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## July Extra Edition

### TEMPLARS Transcripts: Tax Digest

#### Policy and Tax Administration

- **FIRS Reiterates Tax Compliance Requirements for Enterprises in Nigerian Export Processing Zones and Oil and Gas Free Zones**

By a public notice dated 19 July 2023, the FIRS restated the obligation on approved enterprises operating in the Free Trade Zones in Nigeria to file tax returns to the FIRS in accordance with the provisions of the Nigeria Export Processing Zone Act, the Oil and Gas Free Trade Zone Act, and the Companies Income Tax Act. The Public Notice further stated that in addition to the Annual Income Tax Returns, the affected enterprises are required to file monthly Withholding Tax returns and monthly Value Added Tax returns.

- **FIRS and Nigeria Customs Service clarifies that VAT is applicable on Automotive Gas Oil a.k.a. Diesel**

The Value Added Tax (Modification) Order issued in 2021 defined petroleum products exempted from VAT to mean "aviation turbine kerosene, premium motor spirit, household kerosene, and locally produced liquefied petroleum gas (LPG) and crude petroleum oils (i.e., oils obtained from bituminous minerals, crude)". The definition did not include Automotive Gas Oil (AGO or diesel) as one of the exempted petroleum products. The Order however lists petroleum oils as one of the VAT exempt petroleum products. This led to a controversy as to whether AGO which was exempted by the VAT Modification Order 2018 and retained in the 2020 Order has been expunged from the list of petroleum products exempted from VAT.

Following several enquiries regarding the applicability of VAT on diesel, the FIRS has confirmed that VAT is applicable to diesel. In a communique from the FIRS to the Nigeria Customs Service and taxpayers, the FIRS stated that importation and supply of diesel is not exempt from VAT as the VAT Modification Order 2021 did not list it as one of the exempted petroleum products.

Tax practitioners and taxpayers alike have criticized the imposition of VAT on diesel given its importance to Nigeria's economy. While the general public awaits government review of the policy, suppliers and purchasers of diesel are required to charge and pay VAT on the sale and purchase of diesel.

- **Federal Inland Revenue Service (FIRS) Extends Due Date for Filing CIT Returns**

The FIRS issued a public notice extending the due date for the submission of companies income tax returns for the 2023 Year of Assessment (YOA) falling due on 30 June 2023 to 31 August 2023. Consequently, companies whose returns fall due on 30 June 2023 can file their returns on or before 31 August 2023 and such late filing will not attract a late return penalty or interest for late payment of tax.

Affected companies which fail to file within the extended period will incur penalty at the applicable rate which will begin to apply from the original date of 30 June and not the extended date.

The extension applies to Companies Income Tax only; as such, late filing of returns for value added tax, withholding tax and personal income tax collectible by the FIRS will attract late return penalty. Although the notice does not state that education tax is covered in the extended period (EDT), it is expected that EDT will be covered in practice given that the Tertiary Education Act requires that EDT returns be filed alongside CIT returns.

Where a taxpayer (who is an eligible applicant) is taxed in a manner which is inconsistent with the provisions of the Double Tax Agreement, the taxpayer may present their challenge to the CA of either Contracting State or the CA of the taxpayer's residence. The CAs in Nigeria and the other Contracting State may consult each other to resolve corresponding adjustment issues related to the enterprises.

The applicable time limits for MAP requests depend on the relevant tax treaty; however, where the relevant Double Tax Treaty is silent regarding time limits, the applicable time limit will be agreed by the CAs subject to a 3-year period from the first notification of the Notice of Assessment. MAP requests must be made in writing, addressed to the Director of the Tax Policy & Advisory Department at the FIRS and include specific information about the taxpayer, tax authorities, relevant treaty articles, related parties, assessment years, facts, and other relevant documentation.

MAP can be invoked while preserving the right to appeal under Nigerian tax laws. The taxpayer must however commit to suspending domestic remedies during the MAP process. Where a mutual agreement is reached, the taxpayer must present the agreement to the relevant tax authority for review of its tax position. Refunds and implementation timelines depend on the specific MAP contained in the Double Tax Agreement.

- **FIRS to implement VAT on market traders through the Market Traders Association of Nigeria (MATAN)**

On 3 July 2023, The Federal Inland Revenue Service (FIRS) announced its partnership with the Market Traders Association of Nigeria (MATAN) as part of its efforts to increase the collection and remittance of Value Added Tax (VAT) from their members.

The FIRS, in exercise of its power to employ proprietary technology in the administration and collection of taxes, will be deploying a digital platform to simplify VAT payment and remittance from the market traders. As part of the process,

members of MATAN will receive an identity card with their Tax Identification Number (TIN) for tax purposes.

