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TEMPLARS Transcripts: Tax Digest

Policy and Tax Administration

▪ The Notice of Tax Incentives on Deep Offshore Oil and Gas Production, 2024

On 2 October 2024, the Minister of Finance and Coordinating Minister of the Economy, Mr Adebayo Olawale Edun, issued the Notice of Tax Incentives on Deep Offshore Oil and Gas Production, 2024 (the "**Notice**") further to powers granted to the Minister under the *Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024* (the "**Oil and Gas Order**"). Similar to the Oil and Gas Order, the Notice was stated to take effect from 28 February 2024.

The Notice provides tax credits incentives to promote investment in deep offshore oil and gas development within upstream petroleum operations. The Notice provides (I) tax credits for deep offshore oil development and (II) tax credits for deep offshore non-associated gas development.

Eligibility

The tax credit incentive is applicable to two (2) categories of deep offshore developments within oil mining leases and petroleum mining leases with production sharing contracts or profit-sharing contracts:

(i) Existing deep offshore leases with Field Development Plans (FDP) where the lessee makes a Final Investment Decision (FID) for development between 28 February 2024 to 1 January 2029. *A lessee unable to commit to the FID due to force majeure can apply for an extension*.

(ii) Future/new leases awarded after 28 February 2024 as well as leases derived from existing licenses or future licences awarded after 28 February 2024.

The Tax Credit Incentive

is applicable to two (2) categories of deep offshore developments within oil mining leases and petroleum mining leases with production sharing contracts or profit-sharing contracts.

The Tax Credit Incentives

a. *Incentives for crude oil production:*

(i) For developments with reserves under 400 million barrels, a tax credit of the lower of US$3.00 per barrel or 20% of the fiscal oil price, for production capped at 150 million barrels is applicable.

(ii) For developments over 400 million barrels, a tax credit of the lower of US$4.50 per barrel or 20% of the fiscal oil price, for production capped at 500 million barrels is applicable.

(iii) For future leases, an additional tax credit of US$1.00 per barrel from commencement of production cumulatively up to 500 million barrels is applicable.

b. *Incentives for gas production:*

(i) US$1.00 per thousand standard cubic feet (mscf) or 30% of the fiscal gas price, whichever is lower up to a cumulative volume of 5 trillion cubic feet (TCF), for fields with Hydrocarbon Liquids (HCL) content not exceeding 30 barrels per million standard cubic feet (mmscf);

(ii) US$0.50 per mscf or 30% of the fiscal gas price, whichever is lower up to a cumulative volume of 5 trillion cubic feet (TCF), for fields with HCL content between 30 and 100 barrels per mmscf.

While the incentives apply to lessees who make an FID on or before 1 January 2029, the Notice provides that lessees who are unable to make an FID on or before 1 January 2029 will be eligible to claim the tax credit. However, the applicable production credit for such lessees will be reduced by 50%. Further, where the crude oil prices fall below US$50 per barrel, the tax credits above shall apply at a reduced rate of 50%.

Legislative Advancements

Tax Reform Bills

On 3 October 2024, the President transmitted the following bills four executive bills to the National Assembly for consideration: (i) The Nigeria Revenue Service (Establishment) Bill 2024, (ii) Joint Revenue Board (Establishment) Bill, 2024, (iii) Nigeria Tax Administration Bill, (iv) Nigeria Tax Bill 2024. The Bills seek to introduce changes to Nigeria's current tax regime with the overall objective of stabilising the economy.

The Nigeria Revenue Service (Establishment) Bill 2024 (NRS Bill)

The NRS Bill proposes a repeal of the Federal Inland Revenue Service (Establishment) Act, No.13, 2007 (the "FIRS Act") and in its stead, the enactment of the Nigeria Revenue Service (Establishment) Act to establish the Nigeria Revenue Service (the "NRS or Service"). The Bill seeks to reform the extant Federal Inland Revenue Service (FIRS) into the NRS, stipulating its functions and powers.

The Nigeria Revenue Service

The NRS Bill proposes a repeal of the Federal Inland Revenue Service (Establishment) Act, No.13, 2007 (the "FIRS Act").

While the Bill retains most of the provisions of the FIRS Act, some new provisions have been introduced. Below are some key provisions in the NRS Bill:

- **Functions of the NRS:** The functions of the Service under the NRS Bill are similar to the functions of the FIRS under the FIRS Act. They include assessing persons including companies, and enterprises chargeable with tax.

