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3RD
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OALP TAX PRACTICE

NEWSLETTER

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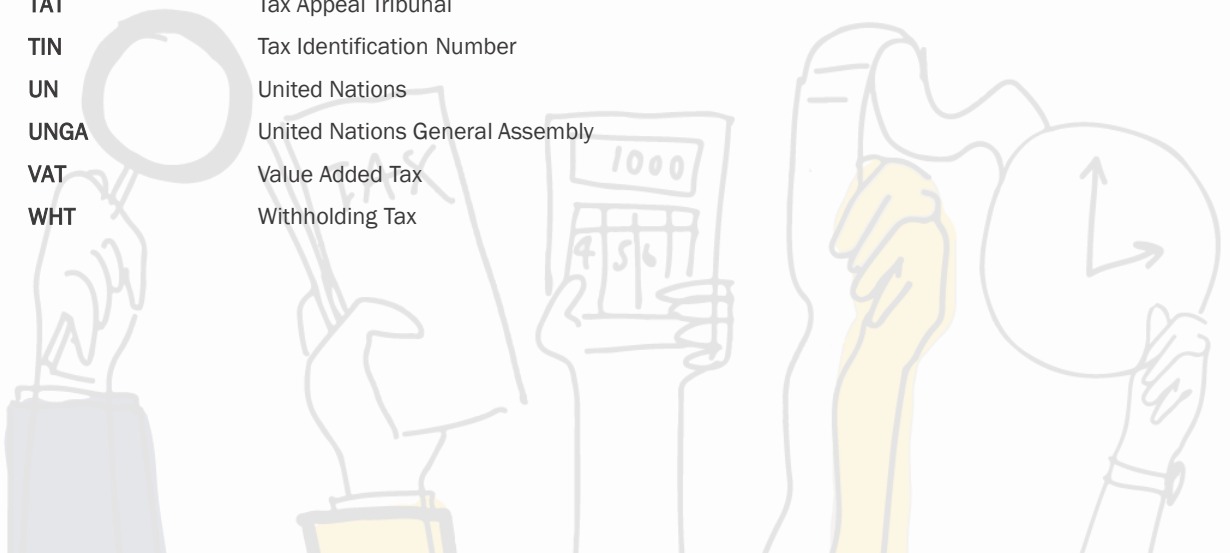
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LIST OF ABBREVIATIONS

AGO	Automotive Gas Oil
API	Application Programming Interface
BoJA	Best of Judgment Assessment
CBN	Central Bank of Nigeria
CIT	Companies Income Tax
CITA	Companies Income Tax Act
CNG	Compressed Natural Gas
CRF	Consolidated Revenue Fund
DPA	Deferred Payment Agreement
ESB	Economic Stabilization Bills
ESBIR	Enugu State Board of Internal Revenue
FDI	Foreign Direct Investment
FGN	Federal Government of Nigeria
FIRS	Federal Inland Revenue Service
FIRSEA	Federal Inland Revenue Service (Establishment) Act
FIRSMBS	FIRS Merchant Buyer Solution
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
MoF	Ministry of Finance
NASS	National Assembly
NCS	Nigerian Customs Service
NoA	Notice of Appeal
NoAA	Notice of Additional Assessment
NoRA	Notice of Refusal to Amend
PITA	Personal Income Tax Act
PTB	Presumptive Tax Bill
PTC	Production Tax Credit
TAT	Tax Appeal Tribunal
TIN	Tax Identification Number
UN	United Nations
UNGA	United Nations General Assembly
VAT	Value Added Tax
WHT	Withholding Tax



INTRODUCTION

The second quarter of 2024 experienced a myriad of developments in the realm of Nigerian taxation, driven by the policy initiatives of the 'Renewed Hope' administration under President Bola Ahmed Tinubu.

Building on the events of Q2, the third quarter witnessed a surge of further developments in the tax landscape. Key developments, such as the federal government's duty-free importation and VAT exemption on basic food items are expected to significantly improve the economy by stemming the rising inflationary trajectory, thereby improving the purchasing power of Nigerians especially in relation to necessities.

In our Q3 Newsletter, we have equally examined some of the tax-related judicial decisions, legislative developments, and other tax policies advanced in this quarter. Our analysis links these developments to the consequential effects they may have on taxpayers, investors, and other key stakeholders in the Nigerian economy. Given the flurry of activities, we have also provided a glimpse into the fourth quarter with a report on some of the most pressing developments with an outlook into what could potentially occur in the coming months.

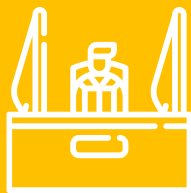
For ease of reference, we have divided our report into four (4) segments: Part A, which focuses on judicial developments; Part B which highlights the legislative developments; Part C, which centres on government policies; and Part D which addresses the emerging developments for Q4.



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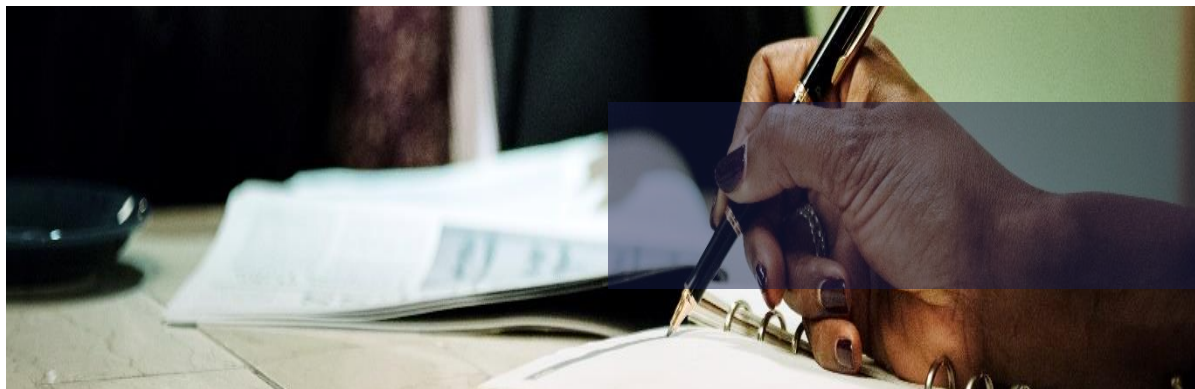
PART A

