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## Client Alert

# Stamp Duty Exposure Rises as Tribunal Rules on Share Purchase Agreements in Nigeria

## Overview

On 28 November 2025, the Tax Appeal Tribunal ("the TAT") sitting in Lagos delivered its judgment in *Oando Oil Limited v. Federal Inland Revenue Service*. In a decision with significant implications for corporate transactions and tax planning in Nigeria, the TAT held that share purchase and sale agreements are subject to stamp duties and do not benefit from the duty exemption under the Stamp Duties Act for instruments effecting the transfer of stocks and shares.

## Background

The dispute arose from a stamp duties assessment issued on 24 June 2024 by the Federal Inland Revenue Service ("FIRS" or "**Respondent**") to Oando Oil Limited (the "**Appellant**"). The assessment, amounting to **US\$88,258,099.32**, was issued in connection with three Share Purchase and Sale Agreements between various subsidiaries of the ConocoPhillips Company and the Appellant (together referred to as the "**SPAs**").

The SPAs concern the transfer of shares in ConocoPhillips entities to companies affiliated with the Appellant, resulting in the Appellant ultimately acquiring interests in Oil Mining Leases (**OMLs**) 60, 61, 62, 63, 131 in 2012 and 2014.

In challenging the assessment, the Appellant argued that it was not a party to the SPAs, and in any event, that instruments relating to the transfer of stocks and shares are expressly exempt from stamp duties under the Stamp Duties Act ("**SDA**"). The Appellant further contended that the transactions were completed in 2012 and 2014, rendering the assessment time-barred.

In response, FIRS relied on the Federal Inland Revenue Service (Establishment) Act ("FIRSEA"), asserting that it has broad investigative and enforcement powers to recover unpaid stamp duties. The Respondent also argued that the SDA's exemption applies only to documents effecting transfer of shares, not to share purchase or sale agreements which, in its view, constitute separate taxable instruments.

## Key Holdings

After evaluating the submissions of both parties, the Tribunal reached the following key findings:

**i. The assessment was not statute-barred, and the FIRS can recover the assessed duties**

The Tribunal considered whether the five-year limitation period under the SDA barred FIRS from collecting stamp duty from SPAs signed in 2012 and 2014. It held that although the SDA contains restrictive limitation provisions, subsequent legislative amendments especially in the FIRSEA (such as section 68 of the FIRSEA which provides that the FIRSEA shall take precedence over all other laws with regards to administration, assessment, collection, and enforcement of taxes) and Finance Act 2021<sup>1</sup> confer overriding enforcement powers on the FIRS. The Tribunal concluded that these statutes empower FIRS to recover outstanding stamp duties notwithstanding the SDA's limitation clauses.

**ii. The SPAs do not qualify for exemption under the Stamp Duties Act**

The Tribunal drew a distinction between the "purchase/sale of shares" and a "simple transfer of shares", noting that Nigerian law recognises multiple methods for share acquisition. It held that the SPAs were contractual instruments evidencing a purchase and sale of shares, not instruments of transfer. As such, they do not fall within the SDA exemption for "*documents relating to the transfer of stocks and shares*" and are therefore dutiable.

**iii. The Appellant did not prove separate legal personality:**

The Tribunal found that Oando Oil Limited did not provide incorporation documents to demonstrate that it was legally distinct from the entities named in the SPAs. In the absence of such proof, the Tribunal regarded the argument as an attempt to avoid tax liability and held that the Appellant was liable for the assessed stamp duty.

**iv. The Tribunal imposed penalties and interest on the tax liability:**

Having concluded that the Appellant was liable to the assessed stamp duty, the Tribunal applied the penalty and interest provisions of the Nigeria Tax Administration Act, 2025 (the "NTAA"). It imposed a penalty of 10% as well as interest at the prevailing Central Bank of Nigeria Monetary Policy Rate.

## Analysis on the Decision of the Tribunal

- i.** The Tribunal held that the assessment was not statute-barred, relying on Section 68 of FIRSEA to establish precedence over the SDA. However, the Tribunal did not address the equally material provision of Section 34(2) of FIRSEA which expressly bars FIRS from demanding or recovering unpaid tax after five years from the date of under-assessment or erroneous repayment, except such under-assessment resulted from a document or statement that was "untrue in any material particular."

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<sup>1</sup> Section 22 of the Finance Act 2021.

This omission is significant. Limitation provisions exist to foster certainty and finality in the tax system, ensuring that taxpayers are not indefinitely exposed to retrospective assessments and that tax authorities act within defined timelines. Both FIRSEA and the substantive tax laws impose these limits, with narrowly defined exceptions in cases involving fraud, willful default, neglect, or false statements. By disregarding the limitation period in FIRSEA, the Tribunal's reasoning appears misaligned with the tax landscape and the critical role of such provisions in effective tax administration.

