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## TEMPLARS Transcripts: Tax Digest

### Policy and Tax Administration

- **FIRS targets 18% tax-to-GDP ratio**

The newly appointed Acting Chairman of the Federal Inland Revenue Service (FIRS) has set stated that the FIRS will increase Nigeria's tax-to-GDP ratio from its current 10.8% (in 2022) to an impressive 18%, surpassing Africa's average of 16%. This commitment is driven by the aim to reduce the country's reliance on borrowing and enhance financial sustainability.

FIRS plans to achieve this by embracing innovation, technology, and modernization in its operations, striving to improve efficiency, reduce revenue losses, and ensure transparency and accountability. To promote tax compliance, FIRS stated that it will enforce a comprehensive system to prevent tax defaulters, underlining values such as integrity, confidentiality, professionalism, and fairness in its mission.

The Acting Chairman further stated that the FIRS is committed to maintaining an open-door policy and actively engaging with stakeholders to collaboratively build a trustworthy tax administration that encourages taxpayers to fulfill their civic duties willingly.

- **RMAFC advocates increasing tax net to boost government revenue**

The Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) has issued a strong call for Nigerian citizens to fulfill their civic responsibility by promptly paying their taxes. Concerns were raised about the current state of tax compliance, with fewer than 40 million Nigerians registered in the tax system, a figure considered inadequate for a nation with a population exceeding 200 million.

The Chairman commended the establishment of a Tax Reform Committee, viewing it as a pivotal initiative with the potential to significantly expand the tax base, particularly by incorporating participants from the informal sector. This collaborative effort, involving various agencies, including RMAFC, aims to enhance the tax landscape and lead to a more inclusive society where a larger segment of the population contributes to tax revenues. The additional funds generated can then be allocated to improve public services and infrastructure, benefiting all Nigerians.

The need for cooperation between the Federal Inland Revenue Service (FIRS) and the Nigeria Customs Service (NCS) to identify and address instances of tax evasion was stressed, particularly in cases where individuals report low income but engage in high-value imports. It was suggested that increased scrutiny and detailed record-keeping, including personal information, for individuals involved in substantial imports could help address this issue. Additionally, all Nigerians were encouraged to embrace tax compliance as a civic duty, recognizing its vital role in funding government activities, delivering essential services, and supporting infrastructure development.

- **The Presidential Fiscal Policy and Tax Reforms Committee to Receive Input from Stakeholders**

The President of Nigeria, President Bola Ahmed Tinubu set up the Presidential Fiscal Policy & Tax Reforms Committee (the Committee) to review and redesign Nigeria's fiscal system with respect to tax and non-tax revenue mobilization, quality of government spending, and sustainable debt management in August 2023. The Committee's remit includes identifying relevant measures to make Nigeria an attractive investment destination and to facilitate inclusive economic growth. The work of the Committee is expected to be completed within one year.

The Committee will work with all levels of government as critical stakeholders to ensure effective collaboration in the design and implementation of necessary fiscal policy changes and localization of reforms at the subnational level as may be applicable. Also, members of the Committee are drawn from a diverse pool of eminently qualified Nigerians across all geopolitical zones, age brackets, religion, and gender who represent the private sector including trade associations, small businesses, civil society, and professional bodies as well as public sector institutions at federal, states and local government levels.

The Committee stated that it will open channels of communication and platforms for submission of inputs by the end of September 2023. In addition, the Committee have outlined various stakeholder engagement sessions with Nigerians from all walks of life including people living with disabilities, artisans, Nigerians in the diaspora, multinational companies, international investment community and so on.

The Committee clarified that it will not be introducing new taxes or impose higher tax rates. Rather, its mandate is to reduce the number of taxes and levies while harmonizing revenue collection to reduce the burden on the people and businesses. The objective is to avoid taxing investment, capital, production, or poverty. Furthermore, the committee plans to review and re-enact the major tax laws in a holistic manner thereby limiting the necessity for frequent changes through annual finance legislation.

- **Tax Appeal Tribunal (the “Tribunal”) rules that the OECD Model Tax Treaty is inapplicable to the interpretation of the DTA between France and Nigeria and on the circumstance upon which an assessment becomes final and conclusive**

The Tribunal sitting in Lagos in the case of CMA CGM S.A (CMA) v. FIRS<sup>1</sup> held that the commentary of Article 8 of the OECD Model Tax Treaty is inapplicable to the interpretation of Article 8 of the Nigeria-France Double Tax Agreement (DTA). The Tribunal also ruled on the circumstances upon which an assessment becomes final and conclusive.

Following a review of CMA CGM S.A's financial records for the 2018 and 2019 years of assessment, FIRS imposed additional company income tax (CIT) on CMA CGM S.A for income derived from the late return of containers, unreturned and severally damaged containers, cleaning fees, shipping line agency commission and port fees (the “**Tax heads**”). The CMA contended that by applying the commentary of Article 8 of the OECD Model Tax Treaty in interpreting Article 8(1) of the DTA between Nigeria and France which exempts a resident of a contracting state from tax in the other state in respect of gains derived from the operations of ships in international traffic, the meaning of “international traffic” can be extended to include CMA's income from the above Tax heads and as such exempt from tax liability under CITA. CMA further argued that a tax liability in respect of which an objection or appeal is pending which has not become final and conclusive cannot form the basis of interest and penalty.