- **Assistance in Tax Collection:** One of the important introductions under the NRS Bill is the power of the NRS to assist, on request, a State or Local Government, in the collection or administration of taxes. This, however, only applies to taxes in respect of which the requesting government has the statutory right to collect or administer.

- **Savings and Transitional Provisions:** The NRS Bill provides that all powers vested in the FIRS will continue to be vested in the NRS. It also provides that all actions taken by the FIRS are deemed to have been taken by the NRS. Similarly, all enforcement processes or proceedings commenced or pending under the FIRS Act will continue to subsist under the Bill. This also applies to all rights, interests, obligations and liabilities under any contract or instrument, or in law or equity.

- **Fund of the Service:** The NRS Bill provides that the Service will be funded by a percentage, as may be determined by the National Assembly, of the total revenue collected by the Service. This differs from the previous position in the FIRS Act. Under the FIRS Act, funding of the FIRS from tax revenue was limited to non-oil revenues.

- **Limitation of Suits and Pre-Action Notice:** Based on the provisions of the Bill, a suit against the Executive Chairman, officer or employee of the Service or the Service must be commenced within three months after the act, neglect or default complained of; or in the case of a continuation of damage or injury, within six months after the ceasing of such damage or injury. Further, the Bill mandates a pre-action notice of one month to be served on the Executive Chairman, officer or employee of the Service or the Service prior to the commencement of any suit.

Joint Revenue Board (Establishment) Bill, 2024 (JRB)

The JRB Bill introduces several significant changes to tax administration in Nigeria by establishing the Joint Revenue Board (JRB) the Tax Appeal Tribunal and the Office of the Tax Ombuds, for the harmonisation, coordination and settlement of disputes arising from revenue administration in Nigeria. The JRB Bill represents another tax reform which the Federal Government is seeking to introduce to refine the tax administration process in the country.

Below are highlights of key provisions under the JRB Bill:

- **Establishment of Tax Appeal Tribunal:** the JRB Bill establishes a Tax Appeal Tribunal ("Tribunal") which is to handle tax-related disputes just as the Tribunal under the FIRS Act. Upon repeal of the FIRS Act, provisions relating to the Tribunal under the FIRS Act will cease to exist and corresponding provisions under the JRB Bill will become effective upon enactment of the JRB Bill. When enacted, the Tribunal will continue to hear and conclude any proceeding commenced before the coming into effect of the JRB Bill, as if they were commenced under the JRB Bill.

- **Establishment of the Tax Office of the Ombud:** the JRB Bill also establishes a Tax Ombud to handle complaints brought against tax authorities. This office has a mandate, amongst others, to investigate tax-related grievances, mediate disputes, institute proceedings on behalf of the taxpayer, and inspect premises related to tax administration.

- **Application of Statute of Limitation:** the JRB Bill provides that the provisions of any statute of limitation and pre-action notice under the JRB Bill or the provision of the Public Officer Protection Act shall not apply to any appeal brought before the Tribunal.

- **Limitation of suits:** The JRB Bill provides for specific limitations and procedural requirements for suits against the Joint Revenue Board (JRB), which are (i) a six-month timeframe from the date of the alleged act/ the ceasing of a continuous damage or injury, and (ii) a one-month notice of intent before commencing any action.

Overall, the JRB Bill is designed to streamline tax administration, increase intergovernmental cooperation, and introduce new avenues for dispute resolution, aiming to create a fairer and more consistent tax environment in Nigeria.

Nigeria Tax Administration Bill

The Nigeria Administration Bill ("**Administration Bill**") proposes the enactment of an Act to provide for the assessment, collection of, and accounting for revenue accruing to the federation, federal, states and local governments; prescribe the powers and functions of tax authorities, and for related matters.

The Administration Bill consolidates the existing administrative provisions in the existing tax legislations such as the Companies Income Tax Act, Personal Income Tax Act, Petroleum Profits Tax Act, the Value Added Tax Act, Stamp Duties Act, and Capital Gains Tax Act, and upon enactment will apply as the primary legislation for the administration of the Nigeria Tax Act, which is currently also before the National Assembly for consideration.

Below are highlights of some key provisions of the Administration Bill.

- **Mandatory Registration:** All taxpayers are to register with the relevant tax authority and obtain a Taxpayer Identification (Tax ID). Taxpayers must also report any changes in personal or business information within 30 days of such change.

- **Filing Requirements:** The Administration Bill will mandate every company to file a self-assessment return with the Nigeria Revenue Service not later than six months after the end of its accounting year. The Bill also makes provisions as to when companies in liquefied natural gas (LNG) and petroleum sectors must submit returns.