JUDICIAL DEVELOPMENTS



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


THE TAX APPEAL TRIBUNAL RULES ON THE POWERS OF FIRS TO RAISE ADDITIONAL AMENDED ASSESSMENTS ON A TAXPAYER BEYOND THE TIME LIMIT STIPULATED BY LAW – AXANKOSI LIMITED V. FEDERAL INLAND REVENUE SERVICE (APPEAL NO. TAT/LZ/CIT/114/2022)



Axankosi Limited (**Axankosi** or the **Appellant**), initiated this appeal before the Tax Appeal Tribunal (the **TAT** or the **Tribunal**) against the Federal Inland Revenue Service (**FIRS** or the **Respondent**) contesting the FIRS' refusal to amend a notice of additional assessment (**NoAA**) which had assessed the Appellant to a total companies income tax (**CIT**) liability of ₦38,063,201 (Thirty-Eight Million, Sixty-Three Thousand, Two Hundred and One Naira) in respect of the 2014 and 2015 years of assessment.

The Appellant argued that FIRS could not issue any CIT assessment beyond six years from the relevant year of assessment, unless in cases of fraud, wilful default, or neglect. They contended that none of these exceptions applied, and that the NoAA issued in 2022 for the 2014 and 2015 years of assessment, exceeded the six-year limit, violated section 66 of CITA, and rendered the assessments invalid. The Appellant also argued that it had withholding (**WHT**) credits of ₦133,106,260 and could legally offset its CIT liability using these credits, citing sections 81(7) of the Companies income Tax Act (**CITA**) and 23 of Federal Inland Revenue Service (Establishment) Act. It contended that no pre-conditions were required for utilizing the WHT credits and that any CIT liability should be set off from the WHT credit.

The Respondent argued that it had the authority to assess a taxpayer multiple times within six years, without necessarily having to prove fraud, wilful default, or neglect. It was the Respondent's case that it audited the Appellant's 2013-2015 accounts in 2017, resulting in additional tax assessed in 2019, which the Appellant objected to. After reconciliation meetings, a revised assessment was issued in 2022. The Respondent contended that this revised assessment did not constitute a new investigation and that the Appellant's challenge was a misrepresentation of the facts.



In its judgment, TAT held that where a monetary liability claim is disputed on the ground that the claim is statute barred, the onus is on the creditor, i.e. FIRS to prove that the debt was acknowledged or that a part payment was made by the defendant so as to revive the cause of action. Furthermore, where there is a successful acknowledgement of the debt or part payment by a party or its agent, the right to recover the debt or liability by action is revived. The effect would then be that the creditor may validly bring an action for enforcement of the debt, as if the cause of action had recently arisen. The Tribunal held that the Appellant's acknowledgment of liability and the deduction of CIT from its WHT credit notes amounted to acceptance and payment of the additional CIT liability. Since the Respondent followed the Appellant's instructions to offset the CIT liability using the WHT credits, the Appellant had no valid cause of action at the time of appeal. Thus, the appeal was declared an abuse of judicial process and dismissed.

The TAT's decision addresses key tax law issues, particularly the statutory limits on tax assessments and the conditions for extending them. It highlights how objections, participation in the reconciliation process, and acknowledgment or part payments can affect the enforceability of assessments. The decision emphasizes the importance of promptly reviewing tax-related communications to assess their impact in order to strategise on the appropriate cause of action.

TAT AFFIRMS THAT BEST OF JUDGMENT ASSESSMENTS EXCLUDES PAY-AS-YOU-EARN (PAYE) AND STIPULATES THAT DOCUMENT REQUESTS MUST ADHERE TO RESIDENCY RULES UNDER THE PERSONAL INCOME TAX ACT (PITA) – ECOBANK NIGERIA LIMITED V ENUGU STATE BOARD OF INTERNAL REVENUE (APPEAL NO: T/SEZ/005/2024) (FIRS) (APPEAL NO: TAT/SSZ/026/2023)



