

NIGERIA



Law and Practice

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Udo Udoma & Belo-Osagie (UUBO) is a full-service, multidisciplinary law firm that is focused on facilitating corporate and commercial business throughout Nigeria and across Africa. The firm has an in-depth understanding of the Nigerian business environment, and leverages an extensive network of long-term relationships – across Africa and beyond – with leading African and global firms, and strategic affiliations with leading organisations, to provide multi-jurisdictional

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1. Tax Controversies

1.1 Tax Controversies in This Jurisdiction

In Nigeria, tax controversies could arise from several scenarios following various interactions between the taxpayer and the relevant tax authority (RTA), which could be either the Nigeria Revenue Service (NRS) or the State Internal Revenue Service (SIRS).

Tax Assessment/Self-Assessment

Under Nigerian law, all taxable persons, including individuals that are not under the Pay-As-You-Earn (PAYE) system (applicable to individuals in employment) and companies, are required to submit a self-assessment to the RTA. Typically, when a taxable person submits their self-assessment along with audited accounts, the tax authority has the following options:

- it can accept the audited accounts and filed return, and then make an assessment based on these documents or other documents requested during an audit; or
- it can reject the return and issue a best-of-judgement assessment to ascertain the taxpayer's profits, tax position and tax liability.

The RTA can also conduct a best-of-judgement assessment of a taxable person who has failed to submit a return if it believes that the taxpayer is liable to pay taxes.

Tax controversies typically arise as follows.

Pre-audit stage

The RTA notifies the relevant taxpayer of an impending audit and requests copies of necessary documents in advance.

Field audit or desk review stage

The RTA reviews the received documents. If it is a desk review, the RTA officials can decide based on the documents, without visiting the taxpayer's office. For field audits, the RTA officials visit the taxpayer's office, request copies of documents, interview staff members and discuss key issues or findings.

Post-audit

After the field audit or desk review, the RTA will typically issue an audit report summarising its findings and inviting the taxpayer to respond. The taxpayer has the right to respond to those findings and, if found acceptable (following correspondence and meetings), the RTA could (but not in all cases) issue a letter of intent (LOI) to assess the taxpayer to additional taxes. This is often the first trigger for a potential tax controversy, as an LOI may be construed as a deemed assessment. Where the RTA issues an LOI, a taxpayer may object to it as they would to a notice of assessment. Where the tax authority fails for an unreasonably long time to take a decision or issue a Notice of Refusal to Amend (NORA), the omission must be interpreted as a refusal decision – ie, a NORA. This was the position of the Tax Appeal Tribunal (TAT) in *Oando Supply v FIRS* (2011) 4 TLRN 113.

For the assessment of additional tax, a time limitation applies during the assessment year or within six years after the initial year of assessment if the RTA

discovers or believes at any time that a taxpayer has not been assessed to tax or has been assessed to a lesser amount than applicable. This time limitation with respect to additional assessments does not apply in cases of deliberate misstatements.

Where the taxpayer disputes the RTA's assessment, the taxpayer can apply to the RTA by way of notice of objection in writing to review or revise the assessment made upon it. A tax dispute arises when the tax authority does not agree with the taxpayer's objection and issues a NORA.

Some tax controversies could arise when a taxpayer pre-emptively applies to the court to interpret certain provisions of tax law, especially if they oppose a position taken by the RTA in a circular, guideline or other form of communication.

1.2 Causes of Tax Controversies

Most tax disputes arise from companies' income tax (CIT) and value-added tax (VAT). This is because these are priority areas for the NRS during tax audits and usually have the most basis for contention. From an income tax standpoint, most issues involve revenue recognition, the deductibility of certain costs and expenditure, the non-deduction or non-remittance of withholding tax, and transfer pricing. From a VAT standpoint, most issues involve remittances, the applicability of VAT to certain transactions, and responsibility for VAT.

The values involved vary from as low as NGN2 million to tens of billions of Naira in some cases, as there are no thresholds that determine the adjudication of tax disputes.

An increasing number of disputes are arising from various State Internal Revenue Service (SIRS) decisions with respect to personal income tax (PIT) and withholding tax (WHT), and this trend is likely to continue as states move to increase tax revenue.

1.3 Avoidance of Tax Controversies

Tax controversies can be mitigated through the following.

- Obtaining legal and tax counsel – the first step to avoid tax controversies is to obtain guidance on proposed transactions, and to implement certain tax planning strategies and business model reviews.
- Obtaining an advance tax ruling (ATR) from the Nigeria Revenue Service (NRS) – an ATR may be issued to provide clarity, consistency and certainty regarding the interpretation and application of any tax law that does not constitute an amendment or replacement of the law. An ATR can significantly reduce the risk of future tax disputes.
- Adopting a robust tax compliance framework – ensuring proper documentation and following a robust tax compliance framework help to mitigate tax controversies.
- Voluntary disclosures and remediation – if errors are identified in tax filings and/or remittances, a taxpayer should disclose these voluntarily and agree with the tax authorities on remedial options.
- Avoiding aggressive tax planning – as tax authorities are increasing the adoption of substance-over-form doctrines stemming from GAARs, taxpayers should avoid tax planning schemes that lack commercial substance and are intended solely to obtain a tax benefit.
- Monitoring legislative and policy developments – taxpayers should stay informed about international and domestic legislative and policy developments that could impact them, and factor these into their tax strategy.

1.4 Efforts to Combat Tax Avoidance

Nigeria has consistently aligned its tax system with global best practices. For example, the country has implemented the Organisation for Economic Co-operation and Development's (OECD) recommendations on Base Erosion and Profit Shifting (BEPS), leading to the introduction of:

- significant economic presence rules;
- transfer pricing regulations;
- exchange of information regimes such as the common reporting standards (CRS);
- controlled foreign company rules;
- global minimum top-up tax rules;
- anti-treaty shopping rules such as the principal purpose test (PPT);

- advance pricing agreements; and
- country-by-country reporting (CbCR) guidelines.

In addition to enhancing tax administration, adherence to the NRS' guidelines reduces incidences of additional tax assessments, effectively reducing tax controversies.

Some grey areas have continued to cause controversies – for instance, the obligations of constituent entities of a multinational enterprise (MNE) in relation to certain disclosure requirements under the CbCR guidelines, and disputes over transfer prices, especially in loan relationships.

1.5 Additional Tax Assessments

A taxpayer has 30 days from the receipt of the disputed decision of the RTA to appeal to the TAT for redress. In filing the appeal, the taxpayer could encounter certain hurdles, either at the point of filing or at the hearing of the appeal, and these are discussed below.

The deposit of tax assessed as a condition precedent to lodging an appeal or seeking a judicial review of an additional assessment is not novel in Nigerian tax jurisprudence. Paragraph 15 (7)(c) of the Fifth Schedule to the repealed Federal Inland Revenue Service (Establishment Act) 2007 (as amended) (FIRS Act) empowers the TAT to require the taxpayer to deposit an amount with the FIRS (now the NRS) before the taxpayer's appeal is heard. This amount should be equal to either the tax charged on the appellant for the previous assessment year, or half the tax charged in the current assessment under appeal, whichever is lower. In addition, the taxpayer must include a sum equal to 10% of this deposit.

If the taxpayer fails to comply with this order, the assessment being appealed will be confirmed, and the taxpayer will forfeit any further right to appeal that assessment. A similar provision is contained in Paragraph 7 (6) of the Second Schedule to the Joint Revenue Board of Nigeria (Establishment) Act, 2025 (JRBEA), to the effect that the TAT may adjourn the hearing of an appeal to any subsequent day and order the appellant to deposit with the tax authority, before the day of the adjourned hearing, an amount on

account of the tax charged by the assessment under appeal equal to the lesser of:

- the tax charged upon the appellant for the preceding year of assessment; or
- one half of the tax charged by the assessment under appeal.

In addition, Order III Rule 6 (a) of the Tax Appeal Tribunal (Procedure) Rules 2021 (the "TAT Rules") mandates taxpayers to deposit 50% of the disputed tax amount into an account designated by the TAT, as a condition precedent to filing an appeal, and to adhere to an affidavit of compliance with this requirement. A strict interpretation of the provision has resulted in the TAT registries refusing to accept the filing of appeals not accompanied by an affidavit that the deposit had been made. As an administrative solution, the TAT permitted the filing of appeals without the affidavit but heard preliminary objections by the FIRS' (now NRS) legal counsel on the matter, often seeking a dismissal of the appeal for non-compliance with the requirement.

In the case of *Emenite Limited v FIRS* (TAT/SEZ/012/2021), this provision was interpreted by the TAT as being inconsistent and invalid on the grounds that the TAT Rules are subsidiary legislation that derive their validity and force from the repealed FIRS Act. In that case, the TAT examined whether the mandatory security deposit requirement under the TAT Rules conflicted with the discretionary requirement under paragraph 15 (7) of the repealed FIRS Act. The TAT therefore decided that the provisions of the TAT Rules mandating a 50% security deposit as a condition precedent for lodging an appeal was inconsistent and invalid, and proceeded to hear the appeal on its merits. As a result of the TAT's decision in the *Emenite* case, the TAT no longer makes it mandatory for taxpayers to deposit 50% of the disputed tax amount as a condition precedent to filing an appeal. The TAT maintained this position in *IHS v FIRS* (2022) 66 TLRN 52.

