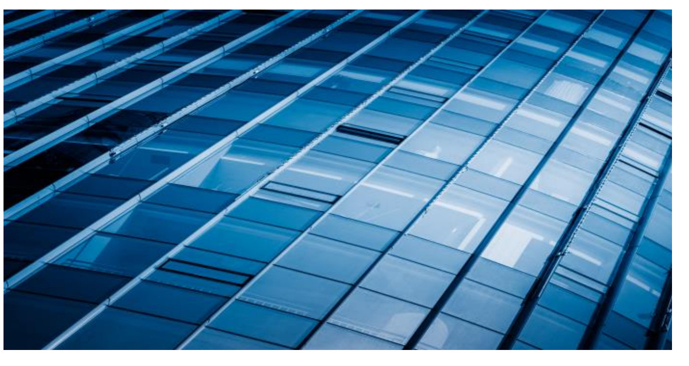
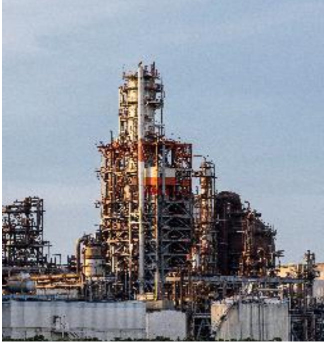
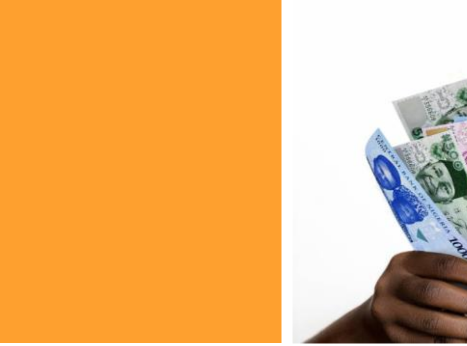
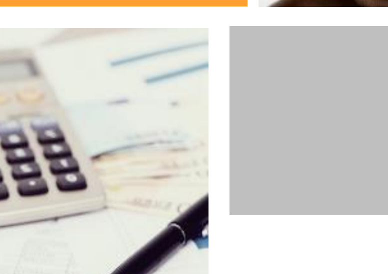
OALP TAX PRACTICE

NEWSLETTER









2ND QUARTER 2024

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LIST OF ABBREVIATIONS

AGFA	Associated Gas Framework Agreement
ATC	Across the Counter
BIRS	Bayelsa State Internal Revenue Service
BoJA	Best of Judgement Assessment
CBN	Central Bank of Nigeria
CGT	Capital Gains Tax
CIT	Companies Income Tax
CITA	Companies Income Tax Act
DSG	Delta State Government
FIRS	Federal Inland Revenue Service
FIRSEA	Federal Inland Revenue Service Establishment
GTA	Gas Tax Allowance
GTBO	Government Business Tax Office
GTC	Gas Tax Credit
GUIA	Gas Utilisation Investment Allowance
IAS	International Accounting Standard
IFRS	International Financial Reporting Standards
JTB	Joint Tax Board
NAG	Non-Associated Gas
NCC	Nigerian Communication Commission
NCF	National Cybersecurity Fund
NoA	Notice of Appeal
NoRA	Notice of Refusal to Amend
NMDPRA	Nigerian Midstream and Downstream Petroleum Regulatory Authority
PAYE	Pay As You Earn
PIT	Personal Income Tax
PITA	Personal Income Tax Act
SCF	Standard Cubic Feet
TAT	Tax Appeal Tribunal
TIN	Tax Identification Number
VAT	Value Added Tax
WHT	Withholding Tax

INTRODUCTION

Still on the mandate of the 'Renewed Hope Agenda', this second quarter underscores the federal government's unwavering efforts in pushing out policies and regulations aimed at addressing the decade-long complexities surrounding tax administration in Nigeria. The ambitious commitment of this administration is not merely a policy thrust as we also witness significant pronouncements from the Tax Appeal Tribunal which altogether, are gradually transforming the legal landscape of Nigeria's tax system.

In this edition of our quarterly newsletter, we examine what these changes translate to for taxpayers as well as the opportunities they present in this continuous drive to foster economic growth in Nigeria. Thus, we avail you with a succinct, yet insightful overview of these developments, helping you stay ahead of the curve and trust that you will find this edition informative.

We have divided our review into two segments: Part A which focuses on judicial developments; and Part B: which centres on government policies.

We have divided our review into two segments:

- **Part A: Judicial Developments;**
- **Part B: Government Policies.**

PART A:

JUDICIAL DEVELOPMENTS

PART A: JUDICIAL DEVELOPMENTS

In this part, we examine some of the notable decisions of the Nigerian Courts particularly the Tax Appeal Tribunal in the resolution of tax disputes in the second quarter of 2024.

