

TAXATION OF INTERNATIONAL SHIPPING COMPANIES IN NIGERIA: THE LEGAL REGIME



INTRODUCTION

Coming off the back of a public notice issued by the Federal Inland Revenue Service (**FIRS**) (the **Notice**)¹, which mandated international shipping companies deriving income in Nigeria to regularize their tax compliance status before 28 February 2023, the FIRS recently began issuing tax assessments to international petroleum vessel companies (“**IPVCs**”) and other International Shipping Companies (**ISCs**) who had conducted business in Nigeria. Per the assessments, the companies were required to remit back tax payments for a period of years between 2011-2019.

In the ensuing hysteria, many ISCs considered withdrawing their vessels from Nigeria’s borders, to

mitigate the risk of having them seized. In response, the Federal Government, following consultations with the Nigerian National Petroleum Corporation (**NNPC**) and the FIRS, recently announced a six-month grace period allowing the IPVCs and the ISCs to regularize their tax compliance as required by the tax assessment notices. Against this background, this Newsletter will examine the taxation regime for ISCs in Nigeria; the legal issues arising from the FIRS assessments; the intervention of the Federal Government; tax compliance requirements for ISCs; and the necessary steps to be taken by ISCs in navigating the current conundrum.

1. This public notice dated 17 December 2021 (<https://www.thedreamdaily.com/wp-content/uploads/2021/12/PNG-1.jpg>).

TAX REGULATORY FRAMEWORK FOR SHIPPING COMPANIES

The Companies Income Tax Act (CITA)² is the primary legislation setting out the regulatory framework for the taxation of companies generally.

Section 14 of the CITA specifically lays down the taxation regime for ISCs operating in Nigeria. This section provides in clear terms, the manner in which profits derived from the Nigerian territory will be assessed for the purposes of tax under different circumstances. It is important to state that ISCs liable to tax under section 14 CITA (i.e., ISCs that originate from non-treaty countries) will pay tax in Nigeria with respect to the full profits or loss arising from the carriage of passengers, mails, livestock, or goods shipped in Nigeria; whilst those originating from treaty countries will be liable to tax based on the provisions of the relevant treaties between their respective countries of origin and Nigeria.

BASIS FOR THE TAXATION OF INTERNATIONAL SHIPPING COMPANIES IN NIGERIA

It is important to note that ISCs are liable to tax on the profits or loss arising from the carriage of passengers, mails, livestock, or goods shipped in Nigeria. However, the basis of computation may differ based on the circumstances of the shipping country and/or its country of origin. The basis of computation may fall under the following categories; (a) where the country of origin of the ISC computes income tax on the same basis as Nigeria; (b) where the country of origin of the ISC computes income tax on the same basis as Nigeria, but the relevant ratios cannot be determined; (c) where the country of origin of the ISC does not compute income tax on the same basis as Nigeria; (d) minimum tax basis; (e) Tax treaty basis.

Where the country of origin of the ISC computes income tax on the same basis as Nigeria, the global income and

expense of the ISC will be apportioned to Nigeria using the following ratios; (a) ratio of global adjusted to global revenue; and (b) ratio of global allowance (depreciation) to global revenue. These ratios are then applied on the Nigerian sales to arrive at the assessable profit liable to tax in Nigeria.

Where the country of origin of the ISC computes income tax on the same basis as Nigeria, but the relevant ratios cannot be determined, the ISC will be taxed on a fair percentage of its revenue in Nigeria from outward carriage.

Where the country of origin of the ISC does not compute income tax on the same basis as Nigeria, the assessable profit will be computed as a fair percentage of the total sum received from outward carriage. In practice, the FIRS has consistently assumed 20% of the revenue as the assessable profit, while 30% tax rate is applied on such deemed assessable profit, resulting in a 6% effective tax rate.

Notwithstanding the above situations, where the tax computed is less than 2% of the total revenue receivable from the carriage of passengers, mails, livestock or goods shipped or loaded in Nigeria, the tax payable shall be the minimum tax, which is determined as 2% of the total revenue receivable from the carriage of passengers, mails, livestock or goods shipped or loaded in Nigeria.

In the event that the ISC originates from a treaty country, the basis of taxation or non-taxation of such shipping company will be based on the tax treaty. The tax treaty may provide certain reliefs to the shipping company which may range from total exemption from taxes, or some reliefs based on reciprocity as may be provided in the tax treaty



2. Cap. C21 LFN 2004 (as amended)



CERTAIN LEGAL ISSUES ARISING FROM THE FIRS ASSESSMENT

Statute of Limitation

The limitation period in relation to tax audit and assessment is 6 years under Nigerian law. This in essence means that the tax authority cannot raise an assessment that exceeds 6 years except in circumstances of fraud, negligence or willful default by the taxpayers. As seen in the Tax Appeal Tribunal (TAT) cases of *Citibank Nigeria Limited v. Rivers State Board of Internal Revenue*; as well as *Eco Bank v. Delta State Board of Internal Revenue*; where the TAT stated repeatedly that unless particulars of fraud, willful default and negligence are specially proved by the tax authorities, tax assessments cannot exceed the limitation period of 6 years. Whilst all the cases on the issue of limitation have been between the state revenue services and taxpayers, it is yet to be seen how the TAT and courts will deal with the issue in relation to federal taxes and in particular the recent assessment on the international shipping companies, especially because these companies have not filed tax returns over the years.