In another case, *Joseph Bodunrin Daudu SAN v Federal Inland Revenue Service (FIRS)* (Suit No FHC/ABJ/TA/1/2021), the Federal High Court (FHC) struck down provisions that required taxpayers to pay secu-

rity deposits before filing appeals at the TAT and the courts. These provisions were deemed to infringe upon taxpayers' constitutional right to a fair hearing, and were consequently declared null and void.

When filing an appeal at the FHC, a taxpayer must be aware of the provisions of Order V of the Federal High Court (FHC) Tax Appeal Rules 2022 (the "FHC Tax Rules"), which creates a conditional stay of execution of a judgment by the TAT. Order V requires a taxpayer appealing a TAT decision to the FHC to deposit the judgment sum in an account in the name of the Chief Registrar of the FHC as a condition for prosecuting an appeal. Section 254 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Paragraph 10 (5) of the Second Schedule to the JRBEA, respectively, empower the Chief Judge of the FHC to make rules for the practice and procedure of the FHC, as it relates to tax matters.

An appeal under Nigerian law does not operate as an automatic stay of execution of judgment, which means that the judgment creditor is expected to take advantage of the judgment. Hence, a stay of execution of a money judgment would usually be granted on the condition that the judgment sum be deposited in an interest-yielding bank account pending the appeal. In this instance, the mandatory security deposit requirement of the judgment sum simply codifies the general principle that the courts would rarely grant an unconditional stay of execution of a money judgment. In effect, Order V provides for an automatic conditional stay of execution of the TAT's judgment being appealed against.

2. Tax Audits

2.1 Main Rules Determining Tax Audits

Tax audits are initiated or could be triggered based on varying factors. While not particularly provided for under the tax statutes, it is typical for the tax authorities to conduct risk profile assessment, industry assessment and compliance status assessment in initiating a tax audit. For instance, companies and taxpayers that have persistently failed to file tax returns or that have reported losses for multiple years without a clear-cut

justification would likely trigger the initiation of a tax audit by the tax authorities.

In addition, taxpayers who have not been audited for a long time are more likely to be audited at some point. The tax authorities are likely to initiate tax audits on companies in certain high-profile industries, such as oil and gas, telecommunications and financial services, and on multinational enterprises. The NRS has adopted the practice of appointing companies in these industries, as well as non-resident suppliers of digital services, as VAT collection agents. There has been a recent rise in the audits of these companies, to ensure compliance with VAT collection and remittance.

2.2 Initiation and Duration of a Tax Audit

A tax authority can initiate a tax audit to verify a taxpayer's compliance with tax laws. A tax audit can be initiated under the following circumstances:

- self-assessment confirmation – a tax audit can be initiated to verify the information provided in the self-assessment return filed by the taxpayer;
- routine audits – a tax authority can conduct a routine tax audit on a taxpayer to determine the extent of its compliance;
- third-party information – the tax authority can act on a credible report of a third party regarding a taxpayer's compliance with its tax obligation to initiate an audit; and
- risk profiling – a tax authority can initiate an audit if it observes red flags, such as unusual financial transactions, persistent losses being reported, or other non-compliance indicators.

The duration of a tax audit may vary depending on factors such as the complexity of the taxpayer's operations, and the adequacy and compliance with the delivery of information required.

In relation to the statute of limitations of a tax audit, the Nigeria Tax Administration Act, 2025 (NTAA) provides that the tax authority can assess a taxpayer for additional tax where it is of the opinion that the taxpayer has not been assessed or has been assessed at a lesser amount than that which ought to have been charged; such additional assessments must

be made within the year of assessment or six years after the expiry of the year of assessment. Additional tax assessments typically arise from an audit, which means that the tax authority can only audit the last six years of assessment (excluding the year of the audit for income taxes). The tax authority can only go beyond the six-year rule in the case of deliberate misstatements, which they must prove exist before extending the audit period beyond six years.

Once an audit has been initiated within the six-year period, the limitation period is automatically suspended. This means that it does not matter how long it takes for the audit to be completed: additional assessments arising from the audit will be payable unless they are disputed.

2.3 Location and Procedure of Tax Audits

Tax audits under Nigeria's tax procedure and practice consist of two methods: field audit and desk review.

In a field audit, the tax authority conducts an audit on the taxpayer's business premises, involving the review and inspection of the physical records, software records and financial systems of the taxpayer, to determine the compliance of the taxpayer with its tax obligations. The tax authority officials also interview the taxpayer's personnel during field audits.

A desk review involves the review of the taxpayer's information at the tax authority's office, based on the documents submitted by the taxpayer.

Across all levels, the tax authority relies on both physical and electronic records; however, with the increasing digitalisation and automation of companies' operations and financial records, tax authorities are relying more on electronic records and can also demand the accounting software of the taxpayer to determine tax compliance.

2.4 Areas of Special Attention in Tax Audits

Key areas and matters for tax auditors' attention include:

- the timeliness of tax filings and payments – ensuring compliance with statutory filings such as CIT,

VAT, WHT and PIT within the due dates prescribed under the law;

- the accuracy of tax returns and declarations – eliminating misclassification of income, deductions and expenses; and
- maintaining tax-specific documentation – ensuring proper bookkeeping and adequate record-keeping of transactions, including invoices (eg, intra-company-related transactions), agreements, etc.

2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits

The extent to which increased access to financial information by the NRS has directly caused an increase in tax audits in Nigeria is not known. Since signing the Common Reporting Standard-Multilateral Competent Authority Agreement (CRS-MCAA) in August 2017 and publishing the Income Tax (Common Reporting Standards) Regulations in 2019, most reporting financial institutions have complied with their obligations to report certain financial information; it is therefore expected that the NRS has had access to significant financial information but it is not possible to assess the extent to which it has utilised that information.

The NRS and the UK HMRC have signed a collaboration agreement on capacity development but, as far as is known no joint tax audits have been conducted by the NRS and other competent authorities.

2.6 Strategic Points for Consideration During Tax Audits

From the taxpayer's perspective, the outcome of every successful audit exercise is dependent on how quickly the taxpayer identifies gaps in its reporting and documentation, possible red flags and remedies for defects. The strategic steps that should be taken include the following.

Pre-Audit Preparation

The taxpayer must always ensure that all tax filings, financial records and relevant documentation are prepared accurately and are readily available. The taxpayer must conduct internal health checks to identify possible risks, discrepancies and areas of non-compliance. In relation to inter-company-related transac-

tions, the taxpayer must ensure that adequate agreements that reflect the nature of services and pricing between related companies are maintained. In addition, supporting documents such as invoices, contracts and tax remittance receipts must be properly stored. In gathering information ahead of audits, it is critical to distinguish information covered by attorney privilege from other information, as this could impact the outcome of the audit. For instance, tax planning advice prepared by an attorney is covered by privilege and is not disclosable.

Formal Audit Engagement

The taxpayer is required to engage the services of accountants, tax experts and legal counsel. The taxpayer must always present a consistent position to the tax authorities, maintain transparency, and provide accurate and adequate information to allay suspicion. The taxpayer must comply with statutory deadlines, including timelines, to object to the additional assessment of the tax authority or appeal against the decision of the tax authority.

Handling Potential Tax Disputes

Analysing the position of the tax authority and its consistency with the relevant tax law is key. The taxpayer can object to such an assessment or decision through mutual consultation with the tax authority. Initiating a tax appeal procedure where mutual consultation fails is also important.

3. Administrative Litigation

3.1 Administrative Claim Phase

The administrative claim phase is a prerequisite for initiating a tax dispute action at the TAT or the FHC. Nigerian tax laws provide for the issuance of an additional assessment notice to taxpayers. Taxpayers who dispute a tax assessment have a period of 30 days from the date of the service of the disputed notice of assessment to object to the assessment raised by the tax authority, stating the grounds for disputing the assessment and:

- the specific issues disputed or errors observed with their monetary values;

- any amendment required to be made so as to resolve the dispute or correct the error;
- justification for the amendments;
- the amount of assessable and total profits, income or value of transactions admitted by the taxable person for the relevant reporting period; and
- the amount of tax admitted by the taxable person, or that no amount of tax is admitted as payable.

The tax authority could either amend, confirm or withdraw the assessment upon review of the objection. The tax authority issues a notice of refusal to amend to the taxpayer where, in its opinion, the taxpayer has failed to provide adequate information to support its position, and deems its assessment subsisting.

Furthermore, the JRBEA provides that a taxpayer may appeal to the TAT against the decision of the NRS where it is dissatisfied with the NRS's decision. An appeal to the TAT against the decision of the NRS is required to be made within 30 days of receiving the decision of the NRS.

3.2 Deadline for Administrative Claims

The NTAA specifies the timeframe within which the tax authorities must respond to a taxpayer's objection to a tax assessment. Specifically, Section 41 (6) of the NTAA states that an objection to the RTA must be responded to within 90 days; otherwise, the objection of the taxpayer shall be upheld.