TAT RULES ON THE IMPACT OF FAILURE TO SATISFY THE CONDITIONS PRECEDENT TO THE ISSUANCE OF DEMAND NOTICES OF ASSESSMENT ON TAXPAYERS - POPHAM WALTER ODUSOTE LIMITED V BAYELSA STATE BOARD OF INTERNAL REVENUE & 19 ORS (APPEAL NO: TAT/SSZ/025/2022)

Popham Walter Odusote Limited (the **Appellant**) vide a Notice of Appeal (**NoA**) instituted at the South-South zone of the Tax Appeal Tribunal (**TAT** or the **Tribunal**) challenged two notices of assessment issued by the Bayelsa State Board of Internal Revenue (the **Respondent**) wherein the Respondent demanded the sum of of ₦1,131,999,976.00 (One Billion, One Hundred and Thirty-One Million, Nine Hundred and Ninety-Nine Thousand, Nine Hundred and Seventy-Six Naira) only as the Appellant's Pay As You Earn (**PAYE**) tax liabilities for the period of 2017 – 2020. It was the claim of the Appellant that its tax base was Lagos State and as such, it had no subsisting tax liabilities in Bayelsa State.

On the other hand, the Respondent alleged that within the period of 2017 – 2022, the Appellant carried out business activities and deployed over 60 (sixty) personnel to carry out work at Agbami, in Bayelsa State, hence the assessment of the Appellant to PAYE tax. The Respondent also claimed to have issued prior notices to the Appellant different from the notices tendered by the Appellant, inviting the Appellant to a tax audit exercise for the years under review, amongst others.

The Tribunal in resolving the case before it, distilled a sole issue for determination to wit: whether the Appellant has proved its case as required by law to be entitled to judgment and the reliefs sought from this Tribunal.

In resolving this issue, the Tribunal held that the notices of assessment issued by the Respondent were invalid for being non-compliant with the requirement to issue letters of notification to the Appellant. Relying on the case of **Commissioner of Revenue v Attah M.O**,[1] the Tribunal held that the Respondent failed to satisfy the twin conditions precedent to an assessment which are: (a) request to render returns and (b) the

1. *ALL NTC Vol 1, page 280*

expiration of the waiting period indicated in the request. Considering the absence of any sign indicating receipt by the Appellant of the Respondent's notification for tax audit exercise and the attendant request for documents, the TAT held that the Respondent failed to afford the Appellant the opportunity to prepare and state its income, and therefore the notices of assessment were invalid.

As it relates to the Appellant, the TAT found that there was evidence that the Appellant had a business presence in Bayelsa State, given that it had employees, (even if former employees), who worked on the Agbami field in Bayelsa State. Having so stated, the TAT held that the Appellant ought to have furnished the Respondent with the essential documents, particularly the time sheets of some of its former employees, audited financial statements, etc, to back up its objection of having remitted PAYE in the state of residence of its employees.

In sum, the TAT found that both parties had not been completely transparent: the Respondent failed to satisfy the conditions precedent to the issuance of the notices of assessment, while the Appellant failed to furnish the Respondent and the Tribunal with all relevant information needed to properly ascertain the merits of the Appellant's case. Consequently, the TAT granted in parts, the reliefs of both the Appellant and Respondent as follows:

1. The assessment of the Appellants PAYE tax for the year 2017-2020 was declared null and void;
2. The assessment and demands of the assessed amounts as stated in the notices of assessments issued by the Respondent to the Appellant were vacated;
3. The Appellant was ordered to provide the Respondent with all relevant information required to show payment of PAYE taxes for its employees as it relates to its work on the Agbami fields;
4. The Appellant was to provide the Respondent with detailed information of all employees deployed to worked on the Agbami fields.

This decision portrays the willingness and readiness of the Tribunal to hold both the taxpayer and the tax authority to the highest standards of liability. Therefore, taxpayers are encouraged to comply with all conditions precedent to the imposition of tax assessments. In the same vein, taxing authorities are advised to ensure that the payment of tax is not made out to be a witch-hunting process, but to afford taxpayers the opportunity to provide all relevant information necessary to the payment of any relevant tax.

TAT RULES ON THE PROPER PROCEDURE FOR RESOLVING FILING ERRORS ON TAXPRO-MAX - TRATRIX ENGINEERING LIMITED V FEDERAL INLAND REVENUE SERVICE (FIRS) (APPEAL NO: TAT/SSZ/026/2023)

Tratrix Engineering Limited (the **Appellant**) executed a contract for Delta State Government (**DSG**) for which payment in the sum of ₦114,698,652.47 (One Hundred and Fourteen Million, Six Hundred and Ninety-Eight Thousand, Six Hundred and Fifty-Two Naira, Forty-Seven Kobo) only (the **contract sum**) was made in March 2022. The sum of ₦6,036,764.51(Six Million, Thirty-Six Thousand, Seven Hundred and Sixty-Four Naira, Fifty-One Kobo) only, was deducted at source as the Value Added Tax (**VAT**) due on the contract sum (**withheld sum**) and remitted by DSG to the FIRS (the **Respondent**) on behalf of the Appellant.