- **Rulings on Tax Law:** The Administration Bill allows taxpayers to apply for a ruling in advance on the clarity, consistency and certainty regarding the interpretation and application of any tax law.

- **VAT Revenue Distribution Formula:** The Administration Bill seeks to introduce a new distribution formula from revenue earned from the VAT which is to be distributed as follows –

i. Federal Government – 10%
ii. State Government and F.C.T – 55%
iii. Local Government – 35%

VAT Revenue Distribution Formula

Significantly, 60% of the amount for the states and local government is to be distributed on the basis of derivation.

- **Administrative Penalties:** a taxable person who fails or refuses to register for tax will be liable to pay an administrative penalty. Notably, where a company awards a contract to an unregistered person, such company shall be liable to pay an administrative penalty of N5,000,000

- **Dispute Resolution:** Additionally, the NTA Bill provides for amicable tax dispute settlement, where taxpayers and the tax authority can resolve disputes in the public interest or to avoid litigation costs.

Overall, the objective of the Administration Bill is to provide a uniform procedure for administration of tax laws to facilitate tax compliance by taxpayers and optimise tax revenue in Nigeria

Nigeria Tax Bill 2024

The Nigeria Tax Bill 2024 (the "**Bill")** seeks to (i) repeal the Companies Income Tax Act, Personal Income Tax Act, Petroleum Profits Tax Act, the Value Added Tax Act, Stamp Duties Act, and Capital Gains Tax Act and (ii) consolidate the legal frameworks relating to taxation and enact the Nigeria Tax Act to provide for taxation of income, transactions and instruments, and for related matters.

The Bill contains fiscal provisions relating to all the tax types in Nigeria, namely income tax, value added tax, stamp duty, capital gains tax, petroleum profit tax, the hydrocarbon tax as introduced by the Petroleum Industry Act 2021 (PIA), and other new introductions and changes to the fiscal system in Nigeria. Ultimately the Bill is intended to provide a unified fiscal legislation governing taxation in Nigeria.

Income Tax

The Bill now defines a "small company" to mean a company that earns gross turnover of N50,000,000.00 or less per annum with total fixed assets not exceeding N250,000,000.00

Below are a few key provisions under the Bill in relation to the various tax heads.

Income Tax

- **Rate of Companies Income Tax:** The Bill provides new corporate income tax rate for companies in Nigeria. Under the extant Companies Income Tax Act (CITA), the tax rate for companies is: 0% for small companies, 20% for medium companies and 30% for large companies. However, under the Bill the tax rates are as follows —

    i. for a small company - Zero (0%) percent; and
    ii. any other company, at the rate of— 27.5% in 2025 year of assessment, and 25% from 2026 year of assessment.

- **Definition of small company:** Under the CITA, a small company is defined as a company that earns gross turnover of N25,000,000.000 (Twenty-Five Million) or less. The Bill now defines a "small company" to mean a company that earns gross turnover of N50,000,000.00 or less per annum with total fixed assets not exceeding N250,000,000.00, provided that any business providing professional services shall not be classified as a small company.

- **Rate of Personal Income Tax:** The Bill proposes the following new rates for personal income tax:

    i. First N800,000 at 0%.
    ii. Next N2,200,000 at 15%.
    iii. Next N9,000,000 at 18%.
    iv. Next N13,000,000 at 21%.
    v. Next N25,000,000 at 23%; and
    vi. Above N50,000,000 at 25%.

- **Developmental levy:** The Bill imposes a development levy on the assessable profits of all companies, other than small companies and non-resident companies, as follows:

    i. for 2025 and 2026 years of assessment, 4%;
    ii. for 2027, 2028 and 2029 years of assessment, 3%; and
    iii. for 2030 year of assessment and thereafter, 2% which shall be solely for the Student Education Loan Fund.

    The Bill also provides an allocation rate for the distribution of revenue accruing from the levy to the Tertiary Education Trust Fund, Student Education Loan Fund, National Information Technology Development Fund and the National Agency for Science and Engineering Infrastructure.

Capital Gains Tax

- **Partial exemption of gains from disposal of shares:** The Bill provides that gains accruing to a person on disposal of shares in any Nigerian company shall not be chargeable gains where: the disposal proceeds, in aggregate, is less than N150,000,000 and the chargeable gain does not exceed N10,000,000 in any 12 consecutive months.