4. Judicial Litigation: First Instance

4.1 Initiation of Judicial Tax Litigation

Judicial tax litigation is initiated at the TAT, which is the first forum for redressing tax disputes. The JRBEA and the TAT Rules provide for an appeal before the TAT to be filed within 30 days from the date on which the action, decision, assessment or demand notice that is being appealed against was made by the tax authority. An appeal to the TAT is made by filing a notice of appeal along with a disposition.

A taxpayer may also lodge a suit at the FHC in the first instance where the suit involves the interpretation of the tax laws or the Constitution, and not in respect of a decision or assessment by the tax authority.

4.2 Procedure for Judicial Tax Litigation

Under Nigerian tax dispute procedure and practice, the tax dispute resolution process is typically initiated when the taxpayer files an objection with the NRS within 30 days of receipt of a tax assessment or a detrimental decision.

If the objection is denied, the taxpayer may file an appeal with the TAT within another 30 days. The TAT's ruling can be appealed to the FHC within 30 days. If dissatisfied, the taxpayer or the tax authority can further appeal to the Court of Appeal and, ultimately, to the Supreme Court, whose decision is final. While an appeal is ongoing, the tax authority may still enforce the assessed tax unless the taxpayer obtains a stay of execution of judgment.

4.3 Relevance of Evidence in Judicial Tax Litigation

At the TAT stage, documentary evidence is critical as tax disputes are largely determined by the relevant documentation, such as the financial records, tax returns and correspondence between the taxpayer and tax authorities. Supporting documents are required to be submitted with the notice of appeal by the appellant. The respondent is required to file a reply. Parties are typically said to have joined issues when the appellant files a reply to the respondent's reply, which finalises the exchange of pleadings.

Witness evidence is also relevant, especially where factual issues are contested. However, such evidence is in writing, filed along with the notice of appeal. In addition, witnesses – such as tax consultants or company representatives – may be cross-examined during hearings to clarify tax treatments, transactions or compliance efforts. The TAT primarily relies on documentary evidence over oral testimony. Paragraph 8 of the Second Schedule to the JRBEA requires the proceedings of the Tribunal and its decisions to be in compliance with the provisions of the Evidence Act. In practice, the core principles of evidence apply at the TAT, but the technical aspects, such as the admissibility of evidence, the forms of evidence, etc, do not apply.

If the FHC sits in its capacity as an appellate court regarding decisions from the TAT, the scope of evi-

dence that can be heard at that level is limited, as appellate courts only review evidence taken at the trial stage and only permit the introduction of new evidence in limited circumstances.

Where the FHC sits as a court of first instance, the same procedures in civil proceedings apply. Witnesses adopt their written statements as evidence, are led to tender documents, and are cross-examined on the evidence given. The rules on admissibility of evidence, how they are tendered, hearsay, etc, apply.

4.4 Burden of Proof in Judicial Tax Litigation

In a civil tax litigation proceeding, the burden of proof typically rests on the asserting party. Hence, if a taxpayer appeals against the additional assessment raised by the tax authority, the burden of proof is on the taxpayer to prove that the assessment is excessive. If the RTA files the appeal to recover the tax owed, the burden of proof rests on the RTA. While the legal burden remains fixed, the evidentiary burden sometimes shifts during proceedings.

In a criminal tax litigation proceeding, the burden of proof always rests on the prosecution.

4.5 Strategic Options in Judicial Tax Litigation

The strategy differs depending on the issues involved, the situation of the taxpayer, the strength of their case, etc. For instance, in anticipation of an additional tax assessment, a taxpayer may approach the FHC to interpret certain provisions of the law, and may also seek an injunction barring the tax authorities from issuing an assessment pending the determination of the suit.

In some cases, it may be helpful for a taxpayer to file a suit, put their best arguments forward, and at the same time initiate settlement talks with the tax authorities if they find some weakness in their case.

If the matter has cross-border elements, is highly technical or has been adjudicated in other common law jurisdictions, it may be helpful to engage expert witnesses in the suit. In some cases, initiating a mutual agreement procedure (MAP) (as provided for in the various avoidance-of-double-taxation agreements while a suit is pending) has been helpful.

4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation

In cases involving international tax issues related to double taxation treaties (DTTs), transfer pricing and cross-border transactions, the TAT and the courts sometimes consider decisions of other foreign courts, common law principles and doctrine, international law principles and jurisprudence, and international guidelines as persuasive, though not binding. They rely on guidance and commentaries on the OECD Model Tax Convention, the UN Model Tax Convention, OECD BEPS reports and similar sources.

For other kinds of disputes, the TAT and courts rely on books, articles, etc.

5. Judicial Litigation: Appeals

5.1 System for Appealing Judicial Tax Litigation

The Nigerian tax dispute resolution system includes the following:

- the TAT;
- the FHC;
- the Court of Appeal; and
- the Supreme Court.

While the Office of the Tax Ombud is not a court or tribunal, it reviews and resolves complaints by taxpayers against tax officials relating to tax, levies, regulatory fees and charges, customs duty or excise matters through mediation or conciliation by adopting informal, fair and cost-effective methods.

When a party is dissatisfied with a decision regarding a tax dispute, they can appeal through various levels of judicial review. Depending on the specifics of the dispute, appeals may be made to higher courts regarding procedural issues or rulings from interlocutory applications made by lower courts. Ultimately, the Supreme Court serves as the final authority. A tax dispute is more likely to undergo multiple appeals when the contested tax liability is of high value.

An appeal may only be submitted once in respect of a specific issue or assessment, although parties may

amend their appeal if they have justifiable reasons to do so. Filing multiple suits in respect of the same subject matter, whether in the same court or multiple courts, is considered an abuse of the court process and is strongly discouraged.

5.2 Stages in the Tax Appeal Procedure

The different stages of the tax appeal procedure are as follows.

- TAT: the first forum for contesting tax assessments and decisions by the tax authorities.
- FHC: if dissatisfied with the TAT's ruling, a taxpayer can appeal to the FHC, which has exclusive jurisdiction over tax matters under Section 251 of the Nigerian Constitution. Appeals to the FHC are solely on points of law and not facts.
- Court of Appeal: an aggrieved party can further challenge an FHC judgment at the Court of Appeal if there are substantial legal grounds.
- Supreme Court: this is the final stage of the tax appeal procedure.

Taxpayers are also allowed to lodge complaints with the Office of the Tax Ombud, which has the power to review and resolve complaints against tax officials through mediation or conciliation by adopting informal, fair and cost-effective methods. The Office of the Tax Ombud may also institute legal proceedings on behalf of the taxpayer, but does not have the jurisdiction to determine any tax liability or duty, nor issue a tax assessment.

5.3 Judges and Decisions in Tax Appeals

The formation/composition of the courts or tribunals in the Nigerian tax system's appeals procedure is as follows.

TAT

- Composition: a panel of five commissioners, including a chair.
- Appointment: members are appointed by the Minister of Finance based on recommendations from relevant stakeholders.
- Decision-making: the panel decides cases collectively, often by majority vote.

FHC

- Composition: a single judge hears and decides tax appeals.
- Appointment: judges are appointed by the President of Nigeria on the recommendation of the National Judicial Council (NJC). In the case of the Chief Judge of the FHC, the approval of the Senate would be required.
- Panel formation: cases are heard individually by one judge.

Court of Appeal

- Composition: a panel of three justices decides tax appeals.
- Appointment: justices are appointed by the President on the NJC's recommendation and approval of the Senate.
- Panel formation: appeals are heard by three justices, ensuring a broader legal perspective.

Supreme Court

- Composition: a panel of five or seven justices hears tax appeals, depending on case significance.
- Appointment: justices are appointed by the President of Nigeria, based on the NJC's recommendation and Senate confirmation.
- Panel formation: a minimum of five justices sits for tax appeals, increasing to seven for constitutional issues.

6. Alternative Dispute Resolution (ADR) Mechanisms

6.1 Mechanisms for Tax-Related ADR in This Jurisdiction

Other than the administrative methods of resolving tax disputes, tax disputes in Nigeria are primarily resolved through litigation, as outlined in the country's tax law and practice. However, the NTAA attempts in Section 141 to introduce alternative methods of resolving tax disputes by providing for out-of-court settlements. The RTA and the taxable person may resolve any tax matters amicably at any stage of the dispute where:

- such a settlement will be in the interest of public revenue or public policy;

- due consideration is given to the cost of litigation in comparison to the possible benefits;
- participants in a tax arrangement have accepted the position of the RTA in the dispute, in which case the settlement may be negotiated in the manner required to adjust the tax arrangements or disposition; or
- under a whistle-blowing arrangement, the settlement will facilitate full disclosure of undisclosed tax planning or evasion schemes, which may lead to significant recovery of tax revenue.

In addition, tax audits and investigations conducted by the tax authorities often facilitate mutual consultation and negotiation between taxpayers and the authorities. This allows both parties to negotiate and potentially prevent the dispute from escalating, which can save time and reduce costs. It is worth noting that the period between the administrative claims process and the appeals process at the TAT can exceed nine months, providing plenty of opportunity for consultation and negotiation.