Whilst filing its VAT returns on TaxPro-Max in April 2022, the Appellant erroneously filled the withheld sum in Box 180, thus incurring liability for non-payment of its VAT for April 2022. Upon realization of this error, the Appellant immediately wrote letters to the Respondent dated 11.10.2022 and 06.03.2023 respectively, requesting that the error be corrected but the Respondent had refused to do so. It was on the basis of this refusal that the Appellant approached the TAT vide an NoA seeking amongst others, an order directing the Respondent to correct the erroneous VAT liability and to set aside the VAT liability in the amount of the withheld sum as same had been remitted to the Respondent.

In response, the Respondent argued that it had no right to vacate the self-assessment returns made by the Appellant and that the allegations of erroneous assessment made by the Appellant were subject to investigation at different tax offices.

In reaching its decision, the Tribunal considered that the Appellant had complied with the provisions of section 24 of the Federal Inland Revenue Service (Establishment) Act 2007 (**FIRSEA 2007**) and section 90 of the Companies Income Tax Act 2007 (as amended) (**CITA**) when it wrote the Respondent in respect of the errors made in filing returns. Thus, the number of applications made or letters written was immaterial as the law simply requires that an application be made.

Further, the Tribunal disagreed with the argument put forward by the Respondent and failed to see any distinction between the different tax offices - the Asaba micro and small tax office, the Government Business Tax Office (GBTO), the Lagos Tax Office, and the Respondent. By the provisions of FIRSEA 2007 and CITA, the Respondent is recognised as the primary body responsible for tax administration in Nigeria, as such, any other office created for the same purpose is merely for the Respondent's administrative convenience.

In view of the above, the Tribunal held that in the absence of any contention as to the remittance of VAT made by the DSG on behalf of the Appellant, the argument that the Appellant should have written the GBTO and not the Asaba tax office was flawed, as an internally developed procedure is incapable of superseding the clear provisions of statute.

The Tribunal found merit in the appeal, and in unanimously dismissing the reliefs/counterclaims of the Respondent held that the withheld sum being the assessed VAT liability of the Appellant for April 2022 had been properly remitted to the Respondent and should be set aside. The Respondent was restrained from interfering with the operations of the Appellant in relation to its VAT liability for April 2022 and ordered to correct the error on the TaxPro-Max platform.

Although, section 24 of the FIRSEA 2007 as cited appears to be inaccurate, this case stresses the importance of a hassle free process in order to facilitate tax compliance. Therefore, whilst we applaud the TaxPro-Max initiative which eases tax filing obligations, it remains the duty of the FIRS to ensure that complaints in respect of errors or mistakes made in filing are promptly dealt with, so as not to overburden taxpayers or discourage voluntary compliance.

TAT RULES THAT TAX ASSESSMENTS MUST BE ISSUED ON A LEGAL BASIS – BAKER HUGHES NIGERIA LIMITED V DELTA STATE BOARD OF INTERNAL REVENUE SERVICE (TAT/SSZ/016/2023).

Baker Hughes Nigeria Limited (**Baker Hughes** or the **Appellant**), an oilfield services company operating in Nigeria, initiated this appeal before the TAT contesting the additional assessment and Notice of Refusal to Amend (NORA) issued by the Delta State Board of Internal Revenue Service (the **Respondent**) assessing the Appellant to additional PAYE taxes, withholding taxes (**WHT**), and penalties for the years 2015 – 2020 culminating in the sum of ₦8,414,479,225.20 (Eight Billion, Four Hundred and Fourteen Million, Four Hundred and Seventy-Nine Thousand, Two Hundred and Twenty-Five Naira, Twenty Kobo).

The Appellant contended that the assessment of PAYE tax by the Respondent was based on undisclosed staff income for years when no employees were deployed to Delta State and that the Respondent failed to tender any evidence in proof of the alleged undeclared income it relied on. It further argued that the requested documents to substantiate its position were provided to the Respondent, and therefore, the assessments by the Respondent were erroneous and lacked legal basis. Regarding WHT, the Appellant disputed the inclusion of the business premises levy as an item liable to WHT, additionally asserting that they did not have physical offices in Delta State during the period they were assessed by the Respondent.

The Respondent argued to the contrary that the assessments issued to the Appellant were fair, based on industry averages, and that penalties were justified for non-compliance.

Having listened to the arguments canvassed by parties, and upon consideration of evidence before it, the Tribunal formulated one issue for determination to wit: whether from the evidence before the court, the Appellant is liable to pay the additional tax assessment of ₦8,414,479,225.20 for 2015-2020 based on the provision of the Personal Income Tax Act 2011 (PITA) (as amended)

Relying on the case of **Elephant Investment Ltd v Fijabi**[2] amongst others, the Tribunal held that he who alleges must prove, and if the Respondent believes that the timesheets provided by the Appellant in support of its objections to payment of PAYE taxes were inaccurate, then the onus of proving otherwise falls on the Respondent. The Tribunal also found that the allegations that the Appellant failed to provide the requested documents were untrue. Consequently, the Tribunal held that the additional PAYE tax liabilities lacked legal basis and therefore were invalid.

On the issue of business premises assessment, the Tribunal considered section 2 of the Business Premises Edict of Bayelsa State, and held that the Appellant's project location as at 2015, qualified as a business premise and so, the Appellant was liable to pay business premises levy. Having noted that the business premises levy had been improperly captured as WHT in the assessment issued by the Respondent, the Tribunal held the Appellant liable to pay a revised assessed sum of ₦689,456.25 being business premises and development levies, including penalties and interest from 2015 to 2020.

