that are lower than the FIRS expects, the FIRS can assess the company on best-of-judgment basis under Sections 30(1) and 65 of CITA.

Based on a careful reading of Section 30(1) of CITA, assessments raised under the section must be computed on a fair and reasonable percentage of the company's turnover, not property value. There is also no specific basis in Section 65 of CITA for the FIRS to determine a company's total profits based on the value of its property. The expectation is that such best-of-judgment computations would be done based on taxing points known to CITA, such as turnover, gross profits and dividend.

In the final analysis, the FIRS' decision to assess companies based on their property values is an imposition of property tax. This is alien to CITA. Taxpayers therefore have a legitimate right under the Act to object to such assessments.

13. Approval and introduction of National Tax Policy

The FEC approved a revised NTP on 1 February 2017. The revised NTP, which replaces the old NTP issued in 2012, sets out the guidelines, rules and modus operandi that would regulate taxation in Nigeria going forward.

The NTP was designed to address some of the challenges of the Nigerian tax system, which include:

i. lack of framework for the taxation of informal sector and high network individuals
ii. fragmented database of taxpayers and weak structure for exchange of information by and with tax authorities
iii. multiple taxation by all tiers of government
iv. insufficient information available to taxpayers on tax compliance requirements
v. poor accountability for tax revenue
vi. use of aggressive and unorthodox methods for tax collection
vii. failure by tax authorities to honour refund obligations to taxpayers
viii. the non-regular review of tax legislation, which has led to obsolete laws, that do not reflect current economic realities
x. lack of strict adherence to tax policy direction and procedural guidelines for the operation of the various tax authorities.

Key recommendations to address the challenges include:

a. A shift towards greater reliance on indirect taxes which are easier to collect and administer and more difficult to evade.
b. Gradual convergence of capital gain tax and PIT rates with the CIT rate, to reduce opportunities for tax avoidance.
c. Elimination of multiple taxation by various tiers of government.
d. Categorization of tax incentives by sector, and restriction of such incentives to economic activities that facilitate national development.
e. Regular comprehensive review of the Nigerian Tax System (laws and administration).
f. Monitoring of the implementation of the NTP by the Federal Ministry of Finance on an ongoing basis.

14. International tax

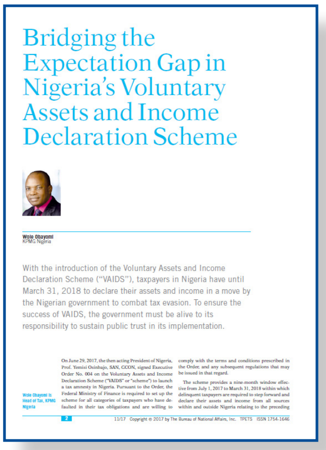
On 17 August 2017, Nigeria signed two major multilateral instruments, namely the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("the Convention") and the Common Reporting Standard Multilateral Competent Authority Agreement (CRS MCAA)

The Convention is a legal instrument designed to prevent BEPS by multinational enterprises. It offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into existing networks of bilateral tax treaties worldwide in a quick and efficient manner without the need to bilaterally renegotiate each such treaty. The Convention also implements minimum standards to prevent treaty abuse and improve dispute resolution mechanisms whilst providing flexibility to accommodate specific tax treaty policies.

The CRS MCAA, on the other hand, is a multilateral competent authority agreement that aims to implement the automatic exchange of financial account information pursuant to the OECD/G20 common standard, and deliver the automatic exchange of CRS information between 101 jurisdictions by 2018. The CRS MCAA sets out the financial account information to be exchanged, the financial institutions required to report, and the different types of accounts and taxpayers covered. The document also specifies the common due diligence procedures to be followed by financial institutions.

Nigeria has committed to an implementation deadline of 2019 with respect to the OECD Automatic Exchange of Information Framework.

4.0 Featured Articles



Bridging the Expectation Gap in Nigeria's Voluntary Assets and Income Declaration Scheme

Wole Obayomi
KPMG Nigeria

With the introduction of the Voluntary Assets and Income Declaration Scheme ("VAIDS"), taxpayers in Nigeria have until March 31, 2018 to declare their assets and income in a move by the Nigerian government to combat tax evasion. To ensure the success of VAIDS, the government must be alive to its responsibility to sustain public trust in its implementation.