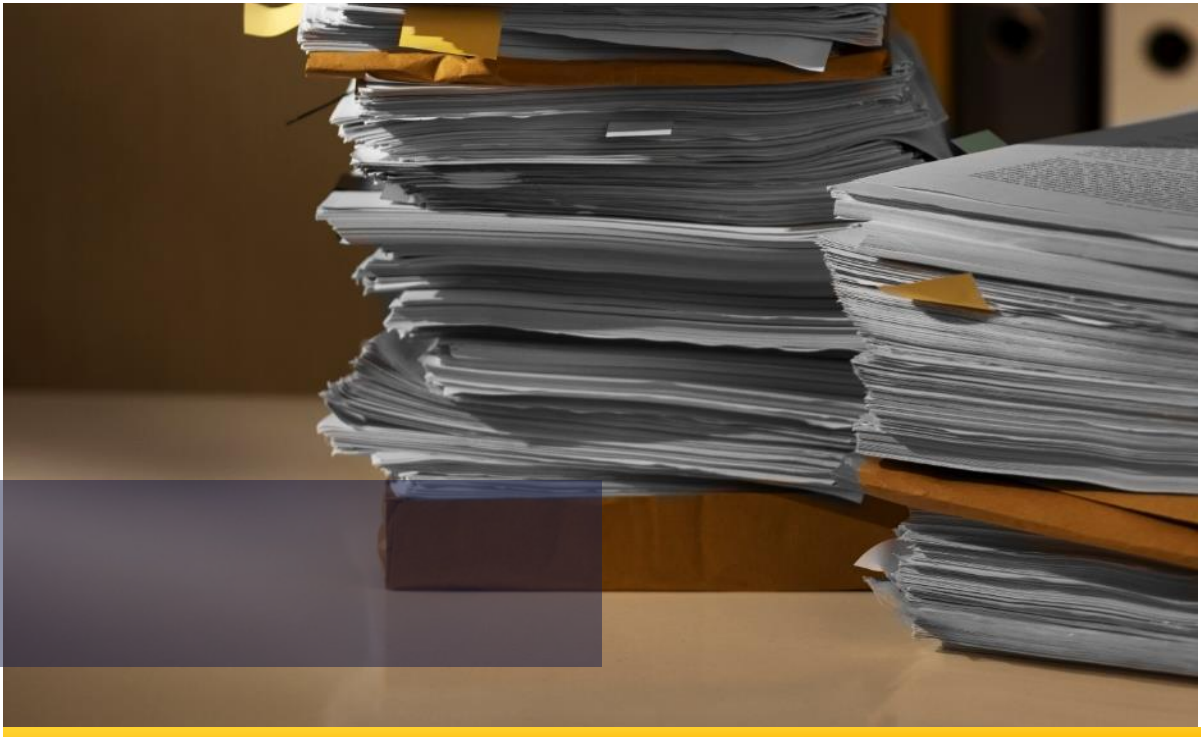
The Enugu State Board of Internal Revenue (**ESBIR** or the **Respondent**) following a tax audit verification and investigation exercise on Ecobank Nigeria Limited (the **Appellant**) for the period of 2012 to 2018, issued a demand notice for additional PAYE liabilities in the sum of ₦587,461,685.67. Despite several communications, and documentary submissions by the Appellant which were discountenanced, the Respondent issued a Notice of Refusal to Amend (**NoRA**) the demand notice for additional PAYE liabilities. Dissatisfied, the Appellant filed a Notice of Appeal (**NoA**) on 07.02.2024 at the TAT seeking amongst others, an order of perpetual injunction restraining the Respondent from enforcing the demand notice imposing the sum of ₦587,461,685.67 as the Appellant's additional PAYE liabilities for the period of 2012 to 2018.

Upon service of the NoA, the Respondent commenced a separate action via a motion on notice seeking an order of the TAT compelling the Appellant to provide its nationwide payroll and appointment letters for at least one person in each staff grade to enable the Respondent to determine the Appellant's objection to its additional assessment. Having considered the nature of both applications, the TAT consolidated both the NoA and the motion on notice to determine the rights of parties in the matter.

The TAT adopted two issues for determination viz:

Whether for the purpose of audit and investigation, the Respondent did not lawfully exercise its power to have requested for documents from the Appellant; and

Whether the Respondent's additional assessment of ₦587,461,685.67, the demand notice dated 29.10.2021 and the NoRA issued to the Appellant was not unjustifiable and unlawful.



In resolving this first issue, The TAT held that the Respondent was wrong in requesting the nationwide payroll, as it did not demonstrate how it used the documents already provided by the Appellant, including the payroll for Enugu State, nor was there proof of any reason necessitating such request. Concurring with the submissions of the Appellant, the TAT stated that the Respondent's powers to request for documents were limited to taxpayers resident in Enugu State.

On the second issue, the Respondent claimed that the additional assessment was a best of judgment assessment (**BoJA**) due to the Appellant's failure to provide requested documents, making the demand final and conclusive, with a liability of ₦587,461,685.67. The Appellant however argued that this assessment, covering 2012–2015, was statute-barred as it was issued outside the six-year limitation period and that the BoJA was unjustified since it wasn't based on any documents.

The Tribunal clarified that a BoJA must be of the highest standard, defensible, and inclusive, considering industry comparisons, basis for assessment, and business magnitude, etc. Relying on a plethora of decided cases, the Tribunal also noted that a BoJA is only applicable to taxable persons under direct assessment and not to PAYE.

In sum, the Tribunal resolved the issues in favour of the Appellant, granted the order of perpetual injunction and set aside the demand notice issued by the Respondent. The TAT, pursuant to its powers to issue revised assessments, ordered the Appellant to pay the sum of ₦525,441.62 (Five Hundred and Twenty-Five Thousand, Four Hundred and Forty-One Naira, Sixty-Two Kobo) to the Respondent.

We note, however, that the TAT in this case failed to consider the issue of limitation period which was an argument tendered in favour of the Appellant. In any event, this decision is significant for highlighting the nuances that should be considered by tax authorities in the exercise of their enforcement powers

PART B

LEGISLATIVE DEVELOPMENTS



THE FINANCE ACT (AMENDMENT) BILL 2024



The federal government of Nigeria (**FGN**), through the Finance Act (Amendment) Bill, 2024 (the **Bill**), seeks to introduce a windfall tax on Nigerian banks. The Bill is designed to raise funds for capital infrastructure projects, education, healthcare, and other public welfare programs. It was submitted to the National Assembly (**NASS**) on 17.07.2024. Now awaiting the assent of President Bola Ahmed Tinubu, the Bill was passed by the Senate on 23.07.2024, with the Senate increasing the proposed one-off tax rate from 50% to 70%.

Highlights of the Bill

Imposition of Tax:



The Bill levies a 70% tax on the realised profits from all foreign exchange transactions of banks within the 2023 to 2025 financial years.

Assessment and Payment of Tax:



The Bill provides that the FIRS shall assess and collect the wind fall tax from the banks and may enter into a deferred payment agreement (**DPA**) with the relevant banks, provided that such DPA is executed on or before 31 December 2024 (the **Deadline**).

Penalties:



The Bill stipulates that any bank failing to remit the windfall tax to the FIRS by the Deadline, without having exercised a DPA, shall be deemed to have committed an offence. Upon conviction, such a bank faces penalties including:

- payment of the withheld or unremitted tax;
- a 10% penalty on the withheld or unremitted tax, calculated at the prevailing Central Bank of Nigeria (**CBN**) minimum rediscount rate; and
- imprisonment of its principal officers for a maximum of three months.

Commencement Date:



The Bill has a retroactive date of application from 1 January 2023.