The FIRS' collection efforts are without prejudice to the provisions of the VAT Act which exempt (i) traders who do not make sales of up to N25 million from complying with VAT obligation, and (ii) traders dealing in VAT exempt items such as baby products, basic food items etc from charging VAT on their sales.

- **FIRS issues Guidelines on Mutual Agreement Procedure**

The Federal Inland Revenue Service (FIRS) of Nigeria released Information Circular No. 2023/04 which includes new Guidelines on Mutual Agreement Procedure (MAP). The Guidelines were issued to provide guidance to taxpayers, tax practitioners, tax officers and the public on the procedures for accessing the Mutual Agreement Procedure (MAP) as a means of resolving tax disputes pursuant to a Double Taxation Agreement/Treaty of which Nigeria is a Contracting State.

The Guidelines clarify that the Competent Authority (CA) of Nigeria i.e., the FIRS, is empowered to interact with Treaty Partners' CAs to resolve disputes related to Tax Treaty provisions pursuant to the Mutual Agreement Procedure contained in the relevant Double Tax Agreements. Eligible applicants for the MAP include Nigerian residents of the treaty partner.

## **Legislative Updates**

- **President Signs Executive Orders Suspending Excise Taxes and Deferring Commencement Date of Finance Act 2023**

The Fiscal Policy Measure 2023 approved by the immediate past president introduced several excise taxes into Nigeria's tax regime ranging from excise taxes on single use plastics (SUPs) to escalation of excise taxes on tobacco products and locally manufactured products as well as confirmation of excise tax on telecommunications services. The President of Nigeria, Bola Ahmed Tinubu, on 6 July 2023, signed four executive orders which included the suspension of the 5% excise tax on telecommunications services and excise duty escalation on locally manufactured products, the deferment of the commencement of the Finance Act 2023 from 28 May 2023 to 1 September 2023, and the suspension of the taxes introduced by the FPM 2023.

*Finance Act (Effective Date Variation) Order, 2023 (Variation Order)*

The Finance Act 2023 which was signed by the immediate past president had a commencement date of 28 May 2023. However, the Variation Order has deferred the commencement date of the FA2023 from 28 May 2023 to 1 September 2023. Consequently, all the amendments introduced by the FA2023 will now take effect from 1 September 2023. The Variation Order is designed to ensure compliance with the 2017 National Tax Policy, which mandates a minimum of 90 days' advance notice for tax changes.

*Customs, Excise Tariff (Variation) Amendment Order, 2023: (Customs Variation Order)*

The Customs, Excise Tariff (Variation) Order 2023 had a commencement date of 27 March 2023. However, the Customs Variation Order defers the commencement to 1 August 2023. The Order includes the suspension of the 5% excise tax on telecommunication services and the escalation of excise duties on locally manufactured goods.

Additionally, the excise duties escalation on tobacco and alcoholic beverages has been suspended, resulting in the continuation of the previously approved excise duties rates for 2022-2024.

### Suspension of Green Tax on Single Use Plastics

The newly introduced Green Tax, which imposes an excise tax on Single Use Plastics, including plastic containers and bottles, has also been suspended.

### Suspension of Import Tax Adjustment Levy

The Order also includes the suspension of the Import Tax Adjustment levy on vehicles with 2000-4000cc engines.

## **Judicial Decision**

- **Tax Appeal Tribunal (“the Tribunal”) Rules on Applicable Posted Price for Crude Oil Sales in the Absence of an Agreement between the Federal Government of Nigeria and the Relevant Companies**

The Tribunal sitting in Lagos, in the case of **Pillar Oil v. FIRS**, held that the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) is the agency of the Federal Government of Nigeria responsible for applicable posted price for crude oil fiscal value in Nigeria.

Following FIRS' audit of Pillar Oil for the 2016, 2017 and 2018 years of assessment, FIRS raised additional tax assessments on Pillar Oil. Pillar Oil had contended that the Respondent cannot unilaterally impose posted price on it for the purpose of taxation pursuant to Section 23(3) of the Petroleum Profit Tax Act (PPTA) in the absence of any written agreement with the Federal Government.

On its part, FIRS argued that the absence of any form of agreement does not invalidate the application of Section 23 of the PPTA to Pillar Oil's operations. The FIRS emphasized that what matters is the existence of any form of agreement between the government and the Appellant and that agreement can be evinced through the fiscal value applied on the royalty paid by the Appellant pursuant to Section 61(4) of the Petroleum (Drilling and Production) Regulations.

The Tribunal upheld the argument of the Respondent, and it held that the usage of the price imposed by the NUPRC for the computation of royalties as the basis for imposition of additional tax in respect of the years of assessment was valid.