Wole Obayomi is Head of Tax, KPMG Nigeria

On June 29, 2017, the then acting President of Nigeria, Prof. Yemisi Osinbajo, SAN, GCON, signed Executive Order No. 004 on the Voluntary Assets and Income Declaration Scheme ("VAIDS" or "scheme") to launch a tax amnesty in Nigeria. Pursuant to the Order, the Federal Ministry of Finance is required to set up the scheme for all categories of taxpayers who have defaulted in their tax obligations and are willing to comply with the terms and conditions prescribed in the Order, and any subsequent regulations that may be issued in that regard.

The scheme provides a nine-month window effective from July 1, 2017 to March 31, 2018 within which delinquent taxpayers are required to step forward and declare their assets and income from all sources within and outside Nigeria relating to the preceding

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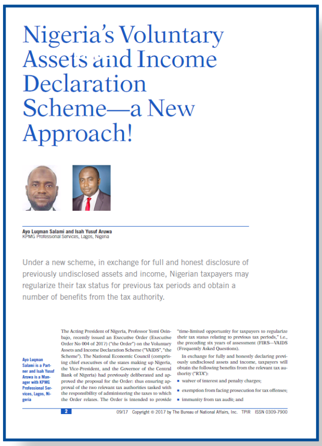
1. Bridging the Expectation Gap in Nigeria's Voluntary Assets and Income Declaration Scheme **by Wole Obayomi**

Wole Obayomi

With the introduction of VAIDS, taxpayers in Nigeria have until March 31, 2018 to declare their assets and income in a move by the Nigerian government to combat tax evasion. To ensure the success of VAIDS, the government must be alive to its responsibility to sustain public trust in its implementation.

While VAIDS may be good for Nigeria, it will only deliver the expected goods if the government is able to do all it can to engender and sustain public trust in implementing the program. At the same time, the citizenry cannot afford to wait until the government becomes fully responsible in the performance of its socio-economic obligations before they begin to pay taxes as and when they should.

You can read the full article at https://responsibletax.kpmg.com/page/bridging-the-expectation-gap-in-nigeria-s-voluntary-assets-and-income-declaration-scheme



Nigeria's Voluntary Assets and Income Declaration Scheme—a New Approach!

Ayo Luqman Salami and Isah Yusuf Aruwa
KPMG Professional Services, Lagos, Nigeria

Under a new scheme, in exchange for full and honest disclosure of previously undisclosed assets and income, Nigerian taxpayers may regularize their tax status for previous tax periods and obtain a number of benefits from the tax authority.

Ayo Luqman Salami is a Partner and Isah Yusuf Aruwa is a Manager with KPMG Professional Services, Lagos, Nigeria

The Acting President of Nigeria, Professor Yemi Osinbajo, recently issued an Executive Order (Executive Order No 004 of 2017) ("the Order") on the Voluntary Assets and Income Declaration Scheme ("VAIDS", "the Scheme"). The National Economic Council (comprising chief executives of the states making up Nigeria, the Vice-President, and the Governor of the Central Bank of Nigeria) had previously deliberated and approved the proposal for the Order: thus ensuring approval of the two relevant tax authorities tasked with the responsibility of administering the taxes to which the Order relates. The Order is intended to provide "time-limited opportunity for taxpayers to regularize their tax status relating to previous tax periods," i.e., the preceding six years of assessment (FIRS—VAIDS (Frequently Asked Questions).

In exchange for fully and honestly declaring previously undisclosed assets and income, taxpayers will obtain the following benefits from the relevant tax authority ("RTA"):

- waiver of interest and penalty charges;
- exemption from facing prosecution for tax offenses;
- immunity from tax audit; and

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2. Nigeria's Voluntary Assets and Income Declaration Scheme – A new Approach **by Ayo Salami and Isah Yusuf Aruwa**

Ayo Salami

Isah Yusuf Aruwa

The Acting President of Nigeria, Professor Yemi Osinbajo, recently issued an Executive Order (Executive Order No 004 of 2017) (''the Order'') on VAIDS (''the Scheme''). Under the Scheme, in exchange for full and honest disclosure of previously undisclosed assets and income, Nigerian taxpayers may regularize their tax status for previous tax periods and obtain a number of benefits from the tax authority. Despite the benefits which the Scheme offers, a thorough scrutiny of the Order and the responses by the FIRS to the ''Frequently Asked Questions'' published on the FIRS' website, would suggest that there is still some ''unfinished business'' relating to the Scheme. This article reviews the rationale behind the implementation of the Scheme, the potential challenges it may encounter and provides advice to the government on the critical factors for its success.