Responsible Party to Tax

The party responsible for the tax is one issue that may be controversial and unclear, especially where the ISC is not the owner of the vessel. It is important to state that there are different ways in which a shipping company makes vessels available to its customers. Whilst some shipping company may own some of their vessels through acquisition, most of these vessels utilized by the shipping companies are usually on charter party/lease arrangement which could be; time charter, voyage charter or demise charter/bareboat arrangement. In this instant case where the FIRS has sent letters to the ship owners directly who may for example may have given the vessel on a bare boat arrangement during these period. It may be wrong or untenable to issue tax assessment to such vessel owner who may not be liable to tax in

Nigeria.

Jurisdiction Over Activities Outside the EEZ

Section 1 of the Exclusive Economic Zone Act provides that “there is hereby denominated a zone to be known as the Exclusive Economic Zone of Nigeria which shall be an area extending from the external limits of the territorial waters of Nigeria up to a distance of 200 nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured”. Where the international shipping company loads its cargo within or outside the exclusive economic zone, one may wonder whether such carriage will be deemed to have been carried out in Nigeria. This may be one of the questions to be answered in determining whether companies falling under this bracket will be liable to tax in Nigeria.

Double Tax Treaty Intervention

As noted earlier, it is important to reiterate that not all ISCs who got demand letters from the FIRS will be liable to tax in Nigeria. This is especially the case for shipping companies originating from countries having tax treaties with Nigeria which contain total exemption from Nigerian taxes.

FEDERAL GOVERNMENT INTERVENTION

Following the reaction of international vessel owners, who started evacuating their vessels from Nigeria out of fear of having their vessels arrested, the Federal Government, in their aim to further ease doing business in Nigeria and provide comfort to international vessel owners, particularly those transporting petroleum products, announced a six-month grace period for vessel owners to clear their ten-year outstanding tax bill and balance their accounts within six weeks after a meeting with the necessary stakeholders and ship owners (the **Grace Period**).

This Grace Period is to ensure compliance and also to help affected companies avoid any tax penalty or liability for failure to comply in the outstanding years.

TAX COMPLIANCE REQUIREMENT FOR INTERNATIONAL SHIPPING COMPANIES

Section 55 of the CITA provides generally for compliance requirement expected of non-resident company having business operations in Nigeria. This provision require that such companies submit returns to the FIRS. These returns include the following;

- i. The company's full audited financial statements, and the financial statement of its Nigerian operations, attested by an independent qualified or certified accountant.
- ii. Tax computation schedule based on the profits attributable to its Nigerian operations.
- iii. True and correct statement in writing containing the amount of profits from each and every source in Nigeria.
- iv. Duly completed self-assessment forms.

Legislation is the foundation of social or economic development in all countries. It is a powerful mechanism for social engineering and establishes the appropriate legal and regulatory framework for any infrastructure development globally. Thus, strategic legislation is a viable tool for regulating a country's maritime sector. Further to the above, the Finance Act 2023 now requires regulators of ISCs in Nigeria to request for the evidence of the preceding year Income Tax filing and the Tax Clearance Certificates for three preceding years from the ISC issued by the FIRS.

To aid the tax compliance of non- resident companies in Nigeria, the FIRS established in 2019 the Office of the Non-Resident Company (the **Office**), which is domiciled at its Ikoyi office in Lagos. This Office is responsible for dealing with all tax issues relation to the affairs of non-resident companies operating in Nigeria.

WHAT THE INTERNATIONAL SHIPPING COMPANIES MUST DO NOW

The ISCs must take seriously the FIRS assessment by engaging with the authorities as quickly as possible. Such prompt interaction is needed to show good faith, commitment and a sense of responsibility towards having discussions with the FIRS on the issued assessment.

In having conversations with the FIRS, the ISCs must consider the following elements, the analysis of which will establish the extent of liability (if any) of the ISCs to taxation in Nigeria. These elements include;

- i. The existence of the tax treaty between Nigeria and the country of origin of the ISC, and the analysis or evaluation of such tax treaty to ensure the extent of relief granted.
- ii. In the case of a ship owner engaging in the business of leasing of vessels; and analysis of the charterer of its vessels at various times from 2011 to date. This analysis will involve evaluating the type of charter and the contractual obligations of parties under the contract, and especially in relation to taxes.
- iii. Analysis of the tax regime in the country of origin of the ISC and comparison with the Nigeria tax regime to determine the proper basis for taxation of the ISC in Nigeria.
- iv. Evaluation of the operations of the ISC to determine whether or not such ISC will be required to register with the FIRS and pay taxes in Nigeria.





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