

TEMPLARS Tax Review

September 2022

The TEMPLARS' Tax Market Review provides monthly updates on recent tax developments and insights in the Nigerian taxation and fiscal landscape as well as TEMPLARS' forthcoming initiatives within the space.

Please get in touch with any of our key contacts if you have any questions regarding the issues featured in this issue or you have legal concerns on the themes addressed.

POLICY AND TAX ADMINISTRATION

FG Suspends Telecommunications Tax:

The Federal Government of Nigeria (FG) has suspended the excise duty which was proposed to be imposed on telecommunications services, citing the prevalent excessive and multiple taxation of the telecommunications sector. Previously, the FG had announced its intention to impose a five percent (5%) excise tax on calls and data usage.

FG Raises Excise Tax on Tobacco Products:

The Federal Government has increased the excise tax as well as the ad valorem tax on tobacco products as part of its public health control measures. With effect from the second half of 2022, the ad valorem tax on tobacco

Key Contacts



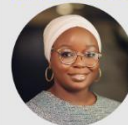
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products was increased from 20 percent to 30 percent, and the excise tax will be increased on a gradual scale from 2022 to 2024. This move comes on the back of a report by the International Centre for Tax and Development which shows that tobacco taxation in Nigeria falls below the minimum limits set by the ECOWAS tobacco tax directive.

LIRS Poised to Collect CGT on the Disposal of Securities following Amendment to Finance Act:

The Lagos State Internal Revenue Service (LIRS) has announced the appointment of Stockbrokers and other Capital Market Operators as agents to file Capital Gains Tax (CGT) returns to the LIRS upon the chargeable disposal of securities involving individual beneficiaries resident in Lagos. This development follows the amendment of the provisions of the CGT Act by the 2021 Finance Act to subject disposal of shares (above a threshold of N100,000,000 (c. US\$235,000)) to CGT at 10 percent.

Post-VAIDS, JTB, FIRS Commence Full-Scale Enforcement on Tax Defaulters:

Further to the Voluntary Assets and Income Declaration Scheme (VAIDS), by which the Federal Government of Nigeria provided amnesty to defaulting taxpayers, the Federal Inland Revenue Service (FIRS) has announced that following the effluxion of the amnesty offered by the VAIDS, it is ready to commence enforcement exercise on tax defaulters who did not take advantage of the initiative. The defaulting taxpayers would be assessed to tax based on the relevant provisions of the applicable tax laws.

FIRS issues Public Notice Stipulating Conditions for Capital Allowance Claims:

The Federal Inland Revenue Service has issued a public notice requiring “any person” incurring Qualifying Capital Expenditure (QCE) exceeding N500,000.00 (c. US\$1,200) to obtain a Certificate of Acceptance from the Industrial Inspectorate Division of the Federal Ministry of Industries, Trade and Investment. Relying on its statutory powers to call on information in pursuance of its duties, the FIRS stated that “all companies” which enjoyed capital allowances on QCEs between 2016 and 2021 tax years are required to submit the certificates to the FIRS before 31 October 2022.

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JUDICIAL DECISIONS**FHC Rules Against Retrospective Application of the Finance Act:**

The Federal High court in **FHC/ABJ/CS /1289/2020 Accugas Limited V Federal Inland Revenue Service and The Attorney-General of The Federation** has ruled that the Finance Act 2019 (“FA 2019”) cannot retroactively apply to the period, activities, transactions, and income earned prior to 13 January 2020, when the FA 2019 came into force. In this matter, the FIRS had sought to assess Accugas to tax on the basis of an amendment introduced in the FA 2019 concerning the payment of minimum tax, arguing that the amended law applied to Accugas’ income for the 2020 year of assessment since its duty to file self-assessment returns arose after the FA 2019 came into effect. The Court held that the FIRS’ position amounted to a retrospective application of the Finance Act which was not the intention of the legislation.

Court Affirms the Authority of the FIRS to collect VAT from All Taxpayers:

The Court of Appeal in **FIRS v The Registered Trustees of Hotel Owners and Managers Association Of Lagos (HOMAL) & Attorney-General Of Lagos State** held that the VAT Act supersedes the provisions of the Hotel Occupancy and Restaurant Consumption Law of Lagos State which imposes a consumption tax on goods and services consumed in hotels, restaurants, and event centres within Lagos State. The HOMAL sought to challenge the validity of the Consumption Law on the basis that the extant VAT Act – upon which the FIRS continued to charge VAT – had already covered the field on the imposition of consumption tax. The Court ruled that the simultaneous operation of the Consumption Law and the VAT Act would amount to double taxation, and that the provisions of the VAT Act should prevail.

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