Where an appeal is before the TAT for the first time, the parties are allowed to explore possibilities of settlement of the dispute for a period not exceeding 30 days. Taxpayers are also allowed to lodge complaints with the Office of the Tax Ombud, which has the power to review and resolve complaints against tax officials through mediation or conciliation by adopting informal, fair and cost-effective methods.

ADR in international tax disputes, especially in relation to a tax dispute between the Nigerian tax authority and a taxpayer in a DTT country, is recognised through the MAP. The MAP Guidelines issued by the NRS provide a tailored and comprehensive framework for resolving tax disputes, particularly those related to double taxation, transfer pricing adjustments and the interpretation of treaties. The MAP serves as an ADR mechanism designed to amicably settle international tax disputes between the taxpayer, their country's tax authority, and the tax authority in Nigeria.

Tax matters are not arbitrable in Nigeria. This principle was established by the Nigerian courts in the cases of:

- *Federal Inland Revenue Service v Nigerian National Petroleum Corporation & 4 ors* (2013);
- *Esso Petroleum and Production Nigeria Ltd & SNEPCO v NNPC* (Unreported Appeal No CAA/507/2012; delivered on 22 July 2016); and
- *Shell Nigeria Exploration and Production Ltd & 3 Ors v Federal Inland Revenue Service* (2016).

In 2017, Nigeria became a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). However, Nigeria indicated that it will not adopt Action 14 of the MLI, which imposes mandatory binding arbitration on signatories.

6.2 Settlement of Tax Disputes by Means of ADR

In domestic tax disputes, there is no formal procedure for negotiation or consultation between the taxpayer and the tax authority to settle the dispute amicably. However, Section 141 of the NTAA recognises that the RTA and the taxable person may resolve any tax matters amicably at any stage of the dispute.

However, settlement of a dispute will not be considered where:

- the action by the taxable person concerned leading to the “dispute” constitutes intentional tax evasion or fraud inimical to the government revenue; or
- it is in the public interest to have judicial clarification of the issue, and the case will significantly promote taxpayer compliance with the relevant tax law.

The NTAA requires the procedure for settlement of disputes to be as follows.

- A person participating in a settlement procedure shall disclose all relevant facts during the discussion phase of the process of settling a dispute. Such disclosed facts shall be confidential.
- A dispute settled in whole or in part shall be evidenced by an agreement in writing between the parties and must include details on:
 - (a) how each particular issue is settled;
 - (b) relevant undertakings by the parties;
 - (c) treatment of the issue in future years;

- (d) the withdrawal of objections and appeals; and
- (e) arrangements for payment.

- The agreement shall be signed by authorised officers of both parties.

The settlement agreement is said to be finalised when it represents the final agreed position between the parties, and it is a full and final settlement of all or specified aspects of the dispute in question between the parties. The RTA is empowered to enforce the collection of the settlement amount as a debt due to the RTA.

Where an appeal is before the TAT for the first time, the parties are allowed to explore possibilities of settlement of the dispute for a period not exceeding 30 days.

Taxpayers are also allowed to lodge complaints with the Office of the Tax Ombud, which has the power to review and resolve complaints against tax officials through mediation or conciliation by adopting informal, fair and cost-effective methods.

Under the MAP for international tax disputes, the time limit to initiate a MAP is specified in the DTT between the taxpayer’s country and Nigeria. If no time limit is provided in the DTT, the taxpayer has three years from the date of the dispute to initiate the process. The taxpayer can submit a formal written application to either the Nigerian tax authority or their own country’s tax authority to commence the MAP. The tax authority that receives the MAP application request reviews the validity of such request in line with the applicable DTT provisions and, upon approval, issues a written notice to the other tax authority.

The Nigerian tax authority requires the taxpayer to agree to the suspension of remedies if a MAP is requested, although invoking a MAP will not deprive a person of their right of appeal under relevant Nigerian tax laws, and domestic remedies are still available. After a mutual agreement is reached on a case, the Nigerian tax authority shall reassess the taxpayer within not later than six months, with a view to reflecting or giving effect to the MAP agreement. In the case of a refund of all or part of the tax already paid by the

taxpayer, the refund will be made no later than 90 days after the date of presentation of the MAP agreement.

6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

A mutual consultation between the taxpayer and the tax authority can potentially lead to a reduction in the assessed taxes, as well as any interest and penalties. It is common for the tax authority to waive penalties for taxpayers who demonstrate a willingness to cooperate and resolve tax disputes. In such cases, the tax authority will revise its assessment and issue a demand notice for the revised sum, which the taxpayer pays. The payment of the revised sum settles the dispute.

If a tax matter is already pending before a court and parties reach a settlement, the parties will usually file terms of the settlement with the court or TAT, which will then enter the terms of settlement as a consent judgment in the matter.

6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests

Taxpayers can proactively engage the relevant tax authority to provide an advance tax ruling (ATR) on potential transactions and arrangements. An ATR may be issued for the purposes of clarity, consistency and certainty regarding the interpretation and application of any tax law that does not constitute an amendment or replacement of the law. The RTA is required to issue an ATR within 21 days of receiving the application from a taxable person, or must give reasons in writing for its inability to issue the ATR.

The effect of the ATR is limited to the applicant and the transaction in relation to which the ATR is given. An ATR is void where the issue or transaction as described in the ruling as being materially different from the issue or transaction actually carried out, or there is fraud, misrepresentation or non-disclosure of a material fact, or an assumption made or condition imposed by the RTA is not satisfied or carried out by the taxpayer. An ATR ceases to be effective where:

- a provision of the tax law that was the subject of the ATR is repealed or amended in a manner that materially affects the advance ruling, in which case

the ATR will cease to be effective from the date that the repeal or amendment is effective; or

- a court overturns or modifies an interpretation of the tax law on which the advance ruling is based, in which case the advance ruling will cease to be effective from the date of the judgment, unless such decision is overturned.

An ATR provides certainty and can significantly reduce the risk of future tax disputes. ATRs are effective and binding with respect to the specific transaction if they have not been obtained by falsification of information, fraud or deceit.

Nigerian courts have, however, held that ATRs are not binding on the tax authority and, where there is a conflict between the tax authority's position in an ATR and the law, such ATR cannot be relied upon; in such cases, the doctrine of legitimate expectation in relation to the reliance of a party on the opinion of a public authority will not apply.

6.5 Further Particulars Concerning Tax ADR Mechanisms

The Nigerian domestic tax dispute resolution framework does not have a formal ADR mechanism. However, Section 141 of the NTAA recognises that the RTA and the taxable person may resolve any tax matters amicably at any stage of the dispute. See **6.1 Mechanisms for Tax-Related ADR in This Jurisdiction** and **6.2 Settlement of Tax Disputes by Means of ADR** for further discussion with respect to this requirement.

6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax

In domestic tax disputes, there is no formal ADR procedure for the settlement of tax disputes, including transfer pricing disputes. However, Section 141 of the NTAA recognises that the RTA and the taxable person may resolve any tax matters amicably at any stage of the dispute. See **6.1 Mechanisms for Tax-Related ADR in This Jurisdiction** and **6.2 Settlement of Tax Disputes by Means of ADR** for further discussion with respect to this requirement.

A taxpayer can negotiate or consult with the tax authority during a transfer pricing audit to settle the dispute amicably.

Transfer pricing disputes between the Nigerian tax authority and a taxpayer resident in a country with a DTT with Nigeria can be settled under the MAP mechanism. The procedure and time limit for initiating a MAP are specified in the DTT between the taxpayer's country and Nigeria, and in the MAP Guidelines issued by the NRS.

7. Administrative and Criminal Tax Offences

7.1 Interaction of Tax Assessments With Tax Infringements

The tax laws always include penalties and fines for non-compliance. These penalties apply to outstanding tax liabilities, in addition to interest on the tax debt. When issuing an additional assessment, the tax authorities always include penalties and interest, which become payable if/when the TAT upholds the assessment (either wholly or partly).

The Nigerian tax laws provide for administrative and criminal liabilities of a defaulting taxpayer's officers and directors, but it is rare for tax authorities to commence personal actions against officials of a defaulting corporate taxpayer, especially where the taxpayer pays the additional tax assessment following a decision of the court.

7.2 Relationship Between Administrative and Criminal Processes

Typically, criminal tax litigation closely relates to the administrative infringement in relation to civil tax assessment, because it arises from an allegation that the taxpayer owes taxes, for one or several reasons. It must first be determined that the taxpayer is in default (ie, owes taxes) before criminal actions or other administrative actions can commence.

However, there have been cases (though scarce) where actions were commenced in various courts against a company for tax evasion, recovery of outstanding taxes and personal liabilities of directors and officials.

7.3 Initiation of Administrative Processes and Criminal Cases

In Nigeria, the process for addressing tax administrative infringements usually begins with an audit or investigation being conducted by the tax authority. If a taxpayer is found to be non-compliant, the tax authority will issue an assessment or penalty notice. In some cases, this administrative process can escalate into a criminal tax case if the tax authority uncovers evidence of tax evasion, falsification of records, deliberate misstatements or similar offences during the audit. Although this transition is not common, in instances of large-scale tax evasion or corporate fraud, tax authorities are more likely to pursue criminal action against the taxpayer if there is substantial evidence of criminal wrongdoing.

