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TEMPLARS Transcripts: Tax Digest

Policy and Tax Administration

- **President Bola Ahmed Tinubu Signs Executive Order on Oil and Gas Reforms**

On 6 March 2024, the President of the Federal Republic of Nigeria, Bola Ahmed Tinubu, executed Policy Directives aimed at enhancing the investment climate in Nigeria. This is in accordance with the commitment to remove investment barriers within Nigeria, harness national resources, and facilitate economic diversification.

Following series of engagements, comprehensive analyses, and benchmarking exercises with similar jurisdictions, the President has instigated the amendment of primary legislation to introduce fiscal incentives for oil & gas projects. The President's directives encompass the following key provisions:

1. The introduction of fiscal incentives tailored for non-associated gas greenfield development, midstream gas utilization investment, and deepwater developments.
2. The streamlining of contracting processes to condense the contracting cycle within the Nigerian petroleum sector to a period of six months.
3. The application of local content requirements without hindering investment or the cost competitiveness.

It is anticipated that the detailed provisions of these Policy Directives will be officially gazetted and disseminated by the Federal Government.

- **Taxation of International Shipping Companies**

The FIRS issued a public notice in 2023 requesting all international shipping companies (ISCs) operating in Nigerian territorial waters to regularize their tax affairs in respect of the 2010-2019 years of assessment no later than 31 December 2023. This deadline was however extended to 31 March 2024.

In view of the deadline of 31 March 2024, ISCs are advised to regularize their tax affairs as FIRS may begin enforcement and compliance with the deadline for the regularization of the tax position of ISCs, fast approaching.

- **Federal Government Suspends Expatriate Employment Levy**

On 27 February 2024, President Bola Ahmed Tinubu launched the Expatriate Employment Levy (**EEL** or the "**Levy**"), a government-mandated annual contribution imposed on employers of expatriate workers in Nigeria. Although the implementation of the EEL was set to commence on 15 March 2024, the Federal Ministry of Interior ("FMoI") however announced the suspension of the implementation of the levy pending further consultation with stakeholders.

According to the Federal Government, the EEL was introduced with the objective of reducing reliance on foreign skills and to encourage companies to prioritise the hiring of Nigerians.

Notably, eligibility to pay the Levy varies and is dependent on factors such as the industry, expatriate's role, and duration of stay or employment in Nigeria. If reinstated, employers of expatriates will be required to pay \$15,000 for Directors and \$10,000 for other categories of expatriates annually. However, accredited staff of diplomatic missions, government officials and international agencies will be exempt from its application. Additionally, expatriate workers employed for duration less than 183 days within a year from date of entry into Nigeria, will not be liable to pay the Levy, if reinstated.

- **Federal Inland Revenue Service (FIRS) Introduce self-registration Module on TaxPro-Max platform**

On 11 March 2024, the Federal Inland Revenue Service (FIRS) issued a public notice informing taxpayers of the introduction of a self-registration module on the TaxPro-Max platform as part of their reforms towards improving the ease of doing business and matching customer-centric approach.

According to the notice, every newly registered corporate/business entity assigned with a Tax Identification Number (TIN) at the point of registration with the Corporate Affairs Commission (CAC) can now complete their registration with the FIRS on Tax Pro-Max and follow the prompt for registration. With the innovation, taxpayers can now complete all registration with the FIRS independently in the comfort of their offices or homes, thus saving them time and resources.

It was noted that the new feature will enable an efficient and transparent tax system that benefits both citizens and the government.

- **Federal Inland Revenue Service (FIRS) Implements Transition to TaxPro-Max Platform for TP Returns and CbCR Notifications**

On 19 February 2024, The FIRS announced a transition from electronic TP platform (e-TP Plat) to the TaxPro-Max platform for annual filing of Transfer Pricing (TP) returns and Country-by-Country Reporting (CbCR) Notification Forms. Notably, Regulations 13 and 14 of the Income Tax (Transfer Pricing) Regulations, 2018 require taxpayers with related party transactions to file TP Declaration and TP Disclosure forms. Similarly, Regulation 6 of the Income Tax (Country-by-Country Reporting) Regulations, 2018 (CbCR Regulations) mandates the Nigerian resident members of Constituent Entities of Multinational Enterprise to file a CbCR Notification with the FIRS.

Effective immediately, taxpayers are required to use TaxPro-Max for these filings. A grace period from now until June 30, 2024, has been granted to fulfil outstanding obligations without facing administrative penalties.

