



UDO UDOMA &
BELO-OSAGIE

TAX TRENDS



The Half-Year Wrap-Up

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Introduction

The UUBO Tax Trends is a bi-annual newsletter that provides an overview of significant events in the Nigerian tax landscape. This edition offers insights on domestic and international tax developments that impacted taxpayers from January to June 2023.

PART A - Major Regulatory Highlights

A. The Finance Act 2023

The Finance Act 2023 (the "FA 2023") was signed into law by former President Muhammadu Buhari on 28 May 2023, a day to his leaving office. The FA 2023 took effect on 28 May 2023 and introduced sweeping changes to some tax and other laws. However, it was [reported](#) on 6 July 2023 that President Bola Tinubu signed the Finance Act (Effective Date Variation) Order, 2023 which postpones the commencement date of the FA 2023 to 1 September 2023 in compliance with the National Tax Policy, which prescribes a 90-day minimum advance period for tax changes.

Some of the changes introduced by the FA 2023 include the withdrawal of some investment allowances/incentives, the introduction of a loss relief regime for the disposal of assets, and the inclusion of digital assets as chargeable assets for capital gains tax purposes. The FA 2023 amends the provisions of the Capital Gains Tax Act 2004 (as amended) ("CGTA"), Companies Income Tax Act 2004 (as amended) ("CITA"), Customs, Excise Tariff, Etc. (Consolidation) Act 2004 (as amended) ("CETA"), Personal Income Tax Act 2004 (as amended) ("PITA"), Petroleum Profit Tax Act 2004 (as amended) ("PPTA"), Stamp Duties Act 2004 (as amended) ("SDA"), Value Added Tax Act 2004 (as amended) ("VAT"), Corrupt Practices and Other Related Offences Act (as amended) ("CPORO Act"), Public Procurement Act ("PRA"), Tertiary Education Trust Fund (Establishment Etc.) Act 2010 (as amended) ("TET Fund Act") and the Ministry of Finance (Incorporated) Act 2004 (as amended) ("MOF Act").

Some of the fundamental changes introduced under the FA 2023, which will take effect on 1 September 2023, include:



- an import levy of 0.5% imposed on all eligible goods imported into Nigeria from outside Africa;
- the repeal of rural Investment allowance and investment allowance on plant and expenditure;
- the application of Capital Gains Tax at the rate of 10% to the gains obtained from the disposal of digital assets, which include cryptocurrencies;
- capital losses on chargeable assets (including shares) are to be tax deductible against chargeable gains on the same class of asset;
- the redefinition of a building under the VAT Act to exclude fixtures and structures;
- clarification of the value-added tax (VAT) collection mechanism for goods sold by non-resident suppliers through online or digital platforms;
- amounts paid as premium by an individual during the preceding year of assessment in respect of their own life or the life of a spouse, or contract for a deferred annuity will be tax deductible provided that any portion of a deferred annuity withdrawn within five years of paying the premium will be taxed at the point of withdrawal;
- the sharing formula for revenue generated through the Electronic Money Transfer Levy has been changed from the previous 15% for the federal government and 85% for States to a new formula of 15% for the federal government, 50% for the States, and 35% for local governments. The Minister recently released the Electronic Money Transfer Levy Regulations, 2022, to provide a practical framework for the effective and efficient administration of the levy;
- all services, including but not limited to the telecommunications sectors, shall be liable to

excise duties at the rate specified by a Presidential Order;

- increase in the rate of education tax from 2.5% to 3%; and
- Monies contributed to a NUPRC-approved fund, scheme, or arrangement for decommissioning and abandonment are now included in the allowable deductions under the PPTA.

We earlier published an article providing an update on these changes, which you can find through the following [link](#).



B. The Business Facilitation Act 2022

The Business Facilitation Act 2022 (“BFA”), which came into effect on 8 February 2023, amends the provisions of various laws such as the Companies and Allied Matters Act, 2020 (as amended), Nigerian Export Promotion Council Act, 2004, Customs, and Excise Management Act, 2004, Export (Prohibition) Act, 2004 and the Financial Reporting Council of Nigeria Act 2011 and 16 other business-related laws.