You can read the full article in Bloomberg BNA, Tax Planning International Review, September 2017


Increasing Tax Revenue

KPMG in Nigeria

December 2017

50% of every 1USD earned in revenue is being used to settle debts. This situation is definitely not sustainable in the long run without any significant increase in revenue.

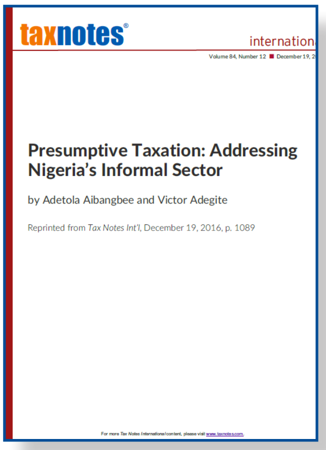
3. Increasing Tax Revenue **by Adewale Ajayi**


Adewale Ajayi

According to the World Bank Group, Nigeria currently ranks 145 out of 190 economies on the ease of doing business and 171 on the Paying Taxes Indicator. The Presidential Enabling Business Environment Council has been very instrumental in Nigeria being ranked among 10 of the most improved economies in the world. This demonstrates that there is significant opportunity for the country to move up on the ranking table if the right polices and measures are implemented.

Undoubtedly, there is significant pressure on the part of tax regulators to increase tax collection. However, they must resist any attempt to turn themselves into tax collectors rather than tax administrators. Every effort must be geared towards building an enduring and responsive tax system.

You can read the full article at https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/ng-Increasing-Tax-Revenue-by-Adewale.pdf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Volume 84, Number 12 ■ December 19, 2

Presumptive Taxation: Addressing Nigeria's Informal Sector

by Adetola Aibangbee and Victor Adegite

Reprinted from *Tax Notes Int'l*, December 19, 2016, p. 1089

4. Presumptive Taxation: Addressing Nigeria's Informal Sector

by Ehile Adetola Aibangbee and Victor Adegite


Adetola Aibangbee


Victor Adegite

The informal sector is often defined as the economic activities in all sectors of the economy that are operated outside the purview of government regulation. This sector is generally unregulated and unstructured. Presumptive taxation involves the use of indirect means to ascertain tax liability. The rules differ from the usual rules, which are based on the taxpayer's financial accounts. The term ''presumptive'' suggests that there is a presumption that the taxpayer's income is no less than the amount resulting from application of the indirect method. This article examines the importance of presumptive tax in the effort to bring the informal sector into the tax net.

You can read the full article on Page 1089, Tax Notes International, Volume 84, Number 12, December 19, 2016


KPMG

Tax Implications of Adoption of International Financial Reporting Standard (IFRS) 9 on Financial Instruments in Nigeria

KPMG in Nigeria

November 2017

5. Tax Implications of Adoption of International Financial Reporting Standard (IFRS) 9 on Financial Instruments in Nigeria by Opeyemi Osunsan and Akinwale Alao


Akinwale Alao

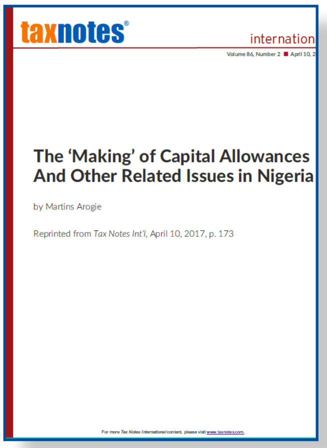

Opeyemi Osunsan

Since 2001, IAS 39 Financial Instruments - Recognition and Measurement has been the accounting standard for financial instruments. However, the Standard was affected by several shortcomings, such as complex and rules-based classification methods for financial instruments, multiple impairment models, and inability to reflect economic realities.