7.4 Stages of Administrative Processes and Criminal Cases

Nigeria's tax administrative infringement process typically begins with a tax audit or investigation by the tax authority. If a taxpayer is found to be non-compliant, the tax authority will issue an assessment or penalty notice, which the taxpayer may challenge by a notice of objection in writing within a 30-day period. If unresolved, either of the parties can appeal to the TAT, and further to the FHC and through to the Supreme Court.

Taxpayers may also lodge complaints with the Office of the Tax Ombud, which has the power to review and resolve complaints against tax officials relating to tax, levies, regulatory fees and charges, customs duty or excise matters through mediation or conciliation by adopting informal, fair and cost-effective methods. The Office of the Tax Ombud may also institute legal proceedings on behalf of the taxpayer, but does not have the jurisdiction to determine any tax liability or duty, nor issue a tax assessment.

In contrast, a tax criminal case arises when, after an investigation or audit is conducted, there is evidence of fraud, tax evasion or deliberate misstatement. Such cases are prosecuted in the FHC or the state high courts, which have jurisdiction over tax-related criminal offences, and treat criminal tax cases separately from civil tax disputes, so the procedure for reviewing the legality of a tax assessment is different from the procedure for reviewing court criminal tax matters.

The TAT does not have jurisdiction over criminal matters.

7.5 Possibility of Fine Reductions

In practice, the tax authority offers concessions to co-operative taxpayers who are willing to resolve tax disputes promptly. By engaging in mutual consultation and negotiation, both the taxpayer and the tax authority can arrive at an amicable settlement. This settlement may involve waiving applicable penalties or reducing potential fines associated with the relevant tax offence.

7.6 Possibility of Agreements to Prevent Trial

A taxpayer may pay the assessed tax, including interest and penalties, after an agreement has been reached with the tax authorities or the public prosecutor, in order to prevent the commencement of criminal action against the taxpayer. The NRS has the discretion to reach a settlement agreement with taxpayers to resolve disputes administratively, which may prevent a criminal case.

However, in cases involving fraud, deliberate tax evasion, deliberate misstatements or falsification of records, the public prosecutor may proceed with a criminal trial unless a plea bargain is negotiated under Section 270 of the Administration of Criminal Justice Act 2015 (ACJA). A plea bargain allows the accused to plead guilty to a lesser charge or agree to a reduced penalty in exchange for co-operation or full tax repayment. This approach is often used to expedite resolution and recover public funds while avoiding prolonged trials. A plea bargain can be entered on the following conditions:

- the evidence of the prosecution is insufficient to prove the offence charged beyond a reasonable doubt;
- the defendant (taxpayer) has agreed to return the proceeds of the crime or make restitution to the tax authority;
- the taxpayer in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders; and
- the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of

justice, public interest and public policy, and there is an exigent need to prevent the abuse of legal process.

7.7 Appeals Against Criminal Tax Decisions

In Nigeria, an appeal against a criminal tax offence decided by the FHC or state high court (the court of first instance) follows a three-stage appeal process. The taxpayer can appeal to the Court of Appeal, which reviews both factual and legal issues. If dissatisfied, a further appeal can be made to the Supreme Court, which serves as the final appellate body and only considers issues of law.

7.8 Rules Challenging Transactions and Operations in This Jurisdiction

In Nigeria, transactions and operations challenged under GAAR, SAAR and transfer pricing regulations have primarily led to administrative tax cases rather than criminal prosecutions. The NRS typically addresses such issues through tax audits, assessments and adjustments, focusing on recovering unpaid taxes, interest and penalties. For instance, in transfer pricing disputes, the NRS may adjust the pricing of related-party transactions to reflect arm's length standards, resulting in additional tax liabilities for the taxpayer.

8. Cross-Border Tax Disputes

8.1 Mechanisms to Deal With Double Taxation

In Nigeria, when a double taxation issue arises due to an additional tax assessment or adjustment in cross-border scenarios, domestic litigation is more commonly used to challenge such administrative decisions. Although MAPs are available, they are not frequently utilised compared to domestic litigation, even in cross-border cases. In addition, tax disputes are currently non-arbitrable in Nigeria, so parties are not allowed to resort to arbitration for the settlement of tax disputes.

Nigeria adopted the MLI on 17 August 2017 but it is yet to be ratified in Nigeria. When this does occur, such ratification/local domestication process in Nigeria will ensure that the MLI and the changes introduced by the MLI to the relevant DTTs become binding and enforceable in Nigeria.

8.2 Application of GAAR/SAAR to Cross-Border Situations

The NRS has tried to adopt GAARs and SAARs in assessing taxpayers to additional taxes. This approach has consistently been resisted by taxpayers as it conflicts with the provisions of DTTs. This notwithstanding, in *New Skies Satellites BV v FIRS* (Appeal No TAT/LZ/CIT/067/2021), the TAT did not strictly follow the provisions of the Netherlands–Nigeria DTT in making a determination that New Skies BV had a permanent establishment (PE) in Nigeria. The TAT held that, in the absence of any positive evidence to the contrary, New Skies BV acquired a PE in Nigeria through SNL and CWG, as SNL and CWG were integral parties to the contract, representing its interest in Nigeria; it did not matter that CWG was an independent contractor. This case shows that the TAT may consider GAARs in making determinations as to tax liabilities.

With the introduction of the principal purpose test (PPT) under the MLI and the amendment of DTT preambles, the Nigerian tax authorities are expected to have stronger tools for challenging treaty shopping and other tax avoidance strategies in cross-border transactions. The PPT focuses on whether the principal purpose of a transaction is to obtain treaty benefits, thus helping tax authorities effectively combat BEPS.

When Nigeria ratifies the positions it has adopted under the MLI, it is likely that taxpayers may adopt more cautious tax planning strategies to comply with the new rules, while courts will be required to interpret and apply these provisions, potentially leading to more complex and nuanced decisions. However, the full impact will depend on the practical implementation of its MLI positions, and there is still limited experience with how these measures are being enforced in local cases.

8.3 Challenges to International Transfer Pricing Adjustments

In Nigeria, international transfer pricing adjustments have been challenged primarily through the domestic TAT, as seen in the case of *Prime Plastichem Nigeria Limited v FIRS* (Appeal No TAT/LZ/CIT/015/2017) and under the domestic transfer pricing regulations in Nigeria, as well as in the applicable principles in the

United Nations Practical Manual on Transfer Pricing for Developing Countries and the OECD Transfer Pricing Guidelines.

The EU Directive is not directly applicable in Nigeria, as the country is not part of the EU. While Nigeria has existing DTTs that provide mechanisms for resolving transfer pricing disputes using the MAP, the focus has been on domestic legal channels rather than international frameworks.

8.4 Unilateral/Bilateral Advance Pricing Agreements

Nigeria issued its first ever Guidelines on Advance Pricing Agreements (APAs) on 27 November 2024, providing guidance on the procedure, conditions and administration of APAs. These guidelines allow taxpayers and the NRS to set transfer pricing criteria for controlled transactions in advance, in line with the arm's length principle, for a maximum period of three years. Taxpayers have begun to adopt APAs to resolve transfer pricing disputes.

The APA Guidelines were issued against the backdrop of Regulation 9 of the Income Tax (Transfer Pricing) Regulations 2018, which provides the legal basis for a taxpayer to request an APA and suspends the operation of APAs in Nigeria pending the publication by the NRS of relevant notices and guidelines on APAs. Since the NRS has now issued the APA Guidelines, taxpayers are expected to start adopting APAs (subject to stipulated thresholds) to agree with the NRS on the price of controlled transactions, in order to avoid any potential disputes between such taxpayers and the NRS.

The APA process has the following distinct stages:

- stage one – pre-filing meeting;
- stage two – formal application;
- stage three – analysis and evaluation;
- stage four – negotiations and agreement; and
- stage five – drafting, execution and monitoring.

8.5 Litigation Relating to Cross-Border Situations

In Nigeria, cross-border taxation disputes in relation to companies often arise around the issues of PE/tax-

able presence. Courts and tribunals have to determine whether a non-resident company has a PE or taxable presence in Nigeria before addressing its tax liability, unless in the case of passive income. Foreign companies operating in Nigeria often face disputes over whether their activities qualify as a PE under Nigerian tax laws and relevant tax treaties. The determination of a PE is crucial as it dictates whether a foreign entity is subject to CIT in Nigeria. Disagreements on this matter can lead to lengthy and costly litigation.

For high net worth individuals, disputes emerge over the determination of tax residency. This includes cases where individuals try to avoid being taxed in Nigeria by claiming residency in another jurisdiction, leading to conflicts over which country has the right to tax their income. There have not been many of these kinds of cases in Nigeria.

To mitigate such disputes and promote tax certainty, information circulars, guidelines and other memoranda by the NRS should be clear, and complex and intricate transaction issues across a range of sectors and taxpayers should be anticipated so that taxpayers have sufficient guidance. Another potential solution is to make ATRs binding on the tax authorities, subject to certain guidelines, as applicable in other jurisdictions.