In sum, the Tribunal dismissed the additional assessment of ₦8,414,479,225.20 as being imaginary and without any legal basis, and charged the Appellant to payment of revised business premises levies.
This case underscores the importance of thorough documentation and evidence, in tax disputes, as well as the need for tax authorities to carefully evaluate any evidence presented by a taxpayer before issuing additional assessments.

2. *[2015] LPELR-24732(CA);*

TAT RULES THAT TAX ASSESSMENT BECOMES FINAL AND CONCLUSIVE SHOULD TAXPAYERS FAIL TO RESPOND WITHIN STIPULATED PERIOD - BAYELSA STATE BOARD OF INTERNAL REVENUE V M.I NIGERIA LIMITED (TAT/SSZ/011/2023)

The Bayelsa State Board of Internal Revenue (the **Appellant**) initiated this appeal against MI Nigeria Limited (**MI** or the **Respondent**) on the grounds that the Respondent failed to pay and file the assessed tax liabilities amounting to ₦5,472,000.00 (Five Million, Four Hundred and Seventy-Two Thousand Naira) being unremitted PAYE tax and the Bayelsa State Infrastructural Maintenance Levy for its staff for the period of March to December 2021. The Appellant sought various orders from the TAT, including payment of the assessed liabilities and declaration of non-compliance by the Respondent.

The Respondent contested the appeal, arguing that their employees, who worked on an oil rig in Bayelsa State, were not tax residents of Bayelsa State but of Rivers and Lagos States, where their PAYE taxes were already remitted. The Respondent provided evidence of tax clearance certificates but did not submit time sheets or payroll schedules proving the employees' short-term deployment.

After hearing both parties, the tribunal formulated a sole issue for determination to wit: whether the Appellant has proved its case as required by Law to be entitled to the judgement of this tribunal.

In resolving the sole issue for determination, the Tribunal held that by virtue of section 3 and 108 of the Personal Income Tax Act (**PITA**) 2011, an itinerant worker can fall under multiple tax jurisdictions within a year and would be liable to tax if in one state, the itinerant worker had worked a minimum of 60 days in a given assessment year. However, determining whether an itinerant worker found in a particular jurisdiction is liable to tax in that jurisdiction rests on the relevant tax authority, who would require sufficient information to determine the tax liability or otherwise of such itinerant worker. In this case, because the Respondent failed to provide valid evidence to support the claim that their employees were only on the rig named 'OES Respect Rig' in Bayelsa State for a period of two weeks, it was difficult for the tax authority to assess their tax obligations accurately. Relying on the case of **Ogunniyi v Hon. Minister of FCT & Anor**[3] the Tribunal reiterated the position of the law that when a party who is in possession to produce evidence fails to do so, it is deemed that his failure to produce same is an intended act because the evidence if so produced will be adverse to its case.

3. *[2014] LPELR-23164(CA)*

Also, the Tribunal relied on the provisions of sections 47 and 54(3) of PITA to hold that a tax authority can make a Best of Judgement Assessment (**BoJA**) if a taxpayer fails to file a return or provide requested documents. Additionally, by the provisions of section 58(1) of PITA, any assessment not objected to within 30 days becomes final and conclusive. Hence, the Respondent's failure to respond to demand notices within the stipulated period made the BoJA final and conclusive. On the whole, judgment was entered in favour of the Appellant.

The judgment highlights the importance of timely and valid objections to tax assessments to prevent issuance of a final and conclusive assessment. Furthermore, it emphasizes the significance of tax compliance and cooperation with tax authorities to avoid adverse assessments and potential penalties.

PART B:

GOVERNMENT POLICIES

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GOVERNMENT POLICIES

The Federal Government through the FIRS and other regulatory agencies, has continued to stimulate its tax drive by the issuance of guidelines to aid taxpayers' compliance. In this part, we will provide a comprehensive review of recent guidelines and administrative developments implemented by the tax authorities.

CENTRAL BANK OF NIGERIA CIRCULAR ON THE IMPLEMENTATION, COLLECTION AND REMITTANCE OF THE CYBERSECURITY LEVY

Following the enactment of the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024 (**Cybercrimes Act**), the Central Bank of Nigeria (**CBN**) by a circular dated 06 May 2024, directed all commercial, merchant, non-interest and payment service banks, other financial institutions, mobile money operators and payment service providers to implement the provisions of the Cybercrimes Act. By section 44(2)(a) of the Cybercrimes Act, a levy of 0.5% of the value of all electronic transactions made by specified businesses under the Second Schedule[4] (**Levy** or **Cybersecurity Levy**) is payable to the National Cybersecurity Fund (NCF), overseen by the Office of the National Security Adviser.

The specified businesses affected by this Levy under the Second Schedule of the Cybercrimes Act are: GSM service providers and all telecommunication companies, internet service providers, banks and other financial institutions, insurance companies and the Nigerian Stock Exchange.