Key concerns with the Bill can be broadly encapsulated in its retrospective application, timing and the lack of stakeholder engagement. With respect to the retrospective implication of the Bill, it is trite that tax laws should have prospective application except where it is expressly provided. Moreso, the prospective nature of tax laws has also been enshrined in the national tax policy and should drive the policy objective of the federal government. Given this possibility for having laws with retrospective effect, the commencement date of the Bill has been set to January 2023, effectively subjecting the realised exchange gains to tax on a retrospective basis. There is also the issue of these gains having already suffered tax following the filing of returns by most banks for the 2023 financial year.

It is worth mentioning that the introduction of this Bill at this time when the government is overhauling the Nigerian tax legislation through the Presidential Committee for Fiscal and Tax Reforms in order to stimulate the economy, will create distrust in the polity and impair investor confidence on the genuineness of the policy statement of the government on favourable tax reforms for businesses.

PART C

GOVERNMENT POLICY AND TAX ADMINISTRATION



THE FEDERAL GOVERNMENT OF NIGERIA IMPLEMENTS THE DUTY-FREE IMPORTATION AND EXEMPTION OF VALUE ADDED TAX POLICY ON BASIC FOOD ITEMS



The Nigeria Customs Service (NCS), on 14 August, 2024, released the ***“Guidelines for The Implementation of Zero Percent Duty Rate on Basic Food Items”*** (the **Guidelines**) following President Bola Ahmed Tinubu’s approval of zero percent import duty and exemption of value added tax (VAT) on select food items from 15 July 2024 to 31 December 2024

This policy serves as a temporary measure for the purpose of; (x) lessening the burden of Nigerians by mitigating the harshness in living standards occasioned by the high cost of essential and yet the most basic food items in the Nigerian market; (y) addressing the current economic hardships; and (z) ensuring that the most basic food items are easily accessible to Nigerians.

The basic food commodities caught by the exemption policy as provided in the Guidelines include; maize, husked brown rice, wheat, grains, beans, and millet. The Ministry of Finance (MoF) would also be responsible for providing a comprehensive list of the importers and their approved quotas for proper guidance throughout the stipulated period of implementation.

The Guidelines outline the eligibility requirements and provide a compliance framework for administering and monitoring conformity to the policy which serves as a guide to companies interested in participating in the duty concession.

To qualify for the exemption, a company/importer must meet the following requirements:

- 1 the company must be incorporated in Nigeria and have been operational for at least five (5) years;
- 2 the company must have paid the relevant taxes, filed its annual returns and financial statements, and fulfilled its statutory payroll obligations for the past five years;
- 3 companies importing husked brown rice, grain sorghum, or millet need to own a milling plant with a capacity of at least 100 tonnes per day, operated for at least four years, and have enough farmland for cultivation;
- 4 those importing maize, wheat, or beans must be agricultural companies with sufficient farmland or feed mills/agro-processing companies with an out-grower network for cultivation.

The compliance requirements detailed in the Guidelines are as follows:

- a Companies that qualify are expected to ensure that at least 75% of the goods are sold through recognized commodity exchanges.
- b Companies must keep comprehensive records of all related activities, which the government can require for compliance verification.
- c Companies are prohibited from exporting the imported food items over which duty exemption was granted, in their original or processed form.

The MoF will issue a list of approved importers to the NCS indicating the respective quota for each exempted item. Furthermore, the Guidelines disclose that the importation of these items shall be restricted to only investors who have the milling capacity and a verifiable backward integration programme for some of the items.

This initiative is part of the government's broader efforts to address food security challenges and ensure that basic foodstuffs are accessible to all Nigerians. However, it is important to emphasise that while this temporary measure is intended to address the current hardships in Nigeria, it does not undermine the long-term strategies put in place to safeguard local farmers and protect the interest of manufacturers.

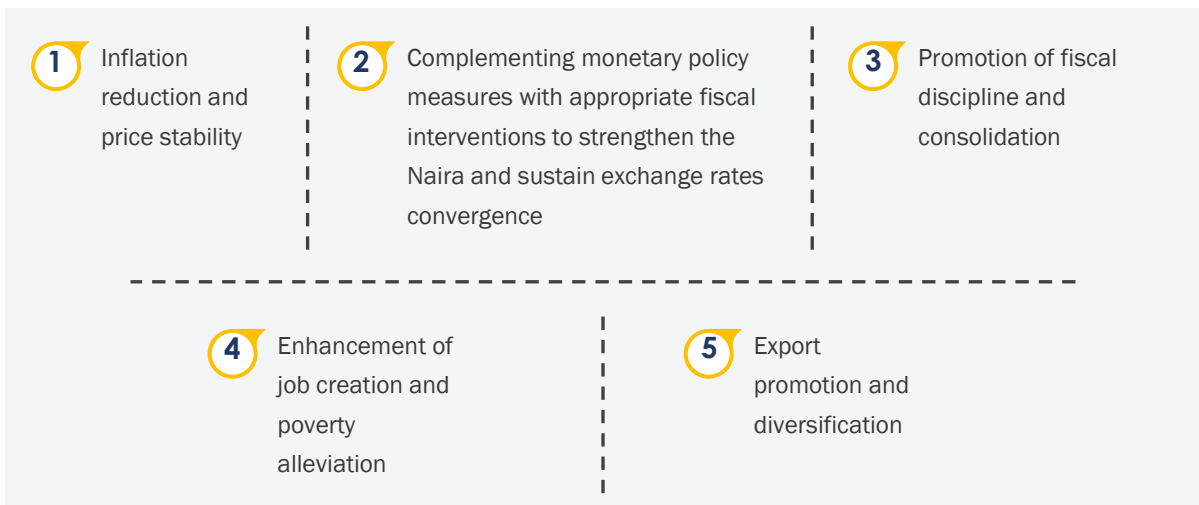
FEDERAL EXECUTIVE COUNCIL APPROVES ECONOMIC STABILIZATION BILLS

The Federal Executive Council (**FEC**) has approved the Economic Stabilization Bills (**ESB**), which incorporate recommendations from the Presidential Fiscal Policy and Tax Reforms Committee (the **Committee**). The ESB is a key component of the FGN's Accelerated Stability and Advancement Plan (**ASAP**), a strategic initiative spearheaded by the Minister of Finance and Coordinating Minister of the Economy, Mr. Wale Edun. This initiative is designed to tackle significant obstacles hindering reform efforts and to stimulate growth across various economic sectors.