Finally, tax should be arbitrable in Nigeria, as seen in other jurisdictions – again, subject to certain guidelines.

9. State Aid Disputes

9.1 State Aid Disputes Involving Taxes

No information is available on this topic.

9.2 Procedures Used to Recover Unlawful/ Incompatible Fiscal State Aid

No information is available on this topic.

9.3 Challenges by Taxpayers

No information is available on this topic.

9.4 Refunds Invoking Extra-Contractual Civil Liability

No information is available on this topic.

10. International Tax Arbitration Options and Procedures

10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs)

Nigerian courts have consistently held that tax disputes fall outside the purview of arbitration and other binding ADR mechanisms. This position is rooted in the belief that taxation pertains to public policy and sovereign rights, making it inappropriate for resolution through arbitration. Nigeria did not opt into the mandatory binding arbitration provisions of the MLI. This decision aligns with Nigeria's domestic stance on the non-arbitrability of tax disputes and reflects a cautious approach towards ceding tax dispute resolution to international arbitration mechanisms.

10.2 Types of Matters That Can Be Submitted to Arbitration

The existing policy in Nigeria is that tax disputes are non-arbitrable. As a result, arbitration is not an available avenue for resolving such disputes in Nigeria, and the traditional methods of dispute resolution – such as domestic courts or administrative processes – remain the primary recourse.

10.3 Application of Baseball Arbitration or the Independent Opinion Procedure

Given the non-arbitrability of tax disputes in Nigeria, Nigeria applies neither baseball arbitration nor the independent opinion procedure to resolve tax disputes. Tax disputes are mostly resolved through domestic litigation and administrative frameworks rather than international arbitration mechanisms.

10.4 Implementation of the EU Directive on Arbitration and/or the MLI

Currently, there is no publicly available information indicating that Nigeria has initiated or concluded any tax dispute cases under the frameworks provided by the MLI. This may be attributed to several factors,

including the need for domestic ratification of the MLI, which is a prerequisite for its provisions to take effect.

10.5 Existing Use of Recent International and EU Legal Instruments

Not being an EU member state, Nigeria is not subject to EU legal instruments.

10.6 New Procedures for New Developments Under Pillars One and Two

Nigeria has expressed reservations regarding the OECD's Pillars One and Two, primarily due to concerns that the thresholds set by these frameworks are too high to effectively tax MNEs operating within its borders. Nigeria has, however, introduced a global minimum top-up tax regime in its domestic tax laws. This minimum effective tax rate is in line with the OECD Pillar Two proposal, which sets out global minimum tax rules designed to ensure that large multinational businesses pay a minimum effective rate of tax of 15% on profits in all countries where they earn income.

Under the Nigeria Tax Act, 2025 (NTA), Nigeria imposes a minimum effective tax rate (ETR) of 15% on large companies and constituent entities of MNE groups. Where a company's ETR falls below 15% of net income, the NTA requires the company to recompute and pay additional tax to make its ETR equal to 15%. This top-up tax requirement applies to:

- constituent entities of MNE groups with an aggregate group turnover of GBP750 million or its equivalent; and
- any other company with an aggregate turnover of NGN50 billion or more in the financial year.

Exemptions apply for approved free-zone enterprises with respect to their approved activities, except for sales within the customs territory or where the free zone enterprise is a constituent entity of an MNE group with an aggregate group turnover of GBP750 million or its equivalent.

In addition, under the NTA, where the income tax paid by a non-resident company that is a subsidiary of a Nigerian company or a member of a multinational group of a Nigerian company in any year yields less

than the 15% minimum ETR, the Nigerian parent company is required to pay an amount to make that non-resident subsidiary's income tax equal to the minimum ETR.

10.7 Publication of Decisions

Given the non-arbitrability of tax disputes in Nigeria, the provisions of the MLI relating to the confidentiality of arbitration proceedings (Article 21) do not apply in Nigeria.

10.8 Most Common Legal Instruments to Settle Tax Disputes

In Nigeria, the predominant methods for resolving tax disputes are through the domestic judicial system, particularly the TAT and the FHC. The reliance on these fora is due to their established legal frameworks and procedures tailored to the Nigerian context. While DTTs provide avenues such as MAPs for cross-border tax disputes, their utilisation depends on the specific provisions of each treaty and the willingness of competent authorities to engage in mutual agreements. As Nigeria is not a member of the EU, it is not subject to EU-specific tax dispute resolution mechanisms.

10.9 Involvement of Independent Professionals

Tax disputes are not arbitrable in Nigeria; as a result, taxpayers do not hire professionals to initiate or handle arbitration proceedings for tax disputes on their behalf.

11. Costs/Fees

11.1 Costs to Litigate at Administrative Level

Taxpayers are not required to pay fees to resolve disputes with the tax authorities at the administrative level. The Office of the Tax Ombud also does not charge fees to review and resolve complaints made by taxpayers against tax officials and authorities.

However, taxpayers typically incur costs for professional services required to address disputes at the administrative level. These services may include fees for lawyers, accountants or other specialists who assist in navigating the administrative process. The amount of these fees can vary significantly depend-

ing on factors such as the complexity of the case, the professionals involved and the duration of the administrative process.

11.2 Judicial Court Fees

In Nigeria, the process of litigating tax disputes involves several judicial levels, each with its own fee structure and payment protocols. Tax disputes may be commenced at the TAT or the FHC, depending on the nature of the matter. To initiate a tax dispute, filing fees are required, whether at the TAT or the FHC, as the court of first instance. Other fees may include oath fees, fees for the filing of exhibits, fees for the service of documents and processes within and out of jurisdiction, etc. Appeals lie from the TAT to the FHC, from the FHC to the Court of Appeal, and from the Court of Appeal to the Supreme Court. Tax appeal cases require the payment of additional filing fees and fees for compiling the records. The exact amounts are specified in the fee schedule of the rules of the various courts and may vary based on the specifics of the case and the relief sought.

The party initiating the legal action or the appeal – be it the taxpayer or the tax authority – is responsible for paying the requisite filing fees at the commencement of each stage of litigation. The other party is also required to pay filing fees when filing a response.

The filing fees are typically paid at the beginning of the proceedings. Payment is a prerequisite for the court to accept and process the case.

In addition to the filing fees, by Paragraph 7 (6) of the Second Schedule to the JRBEA, the TAT may adjourn the hearing of an appeal to any subsequent day and order the appellant to deposit with the tax authority, before the day of the adjourned hearing, an amount on account of the tax charged by the assessment under appeal equal to the lesser of:

- the tax charged upon the appellant for the preceding year of assessment; or
- one half of the tax charged by the assessment under appeal.

Order III Rule 6 (a) of the TAT Rules also mandates taxpayers to deposit 50% of the disputed tax amount

into an account designated by the TAT as a condition precedent to filing an appeal, and to adhere to an affidavit of compliance with this requirement.

Order V of the FHC Tax Rules requires a taxpayer appealing a TAT decision to the FHC to deposit the judgment sum in an account in the name of the Chief Registrar of the FHC as a condition for prosecuting an appeal.

See **1.5 Additional Tax Assessments** for further discussion of the court's position with respect to this requirement.

11.3 Indemnities

In Nigeria, if a court determines that an additional tax assessment is null and void, the taxpayer may seek indemnity and request a refund of any amounts that were wrongfully collected based on the invalid assessment. The taxpayer may also request reimbursement of the legal costs, professional fees and other expenses incurred during the dispute. However, the granting of such reimbursement is at the court's discretion.

11.4 Costs of ADR

Tax disputes are not arbitrable in Nigeria; as a result, taxpayers do not incur any ADR costs. The Office of the Tax Ombud also does not charge fees to review and resolve complaints made by taxpayers against tax officials and authorities.

12. Statistics

12.1 Pending Tax Court Cases

Specific statistics on the number of tax court cases currently pending in each instance, their value, and the average number of cases attributed to a first-instance judge are not readily available in the public domain.

12.2 Cases Relating to Different Taxes

Specific statistics on cases initiated and terminated each year, regarding different taxes and their value, are not readily available in the public domain.

12.3 Parties Succeeding in Litigation

Specific statistics detailing the success rates of tax authorities versus taxpayers in Nigerian tax litigation are not readily available in the public domain.

13. Strategies

13.1 Strategic Guidelines in Tax Controversies

One of the key strategies is to maintain accurate and comprehensive tax records, as proper documentation of financial transactions and commercial agreements, tax returns and correspondence with tax authorities can serve as vital evidence in a dispute. Taxpayers should ensure that their records align with regulatory requirements and can be readily presented to support their claims. When entering into commercial agreements, taxpayers must ensure that such agreements reflect the substance of the transaction and are not just maintaining a form. The use of APAs can also mitigate the risk of potential transfer pricing disputes.

Taxpayers must be familiar with the provisions of Nigeria's tax laws, including the process of obtaining treaty benefits under DTTs. Engaging a knowledgeable tax consultant or lawyer can be essential in interpreting complex tax laws and identifying possible areas of defence.