It also changed specific fiscal provisions to reduce bureaucracy and make Nigeria an attractive business destination. One of such vital amendments is increasing the threshold for the requirement to notify the Director of the Industrial Inspectorate Division of any capital expenditure for new and existing undertakings from not less than ₦20,000 (twenty thousand) to not less than ₦5,000,000 (five million) under the Industrial Inspectorate Act, 2004. Although ₦5,000,000 (five million) has been the FIRS’ acceptable benchmark in practice, the BFA now provides a substantive provision to give legal backing for such practice.

Concerning contributions under the National Housing Fund Act 2004, the BFA now provides that anyone who earns below the minimum wage of ₦30,000 (thirty thousand) a month is exempted from the obligation to contribute 2.5% of their monthly income to the National Housing Fund. In addition, contributions by private sector employees are now discretionary and not mandatory, as was the case before the amendment.

To expedite approval processes by ministries, departments, and agencies of government (“MDA”), the BFA provides that where an application is made to an MDA and the MDA (including the FIRS) does not convey its response to the applicant within the timeline that it stipulates for such responses, such application shall be deemed to have been approved or granted. This concept of “deemed approval” is an innovation of the BFA and, if adhered to by MDAs, would help facilitate the approval processes concerning engagements with MDAs for various approvals, authorisations, permits, consents, etc.

Another innovation is that the BFA has repealed the ₦50,000,000 (fifty million naira) turnover threshold that made employers eligible to contribute to the Industrial Training Fund under the Industrial Training Fund Act 2004. The amendment further provides that only employers with at least 25 persons in their establishment (and are not operating within a free trade zone) must contribute. An employer that meets this requirement must contribute 1% of its annual payroll to the Industrial Training Fund no later than 1 April of every year. The amendment by the BFA implies that any business with less than 25 employees is exempted from making ITF contributions, regardless of its turnover.

C. FIRS Guideline on the Withholding and Self-account of Value-Added Tax

On 3 March 2023, the FIRS published the “*Guideline on the Withholding and Self-Account of Value Added Tax (VAT)*” (the “VAT Withholding Guidelines”).

The VAT Withholding Guidelines aimed at providing clarity on the provisions of the VAT Act regarding the operation of the VAT withholding regime in Nigeria. According to the VAT Withholding Guidelines, oil and gas companies, all government ministries, departments and agencies; Nigerian

deposit money banks; telecommunication companies (currently limited to MTN and Airtel); and any other companies the FIRS may designate in writing from time to time must withhold VAT charged on invoices of all taxable supplies it receives and maintain a "VAT Withheld Account" separate from its typical VAT Account. The company will remit the VAT withheld from such taxable supplies to the FIRS. This obligation is in addition to the eligible company's obligation to collect and remit VAT on its taxable supplies to its customers.

The objective behind the inclusion of MTN and Airtel is to enhance the collection of VAT using their resources, technology, and customer bases. However, it is unclear why other GSM companies, such as Globacom and 9mobile, were not appointed collection agents.

Persons who supply goods and services to appointed VAT withholding agents are required, when filing their returns on TaxProMax ("TPM"), to:

- (a) indicate the total output VAT due on all of the supplies made in the VAT returns for the relevant months;
- (b) deduct the output VAT withheld at source from the total output VAT reported in its VAT return for the relevant month to arrive at a net output VAT (i.e., output VAT collected);
- (c) deduct the allowable input VAT incurred on applicable supplies from the net output VAT to arrive at the net VAT payable;
- (d) where the allowable input VAT exceeds the net output VAT, apply the amount refundable to offset subsequent VAT liabilities; or
- (e) request for a refund from the FIRS. In preparing its invoice, persons who supply goods and services to VAT withholding agents must separately state the gross amount of taxable supplies, the VAT rate, and the VAT charged on each invoice. It is important to note that the self-account rule only applies where VAT is not included in the invoice.

