TAXATION: RECENT KEY DEVELOPMENTS IN NIGERIA

This article highlights the latest developments in the Nigerian taxation space, including updates on tax laws, policies, regulations, and initiatives which will have or have had a significant impact on taxpayers and businesses in Nigeria. They include the following:

1. Introduction of Carbon Tax Policy

In line with Nigeria's climate change and Green Growth commitment to reduce gas flaring at the United Nations Climate Change Conference, the Federal Government of Nigeria (FGN) on 13 February 2023, announced its plans to unveil a Carbon Tax Policy and Budgetary System for Nigeria in accordance with the provisions of the Climate Change Act 2021 (the "Policy").

The Climate Change Act (the "Act") provides a framework for achieving low GreenHouse Gas (GHG) emissions and to constitute climate change actions into national plans and programs. In its section 3, the Act establishes the National Council on Climate Change ("the Council") which shall have the power to make policies and decisions on all matters relating to climate change in Nigeria, the council shall also collaborate with the Federal Inland Revenue Service (FIRS) to develop a mechanism for carbon tax and carbon trading in Nigeria.

The Council is expected to present the policy which will lay out the framework for carbon trading in Nigeria. Presumably, the policy will prescribe a limit of Greenhouse Gases (GHG) allowable by public and private entities and the tax payable as a result of the relevant activities. The proceeds from the tax collected will be used to fund the Climate Change Fund proposed by the Act.

In addition to helping the Government with revenue generation, it is expected that this policy will encourage consumers to adopt the usage of environmentally friendly fuels, new technologies and reduce emissions.

2. Signing of the Business Facilitation (Miscellaneous Provisions) Act 2023

On 14 February 2023, President Muhammadu Buhari signed the Business Facilitation (Miscellaneous Provisions) Act 2023, ("the Act") into law as part of the Federal Government's initiatives to foster an enabling environment for micro, small, and medium-sized enterprises (MSMEs) in Nigeria.

The Act amends salient provisions of the following laws: Companies and Allied Matters Act, Nigerian Export Promotion Act, Customs and Excise Management Act, Export (Prohibition) Act, Financial Reporting Council Act, Foreign Exchange (Monitoring and Miscellaneous) Act, Immigration Act, Industrial Inspectorate Act, Industrial Training Fund Act, Investment and Securities Act, National Housing Fund Act, National Office for Technology Acquisition and Promotion Act, National Planning Commission act, Nigerian Customs Service Board Act, Nigerian Investment Promotion Commission act, Nigerian Oil and Gas Industry Content Development Act, Nigerian Ports Authority Act, Patent and Design Act, Pension Reform Act, Standard Organisation of Nigeria Act and the Trademarks Act.

Some of the notable provisions of the Act include the following:

- Automation of all application processes by the Registrar-General of the Corporate Affairs Commission (CAC) within 14 days of the commencement of the Act.
- powers to allot shares may now be given to the directors of a company, whether private

or public, by the general meeting or by the company's article.

- public companies can now hold general meetings electronically and vote electronically.
- Establishment of a single window platform to enable parties involved in trade and transport under the Customs and Excise Management Act interface with each other and the authorities for purposes of fulfilling all import, export, transit related and regulatory requirements.

3. Signing of Memorandum of Understanding between the Federal Inland Revenue Service (FIRS) and the Lagos State Internal Revenue Service (LIRS)

For the purposes of collaborating on their tax administration functions, the FIRS and the LIRS on 6 February 2023 signed an MoU. The objective of the MoU is to increase the revenue collection quota for both tax authorities. This also allows both agencies to carry out joint audit and investigation as well as automatic exchange of information and data gathering for the purpose of tax administration.

Pursuant to the MoU, a framework for the implementation of a Presumptive Income Tax Assessment regime ("PITAS") for personal income tax and ground rent will be developed by the FIRS and the Ministry of Finance ("MoF") for the administration and collection of personal income tax and ground rent in Lagos State. Under a presumptive tax assessment system, the tax authorities will assess a taxpayer on the basis of presumed income - that is, the amount of income which the tax authority believes the taxpayer earned in a particular period using indicators such as type of business, asset value, receipts, bank statements to determine the tax payable.