Before escalating a dispute to litigation, taxpayers should explore negotiation with tax authorities; this can often lead to a more efficient and cost-effective resolution compared to lengthy and expensive litigation.

Taxpayers must adhere to statutory deadlines for filing objections and appeals, as missing deadlines can weaken a taxpayer's case or result in the loss of the right to challenge an assessment.

Trends and Developments

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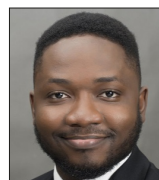
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Introduction

The general tax landscape in Nigeria has undergone a fundamental reset over the last few months with the passage of four new laws (“Tax Reform Acts”) that significantly impact how tax liability, as well as disputes, are determined and administered. As part of the sweeping changes, new rates have been introduced for personal income tax and capital gains, with the principal tax authority undergoing a rebrand. Nigeria also signed a tax treaty with Rwanda, while the Tax Appeal Tribunal (TAT) got a big win with its jurisdiction now expanded to cover tax laws enacted at both the federal and state levels. The Nigerian tax authority has advanced initiatives relating to tax residency, cross-border taxation, digital compliance and information exchange, while also strengthening the existing registration and reporting requirements with a focus on leveraging international collaborations, including the execution of a tax co-operation memorandum of understanding (MoU) between Nigeria and France.

In a year where over 50% of the existing tax laws were either repealed or amended, the trends and developments are, as can be expected, largely driven by the changes introduced by the new laws.

The Tax Reform Acts

On 26 June 2025, the President of the Federal Republic of Nigeria signed into law the following statutes:

- the Nigeria Tax Act, 2025 (NTA);
- the Nigeria Tax Administration Act, 2025 (NTAA);
- the Nigeria Revenue Service (Establishment) Act, 2025 (the “NRS Act”); and

- the Joint Revenue Board of Nigeria (Establishment) Act, 2025 (the “JRBN Act”).

The NRS Act has a commencement date of 26 June 2025, with the other statutes having a commencement date of 1 January 2026.

The NTA repeals the major tax laws, consolidates the legal frameworks relating to taxation by providing for the taxation of the income of persons (legal and natural), transactions and instruments, and merging tax provisions from various laws into one single document. The objective is to help eliminate conflicting, ambiguous and overlapping provisions that cause complexity and uncertainty.

It is anticipated that the tax authorities will issue a number of regulations and circulars in the course of the year to further the objectives of these laws while clarifying many of their provisions.

Tax Authority Reforms

The administrative reforms include the rebranding of the federal tax authority, which previously administered federal taxes and was known as the Federal Inland Revenue Service, to the Nigeria Revenue Service (NRS). The NRS is charged with the responsibility to assess, collect and account for all revenue (not just taxes) accruing to the federation.

Another major highlight of the administrative reform is the establishment of the Office of the Tax Ombud under the JRBN Act, which is expected to further improve the tax system in Nigeria by serving as an independent and impartial arbiter that reviews and

resolves tax-related complaints, including those made against tax officials and authorities. The Office of the Tax Ombud is expected to serve as a first point of redress for taxpayers where an issue remains unresolved by the tax authorities. It has the power to receive complaints, investigate, resolve and make recommendations, including exploring alternative dispute resolution mechanisms when disputes are lodged before it.

Tax Rate Restructuring for Income Tax, Companies Income Tax and Capital Gains Tax

Income tax (individuals, trusts and estates):

The NTA introduces a new graduated personal income tax structure that aims to enhance equity, rationality and vertical fairness. The new personal income tax rates range from 15% to 25%, depending on the level of income of individual taxpayers. Individuals earning below NGN800,000 per annum have been effectively removed from the tax net, thereby increasing disposable income at the base of the income scale. A significant change is the replacement of the consolidated relief allowance by a rent relief allowance capped at either NGN500,000 or 20% of annual rent, whichever is lower. This illustrates the narrower confines within which relief is granted or claimed by individuals under the new personal income tax regime. The revised income band and tax rates also apply to trusts and estates. Under the NTA, the income arising from a settlement, trust or estate is chargeable to tax on the trustee or executor of a deceased person's estate.

Companies income tax

Companies income tax is payable by a Nigerian company at a flat rate of 30%, save for a small company. Under the NTA, a small company is a business/company with a gross annual turnover of NGN100 million or less and total fixed assets with a value that does not exceed NGN250 million. The flat 30% rate payable by a Nigerian company may be reduced to 25% following an order issued by the President on the advice of the National Economic Council.

The new laws now define a "Nigerian company" to not only include a company that is incorporated and registered under Nigerian law, but also one whose central or effective place of management or control is Nigeria. This provides for a broader definition of

what makes a Nigerian company. From a controversy perspective, it is envisaged that the determination of a place of control and management, or an or effective place of management or control, would likely become a subject of litigation or mutual agreement procedure (MAP) based on treaty provisions. For instance, the NTAA requires the Minister of Finance to prescribe what constitutes an effective place of management and control, whereas this is typically applied as a tie breaker to determine fiscal residence under tax treaties. Article 4 (3) of the UK-Nigeria double taxation treaty (DTT) states that "where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall settle the question by mutual agreement". The question this begs is whether the Minister has the power to determine what constitutes an effective place of management and control in relation to treaty disputes.

Capital gains tax

In relation to capital gains tax (CGT), the NTA has repealed the previous flat rate of 10% and replaced it by merging the CGT rate with the relevant rates applicable to individuals and businesses (ie, between 15% and 25% for individuals, and either 0% or 30% for companies).

Changes to the Taxation of Shares

One of the key objectives of the tax reforms is to put in place anti-avoidance mechanisms that help to plug loopholes used by taxpayers to avoid paying tax in Nigeria. With this understanding, the NTA introduces CGT liability in the case of indirect share transfers. The NTA provides that any gains that accrue to a non-resident person upon the disposal of shares are subject to CGT where the disposal leads to either:

- a change in the ownership structure or group membership of a Nigerian company; or
- a change in the ownership of, title in or interest in any asset located in Nigeria. In effect, CGT is now payable by a non-resident where a disposal, even though occurring outside Nigeria, leads to the indirect transfer of ownership in Nigerian companies or assets.

The NTA, however, provides some relief to taxpayers. Any gains that accrue upon the disposal of shares in a Nigerian company will not be subject to CGT where:

- the disposal proceeds from the disposal of shares do not exceed, in aggregate, NGN150 million, and the chargeable gain does not exceed NGN10 million in any 12 consecutive months; and
- the disposal proceeds, irrespective of the amount involved, are reinvested by acquiring shares in the same or other Nigerian companies, within the same year of assessment, provided the tax accrues proportionately on the part of the proceeds that are not reinvested in accordance with the provisions of the NTA.

Confirmation of the Powers and Status of the Tax Appeal Tribunal

As Nigerian tax jurisprudence continues to grow, 2025 saw a number of impactful decisions made by the TAT as well as the superior courts of record. One notable development in Nigeria's tax controversy space is the strengthening of the TAT's institutional authority in a case filed against the federal tax authority. What was previously a contested question as to whether the TAT could grant interim or interlocutory relief has now evolved into a clearer recognition of the TAT's incidental and ancillary powers. This shift reflects a more functional interpretation of the TAT's mandate, ensuring that enforcement actions do not undermine pending appeals and that taxpayers have access to meaningful protection in the interim.

At the constitutional level, clarity has emerged regarding the relationship between the TAT and the Federal High Court (FHC). A recent decision of the Supreme Court of Nigeria has now positioned the TAT firmly as a specialised, quasi-judicial body whose processes operate as a condition precedent to judicial review by the FHC, rather than as a competing forum. In effect, parties are to approach the TAT as a specialised fact-finding court before proceeding to approach the superior courts of record, starting from the FHC.

Jurisdictional Conflicts Over Federal and State Taxes

The constitutional conflict between the TAT and state high courts is centred around whether tax disputes

covering taxes such as personal income tax, CGT and stamp duties, are required to be brought before the TAT or whether taxpayers may file an action before the State High Court.

Taxes such as land use charge and business premises levies fall within the constitutional remit of the states. However, because the TAT was established under federal law, questions arise about whether the TAT can adjudicate disputes arising from state taxes. This has led to instances where state high courts are of the view that certain matters fall exclusively within their authority, creating uncertainty.

As part of the recent reforms, the jurisdiction of the TAT has now been clearly expanded to cover tax disputes and controversies arising under any existing and future tax laws enacted at both the federal and state levels. What this means is that taxpayers can now approach the TAT regarding tax disputes arising under a law enacted by either the National Assembly or the House of Assembly of a state. This will lead to a more centralised and specialised tax adjudication framework that promotes greater certainty in the resolution of tax controversies.

Digitalisation and Fiscalisation of VAT

One of the clearest administrative shifts under the recent tax reforms is the formal fiscalisation of VAT-able supplies and the embedding of technology within the compliance architecture. The NTA now makes it mandatory for a taxable person making a taxable supply to implement the fiscalisation system deployed by the NRS. In fact, the NTAA provides for a penalty, plus 100% of the tax due and interest at the prevailing Central Bank of Nigeria monetary policy rate per annum, for failure to comply with the mandatory fiscalisation rules. These initiatives are particularly important given that VAT has been one of the most heavily disputed taxes in recent years, especially in relation to non-resident companies operating in Nigeria.