- ii. The Tribunal held that the SPAs did not qualify for the SDA exemption for documents “relating to the transfer of shares”,<sup>2</sup> reasoning that the SPAs were merely contracts for the purchase and sale of shares.

This distinction is difficult to reconcile with Nigerian company law. Under the Companies and Allied Matters Act 2020 (“**CAMA**”), shares are transferred by an *instrument of transfer*, which must be executed by both parties. In practice, commercially executed agreements—such as SPAs—serve as valid instruments of transfer pending registration in the company's register of members. Given that the SDA exempts “*all documents relating to the transfer of stocks and shares*,” a proper interpretation aligned with CAMA suggests that SPAs fall within the scope of the exemption.

Further, the Tribunal's categorization of SPAs as contracts for the purchase and sale of shares does not take into cognizance the fact that transfer of shares under CAMA can be effected via a “sale”. The Supreme Court has held that transfer of shares by sale (via an SPA) is within the operation of CAMA – therefore affirming that SPAs fall within the operation of instruments of transfer contemplated under CAMA.<sup>3</sup>

The Tribunal's narrow reading therefore appears inconsistent with the statutory framework governing share transfers.

- iii. The Tribunal held that the Appellant adduced no evidence to prove that it is a legal person separate from the parties to the SPAs. The law is settled that he who asserts must prove. The Supreme Court has held that once a company sues, and issues arises as to its legal personality, it has to be proved in accordance with the law, by the production of the necessary document of incorporation.<sup>4</sup>

Based on the foregoing, once the Appellant submitted that it is a separate legal entity from the parties to the SPAs, the burden rested squarely on the Appellant to establish, by direct and material evidence, that it is a corporate entity distinct from the contracting parties to the SPAs. Under Nigerian evidentiary law, any fact pleaded but not supported by evidence is deemed abandoned and cannot avail the party who pleaded it. In this instance, the Appellant, having failed to adduce evidence in support of its claim on this issue, is taken in law to have abandoned the allegation. Accordingly, the Tribunal properly ruled against the Appellant on this point.

- iv. On a final note, the Tribunal imposed penalties and interest by relying on the NTAA, which references defaults under the Nigeria Tax Act (“**NTA**”). However, both the NTA and NTAA have a commencement date of **1 January 2026**.

<sup>2</sup> Paragraph 13 of the Schedule to the SDA.

<sup>3</sup> A.G Lagos State v. Eko Hotels Ltd & Anor (2006) 18 NWLR (Pt. 1011) 37

<sup>4</sup> Reptico S.A. Geneva v. Afribank (NIG) plc (2013) LPELR-20662(SC).

Until these laws come into force, no obligation — and therefore no breach or penalty — can arise under them. By applying the NTA and NTAA before their commencement, the Tribunal effectively imposed consequences for a tax default that **legally do not exist** prior to 1 January 2026. The penalties for non-compliance with the NTA are not enforceable until the NTA and NTAA take effect.

We note however that the provision of the FIRSEA on penalties and interests applicable to non-payment of tax within the prescribed period mirrors the provision of the NTAA. Accordingly, while the Tribunal incorrectly applied the NTAA prior to its commencement, the Tribunal would have reached the same decision had it applied the penalties and interest provided under the FIRSEA.

### Implications for Taxpayers

The Tribunal's decision carries significant consequences for corporate transactions, particularly mergers and acquisitions, restructuring and private equity investments. Key implications include:

**Uncertainty for future transfers/acquisition of shares:** The NTA which becomes effective in 2026, mirrors the language of the SDA. As a result, parties to future share acquisition transactions may therefore face stamp duty exposure unless clarity is provided by the courts.

**Precedent for reopening Historic Transactions:** The Tribunal's decision may prompt the tax authority to re-examine similar historic transactions that were not stamped. In light of the Tribunal's findings on the application of limitation period for assessments, tax authorities may be emboldened to seek stamp duty for prior years, even those previously considered outside the limitation period. Taxpayers involved in legacy transactions should therefore be prepared for potential enquiries.

**Importance of adducing evidence in support of pleadings:** The Tribunal's decision reinforces the importance of adducing evidence to support any facts pleaded by Taxpayers before a court or tribunal. Therefore, Taxpayers should ensure to substantiate any pleaded fact with material evidence.

### Concluding Remarks

While the Tribunal's decision remains binding unless overturned on appeal, elements of its reasoning particularly its interpretation of the SDA exemption and limitation principles introduces uncertainty regarding future tax planning and corporate structuring.

Taxpayers engaging in share acquisition or transfer transactions are advised to consult professional tax advisors and, where appropriate, secure advance rulings from the tax authority to minimise risk, and obtain clarity regarding potential tax liabilities under the evolving tax landscape.

***If you require any further clarification, do not hesitate to contact us.***