The ESB seeks to amend numerous laws across several sectors.² According to the Chairman of the Committee, Mr. Taiwo Oyedele, the ESB is aimed at facilitating economic stability and setting the country on the path for sustained inclusive growth.

Policy Objectives of the ESB

The changes which the ESB intends to make on existing laws are designed to achieve the following key objectives:



Proposed Changes to be Made by the ESB

According to Mr. Oyedele's public clarification on the subject, the ESB intends on making these changes to various laws.

Income Tax Laws: The ESB will amend income tax laws to facilitate employment opportunities for Nigerians living in Nigeria, within the global value chain, including the digital economy. This means the changes in existing income tax laws such as the PITA and CITA will be geared at encouraging businesses and industries to create more jobs for Nigerian residents.

2. The Laws which are amended by the ESB are

1. Central Bank of Nigeria Act
2. Capital Gains Tax Act
3. Companies Income Tax Act
4. Customs, Excise, Tariff, Etc. (Consolidation) Act
5. Federal Inland Revenue Service (Establishment) Act

6. Fiscal Responsibility Act

7. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act
8. National Identity Management Commission Act
9. Nigerian Maritime Administration and Safety Agency Act
10. Nigerian Ports Authority Act

11. Personal Income Tax Act

12. Petroleum Industry Act
13. Tertiary Education Trust Fund Act
14. Value Added Tax Act
15. Nigerian Oil and Gas Industry Content Development Act



Value Added Tax: The ESB will introduce zero-rated VAT, and ensure an improved incentive regime to promote exports in goods, services, and intellectual property. By introducing zero-rated VAT for certain goods, businesses that sell these items will not charge VAT to their customers, which effectively reduces the indirect tax burden on those products



Gas Sector: Amendments will be made to facilitate an increase in investment in the gas sector. The ESB will also introduce changes which will simplify local content requirements, in a bid to ensure competitiveness in the sector. This will go a long way in driving foreign participation in the Nigerian gas industry.



Tax Reliefs: The ESB will provide tax reliefs to private sector employers in respect of wage awards and transport subsidies provided to their employees. This means that for employers in the private sector, wage awards (e.g. bonuses) and subsidies on transport will not be taxable. This relief will incentivise employers to provide these benefits to their employees. Another notable tax relief is to be granted to companies that generate incremental employment and retention of their employees for a minimum of three years.



Enhancement of Remittances: The changes which will be introduced by the ESB will engender fiscal discipline and enhance remittances from government agencies and corporations to the Consolidated Revenue Fund (CRF) of the federal government. The importance of efficient remittance cannot be overlooked, as it guarantees that tax revenue is effectively directed to the CRF and utilized for the greater public good.



Suspension of Certain Taxes on Small Businesses and Vulnerable Populations: There will be a collaboration between the federal and state governments to suspend certain taxes on small business and vulnerable populations, such as road haulage levies and other charges on transportation of goods, business premises registration; animal trade and produce sales tax; bicycle, truck, canoe, wheelbarrow, and cart fees; shops, kiosks and market taxes and levies. This suspension will alleviate the tax burden on individuals who are disproportionately impacted by taxes and levies on activities that yield minimal profits for them.



Provision of Additional Funding for the Students Loan Scheme: The ESB will make amendments to provide additional funding for the student loan scheme which was established by the Student Loans (Access to Higher Education) (Repeal and Re-enactment) Act, 2024.

FIRS TO INTRODUCE CRYPTOCURRENCY REGULATION



The Executive Chairman of the FIRS, Dr. Zacch Adedeji (the **Chairman**), has unveiled plans to collaborate with the National Assembly to develop legislation regulating the cryptocurrency industry in Nigeria. Speaking at a stakeholder engagement, the Chairman emphasized the need for a comprehensive legal framework to address the growing prominence of cryptocurrencies in the country's economy.

The Chairman announced that a proposed bill will be introduced to the National Assembly by September 2024, aiming to modernize Nigeria's revenue administration and update outdated tax laws. The legislation is expected to address the regulation of cryptocurrencies, a sector currently operating in a regulatory vacuum.

This announcement comes in the wake of increased scrutiny surrounding cryptocurrency platforms, particularly following the exit of binance amidst allegations of market manipulation. Furthermore, Nigeria's recent implementation of a 7.5% value added tax on cryptocurrency transaction fees signals a shift towards a more regulated approach, especially after the CBN lifted its ban on banks providing services to crypto service providers.

The proposed legislation will have significant implications for professionals in the financial sector. Financial institutions and crypto service providers may face increased compliance requirements, necessitating enhanced reporting and adherence to new standards. This regulatory shift will drive demand for legal and financial advisory services to navigate the updated framework.

By establishing clear regulations, the government aims to stabilize the cryptocurrency market, reduce financial manipulation, and foster a more conducive investment environment. Additionally, a well-regulated framework could stimulate innovation and attract investment, integrating cryptocurrencies more effectively into Nigeria's financial system.

THE FEDERAL INLAND REVENUE SERVICE TO INTRODUCE AN E-INVOICE SYSTEM TO ENHANCE NIGERIA'S TAX ADMINISTRATION



The FIRS has announced plans to introduce a digital e-invoice system to enhance tax administration and compliance in Nigeria. This initiative aligns with the provisions of Part V (Tax Administration and Enforcement) of the FIRSEA³ and the FIRS' digital development strategy. The e-invoice system, designed for automated processing and digital record-keeping, will streamline transactions across various sectors, including business-to-business, business-to-consumer, and business-to-government interactions. This modernization effort is expected to increase efficiency, transparency, and compliance within Nigeria's tax landscape.