In 2025, the NRS announced the roll-out of its e-invoicing/Merchant Buyer Solution to be utilised by all registered businesses and entities transacting in or from Nigeria. Taxpayers are expected to connect to the NRS's electronic platform through access point providers (APPs) approved by the NRS. The APPs

will help with generating, validating and transmitting invoices to and from the NRS's e-invoicing platform.

This marks a decisive move from periodic, largely self-reported VAT compliance to technology-driven, near-real-time transaction visibility. Under the previous regime, VAT compliance relied heavily on monthly returns supported by underlying documentation, which was subject to post-filing audits. Under the new system, there will be an integration of technology into the entire value chain, which reflects a broader strategy of incorporating tax reporting within business processes rather than relying predominantly on retrospective verification. It is expected that the NRS will, over the course of the year, issue more detailed rules regarding the fiscalisation system to be adopted, as well as a transition arrangement for its implementation.

Nigeria Signs Double Tax Treaty with Rwanda

Nigeria currently has DTTs with about 16 countries, which have been domesticated. Some of the countries with which Nigeria has a DTT include Belgium, Canada, China, the Czech Republic, France, Singapore and the United Kingdom. In June 2025, Nigeria and Rwanda signed what Nigeria's Ministry of Finance referred to as a landmark agreement titled the "Agreement on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income". It is expected that the Nigeria-Rwanda DTT will help deepen economic ties between the countries. The treaty was entered into as part of Nigeria's ongoing support of various continental initiatives that seek to promote economic co-operation among African countries, such as the African Continental Free Trade Area.

It is hoped that the Nigeria-Rwanda DTT will, in line with the provisions of the Nigerian Constitution and the NTA, be ratified/domesticated by the National Assembly so it can become effective in Nigeria. Nigeria currently has a DTT, which is in effect, with only one other African Country: South Africa.

Mandatory Disclosure of Tax Planning and the Principal Purpose Test

The NTAA now requires any person who enters or intends to enter into a "disclosable transaction"

whose principal purpose is a benefit that allows, or might allow, the taxpayer to obtain a tax advantage to provide information to the relevant tax authority, without notice or request. This obligation is triggered not by an assessment, audit or investigation, but by the taxpayer's own evaluation of the purpose of a transaction. A "tax advantage" includes:

- a relief or increased relief from tax;
- repayment or increased repayment of tax;
- avoidance or reduction of a charge to tax or an assessment to tax;
- avoidance of a possible assessment to tax;
- deferral of a payment of tax or advancement of a repayment of tax; or
- avoidance of an obligation to deduct or account for tax.

Given the very broad definition of what amounts to a tax advantage, most structures adopted in commercial transactions that help to minimise tax exposure may fall within the scope of mandatory disclosure. Structuring deals in a manner that is tax efficient is a normal and legitimate consideration in commercial planning, yet the NTAA does not confine disclosure to artificial or abusive arrangements. Instead, the obligation depends on whether obtaining a tax advantage is the "principal purpose". Commercial transactions are rarely driven by a single objective, and considerations such as choosing the most tax-efficient structure are only a part of the overall decision-making process. Determining when a tax advantage moves from incidental effect to principal purpose is inherently subjective and may inevitably give rise to disputes between taxpayers and the tax authority. The NRS may issue regulations to provide clarity on this subject as well as the kind of information that taxpayers would need to provide, the period for making the disclosure, the form and manner of delivery, as well as the penalties for non-compliance.

Retention of the Security Deposit Requirement

One issue that has been controversial in recent times is the requirement for taxpayers to pay a security deposit (either the tax charged for the preceding year of assessment or one-half of the tax charged by the assessment under appeal, whichever is less) into the court before they can challenge an assessment by

the tax authorities. Under the now-repealed Federal Inland Revenue (Establishment) Act 2007 (the “FIRS Act”), the TAT was empowered to order a taxpayer to pay a security deposit pursuant to the provisions of paragraph 15 (7)(c) of the Fifth Schedule to the FIRS Act where the FIRS is able to establish to the satisfaction of the TAT that:

- the appellant has for the year of assessment concerned, failed to prepare and deliver to the service returns required to be furnished under the relevant provisions of the tax laws;
- the appeal is frivolous or vexatious, or is an abuse of the appeal process; or
- it is expedient to require the appellant to pay an amount as security for prosecuting the appeal.

The JRBN Act retains these provisions despite their constitutionality being in doubt, given the decision of the FHC in *Joseph Bodunrin Daudu SAN v Minister of Finance, Budget and National Planning & 2 Ors*.

In that case, the court considered the provisions of subsidiary legislations including the Tax Appeal Tribunal (Procedure) Rules (2021), the Federal High Court of Nigeria (Federal Inland Revenue Service) Practice Directions (2021) and the Federal High Court of Nigeria (Tax Appeals) Rules (2022), which required taxpayers to make a mandatory deposit of either 100% or 50% of the disputed amount. The court held that the import of these provisions is that any tax debtor that is unable to afford the deposit will automatically be deprived of their right to appeal, which is a constitutional right, and that as a result, the provisions are unconstitutional. Smaller taxpayers will be faced with effective exclusion from the appeals process because of the prohibitive deposit requirements, which would force them to either forfeit valid claims or settle under duress to safeguard working capital.

In light of the controversy this issue has generated, its retention in the JRBN Act is sure to be the subject of tax controversy in the coming months. It is essential that the highest courts in Nigeria reach a decision on the matter so taxpayers can have much needed clarity on the issue.

Fossil Fuel Surcharge and Development Levy

One of the main goals of the tax reforms that led to the enactment of the Tax Reform Acts is to reduce the incidence of multiple taxation in Nigeria while harmonising the provisions of the tax laws. The NTA has now introduced a new development levy of 4% of assessable profits, payable by all companies other than small companies and non-resident companies. The development levy replaces a number of levies that companies were previously required to pay, such as the tertiary education tax, information technology levy, police trust fund levy and the National Agency for Science and Engineering Infrastructure levy. It is expected that this new development levy will help reduce the tax burden for businesses in Nigeria.

The NTA also introduces, formally, into the tax laws a surcharge of 5% payable on chargeable fossil fuel products provided or produced in Nigeria, and which is to be collected at the time the chargeable transaction occurs. There has been some controversy as to whether this surcharge is a new form of tax payable by Nigerians or is simply a restating of the provisions of an existing law. This is because the Federal Roads Maintenance Agency (Amendment) Act, 2007 (as amended) provides for a 5% user’s charge on the pump price of petrol and diesel. The chair of the committee that spearheaded the drafting of the new laws has clarified that this surcharge is not a new tax and that it has been included in the NTA for harmonisation and transparency. The surcharge is to be paid on the retail price of the relevant products. As part of the ongoing push to promote a greener economy, the NTA exempts certain items from this surcharge, some of which include clean or renewable energy products, household kerosene, cooking gas and compressed natural gas. It is expected that the Minister of Finance will issue an order providing an effective date for the commencement of this surcharge should the government decide to start collecting this surcharge.

International Co-Operation and Emerging Controversies: Nigeria–France Tax MoU

In December 2025, Nigeria and France formalised a tax co-operation MoU, signed by the tax authorities of both countries. While the MoU is not a binding DTT, it establishes a framework for administrative collaboration between the NRS and the Directorate General

of Public Finances (*Direction Générale des Finances Publiques* – DGFIP), particularly in the areas of digital transformation, capacity building and information exchange, consistent with the international standards on transparency and base erosion and profit shifting (BEPS).

Nigeria entering into agreements like the MoU should help both the tax authorities and taxpayers to resolve disputes more efficiently. With better access to accurate cross-border financial data, tax authorities can verify claims quickly and make more informed decisions, reducing the length and complexity of investigations. For taxpayers, the increased transparency and consistency in tax treatment should provide greater predictability in cross-border transactions, thereby helping businesses and taxpayers to structure their dealings properly, at least in relation to transactions cutting across Nigeria and France. This co-operation should also facilitate smoother use of dispute-resolution tools like MAPs and advance pricing agreements (APAs), ultimately lowering compliance burdens.

The MoU illustrates Nigeria's increasing focus on leveraging international co-operation among other tax authorities, such as the DGFIP, to strengthen compliance, especially in sectors with cross-border exposure.

Conclusion

The Nigerian tax system has undergone significant reforms over the past year, with the entire system being overhauled to provide for clearer statutory rules, expanded institutional oversight, and a new focus on using technology to improve tax collection and compliance. With the principal tax authority itself, the NRS, undergoing a reform in both its name and its operations, the now-operational 2025 reforms demonstrate a co-ordinated shift towards tightening the compliance framework while simultaneously modernising tax administration and dispute resolution mechanisms.

For businesses and individuals, particularly those with cross-border operations, multi-entity structures or technology-driven business models, the practical implications are immediate and substantial. Governance frameworks, documentation standards, internal controls and real-time compliance readiness are no longer peripheral considerations but central elements of tax risk management.