In response to the shortcomings of IAS 39, the International Accounting Standards Board (IASB) completed the final phase of its comprehensive response to the global financial crisis of 2008 with the publication of the fourth and final version of IFRS 9 Financial Instruments in July 2014. IFRS 9, which replaces IAS 39, is effective for annual periods beginning on or after 1 January 2018, though early application is permitted.

Expectedly, the adoption of IFRS 9 will have a significant impact on how Deposit Money Banks (DMBs), Other Financial Institutions (OFIs) and Insurers account for credit losses on their loan and other debt instruments. It is, therefore, important for DMBs particularly, and other companies within the financial services space, to assess the tax impact of the adoption of IFRS 9 in order to take advantage of available tax planning opportunities well ahead of implementation. This article highlights some of the potential tax implications of adopting IFRS 9.

You can read the full article at https://home.kpmg.com/ng/en/home/insights/2018/02/tax-implications-of-adoption-of-ifrs9-on-financial-instruments-i.html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The 'Making' of Capital Allowances And Other Related Issues in Nigeria

by Martins Arogie

Reprinted from *Tax Notes Int'l*, April 10, 2017, p. 173

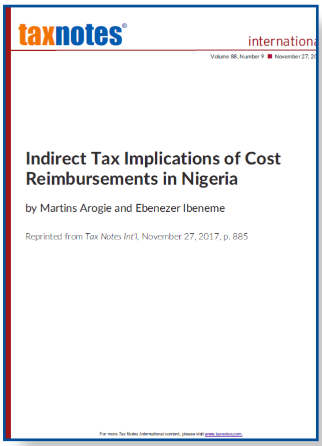
6. The 'Making' of Capital Allowances and Other Related Issues in Nigeria by Martins Arogie


Martins Arogie

Capital allowance, its treatment, and the implications for the income tax position of companies operating in Nigeria has never been a front-burner issue. This may be because the process of obtaining the relief is fairly straightforward, so there has been no need to fret over it.

However, tax dynamics in Nigeria are continually changing and it is only a matter of time before the issue of capital allowances comes to the fore. This article reviews the subject and identifies potential issues arising from the ''making'' of capital allowances in Nigeria.

You can read the full article on Page 173, Tax Notes International, Volume 86, Number 2, April 10, 2017



7. Indirect Tax Implications of Cost Reimbursements in Nigeria

by Martins Arogie and Ebenezer Ibeneme

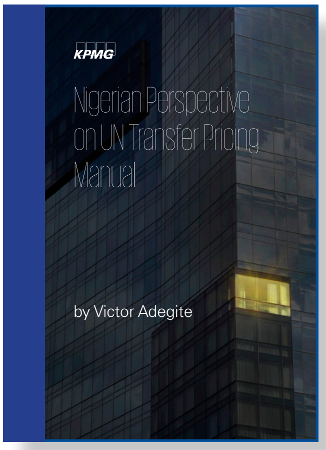
The treatment of reimbursed expenses has always been a thorny issue that frequently surfaces during tax audits and other tax-related inquiries conducted by the FIRS in Nigeria. The FIRS typically takes the view that these expenses should be subject to the relevant indirect taxes (that is, VAT and withholding tax). Taxpayers and their consultants have consistently challenged this position, with varying degrees of success.

This article discusses the appropriate VAT and withholding tax treatment of reimbursed expenses in Nigeria, looking at the 2016 Brasoil ruling, the stated position of the FIRS, and the text of Nigeria's tax laws.