At the Tribunal, FIRS argued that Article 8 of the Nigerian-France DTA clearly delineates the categories of income to which the DTA applies as freights, income from mails and sales of tickets, and stipulates that any other income derived by CMA from activities such as demurrage and other related incomes such as the above Tax heads are not part of international traffic and accordingly are taxable not under Article 8 but under the general taxing provisions under the CITA. The FIRS further emphasized that the Commentaries of the OECD Model DTA are mere comments written by authors and are neither international treaties nor national statutes and that there is no similarity between Article 8 of the OECD conventions and Article 8 of the Nigerian-France DTA and as such the OECD are irrelevant and have no legal status. FIRS further submitted that interests and penalties are consequences of a breach of tax laws and that an objection or appeal does not extinguish the liability to penalty and interest for late payment or non-payment tax.

The Tribunal, agreeing with FIRS, held that the wordings of the two Articles are different as Article 8 of the DTA is dissimilar to Article 8 of the OECD Model Tax Treaty and is therefore inapplicable in the interpretation of Article 8 of the DTA. In view of this, the Tribunal held that the income derived from the above tax heads do not qualify under international traffic and as such is subject to tax at the applicable rate under the CITA. On the issue of interest and penalties, the Tribunal held that an appeal against an assessment only suspends collection of taxes and that interest and penalty on the unpaid liability will continue to accrue at the background from the time the tax ought to have been paid but will only crystallize if the objection or appeal were determined in favour of the tax authority. In view of this, the Tribunal

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<sup>1</sup> TAT/LZ/CIT/139/2021

enumerated the following circumstances upon which an assessment becomes final and conclusive to include:

- a) where upon receipt of a notice of assessment, a taxpayer fails to raise an objection or appeal same, within the periods prescribed by the various tax laws.
  - b) where upon receipt of a notice of assessment, a taxpayer raises an objection and the tax authority discountenances and subsequently issues a notice of refusal to amend (NORA) and the taxpayer fails to appeal the NORA within the period prescribed by law.
  - c) where upon receipt of a notice of assessment, a taxpayer raises an objection and/or appeal and the Tribunal or court determines the dispute in favour of the tax authority. However, the tax authority must within one month of judgment, serve notice of the tax payable on the taxpayer, and
  - d) where upon the receipt of a notice of assessment a taxpayer fails to object or appeal and accepts to discharge the tax liability. However, where an assessment is neither due for payment nor valid, payment of interest and penalty will not arise or crystallize.
- **Tax Appeal Tribunal (the “Tribunal”) rules that the jurisdiction of the Tribunal is limited to civil jurisdiction and has no jurisdiction over criminal matters - Tourist Company of Nigeria PLC (TCN) v FIRS**

FIRS conducted a tax audit on TCN for the 2014 and 2015 financial years and consequently notified TCN of its additional liability to Tertiary Education Tax (“TET”) via a Notice of Additional/Amended Assessment on the basis that the turnover reported by TCN was less than its actual turnover; the sums recorded as impairment and bad debts by TCN are non-allowable expenses for the purpose of determining TCN’s assessable profits; and there were discrepancies in the reported cost of sales.

FIRS also contended that the Pioneer Certificate presented by the TCN was a forged document. FIRS acknowledged that while the Industrial Development Income Tax Relief Act (IDITRA) indeed made provision for the exemption of certain companies from payment of tax for certain period of years, TCN was not entitled to the incentive because it forged the Pioneer Certificate which it tendered in evidence. TCN on its part, argued that the validity of the Pioneer Certificate had no impact on the appeal as the pioneer status incentive derived under IDITRA did not apply to TET, and that the Honourable Tribunal pursuant to Paragraph 12 of the Fifth Schedule of the FIRS Act lacked jurisdiction to entertain an allegation of forgery being a criminal offence further to Section 465 of the Criminal Code Law.

The Tribunal relying on Paragraph 12 and Paragraph 20(3) of the Fifth Schedule of the FIRS Act confirmed that it did not have jurisdiction to determine matters of criminal conduct. However, on discovery of possible criminality, the Tribunal shall be obliged to pass such information to the appropriate criminal authorities, such as the Attorney General of the Federation or the Attorney General of any State or any relevant law enforcement agency. In the instant case, the Tribunal held that the FIRS has not presented before the Tribunal a prima facie case of forgery, and so the obligation to refer the matter to criminal proceeding was not triggered. Furthermore, for determining the appeal concerning assessable profits, the alleged forgery was not relevant as the pioneer status incentive does not extend to TET.

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With respect to TCN's requirement to pay the TET for the 2015 assessment, the Tribunal concluded based on Section 24 and Section 27 of the CITA, that the cost incurred by TCN as impairment sum, bad debts and cost of sales was permitted and deductible, but the turnover difference was disallowed. Following this, FIRS was ordered to revise the TET assessment, taking into consideration the assessable loss declared by TCN as well as the item disallowed by the Tribunal.