The digital e-invoice system is targeted at all VAT registered taxpayers' businesses and is designed to manage the issuance of e-invoices. The issued e-invoice is in a standardized format and will contain material information such as supplier and buyer information, item descriptions, quantities, prices, tax, and total amounts.

The system further serves as a real time representation and database of transactions between suppliers and buyers, effectively replacing traditional paper or electronic documents such as invoices, credit notes, and debit notes. It is also expected to help businesses to save resources, minimise errors, maximize resources and facilitate seamless tax reporting and compliance.

Interested taxpayers can sign-on the e-invoice system with their FIRS issued taxpayer identification number (**TIN**) and provide the required documents for onboarding on the system. There are two options available for e-Invoice transmission; the first option being the FIRS Merchant Buyer Solution (**FIRSMBS**) portal, while the second option is the FIRSMBS e-invoice. The former is suitable for business entities who do not have Application Programming Interface (**API**) connection and is available on FIRS' portal at no cost to taxpayers. The latter option is targeted at businesses with substantial volumes of transactions, as it requires investment in technology and adaptation of existing systems which is required to facilitate direct data transmission between the taxpayer's system and the FIRSMBS system through the relevant service providers.

The planned introduction and subsequent implementation of the e-invoice digital solution, represents a necessary step in the modernization of Nigeria's tax landscape with the resultant effect of increased administrative efficiency, transparency, and tax compliance. However, compliance with the legal and regulatory requirements in line with extant laws and data privacy rules are critical to ensuring the successful implementation of this initiative so as to bolster tax administration and collection in Nigeria.

3. See section 25(4) of the Federal Inland Revenue Service (Establishment) Act 2007

OYO STATE GOVERNOR DECLINES ASSENT TO PRESUMPTIVE TAX BILL PASSED BY OYO STATE HOUSE OF ASSEMBLY



The Governor of Oyo State, Governor Seyi Makinde has declined to assent to the State Presumptive Tax Bill, 2023 (the **PTB**). The Governor's decision was influenced by his concern for the well-being of the people, particularly in light of the economic challenges they are currently facing. Gov. Makinde explained that signing the bill into law would place an additional burden on the poor, many of whom are already struggling with hunger and hardship due to the prevailing economic conditions in Nigeria. He emphasized that the current situation makes it unreasonable to impose further taxes that would exacerbate the difficulties faced by the masses.

The Oyo State House of Assembly has taken a significant step towards improving the state's tax administration by passing the PTB which aims at addressing the challenges associated with taxing the informal economy, i.e. individuals and businesses that lack financial records, therefore making it difficult to ascertain their true income and, by extension, the appropriate tax payable.

The PTB introduced presumptive taxation, a system specifically designed for small businesses and self-employed individuals who are not covered under the existing Pay-As-You-Earn (**PAYE**) or direct assessment framework. It also applies to those whose financial records are poorly maintained, thereby hindering accurate tax assessments.

Despite the anticipated economic benefits of the PTB, particularly in terms of expanding the tax base and increasing revenue, the Governor's decision to withhold assent is understandable especially considering the prevailing economic challenges faced by taxpayers in Oyo State.

NIGERIA ADVOCATES FOR UNITED NATIONS FRAMEWORK ON INTERNATIONAL TAX COOPERATION TO BOOST AFRICAN DEVELOPMENT



At the 79th United Nations General Assembly (UNGA) in New York on 17 September 2024, Nigeria's Minister/Chargé d'Affaires Ad Interim of Nigeria's Permanent Mission to the United Nations, Syndoph Endoni, called for the establishment of a United Nations (UN) Framework Convention on International Tax Cooperation to bolster economic development across Africa.

The event, organized in collaboration with various international entities, aimed at promoting sustainable investments and interventions. Endoni emphasized the challenges faced by developing countries, including Nigeria, in achieving the Sustainable Development Goals (SDGs), particularly those related to economic growth, industry, and responsible consumption. He noted that Africa's Foreign Direct Investment (FDI) remains low, accounting for only 3.5% of the global total.

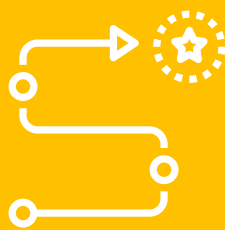
Endoni advocated for targeted measures to stimulate local production in sectors like agriculture and entertainment. He also stressed the need for a more equitable and rules-based multilateral trading system. Nigeria reaffirmed its commitment to implementing the SDGs and expressed hope for strengthened partnerships to foster business development in the Global South.

It is worth mentioning that Nigeria's advocacy for a UN Framework Convention on International Tax Cooperation reflects its commitment to promoting economic development in Africa. Given Nigeria's rejection of OECD 2-pillar solution, this call emphasizes Nigeria's fixation on leveraging the UN led international cooperation to drive its interest in safeguarding its taxing rights with respect to multinational entities.

As we settle into the final quarter of 2024, the Nigerian tax landscape is experiencing significant activity, signalling an impending overhaul of the country's legal and administrative taxation framework. Despite being in the early days of the quarter, we have already witnessed a flurry of tax-related developments. In this following section of our Q3 Newsletter, we have summarized these early developments, including the introduction of additional tax incentives, the gazettal of pre-existing regulations, and the submission of four executive bills to the National Assembly.

PART D

SETTING THE STAGE FOR Q4: EMERGING TAX DEVELOPMENTS



In this part, we undertake a quick preview, into the early developments of the final quarter thus setting the stage for emergent tax trends

VALUE ADDED TAX (MODIFICATION) ORDER 2024



Value Added Tax (Modification) Order 2024

In exercise of his powers under section 38 of the VAT Act, the Minister of Finance and the Coordinating Minister of the Economy recently issued the Value Added Tax (Modification) Order 2024 (the **Order**). It is pertinent to note that the Order does not repeal the Value Added Tax (Modification) Order 2021 (**VMO 2021**), but merely introduces new amendments. Specifically, the newly introduced amendments focus on expanding VAT exemptions for essential goods and services, particularly with respect to the energy and oil and gas sector.