By this circular, it is expected that the Levy shall be; (a) applied at the point of electronic transfer origination; then (b) deducted and remitted by the banks, other financial institutions, and payments service providers with the narration, "Cybersecurity Levy" which is to be reflected in the customer's account

4. *Second Schedule of the Cybercrimes Act.*

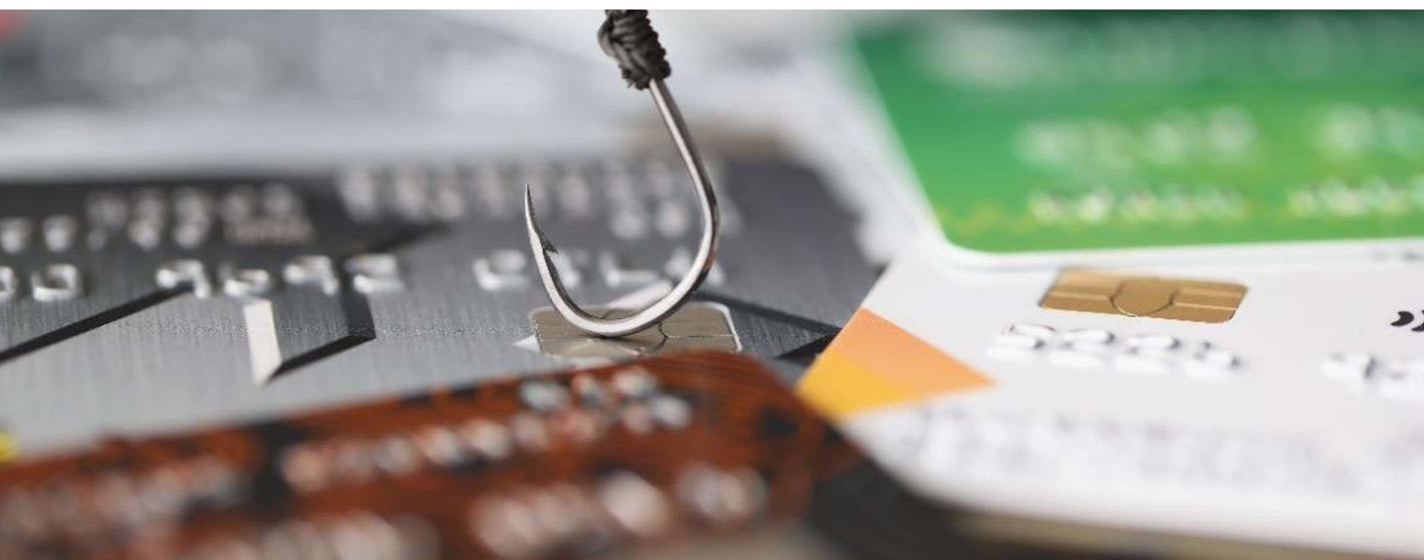
In recognition of the possibility of multiple deductions in respect of this Levy, the CBN circular captures sixteen eligible transactions, exempted from the application of this Cybersecurity Levy. They include loan disbursements and repayments, salary payments, intra-account transfers within the same bank or between different banks of the same customer, intra-bank transfers between customers of the same bank, cheques clearing and settlements, letters of credits, non-profit and charitable transactions, educational institutional transactions, transactions involving bank's internal accounts, amongst others.

The circular also prescribes significant penalties for non-compliance. Thus, any defaulting business shall be liable to pay upon conviction, a fine, not less than 2% of its business turnover, amongst others.

It is worthy to note that the imposition of this Levy has been criticised for: (a) imposing additional tax burden on businesses and individuals, thereby increasing the cost of doing business; (b) potentially functioning as an extortion instrument; (c) allocating a separate fund, (NCF), for collecting a levy due to the federal government, which may be inconsistent with section 162 of the Constitution of the Federal Republic of Nigeria (as amended) and (d) circumventing the power of the FIRS as a collection agent.

Following the decision of the Federal Executive Council to suspend the implementation of the Levy pending further review, the CBN in a subsequent development issued a revised circular on 17 May 2024, officially withdrawing the previous directive of 06 May 2024.

CBN DIRECTS BANKS TO SUSPEND CHARGES ON DEPOSITS TILL SEPTEMBER 2024



The CBN had on 20 December 2019, issued a revised "Guide to Charges by Banks, Other Financial Institutions and Non-Bank Financial Institutions" with effect from 01 January 2020, which made provisions for processing charges on cash deposits exceeding specific amounts. The processing fees were to be charged thus:

FOR INDIVIDUAL

2% processing fees for cash deposit transactions above ₦500,000 and 5% processing fees for cash withdrawals above ₦500,000

FOR CORPORATE

2% processing fees for cash deposit transactions above ₦3,000,000 and 5% processing fees for cash withdrawals above ₦3,000,000

The CBN subsequently suspended until 30 April 2024, the implementation of the 2% and 3% processing charges on only cash deposits above ₦500,000 and ₦3,000,000 for individuals and companies, respectively. This suspension was communicated by a CBN circular issued on 11 December 2023, with reference number: BSD/DIR/PUB/LAB/016/023.

