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TEMPLARS Transcripts: Tax Digest

Policy and Tax Administration

- **The Federal Inland Revenue Service (“FIRS”) waives Penalties and Interests on Outstanding Tax Liabilities**

On 5 December 2023, the FIRS issued a public notice disclosing its approval of a one-month waiver of penalties and interests on all outstanding tax liabilities (the “**Waiver**”). The Waiver is conditional - it is premised - on full payment and discharge of outstanding principal tax liabilities on or before 31 December 2023. If the principal sum owed subsists by 31 December 2023, then the penalties and interests will subsist with it.

The Waiver is consistent with **Section 32 of the FIRS (Establishment) Act, 2007** (the “**FIRS Act**”) and acknowledges the difficulties experienced by taxpayers in discharging their tax obligations, alongside the commitment of the current government to support businesses in Nigeria.

The FIRS has emphasized that the Waiver does not affect the principal sums owed, and that taxpayers are still expected to file their returns and pay the principal sums. After 31 December 2023, penalties and interests will begin to accrue afresh on unpaid principal sums.

Absent the Waiver, the penalties, and interests for late payment of taxes are set out in **Sections 32(1) and 40 of the FIRS Act**, which provide that:

“If any tax is not paid within the period prescribed: (i) a sum equal to 10% of the amount of tax payable shall be added thereto as penalty; and (ii) the tax shall carry interest at the prevailing Central Bank of Nigeria (CBN) Minimum Rediscount Rate (MRR), plus a spread to be determined by the Minister.”

This Waiver is much commended, as it will afford companies that are currently undergoing tax audits and investigations (including objections) the opportunity to expeditiously pay the assessed principal tax liabilities without attracting additional penalty and interest.

Taxpayers are enjoined to take notice of the update and take advantage of this Waiver for a quick resolution of their principal tax obligations on or before the 31 December 2023 deadline.¹

- **The Federal Ministry of Finance Reiterates the Exemption from Payment of Import Duty and Value Added Tax on the Imports of Liquefied Petroleum Gas (LPG)**

On 28 November 2023, the Honourable Minister of Finance and the Coordinating Minister of the Economy, Wale Edun, (the "**Minister**"), in a letter titled "Exemption of Payment of Import Duty and Value Added Tax on the Import of Liquefied Petroleum Gas (LPG)" (the "**Letter**") reiterated the Presidency's directive that importation of LPG is exempt from Value Added Tax (VAT) and Import duty.

By a Presidential directive with reference number PRES/88/MPR/99, dated 29 July 2022, former president Muhammadu Buhari exempted the importation of LPG (utilizing HS Codes 2711.12.00.00, 2711.13.00.00 and 2711.19.00.00) from VAT and import duty.

Additionally, the Minister likewise reiterated the Presidential directive with reference number 24/A/3785, issued on 7 June 2019, which granted an import waiver on the importation of LPG machinery and equipment. The eligible machinery and equipment are listed in an appendix to the Letter and contains 38 machinery and equipment.

Expectations are that the directives will be formally incorporated into an official gazette in the near future. In the meantime, the Nigeria Custom Service and the Federal Inland Revenue Service are expected to comply with the directives, with the former required to withdraw all debit notes for VAT and import duty issued to petroleum marketers who have imported LPG utilizing HS Codes 2711.12.00.00, 2711.13.00.00 and 2711.19.00.00.

¹ [FIRS Public Notice on Waiver of Penalty and Interest.pdf](#)

Legislative Advancements

- **Federal Government presents first Appropriation Bill for 2024 Budget**

President Bola Ahmed Tinubu presented the first appropriation bill (the “**2024 Budget**”) for his administration to a joint session of the Nigerian National Assembly on November 29, 2023. The Budget is titled "The Renewed Hope Budget." We have highlighted some key features of the budget below.

The 2024 Budget is the largest in Nigeria's history, with a total expenditure of N27.5 trillion, which is 10.9% higher than the 2023 revised budget. The 2024 Budget reflects the government's vision to revive the economy after the COVID-19 pandemic and the security challenges.

Additionally, the 2024 Budget is based on some key assumptions, such as an oil price of \$78 per barrel, an oil production of 1.78 million barrels per day, an exchange rate of N750 per dollar, a GDP growth of 4.2%, and an inflation rate of 21.5%. The budget projects a revenue of N18.32 trillion, which is 65.8% higher than the 2023 revised budget, and a deficit of N9.18 trillion, which is 3.88% of the GDP.

