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## TEMPLARS Transcripts: Tax Digest

### Policy and Tax Administration

- **Ministry of Finance issues Fiscal Policy Measures 2023:** On 20 April 2023, the Federal Government approved the Fiscal Policy Measure 2023 (FPM 2023) which replaces the Fiscal policy Measures 2022 (FPM 2022) and takes effect on the 1<sup>st</sup> of May 2023. The FPM 2023 consists of the following:
  - Supplementary Protection Measures (SPM) for the implementation of the ECOWAS Common External Tariff (CET) which shall take effect from 1<sup>st</sup> May 2023
  - Import Adjustment Tax (IAT) list with additional taxes (Levy) on 189 tariff lines of the extant ECOWAS CET
  - Import Prohibition List (Trade), applicable only to certain goods originating from non-ECOWAS Member States
  - National List consisting of items with reduced import duty rates to promote and stimulate growth in critical sectors of the economy.

The FPM reduced the import duty on certain items on the National list to promote and stimulate growth in critical sectors of the economy. The reduced import duty will however only be accessible to verifiable investors/manufacturers who require them as inputs for production. The FPM also further revised IAT for certain items.

Importers who had opened Form M (under the pre-existing import duty rates) and have entered into irrevocable Trade Agreements before the coming into effect of the FPM 2023 may process and clear their goods at prevailing duty rates subject to a 90-day grace period commencing from 1<sup>st</sup> May 2023. However, any new import transaction entered after 1<sup>st</sup> May 2023 shall be subjected to the new import duty.

Other highlights of the FPM include the following:

#### ❖ Telecommunications Services:

The Finance Act 2021 introduced excise duties on telecommunications services and donated powers to the President to prescribe the rate of excise duty. The

President had prescribed a rate of 5% and published same in the official gazette No.88 on 11 May 2022. Following consultations with sector stakeholders, it was reported that the Federal Government will be putting a hold on the imposition of excise duty on telecommunications services. However, the FPM 2023 confirms that excise duties will be imposed on prepaid and post-paid telecommunications services. The FPM 2023 reiterates the rates stipulated by the President in Gazette No.88.

#### ❖ **Non-alcoholic Beverages:**

The FPM 2023 upheld the N10 per litre excise duty imposed by the Finance Act 2021 on non-alcoholic beverages, fruit juice, energy drink etc. Similarly, an excise duty of N10 per litre was imposed on carbonated water.

#### ❖ **Tobacco and Tobacco Products:**

The FPM 2023 increased the excise duty rate from N4.70 per stick of cigarette in the 2022 FPM to N8.20 per stick of cigarette. Also, an excise duty rate of N1,500 per kilogram or N3,500 has been imposed on other tobacco products.

#### ❖ **Green Taxes and Climate Change Interventions:**

As part of its commitment to climate change adaptation and migration to environmental degradation, the Federal Government through the FPM 2023, introduced a green tax comprising of an excise duty of 10% on Single Use Plastics including containers, films, and bags. Further, the FPM 2023 increased the Import Adjustment Tax on the importation of other plastic items such as sheets, foils, polymers, and photocopying papers as well as an Import Adjustment Tax of 2% on motor vehicles of 2000cc to 3,999cc while vehicles with 4000cc and above will be taxed at 4%. However, vehicles with below 2000cc, mass transit buses, electric vehicles and locally manufactured vehicles are exempted from the Import Adjustment Tax.

## **Legislative Advancements**

- **Finance Bill 2022 (Recommitted):** On 3 May 2023, the Nigerian Senate passed (and recommitted) the Finance Bill 2022 (the “**Bill**”). The Bill introduces significant amendments to existing tax, fiscal and regulatory laws in Nigeria. Particularly, the Bill proposes amendments to salient provisions of the following laws: Capital Gains Tax Act, Companies Income Tax Act, Customs, Excise Tariff etc. (Consolidation) Act, Personal Income Tax Act, Petroleum Profits Tax Act, Stamp Duties Act, Value Added Tax Act, Corrupt Practices and other Related Offences Act and the Public Procurement Act. Notably, also, the Bill deletes some provisions contained in an earlier version of the Bill passed on 28 December 2022. We provided a highlight of the previous Bill in our [January Tax Transcript](#). Below, we provide highlights of the recommitted Bill as well as a comparison between the previous Bill and the recommitted Bill:

## Amendments to the Capital Gains Tax Act (the “CGTA”):

- ❖ **Introduction of Digital Assets as Chargeable Assets under the CGTA:** Section 3 of the CGTA does not include digital assets as one of the assets chargeable to a capital gains tax. However, with the passage of the Bill into law, the scope of section 3 of the CGTA will be widened, and gains accruing from the disposal of digital assets such as cryptocurrency, NFTs, videos, images etc. will become chargeable under the CGTA.<sup>1</sup> This provision implies a recognition and acceptance by regulators of the Nigerian financial market of the sale and purchase of cryptocurrency in Nigeria which hitherto was banned by the CBN.
- ❖ **Deduction of Losses Arising from Sale of one Asset from the Gains Derived from the Sale of another Asset of the Same Class:** Under the Bill, losses arising from the sale of a capital asset can now be deducted from gains derived from the sale of another capital asset, provided that the assets are in the same class.<sup>2</sup> For example, where a company sells shares and records a loss, the loss accruing from the disposal of those shares can be deducted against the gains derived by the company from the sale of another shares.

## Amendments to Companies Income Tax Act (the “CITA”):

- ❖ **Deletion of Investment Tax Credit for Gas Utilization:** The first version of the Bill passed by the Nigerian Senate on 28 December 2022 had proposed to grant a single investment tax credit of 50% to medium and large companies engaged in commercial winning, capturing, production, and utilization of associated and non-associated gas on their qualifying capital expenditure used for the above-mentioned activities. Progressively, this new insertion was further revised to an investment allowance of 10% and 5% per annum for non-associated and associated gas, respectively subject to attaining a cumulative production of 300 billion cubic feet.

The (recommitted) Bill has now deleted this provision entirely.

- ❖ **Deletion of Reconstruction Investment Allowance, Rural Investment Allowance and Income Tax Exemption Granted in respect of Convertible Currencies:** The Bill seeks to delete the investment allowance of 10% currently applicable to capital expenditure incurred on plant and equipment under section 32 of the CITA. This removal will not affect assets acquired on or before the effective date of this repeal (i.e. assets acquired on or before the date of presidential assent).<sup>3</sup> The Bill also seeks to delete the rural investment allowance ranging from 15% to 100% applicable to capital expenditure incurred on the provision of certain facilities such as electricity, water or tarred road for the purpose of a trade or business which is located at least 20 kilometers away from such facilities provided by the government. This repeal does not affect any asset acquired on or before the effective date of repeal (i.e., assets acquired on or before the date of presidential assent).<sup>4</sup> Additionally, the Bill deletes the income tax exemption applicable to 25% of incomes in convertible currencies derived from tourists by companies engaged as hoteliers. Notably, where companies have

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<sup>1</sup> Section 2 of the Bill.

<sup>2</sup> Section 3 of the Bill. Section 5 of CGTA

<sup>3</sup> Section 6 of the Bill.

<sup>4</sup> Section 7 of the Bill.

reserved funds for the purpose of this exemption, such companies will continue to enjoy the exemption until the funds are fully utilized.<sup>5</sup>

- ❖ **Deletion of the New Corporate Tax Rate for Gas Flaring Companies and for Unconverted Companies:** The first version of the Bill passed by the Nigerian Senate on 28 December 2022 had introduced a new corporate tax rate of 50% to be imposed on companies which flare gas – including upstream petroleum companies who have not converted to the Petroleum Industry Act (PIA) regime and are not liable to pay Companies Income Tax. The aim of this provision is to deter gas flaring in Nigeria. Notably, this provision has been deleted in the (recommitted) Bill of 3 May 2023.
- ❖ **Introduction of Unrestricted Capital Allowances for Companies in the Upstream and Midstream Petroleum Industry:** Paragraph 24 (7) of the Second Schedule of CITA has been amended to introduce unrestricted deductions of capital allowances from assessable profits, for companies engaged in upstream or midstream gas operations as described in the Petroleum Industry Act or Petroleum Profit Tax Act. Previously, these deductions were limited to 662/3 of such assessable profits

## Amendments to the Customs, Excise, Tariff etc. (Consolidation) Act (the “CETA”):

- ❖ **Imposition of Levy on All Eligible goods Imported into Nigeria to Finance Capital Contributions etc.:** The Bill seeks to introduce a new subsection (4) to section 13 of the CETA which provides for the imposition of 0.5% on all eligible goods imported into Nigeria from outside Africa for the purpose of financing capital contributions, subscription and other financial obligations to the Africa Union, African Development Bank, Africa Export-Import Bank, and other multilateral institutions as may be designated by regulation issued by the Minister responsible for Finance.<sup>6</sup>
- ❖ **Imposition of Excise Duty on All Services:** Excise Duty is currently limited to telecommunications services only. By this amendment, the scope of services subject to excise duty will now be expanded to cover services other than telecommunications services.<sup>7</sup> It is expected that the President will issue an order containing the services on which the excise duty will be imposed as well as the relevant rates following the enactment of the Bill.