Just recently, the CBN in another circular dated 06 May 2024, with reference number: BSD/DIR/PUB/LAB/017/007 and titled "Re: Processing Fees on Cash Deposits", announced the extension of the suspension of these processing fees on cash deposits of individuals and companies exceeding the above stated threshold until 30 September 2024.

FIRS CIRCULAR ON THE APPLICABILITY OF THE MIDSTREAM CAPITAL AND GAS UTILIZATION INVESTMENT ALLOWANCE

On 19 April 2024, the Federal Inland Revenue Service (**FIRS**) issued Information Circular No: 2024/02 titled "Guideline on the Applicability of the Midstream Capital and Gas Utilization Investment Allowance", (the **Guideline**) to provide guidance on the implementation of the midstream capital and gas utilization investment allowance (**GUIA**) granted under the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024 (Tax Incentives Order) (see our discuss on this Tax Order in our Q1 Tax Newsletter).

The Guideline specifies that the GUIA shall apply to qualifying capital expenditure incurred on plant and equipment acquired by midstream gas companies in respect of any new or ongoing project in the midstream sector. Issued pursuant to Part II of the Tax Incentives Order, sections 23 (2) and 89 of CITA, the Guideline outlines the conditions for eligibility for the GUIA.

Thus, for a company to be eligible, such company must –

be engaged in one or more of the following midstream operations viz: transportation of natural gas to gas processing and conditioning plants; or transportation of natural gas from gas conditioning and processing plants to gas-based industries and other end-use customers; or gas conditioning and processing plants; or gas bulk storage infrastructure utilised for holding stock of plant condensates, liquefied natural or petroleum gas.

obtain the relevant licence in respect of any of the above midstream operation from the Nigerian Midstream and Downstream Petroleum Regulatory Authority (**NMDPRA**)

have incurred qualifying capital expenditure on plant and machinery utilised in respect of any of the above midstream operation

show that the qualifying capital expenditure was incurred from 28.02.2024 which is the commencement date of the Tax Incentives Order.

show evidence of ownership of the qualifying plant and equipment and proof of direct use of same for gas processing and transportation in midstream gas operations

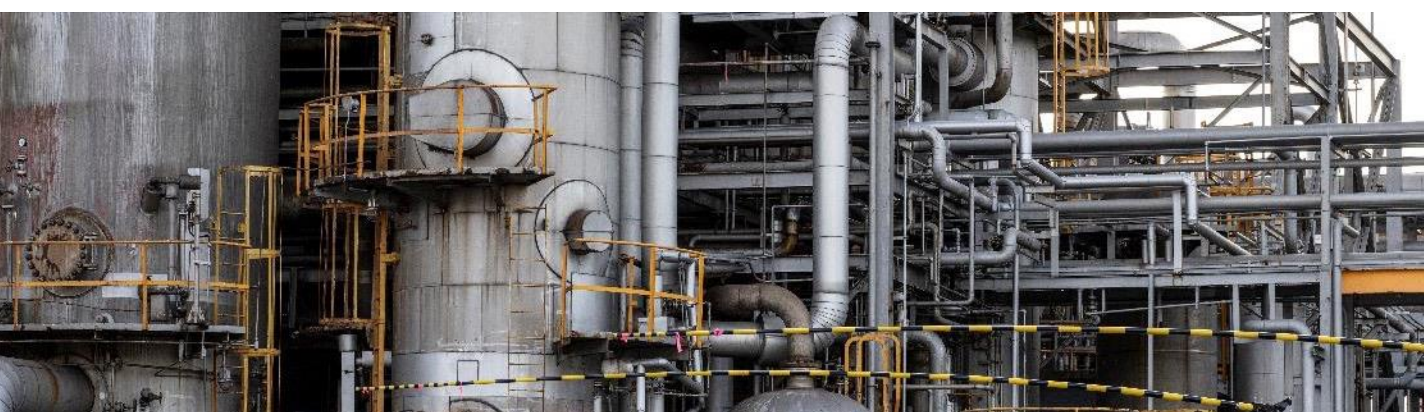
have exhausted the tax free period granted under section 39(1) of CITA.

provide certified information on new and ongoing projects to the NMDPRA and FIRS to process GUIA.

In light of the above, the Guideline stipulates certain instances where the GUIA will not apply. These instances include; (a) where the plant and machinery is sold or transferred to a company that is not engaged in similar or related midstream operations within five years of incurring the expenditure; or (b) where there is an appropriation of the plant and machinery within five years of incurring the expenditure for purposes other than gas utilisation; or (c) where the cost of the plant and machinery is an artificial or fictitious transaction; or (e) where the company is in itself, an end-product user of gas.

The allowance is set at a rate of 25% of the actual expenditure on qualifying plant and equipment. It is expected that any company that sells or transfers plant and expenditure which had been subjected to GUIA must disclose particulars of same to the FIRS within three months of the sale or transfer. It is important to note that the application of the GUIA does not affect any allowable deductions, incentives or allowances available to any eligible company.