Where a company has received taxable supplies, and VAT has not been included in the relevant

invoice, the company is required to self-account. Self-accounting means the company is to:

- (a) compute the applicable VAT on the transaction;
- (b) self-charge the VAT;
- (c) prepare a schedule showing the name, Tax Identification Number ("TIN") and address of the relevant contractor or supplier, amount of invoice, amount of VAT self-charged, and the month of return;
- (d) self-account and remit the amount to the FIRS through TPM; and
- (e) file Form 002A or complete fields on the TPM for filing VAT returns.



Other major highlights of the VAT Withholding Guidelines are as follows:

- a) Imposition of VAT withholding, accounting, and remitting obligations in a transaction between two appointed VAT withholding agents on the recipient of the taxable supplies;
- b) Where an NRS (who is not appointed as an agent of the FIRS) makes a taxable supply to a Nigerian taxpayer, the Nigerian taxpayer will have an obligation to withhold and remit VAT to the FIRS. Where an NRS appointed as an agent of the FIRS fails to charge and collect VAT, the Nigerian FIRS-appointed agent will be responsible for withholding or self-accounting for the VAT.
- c) A VAT withholding agent must prepare a separate schedule showing the names, TINs,

and addresses of the vendors, contractors, or suppliers (from whose invoices the VAT has been withheld), the gross amount of the invoices, VAT charged on the supplies and the month of return.

The implication of VAT Withholding Guidelines is that entities that supply taxable goods exclusively to the VAT withholding agents will hardly have output VAT in cash to net off their input VAT. A combination of the slow pace at which the FIRS processes tax refunds and the FIRS' policy to always conduct a tax audit before granting refund applications could adversely affect a business's cash flow.



D. FIRS Guidelines for the Refund of VAT Paid by Diplomats, Diplomatic Missions, and International Organisations on Goods and Services Purchased

The FIRS issued the "Guidelines for the Refund of Value Added Tax (VAT) Paid by Diplomats, Diplomatic Missions and International Organisations on Goods and Services Purchased" (the "VAT Guidelines for Diplomats") in March 2023. To provide some context, under the VAT Act, goods and services purchased by diplomats and goods purchased for use in humanitarian donor-funded projects are classified as zero-rated. This means, therefore, that diplomats that pay VAT on any goods and services supplied to them are entitled to a refund of the amount paid as VAT. The VAT Guidelines for Diplomats issued by the FIRS provide a framework for processing such requests for VAT refunds.

Those eligible for a refund under the VAT Guidelines for Diplomats include diplomats (foreign employees of embassies/missions not below the rank of third secretary), Diplomatic Missions (Embassies and High Commissions), and international organisations conferred with diplomatic immunities and privileges by the Minister of Foreign Affairs through an Order published in a Federal Gazette. Applications by diplomats for a VAT refund are now to be made to the FIRS through the Ministry of Foreign Affairs.

The VAT Guidelines for Diplomats do not provide guidelines for recovery of VAT paid on goods used for humanitarian donor-funded projects. It needs to be clarified whether this means that humanitarian donor-funded projects that have paid VAT on the supply of goods for their projects can only rely on the general provisions of the FIRS establishment statute to seek refunds. In addition, the basis on which the FIRS restricts the refund for diplomats needs to be clarified, as this restriction is not stipulated in the VAT Act.

E. Tax Clearance Certificate for Foreign Exchange Transactions

As part of the ongoing efforts to increase revenue generation from taxes, the Central Bank of Nigeria has directed all commercial banks that, with effect from 1 June 2023, all customers that initiate Form A requests for foreign exchange are required to provide a valid Tax Clearance Certificate ("TCC") for three years immediately preceding the current assessment year. This is in furtherance of the provisions of section 85(2) of the Personal Income Tax Act 2004 (as amended). The provision requires any commercial bank with whom a person has any dealing concerning an application for foreign exchange or exchange control permission to remit funds outside Nigeria to ensure such a person has a TCC. In addition to increasing the government's revenue, this requirement will help widen the current tax base.