Further, the 2024 Budget allocates N8.25 trillion for debt servicing, which is 30% of the total expenditure and 45% of the revenue. This is lower than the 73.5% debt service to revenue ratio in the 2023 budget proposal, but still high by international standards. The 2024 Budget also allocates N2.18 trillion for education, N1.33 trillion for health, N1.32 trillion for infrastructure, N3.25 trillion for defense and security, and N534 billion for social development and poverty reduction.

Judicial Decisions

- **The Tax Appeal Tribunal (“Tribunal”) Lagos Zone Rules that the Provision of Private Security Guard Services is a Professional Service, and Consequently, Liable to Withholding Tax at 10%.**

The Tribunal sitting in Lagos in **Tourist Company of Nigeria Plc v. Federal Inland Revenue Service**² held, amongst others, that the provision of private security guard services was liable to Withholding Tax (“**WHT**”) at a rate of 10% under the amended WHT Regulations 2015.

In the matter, Tourist Company of Nigeria Plc (“**TCN**”) initiated the appeal against the FIRS in opposition to its assessment of amongst others, outsourced security services at 10% and not 5% as argued by TCN. TCN relied on the Schedule to the WHT Regulations and the FIRS’ Information Circular No. 2006/02 9801 dated February 2006 (“**Information Circular**”) and submitted that outsourced contracts were not in the nature of professional services to warrant a deduction of 10%. The FIRS did not advance arguments on the chargeability of private security guard services to WHT at the rate of 10%, and whether same were consultancy, technical or management services.

² Appeal No. TAT/LZ/WHT/025/2019

In resolving the issue, the Tribunal noted that the WHT Regulations does not prescribe a test to distinguish between consultancy, technical or management services. Under the WHT Regulations, only consultancy and professional services would attract WHT at 10%. “All [other] types of contract and agency arrangement, other than sales in the ordinary course of business” would attract WHT at the rate of 5%. Therefore, technical services could be classified as “all types of contract” so as to avoid paying WHT at the rate of 10%. However, the FIRS' Information Circular dated February 2006 groups consultancy, professional, management and technical services into the same category in defining them, while directing that to actually discern whether an entity is carrying out professional services, the real content of the services being provided must be examined. The Tribunal noted that although the Information Circular does not possess the force of law, it will guide the Tribunal in arriving at a reasonable conclusion.

In its analysis, the Tribunal examined the content of the services, distinguishing between two classes of security guards: ragtag body of security guards who are unregulated, and an organized body of security guards regulated by the Nigerian Security and Civil Defence Corps (“NSCDC”) created by the NSCDC Act. The latter undergoes trainings and workshops organized by the NSCDC, where they acquire skills and knowledge; it must also meet some standards usually set by the NSCDC. The Tribunal ruled that the latter class of security guards renders professional services which must be liable to WHT at the rate of 10%. On the premise that the services provided to TCN fell within that class, the Tribunal held that it was a professional service, hence, the FIRS had rightly assessed same to WHT at the rate of 10%.

The ruling of the TAT on this issue is remarkably different from its ruling on a similar issue in the case of **McKinsey Company Nigeria Global Ltd v. FIRS (McKinsey case)**.

In the McKinsey case, one of the issues in contention was whether private services rendered by private security guards should attract a WHT rate of 10% or 5%. FIRS argued that the security services is regulated by the NSCDC which restricts basically people with technical know-how only to be in the profession.

On the contrary, McKinsey argued that the criteria set out in FIRS' circular and the definition of the term “professional services” cannot be met by the security personnel hired, NSDC Act does not provide for any specific type of training, certification, licensing, adherence to any standard of ethics or regulations, that McKinsey's private security personnel must possess. McKinsey further argued that the NSCDC Act does not provide any requirements which would categorise private security as professional services. The argument of FIRS was further debunked by two facts: (a) the NSCDC Act does not licence individuals but only companies, and a company cannot by any logic be classified as a 'professional'; and (b) FIRS' Circular No. 2009/01 of July, 2009 itself classifies engineering services as construction services and not professional services, notwithstanding the statutory regulation of individual engineers under the auspices of the Council of Registered Engineers of Nigeria (COREN).

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The issue of what WHT rate applies to services provided by private security guards is usually subject to different interpretations by tax authorities and taxpayers alike. It was expected by taxpayers that this issue has been resolved by the McKinsey case. However, it appears, that with this recent decision, the controversy is very much ongoing. It is hoped that the tribunals and the courts will lay this controversy to rest.

In the meantime, taxpayers who engage the services of private security personnel are advised to examine the content of the services provided by such personnel and whether they are regulated or not.