FIRS CIRCULAR ON THE APPLICABILITY OF GAS TAX CREDITS AND ALLOWANCES FOR NON-ASSOCIATED GAS GREENFIELD DEVELOPMENT



This Information Circular No. 2024/01 released on 19 April 2024 (the Circular) provides guidance on the application of gas tax credits (**GTC**) and gas tax allowances (**GTA**). It was issued pursuant to the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc) Order, 2024, Sections 23(2) and 89 of CITA which constitutes its legal framework. The incentives are targeted at companies holding licenses or leases for greenfield development of non-associated gas in onshore and shallow water locations

GTC is available to companies that have achieved first gas production, with a hydrocarbon liquid content limit of 100 barrels per million standard cubic foot (**SCF**), on or before 01 January 2029. To calculate the GTC available to a company, the lower of these two amounts shall apply: $1 per thousand standard cubic feet or 30% of the fiscal gas price, where the hydrocarbon liquids content does not exceed 100 barrels per million SCF. This form of tax credit that can be used to defray the tax liability of an eligible company in an accounting period. In the event that the GTC exceeds the company income tax payable by an eligible company, the surplus can be carried forward for a maximum of three (3) years after which any GTC surplus will lapse.

In contrast, the GTA shall be available to a company at the rate of $0.50 per thousand SCF or 30% of the fiscal gas price, whichever is lower, where the hydrocarbon liquids content does not exceed 100 barrels per million SCF. Companies that have achieved first commercial gas production, not exceeding hydrocarbon liquid content restriction of 100 barrels per million SCF, after 01 January 2029, are eligible to claim this GTA. The GTA shall be deductible from the assessable profit of an eligible company, in arriving at its total profit. Although, the maximum duration for claiming a GTC is 10 years, a company may however transition from GTC to GTA after 01 January 2029 provided that its gas production level satisfies the hydrocarbon liquid content specifications.

The Circular further stipulates that companies eligible for GTC and GTA cannot claim the Associated Gas Framework Agreement (**AGFA**) incentive for the same NAG greenfield development. To ensure compliance, companies are therefore mandated to file separate tax computations in respect of the NAG greenfield development.

FIRS CIRCULAR ON TAX TREATMENT OF FOREIGN EXCHANGE TRANSACTIONS

On 14 June 2024, the FIRS issued a circular on the tax treatment for foreign exchange transactions in Nigeria (the Circular). In contrast to the FIRS circular on “Tax Implications of the Adoption of the International Financial Reporting Standards (prior Circular) which was issued in March 2013, and which aligns the tax implications of IAS 21 to the financial reporting treatment, the Circular deviates from the financial reporting treatment in line with IAS 21, by adopting a different approach to the tax treatment of effect in changes in foreign exchange rates.

Unlike the prior Circular, the Circular broadly classifies foreign exchanges differences into two, based on the nature of the underlying transaction and nature of business of the taxpayer. Thus, a foreign exchange difference may be:

Revenue difference – arising from income generating transactions with has the tendency of affecting the assessable profits of a company for tax purposes; or

Capital difference - arising from non-income generating transactions of a company with the gains liable to capital gains tax under the Capital Gains Tax Act.

Either of the above may be deemed to be an unrealized or realized exchange difference.

Treatment of Revenue Difference

For an unrealized exchange difference arising from revenue impacting transactions, the difference does not result in the actual receipt or payment of the revalued sum.[5] Thus, this difference is simply recorded in fulfilment of a company's accounting or reporting obligations in line with IAS 21 "***the effects of changes in foreign exchange rates***". In other words, an unrealized difference does not impact positively or negatively on the tax liability of a company and would be neutral for tax purposes (gain or loss), when computing the assessable profits of a company.

On the other hand, a realized difference denotes that the revalued sums have been received or paid by the company. In this instance, the foreign exchange difference affects the tax liability of a company as it may increase (in the case of realized exchange gains) or decrease (in the case of realized exchange losses) the tax payable by a company.

Treatment of Capital Exchange Difference

Capital exchange difference arises from non-income generating transactions of a capital nature. Thus, by the provisions of section 27(a) of CITA, which prescribes that capital expenditure is not tax deductible, any realized capital exchange loss from non-current assets will not be deductible for tax purposes. The loss can however be claimed as qualifying capital expenditure, for the purposes of capital allowances. Conversely, any realized capital exchange gain will be subject to capital gains tax at the prevailing rate[6]. For an unrealized capital exchange difference, any loss or gain therefrom will not affect the computation of the tax liability of a company.

(You can read up our tax alert on this circular).

5. *Revalued sum refers to the amount paid upon settlement of the foreign exchange transaction which recognises the increase or decrease in the initial rate of the foreign exchange transaction.*
6. *The rate is 10% in line with Section 2 of the Capital Gains Tax Act, CAP 354, LFN 1990*

DEDUCTION OF TAX AT SOURCE (WITHHOLDING) REGULATIONS 2024

Only recently, the Minister of Finance and Coordinating Minister of the Economy, Mr. Adebayo Olawale Edun, issued new regulations governing the deduction of tax at source from payments made to taxable persons under the Capital Gains Tax Act, the Petroleum Profits Tax Act and the Personal Income Tax Act. The Regulations titled, "Deduction of Tax at Source (Withholding) Regulations 2024 (the **Regulations**) with a commencement date of 01 July 2024 replace existing deduction at source rules.