F. Overview of H1 – FIRS' 2022 Performance and 2023 Budget

According to a [report](#) by Nairametrics, the FIRS collected about ₦10.1 trillion in taxes in 2022. This represents more than a 40% increase from the previous year's total collection of about ₦6.6 trillion.

Part of this increase in the revenue generated from taxes can be attributed to the FIRS' strategy to ensure that non-resident persons pay taxes in Nigeria through consistent legislative amendments to tax laws supported by an increased focus on the usage of the TPM online portal as well as the introduction of nationwide self-service stations. The TPM allows all taxpayers to register, file, and remit their taxes in 'real time.'



The 2023 Appropriation Act has a projected expenditure of over ₦21 trillion, making it the highest, in Naira terms, the country has seen in its over sixty-year history. Nigeria's projected revenue for 2023 is about ₦11 trillion, roughly 50% short of the projected expenditure. This results in a budget deficit of over ₦10 trillion, which the former Minister of Finance [disclosed](#) will be financed by additional borrowings and proceeds from privatizing some Federal Government of Nigeria's assets. With the FIRS' success with revenue collection in 2022, and given the budget deficit, taxation's vital role in Nigeria's economic development has become more apparent.

PART B – Notable Tax Decisions

(i) INT Towers Limited v FIRS – Liability of Entities to Payment of NITDA Levy

The telecommunication sector ranks as one of the most significant contributors to the Nigerian economy and has recently been the focus of the FIRS and other regulators. In this case, the Tax Appeal Tribunal ("TAT") had to decide on the issue of whether INT Towers Limited ("INT") is a telecommunications company for tax purposes and whether it is required to pay the 1% National Information Technology Development Levy ("NITDA Levy") charged on the profits of qualifying companies¹ before tax as stipulated in the National Information Technology Development Act, 2007 (the "NITDA Act").

In arriving at its findings, the TAT examined the provisions of section 157 of the Nigerian Communications Act 2003 (the "NCC Act"), which defined "telecommunication" as "any transmission, emission, or reception of signs, signals, writing, images, sounds, or intelligence of any nature by wire, radio, visual or electro-magnetic systems" and section 12(2)(a) and the Third Schedule to the NITDA Act. The TAT also examined the nature of INT's primary business, which is the provision of infrastructure for the transmission of communications, and the operating license granted to INT under the NCC Act (Infrastructure Sharing and Collocation Services Licence). Following these reviews, the TAT held that network facilities providers are not telecommunications companies and, thus, the operations of INT are outside the scope of the NITDA Act. Consequently, INT was held not liable to pay the NITDA Levy chargeable on the profits of telecommunication companies.

(ii) Bayelsa State Board of Internal Revenue v Century Energy Services Limited – The TAT's Jurisdiction to Adjudicate on Legislations Enacted by States.

The Bayelsa State Board of Internal Revenue (the "Board") filed a claim against Century Energy Services Limited (the "Company") for alleged non-compliance with filing returns and paying Pay-As-

¹ Section 12 of the NITDA Act provides that GSM Service Providers and all Telecommunication companies that earn a turnover of over NGN100 million must pay the NITDA Levy.

You-Earn (PAYE) taxes on the income of the Company's Bayelsa-resident employees and for failure to pay taxes and submit returns for the Infrastructural Maintenance Levy and Development Levy (referred to as the "Levies") imposed by the Bayelsa State Infrastructural Maintenance Levy Law. The TAT, in this case, was tasked with determining whether it had the jurisdiction to hear issues arising out of the Bayelsa State Infrastructural Maintenance Levy Law.