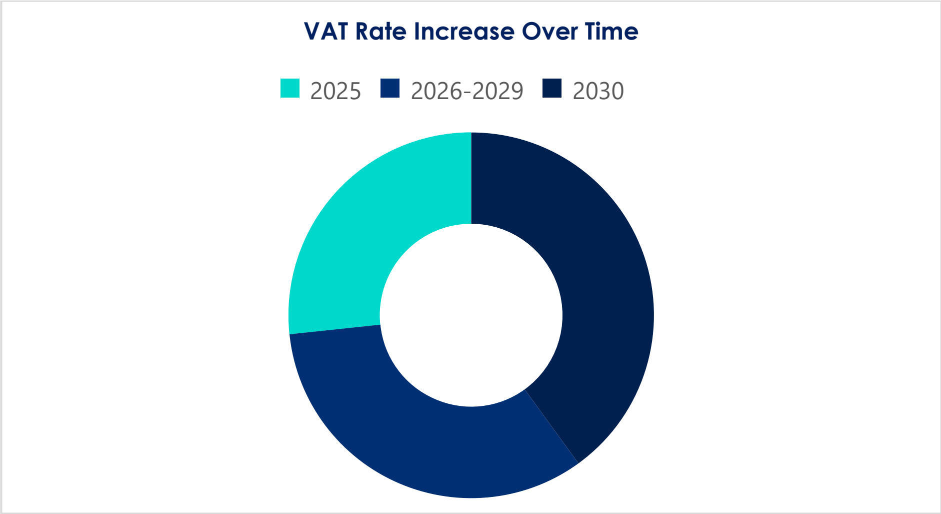
- **Digital assets**: The Bill provides a definition for "digital assets" following its introduction by the Finance Act 2023 as a chargeable asset under the Capital Gains Tax Act ("CGTA"). Under the Bill "digital asset" is defined to mean digital representation of value that can be digitally exchanged, including, but not limited to, crypto assets and non-fungible tokens (NFT).

iv. **Compensation for personal injury:** Under the extant CGTA, CGT is payable where the amount for compensation from loss of employment exceeds NGN10,000,000. The Bill proposes to increase the threshold for this to any sum exceeding NGN50,000,000.00 obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation.

Value Added Tax

- **Rate of VAT:** Under the extant Value Added Tax Act (VAT Act), VAT is charged at the rate of 7.5% on the value of the taxable goods or services. However, the Bill provides a new graduating rate at which VAT will be computed depending on the year of assessment. They rates are:

  i. 2025 year of assessment –10%.
  ii. 2026, 2027, 2028 and 2029 years of assessment – 12.5%.
  iii. 2030 year of assessment and thereafter – 15%.



- **Expanded list of exempted items:** The Bill provides a proposed list of goods and services exempt from VAT. The proposed exemption list comprises the new introductions in addition to items that were previously zero-rated. One of such are goods or services supplied to a diplomatic mission, a diplomat or a person recognised under the Diplomatic Immunities and Privileges Act whose activity is in public interest, and not for profit.

- **Expanded list of zero-rated items:** The Bill provides a proposed list of goods and services that are VAT zero rated. The new zero-rated list comprises items that were previously exempted and a new introduction. They include electricity generated by generation companies (GENCOs) and supplied to National Grid or Nigeria Bulk Electricity Trading Company (NBET), electricity transmitted by Transmission Company of Nigeria (TCN) to Electricity Distribution Companies (DISCOs), and exported incorporeal property, amongst others.

Stamp Duties

- **Dutiable instruments and applicable rate:** Unlike what applies under the extant Stamp Duties Act, the NTB contains a detailed list of dutiable instruments, applicable rates, and the party liable to pay stamp duty. It also provides conditional exemption of dutiable instruments from stamping.

- **Instruments outrightly exempted from stamping:** In addition to the conditional exemptions for stamping of dutiable instruments, the Bill provides an outright exemption of specific instruments from stamping.

Economic Development Tax Incentive

Introduction of the economic development tax incentive (EDTI): The Bill seeks to introduce the Economic Development Tax Incentive (EDTI), granting specific incentives to priority sectors. The EDTI will replace the Pioneer Status Incentive granted under the Industrial Development (Income Tax Relief) Act (IDITRA) for pioneer industries. The Bill contains provisions on eligibility for the EDTI, the duration of EDTI, and addresses other incentives that may be enjoyed by certain categories of businesses, post their utilisation of EDTI.

Hydrocarbon and Income Taxes Under the PIA

The Bill proposes key provisions touching on Hydrocarbon and Income taxes as contained in the PIA. These include notable provisions on unallowable deductions and qualifying capital expenditure.