Highlights of the Order

Expansion of Exempted Goods

The Order extended exempted goods to now include:



Equipment and infrastructure relating to the expansion of Compressed Natural Gas (**CNG**) including conversion kits;



Equipment and infrastructure relating to the expansion of Liquefied Petroleum Gas (**LPG**) equipment including conversion kits;



Domestic Liquefied Natural Gas (**LNG**) processing facilities and equipment;



Electric Vehicles;



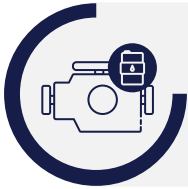
Parts, semi-knock down units for the assembly of electric vehicles; and



Biogas and biofuel equipment and accessories for clean cooking and transportation.

Expansion of Exempted Services

The Order extended exempted services to now include:



CNG conversion and installation services;



LPG conversion and installation services; and



Manufacturing, assemblage and sale of Electric Vehicles.

Definition of Petroleum Products

This definition has been updated to include:



Feed gas for all types of processed gas including CNG;




Common fuels like aviation turbine kerosene, premium motor spirit, automotive gas oil, household kerosene and crude petroleum oils; and



Locally produced and imported LPG.

The Order has a commencement date of 01 September 2024.



A significant change in the Order is the inclusion of 'feed gas for all types of processed gas including CNG' in the definition of petroleum products which qualify for the exemption. This amendment effectively exempts natural gas from VAT, which is a significant departure from the VMO 2021, which only exempted gas supplied by gas producing companies to electricity generating companies (**GenCos**).

In the same light, the Order has reinstated the exemption of Automotive Gas Oil (**AGO**) from VAT. It will be recalled that the VMO 2021 had expressly excluded AGO from the definition of petroleum products thereby obviating the VAT exemption erstwhile enjoyed by AGO. Attempts by relevant agencies to fully implement VAT on AGO in 2023 were met with stiff opposition by stakeholders hence the suspension of VAT on AGO in October 2023. Thus, in a bid to provide legal basis for the suspension of VAT on AGO since October 2023, the definition of petroleum products in VMO 2024 has been expanded to expressly include AGO for which the commencement date for the exemption has been exclusively set to 01 October 2023.

Further, it is to be recalled that in December 2023, the Federal Ministry of Finance issued a circular granting customs duty and VAT exemptions for imported LPG and its associated equipment. However, this circular faced criticism for not being gazetted in accordance with the provisions of section 38 of the VAT Act, thereby lacking the necessary legal force. The Order, which grants the same VAT incentives in respect of imported LPG, addresses these concerns by providing a formal legal basis for the VAT incentives previously outlined in the December 2023 circular, as it has now been duly gazetted.

UPDATES FOLLOWING THE GAZETTEMENT OF THE DEDUCTION OF TAX AT SOURCE (WITHHOLDING) REGULATIONS, 2024

Following the issuance of the Deduction of Tax at Source (Withholding) Regulations, 2024 (the **WHT Regulations**) in July 2024 (please see our previous publications [here](#) and [here](#)), the FGN officially gazetted the Regulations on 02 October 2024. Further to this, the FIRS released a public notice addressing specific issues related to the newly gazetted Regulations. We have highlighted in the paragraphs below, the key changes and updates introduced by the gazetted version of the WHT Regulations as well as the FIRS public notice.



Commencement Date:

The commencement date of the WHT Regulations is 30 September 2024. However, in a bid to ensure adherence to the 90 days minimum advance notice for tax changes as contained in the 2017 National Tax Policy, the WHT Regulations specify that the implementation of the WHT Regulations shall be effective from 1 January 2025⁴.

Further to this, the relevant tax authority i.e. the FIRS or State Internal Revenue Service (**SIRS**), with the approval of the Minister, have been empowered to:

- issue guidelines for the effective implementation of the WHT Regulations, and
- where the circumstances warrant, prescribe modalities permitting early application of the WHT Regulations from 1 July 2024⁵.



Expansion of Exempted Transactions

The WHT Regulations have expanded the list of WHT exempt transactions to include telephone charges, internet data and airline tickets⁶.



Effective Date for Specified Transactions:

The effective date for implementation of the WHT Regulations on transactions such as winnings from lottery, gaming, and reality shows etc. has been changed from 01 October 2024 to 01 January 2025.



Revocation

The WHT Regulations revoke all existing regulations in respect of deductions at source or withholding tax but provide that such revocation does not invalidate anything done under the revoked withholding regulations⁷.

4. Regulation 11(1) of the Deduction of Tax at Source (Withholding) Regulations, 2024
 5. Regulation 11(2) of the Deduction of Tax at Source (Withholding) Regulations, 2024
 6. Regulation 10(1)(h) of the Deduction of Tax at Source (Withholding) Regulations, 2024
 7. Regulation 12(1) and (2) of the Deduction of Tax at Source (Withholding) Regulations, 2024

FIRS Public Notice on the Regulation

Further to the issuance of the gazetted Regulations, the FIRS, in its public notice issued on 03 October 2024, announced that:

The Deduction of Tax at Source (Withholding) Regulations, 2024 will take effect on 01 January 2025; and

The current withholding tax regime, as outlined in the Companies Income Tax (Rates, Etc, of Taxes Deducted at Source (Withholding Tax) Regulations (S.1.10 of 1997) and relevant WHT provisions, will remain in force until December 31, 2024.

In essence, the new Regulations will become effective starting from the new year 2025, while the existing regulations will continue to apply until the end of the current year.



The conflicting commencement dates presents certain challenges to taxpayers in relation to actual implementation. The July 2024 WHT Regulations, duly signed by the Minister, had a commencement date of 01 July 2024, further to which several persons had begun the implementation of the varied rates contained therein. The basis for this early implementation, was the interpretation that section 81(8) of the CITA, which empowers the Minister to issue regulations, does not specify that the Regulations must be gazetted to have the force of law.