The TAT acknowledged its legal status as an adjudicatory body created by law under Section 59(2) of the Federal Inland Revenue Service (Establishment) Act, 2007 ("FIRS Act") and empowered to handle tax-related matters arising from the application and interpretation of various tax laws listed under the First Schedule of the FIRS Act. This includes the PITA and other laws imposing the collection of taxes, fees, and levies collected by other government agencies under Item 3 and Item 11 of the First Schedule of the FIRS Act. The TAT further acknowledged the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the "Constitution"), which empowers the State Houses of Assembly to make laws on matters not covered under the exclusive legislative list. The Bayelsa State House of Assembly did this when it enacted the Bayelsa State Infrastructural Maintenance Levy Law in 2003.

Relying on Item 11 of the First Schedule to the FIRS Act, the TAT held that it possessed the jurisdiction to adjudicate over issues arising from the operation of the Bayelsa State Infrastructural Maintenance Levy Law provided that its provisions do not conflict with those of the PITA, and the law remains valid and enforceable.

(iii) Wheatbaker Investment and Properties Limited v. Economic Financial Crimes Commission & Anor

In this case, the Federal High Court ("FHC") was tasked with the determination of several issues, including whether: (i) the Economic and Financial Crimes Commission ("EFCC") and other public bodies had the authority to assess, impose, and collect taxes from individuals; and (ii) the EFCC's exercise of these functions was illegal and encroached on the power of the FIRS. In arriving at its decision, the FHC took into consideration the

provisions of Section 8 of the FIRS Act and Section 2(1) of the Taxes and Levies (Approved List for Collection) Act 2004 (as amended).



Consequently, the FHC concluded that Nigeria's exclusive authority to assess, administer, and collect taxes rests with the FIRS as the designated statutory body. The court noted that while the FIRS could delegate these responsibilities to other statutory bodies, such delegation of duties to the EFCC was not established in this case. Furthermore, the court stated that while under section 8(e) of the FIRS Act, the EFCC may conduct examinations and investigations concerning taxpayers to ensure compliance with the FIRS Act, such actions can only be carried out upon an official collaboration request from the FIRS. Without such a collaboration request, the court determined that the EFCC had exceeded its authority by its unilateral attempt to impose a tax assessment and audit on Wheatbaker Investment and Properties Limited ("Wheatbaker") as the EFCC's unilateral action effectively encroached upon the powers vested on the FIRS. Based on these findings, the FHC deemed the actions of the EFCC unconstitutional and illegal and ruled in favour of Wheatbaker.

(iv) Sinopec International Petroleum and Production Nigeria Limited v. Federal Inland Revenue Service

In this case, the court was asked to determine whether services rendered by a Non-Resident Company ("NRC") outside of Nigeria are subject to

Value Added Tax (“VAT”) and Withholding Tax (“WHT”) and whether the FIRS correctly assessed the appellant for WHT on interest on its foreign loan.



On the first issue, the contention was whether the services were rendered in Nigeria to make it subject to VAT. The FHC held that the supply of satellite network bandwidth capacities (which was the service rendered) was made through the appellant’s transponder in Nigeria and, therefore, held that the services (regardless of their intangible nature) cannot be considered to be supplied outside Nigeria. Given this, the FHC decided that the service was rendered in Nigeria and, thus, subject to VAT. On whether the NRC is subject to WHT on income made from the supply of satellite network bandwidth capacities, the FHC held that the appellants were agents of the NRC because the NRC’s obligations in Nigeria under the agreement for the supply of satellite network bandwidth capacities were to be carried out by the appellants. Considering that the appellant is an agent of the NRC, the NRC is subject to WHT under section 13(2)(b) of the CITA.

With regard to the second issue, the FHC held that the appellant is entitled to a 100 percent exemption on the interest on its foreign loan as provided under section 11 and Third Schedule to the CITA. It further held that the appellant satisfied the condition for such exemption as provided under the CITA (which is a repayment period above 7 (seven) years and a grace period above 2 (two) years) as a moratorium and grace period. The FHC held further that even though the subsisting loan agreement failed to define “period”, this can be inferred from the parties’ conduct and contractual terms. The FHC,

therefore, determined that the FIRS was incorrect in assessing WHT on the appellant’s interest on its foreign loan.