## Amendments to the Petroleum Profits Tax Act (the “PPTA”):

- ❖ **Contributions to Decommissioning and Abandonment Funds to be deemed Allowable Deductions:** The Bill introduces a new paragraph (a) to section 10 of the PPTA to the effect that contributions made to any fund, scheme or arrangement approved by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) for the purpose of decommissioning and abandonment are treated as allowable tax deductions under the Petroleum Profits Tax Act.<sup>8</sup>

## Amendments to the Value Added Tax Act (the “VATA”):

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<sup>5</sup> Section 8 of the Bill.

<sup>6</sup> Section 11 of the Bill.

<sup>7</sup> Section 12 of the Bill.

<sup>8</sup> Section 16 of the Bill.

- ❖ **Introduction of Anti-Avoidance Provisions:** The Bill seeks to introduce new subsections (3), (4), (5) and (6) to section 7 of the VATA which will now empower the Federal Inland Revenue Service to raise Value Added Tax Assessment on dispositions and related party transactions, which the FIRS deems to be artificial or fictitious in nature.<sup>9</sup> This provision simply replicates the anti-avoidance/abuse provisions already contained in the CITA, PPTA and PITA.
- ❖ **VAT to now be Remitted on or before the 14<sup>th</sup> Day of the Following Month:** Entities appointed to deduct VAT at source will now be required to remit the VAT to the FIRS on or before the 14<sup>th</sup> day of the following month and no longer on or before 21<sup>st</sup> day of the following month.<sup>10</sup>

## Judicial Decisions

- ❖ **Tax Appeal Tribunal (the “Tribunal”) Rules that State Tax Authorities do not have the right to demand stamp duties remittances on Electronic Receipts of Bank Transactions:**

The Tribunal sitting in Enugu has held that State Tax Authorities in Nigeria do not have any legal basis for demanding from banks remittances on electronic receipts of bank transactions. In **Unity Bank Plc V Abia State Internal Revenue Service**, the Abia State Internal Revenue Service (the “Respondent”) had requested Unity Bank Plc, (the “Appellant”) in a series of letters, to remit its stamp duties on all electronic receipts of bank transactions made by the Appellant’s customers between 2015 to 2020. The Respondent also issued a Best of Judgment (BoJ) assessment against the Appellant. The Appellant had however argued that it was not mandated under relevant laws to pay stamp duties on electronic receipts to the Respondent. The Appellant further argued that such stamp duties had been paid to the FIRS being the authorized body under the law to receive same.

In deciding the matter, the Tribunal considered the relevant provisions of the Stamp Duties Act, the Finance Act, 2019 and the Finance Act, 2020. The Tribunal held that the Stamp Duties regime pre-2020 in relation to electronic bank receipts was that “stamp duties were not chargeable on receipts given for money deposited in any bank, or with any banker, ...”, and thus the Respondent was not statutorily empowered to assess the Appellant to stamp duties for the period between 2015 - 2019.<sup>11</sup> In relation to the period post-2020, the Tribunal held that by the provisions of the Finance Act 2020, the Electronic Money Transfer Levy was established on all electronic receipts for money deposited in any deposit money bank or financial institution. It was also provided under the Finance Act, 2020 that the revenue accruing from such levy shall be collected by the Federal Government, through the FIRS, and then distributed between the Federal Government and the State government. It was thus held that the Appellant having remitted the relevant stamp duties on electronic receipts for the period from February 2020 to the FIRS owed no further duty of paying the duties to the Respondent as that would amount to double taxation under the law.

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<sup>9</sup> Section 23 of the Bill.s

<sup>10</sup> Section 24 of the Bill.

<sup>11</sup> Item 4 of Stamp Duties Exemption Under Receipt.

With respect to the BoJ assessment, the Appellant argued that by reason of the fact that the Respondent was not authorized under the relevant laws to collect stamp duties from it on electronic receipts, the Appellant also does not have the authority to issue it with a BOJ assessment. The Tribunal held that the principle of BOJ assessment is statutorily provided for in relevant tax laws in Nigeria. The Tribunal further noted that section 54 of the Personal Income Tax Act (PITA), and section 65 of the Companies Income Tax Act (CITA) clearly make provisions for BOJ assessment to be carried out by the relevant tax authority authorized to collect tax under these laws. However, there is nothing in the Stamp Duties Act which makes provisions for a BOJ assessment.