The Regulations, amongst others stipulate eligible transactions and the applicable rates, at which tax shall be deducted at source. These eligible transactions have been expanded to include brokerage fees, winnings from lottery, gaming, and reality shows.

The inclusion of net payouts from winnings from lottery, gaming, reality shows, as well as entertainment and sports as eligible transactions highlight the intention of the Federal government to derive revenue from this fast-growing industry. However, the Regulations draw a distinction between these winnings and those from games of chance or reality shows designed exclusively to promote entrepreneurship, academics, technological or scientific innovation. While the former are subject to WHT, the latter are exempt from the application of WHT. It is now left to be seen how this distinction will be applied in practice.

Notably, the Regulations also emphasise the importance of recipients having a tax identification number (**TIN**). Thus, where a recipient of income has no TIN, the amount deducted at source will be double the specified rate under the First Schedule of the Regulations.

Another positive addition under the Regulations is the provision for the entity making the deduction, to issue receipts to the recipient of the income. This receipt must be accompanied by a statement describing the nature of the transaction, the recipient's name, address, and the gross amount paid or payable, as well as the recipient's TIN, national identification or company registration number whichever applies (altogether, regarded as **Detailed Statement**). In similar fashion, the entity making this deduction is expected to submit this Detailed Statement, upon remittance of the WHT to the relevant tax authority.

(For a fuller read of our analysis of the Regulations, click here)

THE PRESIDENTIAL FISCAL POLICY AND TAX REFORM EXPOSURE IMPACT ASSESSMENT SESSION

The Presidential Fiscal Policy and Tax Reforms Committee (the **Committee**) conducted public consultation events in Lagos and Abuja in May 2024. These sessions were aimed at evaluating the Committee's proposals for tax reforms and constitutional amendments targeted at addressing various tax issues.

Led by Taiwo Oyedele, the public consultations served to update stakeholders, including those in the private and public sectors, and to discuss the Committee's proposed changes. This initiative exemplifies the Nigerian government's commitment to inclusivity in addressing local tax concerns.

The Committee revealed its ambitious plans to transform the Nigerian fiscal system, with specific focus on the fiscal policy, the Nigerian tax legal framework, revenue optimisation, governance and fiscal structures.
In relation to fiscal policy, the Committee proposed the establishment of a new national fiscal policy, which outlines the tax, spending, borrowing and reporting framework, as well as the establishment of the office of the Tax Ombudsman.

As it concerns Nigeria's current legal tax framework, another core reform proposed by the Committee was the introduction of a number of single digit taxes. This is fuelled by a desire to do away with nuisance taxes with very low revenue yield, high cost of collection and ultimate burden on poor and small businesses; and to focus on high revenue yielding taxes that are broad based and easy to collect.

The Committee also outlined plans to restructure tax legislation by harmonizing all tax laws under a single Act, establishing Revenue Courts for specialized tax matters, and replacing the Joint Tax Board (JTB) with the Nigerian Revenue Commission.

The Committee also suggested revisions to the WHT regulations, such as exempting small businesses from WHT obligations, lower rates for businesses with low margins; and exemptions for manufacturers and farmers. Regarding VAT, proposed recommendations put forward include a) full deduction of input VAT on all supplies including services and assets; b) expansion of the zero-rated list to include agriculture, medical, educational and other basic consumptions; c) inclusion of VAT in the exclusive legislative list among other reforms.

These public sessions and provision of exposure consultation materials for public review and feedback speak to the Committee's mandate to ensure transparency and inclusivity in the reform process.

CONCLUSION

As we mark the end of this quarter, we eagerly await the establishment of a new national fiscal policy. We also anticipate a surge in regulations and legislative enactments designed to align with the Committee's suggested reforms. In the interim, businesses must carefully ascertain their reporting obligations under these newly issued government policies to achieve seamless business operations and avoid any potential implications. Similarly, taxing authorities are urged to prioritise assisting taxpayers over imposing penalties to achieve a more robust revenue collection system.

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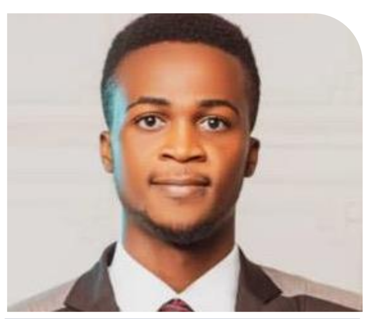

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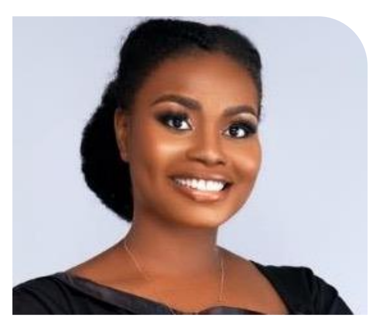

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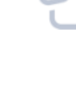

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