You can read the full article on Page 885, Tax Notes International, Volume 88, Number 9, November 27, 2017


Martins Arogie


Ebenezer Ibeneme

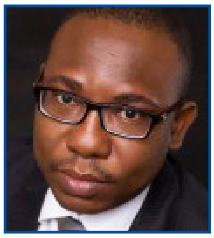


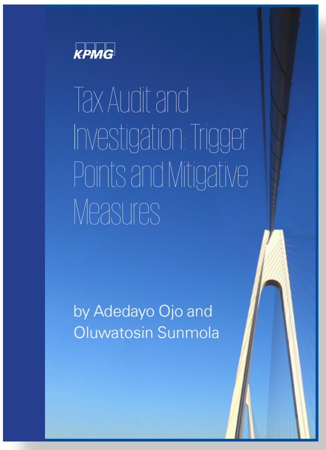
8. Nigerian Perspective on UN Transfer Pricing Manual **by Victor Adegite**

In April 2017, the United Nations Committee of Experts on International Cooperation in Tax Matters published the second edition of the UN Practical Manual on Transfer Pricing for Developing Countries. The main thrust of the revision to the manual was to bring it in alignment with the current BEPS project of the Organisation for Economic Cooperation and Development and the Group of Twenty countries. Also, consideration was given to feedback obtained since the first edition was published as well as to transfer pricing developments.

Some of the main changes in the second edition of the manual include a new chapter on intra-group services, a new chapter on cost contribution arrangements, as well as major updates to other chapters. This article reviews some of these changes and their possible impact on the administration of transfer pricing rules in Nigeria.

You can read the full article in Bloomberg BNA Tax Management Transfer Pricing Report, Volume 26, No. 14, October 2017.


Victor Adegite



9. Tax Audit and Investigation: Trigger Points and Mitigative Measures by Adedayo Ojo and Oluwatosin Sunmola


Adedayo Ojo


Oluwatosin Sunmola

The frequency of tax audits and investigations, in recent times, by the FIRS and the various SBIRs has been on the increase. This could be attributed to the efforts of the government to diversify its revenue from oil revenue to non-oil revenue sources, of which taxation forms a major part.

Tax audit and investigation should be an area of great concern to taxpayers, since if it is not properly managed, the outcome of the exercise could have a negative impact on their reputation and operations.

You can read the full article at http://www.blog.kpmgafrica.com/tax-audit-and-investigation-trigger-points-and-mitigative-measures/

10. Understanding TP Compliance for Commencement Tax Returns

by Victor Adegite and Adedayo Adebowale


Victor Adegite


Adedayo Adebowale

Nigerian companies are required to file income tax returns annually. This is expected to occur six months after a company's accounting year-end or 18 months after incorporation of the company, whichever is earlier. In the same vein, the Income Tax (Transfer Pricing) Regulations (Nigeria TP Regulations) require taxpayers to submit TP returns annually alongside the income tax returns. This comprises the recently updated TP Declaration and Disclosure forms, audited financial statements, tax computations and self-assessment forms.

As a result of the peculiarities faced by commencement entities, the question arises on how such companies should prepare TP documents and file annual returns in order to ensure compliance with the requirements of the Nigeria TP regulations. It seems two options are available – to prepare and file per basis period, or to prepare and file per commencement period. These options are further analysed in the article.

You can read the full article at http://www.internationaltaxreview.com/Article/3665406/Nigeria-Archive/Understanding-TP-compliance-for-commencement-tax-returns.html


The Tax Refund Process in Nigeria—Review of Current Practice

Ikechukwu Odoh
KPMG Professional Services, Lagos, Nigeria

Nigerian federal and state tax authorities have introduced initiatives to improve the level of fairness in their dealings with taxpayers. However, the conduct of special tax audits on companies that have applied for a tax refund, or that are seeking to carry forward tax credits, raises questions for the companies involved.

Ikechukwu Odoh is Senior Consultant, KPMG Professional Services, Lagos, Nigeria

The most subjective attribute of an efficient and effective tax system is "fairness." This attribute requires taxpayers to pay a fair share of taxes to the government, commensurate to the income or profits earned, particularly, in a progressive tax system. Fairness accentuates the tax morality question, which has become a leading topic of public discourse on taxation globally: the clamor for corporate taxpayers to adopt fair tax practices as part of their corporate social responsibility strategy has been on the increase.

Typically, tax morality or tax fairness is adjudged from the lens of the government or tax authority. However, the fair treatment of taxpayers by the tax authority is seldom considered. Nonetheless, the issue of tax morality is a two-way obligation, between the taxpayer and the government. It is important to find the delicate (and often difficult) balance between the government's desire to maximize tax revenue and the taxpayer's need to effectively and legally manage its tax exposure in the face of challenging economic and business realities.