(v) Bolt Operations OU v. Federal Inland Revenue Service

The origin of this action dates to the appointment of Bolt Operations OU (the “Company”) as a Non-Resident Supplier (“NRS”) by the FIRS under its Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Supplies dated 11 October 2021. In letters dated 26 July 2021, 4 February 2022, and 11 April 2022, the FIRS mandated the Company to charge and collect VAT on all invoices processed through its platform, regardless of whether the Company is the supplier of the goods or services. The Company argued that it is a non-resident supplier/company (NRS or NRC) for VAT purposes since it is not incorporated in Nigeria, and the only taxable supply it provides in Nigeria is connecting independent transporters and restaurants with customers on its platform. The Company stated that it charges the drivers and restaurants a commission for this service, and it is fully compliant with the provisions of Section 10 of the VAT Act by remitting the VAT charged and collected/accounted for on its commission.

The Company filed an appeal to the TAT for the determination of the following issues whether: (a) the FIRS erred in law by appointing it as a NRS, thereby making it responsible for charging, collecting, and remitting VAT on supplies made by Nigerian resident suppliers to their customers through the Company’s platform; (b) the FIRS’ Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Supplies, which designate the Company as the Supplier and the primary entity responsible for charging, withholding, and remitting VAT on taxable supplies by resident Nigerian suppliers on-boarded on the Company’s platform, is ultra vires/exceed the powers granted under Section 10 of the VAT Act; (c) it is lawful to designate the Company as the party responsible for charging VAT on taxable supplies made by NRS resident suppliers who are exempted from VAT obligations under Section 15(2) of the VAT Act; and (d) the FIRS erred in law by imposing an agency arrangement between the taxable suppliers and the Company for the purpose of charging VAT, even though no such agency

arrangement had been willingly entered into between both parties.

On the first issue, the TAT held that the FIRS' decision to appoint the Company as the agent for VAT collection is justified under Section 10(3) of the VAT Act, which grants the FIRS the power to make such appointments. On the second issue, the TAT held that it is patently not ultra vires Section 10 of the VAT Act for the FIRS to have appointed the Company to act as agent for the collection of VAT on the goods and services supplied by the food vendors and ride-hailers on the Company's platform. Regarding the third issue, the TAT determined that the FIRS may appoint any person, by written notice, to be an agent of a taxpayer if that person is in possession of any money that belongs to (or is owed to) the taxpayer. This authority is granted by section 31 of the FIRS Act and section 49 of the CITA. The TAT indicated that since it is impracticable for the tax administration to follow every single food vendor and ride-hailing service to collect the tax, the appointed agent may be required by such notice to pay any tax "payable" by the taxpayer to the FIRS out of the taxpayer's money in his custody. The TAT upheld the Company's appointment and concluded that for any real sales tax to be collected and delivered to the government, it must be done by agents, such as distributors, whose accountability to the government for the tax collected is ensured.

On the fourth issue, the TAT held that the FIRS validly exercised its powers under the VAT Act to appoint the Company as an agent of collection of VAT from the activities of the food vendors and ride-hailers on the Company's platform. It is essential to clarify that the term "sales tax," as used by the TAT, refers to a consumption tax imposed by the government on the supply of goods and services collected by a retailer from its customer at the point of sale and remitted to the government. In Nigeria, the prevailing tax on the supply of goods and services is the VAT. Unlike traditional sales taxes, VAT is a multi-stage tax collected by all sellers at each stage of the supply chain but is borne by the final consumer, who cannot pass on the supply to another party. Under the VAT regime, suppliers in the value chain who pass on the supply to another party are generally entitled to claim an input VAT (like a credit for the VAT paid on purchases), but this does not apply to sales tax.