However, in light of the gazetted WHT Regulations and FIRS' public notice, taxpayers who have applied the new WHT rates since July 1, 2024, based on the rates and rules contained in the previous Regulations, may need to reassess their withholding obligations.

NOTICE OF TAX INCENTIVES ON DEEP OFFSHORE OIL AND GAS PRODUCTION, 2024



The Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024, issued on 28.02.2024, provides fiscal incentives to enhance investments in deep water oil and gas projects and ensuring competitive returns. In line with this, the Minister of Finance, issued the "Notice of Tax Incentives on Deep Offshore Oil and Gas Production, 2024" (**Deep Offshore Incentive Notice**) on 02.10.2024, to take effect immediately. The Deep Offshore Incentive Notice primarily aims to stimulate investments in deep offshore oil and gas developments, benefiting parties in production sharing contracts who finance these projects.

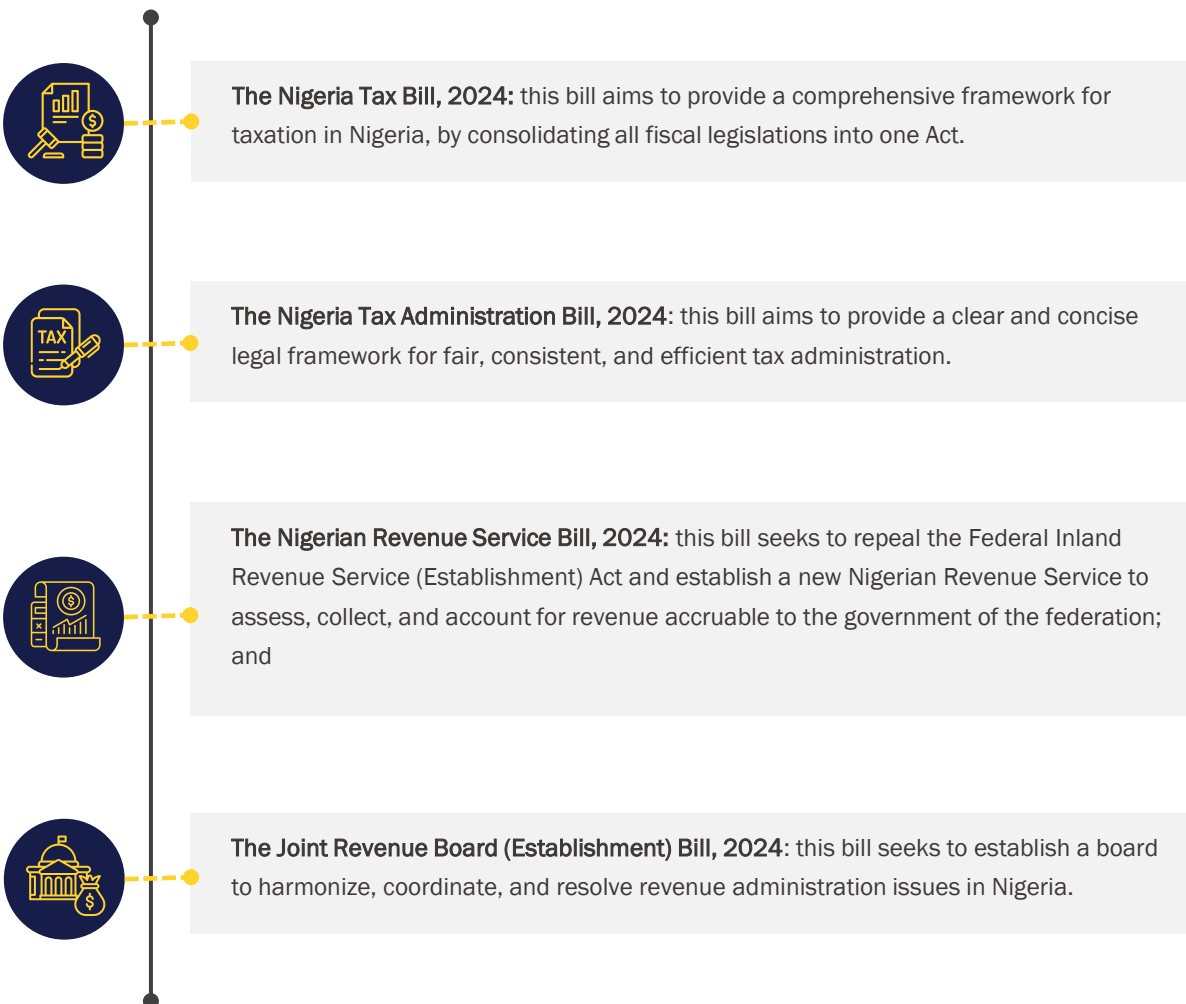
This Deep Offshore Incentive Notice provides for production tax credits (**PTC**) which would apply to deep offshore developments with production sharing contracts within oil and petroleum mining leases. These PTCs are geared towards incentivising crude oil developments as well as non-associated gas production although subject to the satisfaction of specific eligibility criteria. For a more detailed analysis of the legal implications of the Tax Incentives Notice, please see our publication [here](#).

THE FEDERAL GOVERNMENT OF NIGERIA TRANSMITS FOUR EXECUTIVE TAX BILLS TO THE NATIONAL ASSEMBLY



In line with its commitment to reforming Nigeria's legal and administrative framework, the FGN transmitted four tax bills to the National Assembly on 03 October 2024.

These bills include:



CONCLUSION

The third quarter of 2024 witnessed a wave of fiscal policy developments, setting the stage for an even more active fourth quarter. These changes aimed to address economic pressures, enhance tax administration and revenue generation, and expand the tax base. While some of these developments have faced criticism, many have been lauded as aligning with Nigeria's economic realities and revenue needs.

Maintaining this momentum, the fourth quarter has already seen significant tax regulations and incentives introduced. As Nigeria's legal and administrative taxation framework undergoes a potential overhaul, we anticipate further developments in the coming months. Ultimately, the impact of these changes on taxpayers, the economy, and Nigeria's investment outlook needs to be closely monitored.



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