4. Issuance of the Excise Duty on Non-Alcoholic Beverages

The Finance Act 2021 ("Finance Act") amended the Customs, Excise Tariffs, etc (Consolidated) Act, 2004 ("CETA") by introducing a new section 21(3) to CETA. This new subsection imposed an excise duty of N10 per litre on non-alcoholic, carbonated, and sweetened beverages.

The Federal Government posits that the introduction of the excise duty is to discourage excessive consumption of sugar in beverages which contributes to several health conditions including diabetes and obesity. This excise duty, otherwise known as the "Sugar tax" was also introduced to generate revenues for health-related and other critical expenditures. Though the effective date of commencement of the Finance Act was January 2022, the excise duty did not commence until 1 June 2022.

In exercise of the powers conferred by virtue of section 120 of the Customs and Excise Management Act 2004 ("CEMA"), the Minister of Finance, Budget and National Planning, on 12 September 2022, signed a Regulation titled Excise Duty (Non-Alcoholic, Carbonated and Sweetened Beverages) Regulations, 2022 ("Regulations") for the effective administration of the excise duty.

The Regulation provides definitions for the kinds of beverages which are chargeable to and exempt from the payment of the tax. In addition, the Regulation makes provision for payment and filing obligations with respect to manufactured, packaged, and imported non-alcoholic beverages.

5. The Finance Bill 2022

Upon signing of the current Finance Bill 2022 ("the Bill") into law by the President, the Act will become operational, and its provisions will become law. The Bill provides that the provisions of the Finance Act 2022 shall take effect from 1st January 2023 or such other date that shall be indicated by the National Assembly by law or by the President of the Federal Republic of Nigeria by assent or order. '

The Bill proposes to introduce significant amendments to various tax, fiscal and regulatory laws in Nigeria including Capital Gains Tax Act, Companies Income Tax Act, Customs, Excise Tariff etc. (Consolidation) Act, Personal Income Tax Act, Petroleum Profits Tax Act, Stamp Duties Act, Value Added Tax Act, Corrupt Practices and other Related Offences Act and the Public Procurement Act.

Some of the notable changes to be made by the Bill with respect to tax laws in Nigeria include the following:

- Designates contributions made to a fund, scheme or arrangement approved by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) for the purpose of decommissioning and abandonment as allowable deductions under the Petroleum Profits Tax Act.

- Inclusion of Local Governments in the sharing formula with respect to revenue generated from the collection of Electronic Money Transfer Levy under the Stamp Duties Act. The proposed sharing formula is as follows: Federal Government- 15%, State Governments- 50%, Local Governments- 35%.
- Seeks to make provision for the following deductions, among others, in determining the profit of companies in the Lottery and Gaming business; money paid as winnings, prize and funds contribution to the lottery funds, agents commission expenses incurred, taxes and levies paid to relevant regulatory and government authorities as contained in the relevant Federal and State Laws.
- Deletion of the exemption of twenty-five percent of incomes in convertible expenses derived from tourists by hotel from taxation.
- Capital Gains Tax is to be charged on the disposal of digital assets and incorporeal property generally.
- Losses arising from the sale of a capital asset to be deducted from gains derived from the sale of another capital of the same class.
- Investment allowance of 10% and 5% per annum to be granted to medium and large companies engaged in commercial winning, capture, production, and utilization of associated and non-associated gas respectively, subject to attaining a cumulative production of 300 billion cubic feet.
- Introduction of a new companies income tax rate of 50% to be imposed on companies that flare gas – including upstream petroleum companies who have not converted to the Petroleum Industry Act (PIA) regime and are not liable to pay Companies Income Tax.
- Imposition of excise duty on all services including telecommunications services provided in Nigeria at rates to be prescribed by the President.
- Persons appointed to deduct VAT at source on invoices received from their vendors are now to remit such VAT to the FIRS on or before the 14th day of the following month, against the current position of the 21st day of the following month.
- Premium paid to an insurance company in respect of a contract for deferred annuity for an individual or his/her spouse to become an allowable deduction under the Personal Income Tax Act; provided that the premium is not withdrawn before the end of 5 years from the date the premium was paid.

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About WTS Global

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