PART C – International Tax Developments

1. Nigeria Has Stated Its Plans To Introduce A Domestic Top-Up Tax Regime

Following its decision to not implement the proposed two-pillar solution to tackling the tax challenges of digitalization, which has been signed by over 137 members of the Organisation for Economic Cooperation and Development Inclusive Framework ("OECD Inclusive Framework"), the Nigerian government has expressed its intention to introduce a Qualified Domestic Minimum Top-Up Tax ("QDMTT") regime in 2024. The QDMTT regime will give Nigeria the right to implement the Global Base Erosion Rules ("GloBE Rules"), which is a component of the Pillar 2 proposal. The GloBE rules create a top-up tax to be imposed on large multinational groups in each of the jurisdictions in which they operate whenever their effective tax rate in a jurisdiction is below the global minimum tax rate of 15%.



2. FIRS Guidelines on Mutual Agreement Procedure

The Mutual Agreement Procedure ("MAP") is a means by which the competent authorities of contracting parties under a double taxation agreement ("DTA") resolve disputes that relate to

the application of the DTA. The provision for MAP is usually stated in the articles of a DTA. Nigeria has sixteen DTAs in force as of the date of this article, and each of the DTAs provides for MAP. In February 2019, the FIRS issued the Guidelines on Mutual Administrative Procedure (the "2019 MAP Guidelines") that set out instructions on requesting a MAP in Nigeria. In On 23 May 2023, the FIRS issued revised Guidelines on Mutual Agreement Procedure 2023 (the "2023 MAP Guidelines"). The revised Guidelines broaden the scope of incidents that can be resolved by MAP, provide an electronic platform for MAP requests, and designate the Director of the Tax Policy and Advisory Department of the FIRS as the Authorised Competent Authority in Nigeria for MAP purposes. Access this [Link](#) to our update on the revised Guidelines.

3. Exchange of Information ("EOI")

There were two major developments regarding EOI this year. The first is that Nigeria successfully completed the second round of its peer review of the implementation of the standard of transparency and Exchange of Information on Request ("EOIR") by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. The review focused on the legal and regulatory framework in force on the availability of beneficial ownership information on legal entities and arrangements. The implication of this is that Nigeria can now exchange information with other OECD Inclusive Framework members upon request. The information available for exchange include legal and beneficial ownership and identity information, accounting records, and banking information.

The second notable development is that Nigeria participated in the drafting of the legal instrument on beneficial ownership for ECOWAS and WAEMU (West African Economic and Monetary Union) countries. The draft instrument was ratified in Senegal in March 2023 and was expected to be approved in June 2023 by the Finance Ministers of the member countries. The instrument, when implemented, would help member countries in the region to maintain a public register of beneficial ownership of legal entities and arrangements and exchange such information on request by tax authorities of member countries through existing EOI channels.

PART D - Other Developments

1. The Federal Government's Fiscal Policy Measures for 2023

On 20 April 2023, the Federal Government announced that President Buhari had approved the implementation of the 2023 Fiscal Policy Measures ("2023 FPM"). Some of the key highlights of the 2023 FPM include:

- **Introduction of Green Tax:** This comprises the excise duty to be charged on single-use plastics and an import adjustment tax levy to be imposed on motor vehicles of 2000cc and above. Motor vehicles below 2000cc, electric vehicles, locally manufactured vehicles, and mass transit buses are exempted from this tax. These measures were expected to take effect from 1 June 2023. However, President Bola Tinubu has signed the Customs, Excise Tariff (Variation) Amendment Order, 2023, which postpones the commencement date of the Fiscal Policy Measures as contained in the Customs, Excise Tariff, Etc. (Variation) Order 2023 from 27 March 2023 to 1 August 2023 in line with the National Tax Policy.



- **Telecommunications Tax:** The imposition of excise duty on the telecommunication industry was opposed by various public stakeholders, including the National Association of Telecoms Subscribers ("NATCOMS") who sued the Federal Government and challenged the imposition of excise duties and value-added tax (VAT) on telecommunication services. Although the status of the action is unknown, the Federal Government subsequently announced the removal of the excise duty.