Judicial Decision

- **Tax Appeal Tribunal (“the Tribunal”) rules that the Income of Insurance Companies can be subject to tax outside the provisions of Section 16 of the Companies and Income Tax Act (“CITA”) - F.B.N. Insurance Ltd (FBNI). vs. Federal Inland Revenue Service (FIRS)**

The Tribunal upheld the excess dividends tax assessment issued by the FIRS to FBNI.

The FIRS had conducted an audit exercise on FBNI's 2016 and 2017 accounts and consequently imposed additional excess dividend tax on FBNI's insurance business on the basis that FBNI's dividends for the relevant years were in excess of its profits. FBNI objected to the additional assessments and filed an appeal upon the FIRS refusal to amend the additional assessments. The primary issue before the Tribunal was whether the FIRS can lawfully subject the insurance income of FBNI to tax outside the provisions of Section 16 of the CITA which relates to the taxation of insurance income and whether the FIRS lawfully assessed FBNI to excess dividend tax under Section 19 of the CITA.

FBNI argued that Section 16 of CITA, being an overriding provision, is complete and exhaustive in the taxation of FBNI and other insurance companies. FBNI submitted that (i) the FIRS ought not to have imposed the taxes stipulated in Section 19 of the CITA on it, (ii) the dividends which were paid out of the retained earnings of the company had suffered tax, (iii) taxing the dividends amounts to double taxation and (iv) the Finance Act 2019 provides that the dividends paid out of retained earnings, which have been subjected to tax, are exempt from excess dividends tax.

The Tribunal in dismissing FBNI's argument found that the provision of section 19 of the CITA, which FBNI claims has been overridden by section 16(1), was applicable to FBNI as it relates to the payment of dividends by a Nigerian company where a

company declares dividends that are in excess of its profit. With respect to the provisions of the Finance Act 2019, the Tribunal held that the Finance Act only became effective in 2020, whereas the dividends were paid in 2016 and 2017 prior to the commencement of the Finance Act.

- **Tax Appeal Tribunal (the “Tribunal”) rules that the provision to treat undistributed profits as distributed profits in section 21(1) of the Companies Income Tax Act (“CITA”) 2004, is at the discretion of the FIRS - Rand Merchant Bank Nigeria Limited v Federal Inland Revenue Service**

The Tribunal found that the FIRS has the discretion to treat profits, which were not distributed by a company as distributed and subject to tax.

The FIRS had issued an additional Withholding Tax (“WHT”) assessment on RMB in the sum of **N602,590,813.53** on the undistributed profits of the company on the basis that the profits ought to have been distributed as dividends to shareholders and that the refusal by RMB to distribute the profits is a scheme to reduce its aggregate tax payable. By Section 21 of the CITA, the FIRS argued that it was empowered to deem the undistributed profits as distributed and impose WHT on same.

FIRS submitted that there was no obligation on it to establish tax evasion or avoidance as the purpose of RMB's non-distribution of profits. It further argued that the most important consideration was the impression of the Board and that CITA was not concerned with the long-term sustainability of a company, but the present effect that distribution of dividends would have on a company.

RMB, on its part, argued that the non-distribution of dividend to its shareholders was a legitimate business decision taken by its board of directors and that the powers of the FIRS under section 21 of CITA can only be exercised where tax evasion or avoidance was the underlying consideration for non-distribution of profits.

The Tribunal dismissed RMB's appeal and upheld the FIRS' additional WHT assessment.

- **MultiChoice v. Federal Inland Revenue Service**

MultiChoice, the owner of DSTV and GOTV cable television brands, has reached a resolution with FIRS to settle a three-year tax dispute. The settlement involves MultiChoice Nigeria and MultiChoice Africa Holdings paying a total tax amount of about \$37.3 million, offsetting it against security deposits and good faith payments made to date.

Prior to the settlement, FIRS had in 2021 accused MultiChoice of tax evasion amounting to ₦1.8 trillion (\$4.4 billion). Following the issuance of tax assessment notices on MultiChoice, MultiChoice filed an appeal at the Tribunal challenging the assessment of the FIRS. However, in March 2022, both parties agreed to an out-of-court settlement.

As part of the settlement, FIRS conducted a forensic systems audit to determine the accurate tax liability of MultiChoice. The resolution came after both parties withdrew ongoing lawsuits, signalling a commitment to an amicable resolution.