Whilst the level of fairness displayed by the taxpayer is customarily measured by the proportion of taxes paid, for the tax authority this should be measured by:

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11. Tax Refund Process in Nigeria

by Ikechukwu Odoh


Ikechukwu Odoh

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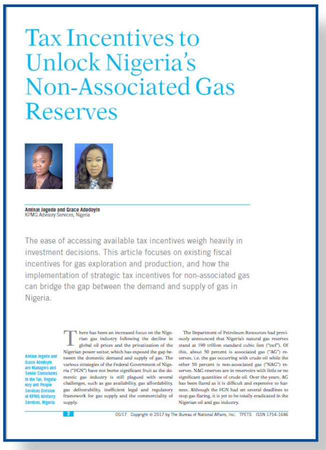
You can read the full article in Tax Planning International Review, Bloomberg BNA, October 2017.


Tax Incentives to Unlock Nigeria's Non-Associated Gas Reserves

Aminat Jegede and Grace Adedoyin
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The ease of accessing available tax incentives weigh heavily in investment decisions. This article focuses on existing fiscal incentives for gas exploration and production, and how the implementation of strategic tax incentives for non-associated gas can bridge the gap between the demand and supply of gas in Nigeria.

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There has been an increased focus on the Nigerian gas industry following the decline in global oil prices and the privatization of the Nigerian power sector, which has exposed the gap between the domestic demand and supply of gas. The various strategies of the Federal Government of Nigeria ("FGN") have not borne significant fruit as the domestic gas industry is still plagued with several challenges, such as gas availability, gas affordability, gas deliverability, inefficient legal and regulatory framework for gas supply and the commerciality of supply.

The Department of Petroleum Resources had previously announced that Nigeria's natural gas reserves stand at 190 trillion standard cubic feet ("tscf"). Of this, about 50 percent is associated gas ("AG") reserves, i.e. the gas occurring with crude oil while the other 50 percent is non-associated gas ("NAG") reserves. NAG reserves are in reservoirs with little or no significant quantities of crude oil. Over the years, AG has been flared as it is difficult and expensive to harness. Although the FGN had set several deadlines to stop gas flaring, it is yet to be totally eradicated in the Nigerian oil and gas industry.

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12. Tax incentives to unlock Nigeria's non-associated gas reserves by Aminat Jegede and Grace Adedoyin


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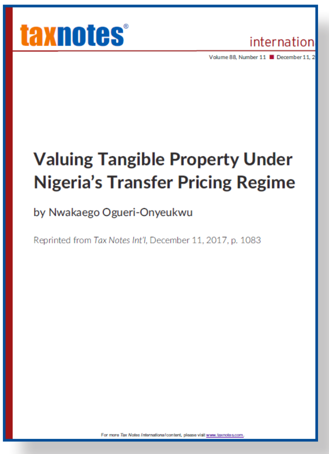
You can read the full article in Tax Planning International European Tax Service Monthly Digest, Bloomberg BNA, May 2017.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Valuing Tangible Property Under Nigeria's Transfer Pricing Regime

by Nwakaego Ogueri-Onyeukwu

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13. Valuing Tangible Property Under Nigeria's Transfer Pricing Regime by Nwakaego Ogueri-Onyeukwu


Nwakaego Ogueri-Onyeukwu

With the introduction of the Nigeria Transfer Pricing Regulations in 2012, transfer pricing has become more relevant in the Nigerian tax space. Taxpayers are increasingly aware of the requirements of the transfer pricing regime and the fact that they may incur additional tax liabilities if they fail to comply with the regulations.

When carrying out transfer pricing analyses and documenting related-party transactions, there is often a need to estimate the transfer price for tangible or intangible property. Tangible property, the focus of this article, ranges from fittings and equipment to land and buildings, and the transfer price is critical for establishing an accurate tax basis for the transferred property. One of the biggest challenges in this regard is the lack of a specific valuation method to be used in determining the value of property, especially locally.

You can read the full article at https://www.taxnotes.com/worldwide-tax-daily/transfer-pricing/valuing-tangible-property-under-nigerias-transfer-pricing-regime/2017/12/29/1x9w6

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