However, the 2023 Fiscal Policy Measures (FPM) released on 20 April 2023 affirms the implementation of excise duties on the telecommunications sector as initially introduced by the Finance Act 2020. This provision directly contradicts the recommendations made by the Presidential Review Committee on Excise Duty in the Digital Economy Sector. Amidst these uncertainties, the Nigerian President has, by the Customs, Excise Tariff (Variation) Amendment Order, 2023, deferred the implementation of this fiscal policy measure until 1s August 2023.

- Supplementary Protection Measures (“SPM”):** These measures have been introduced in relation to the implementation of the ECOWAS Common External Tariff 2022-2026. The list includes rice, woven fabrics, ceramic tiles and sinks, steel, containers for compressed or liquified gas, aluminum cans, washing machines, electric generating sets and rotary converters, smartphones, new and used passenger motor vehicles, and electricity meters. The changes are effective from 1 May 2023 and are subject to a 90-day grace period for importers who had opened Form M before 1 May 2023.



- Revised Rates:** The government has approved revised excise duty rates on alcoholic beverages, cigarettes, and tobacco products. These revised excise duty rates range from 20% to 100%. For instance, the government aimed to charge ₦75 per litre of beer, stout, or wine produced in Nigeria with effect from 1 June 2023, but with the Customs, Excise Tariff (Variation) Amendment Order, 2023, its commencement date has been extended until 1 August 2023.

2. FIRS Updates TaxProMax VAT Filing Procedure

The FIRS recently announced that it had updated the VAT filing and payment modules on TaxProMax to improve the management of input VAT claims, credit mechanisms, the sales adjustment process, and output VAT filing procedures. As part of its measures to enlighten the public on these changes, the FIRS released explanatory videos on YouTube and held a sensitisation event on 18 April 2023 targeted at various stakeholders. The FIRS released a clarification video accessible via this [LINK](#). In summary, some of the problems and the resolution are as follows:

No.	Issue	FIRS' Response
1.	Restriction on a taxpayer's right to claim input VAT.	Input VAT claims will be granted once the identity of the vendor is verified by the FIRS, whether or not the vendor has remitted the VAT on its sales (i.e., VAT on the taxpayer's purchases). Where the FIRS is unable to verify a vendor on whose supply a taxpayer makes an input VAT claim, the already granted input VAT will be withdrawn, and the taxpayer will be required to pay the tax plus interest and penalties.
2.	Compulsory inclusion of suppliers' TIN in VAT filings on TPM.	This is no longer compulsory. Hence, the field for TIN is no longer mandatory.
3.	Restriction of VAT claim to VAT Withheld at Source that have been remitted to the FIRS.	Once a taxpayer whose output VAT was withheld at source populates and uploads the "Withheld VAT Schedule", such a taxpayer would be entitled to a refund claim whether or not the VAT withholding agent has remitted the tax to the FIRS.

PART E - Outlook for H2 2023 and Conclusion

With the inauguration of a new administration, led by President Bola Ahmed Tinubu, who was once the Governor of Lagos State and is known for his tax policies and initiatives that contributed to the financial re-engineering of Lagos State, we expect to see more tax reforms that will be targeted at expanding Nigeria's tax base. Already, the new administration has indicated that there will be more cooperation and exchange of information between State revenue authorities and the FIRS. The use of

technology to enhance data collection and analysis has also been mentioned, as well as a concerted effort at the inclusion of the informal sector in the tax base and continued tax administration reforms. This, in addition to the FIRS' goal to increase Nigeria's tax-to-GDP ratio from 10.8% to 15%, is an indicator of an increased revenue generation drive. From an international law perspective, we anticipate that the new administration may ratify the Multilateral Instrument ("MLI"), which would enable Nigeria to amend its existing bilateral tax treaties with its treaty partners that are signatories to the MLI.



**Lolade
Ososami**



**Joseph
Eimunjeze**



Kelechi Ibe



**Oluwatobi
Akintayo**



Itoro Etim



**Dumebi
Anike-
Nweze**



**Toluwalope
Adedokun**



**Adaobi
Omosefe
Uzo**

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