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# KEY HIGHLIGHTS

OF THE TAX EVENTS OF 2023

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## 2023 IN A NUTSHELL

2023 marked a pivotal year for Nigeria's fiscal system, shaped by a confluence of political and legislative developments. The year began with a renewed vigour for revenue generation on the part of the Federal Government and regulators alike, setting the stage for potential policy shifts. This momentum was swiftly translated into action with the enactment of the Business Facilitation Act 2023 and the Finance Act 2023, both aiming to modernize and streamline tax regulations. These legislative changes, alongside executive measures, aimed to strengthen the country's fiscal system and bolster revenue generation.

Beyond legislation, regulators like the Federal Inland Revenue Service (**FIRS**) and the Lagos State Internal Revenue Service (**LIRS**) actively pursued greater tax compliance through targeted initiatives. The judiciary also played a crucial role in shaping the tax landscape. The Tax Appeal Tribunal (**TAT**) issued

landmark decisions, including the decision declaring the Income Tax (Country by Country) Regulations 2018 unconstitutional, providing invaluable guidance on tax laws, and impacting both taxpayers and authorities.

These legislative, regulatory, and judicial developments collectively marked a significant transformation for Nigeria's tax landscape in 2023. The evolving system aims for a more robust and progressive future, impacting business operations, government revenue generation, and the overall financial environment for individuals and businesses alike.

Focusing on critical tax reforms, compliance initiatives, and judicial pronouncements, this highlight narrates the tax events of the 2023 fiscal year in a nutshell.





1. **The Business Facilitation Act 2023**: the BFA was enacted with the aim to streamline business operations in Nigeria as well as to promote the ease of doing business. Signed into law in February 2023, the BFA reformed 21 business related laws including their impact on tax regulations and legislations. Some of these amendments include the raising of the minimum employee threshold for mandatory contributions to the Industrial Training Fund (ITF) from 5 to 25 under the ITF Act; the mandating of public sector employees and self-employed individuals earning the minimum wage, or more to contribute 2.5% of their monthly income to the National Housing Fund; and the affirming of the supremacy of the financial reporting guidelines as adopted by the Financial Reporting Council Act (FRCN Act) over other legislations, as it pertains to the form of financial reporting.
  
2. **The Finance Act 2023**: The FA 2023, signed into law by former President Buhari, aimed to align taxation with economic reforms and global standards. By virtue of the Finance Act (Effective Date Variation) Order, 2023, the FA 2023 came into effect in September 2023 to comply with advance notice requirements. Some key amendments are highlighted below:
  - 2.1. Inclusion of digital assets within the definition of chargeable assets under the Capital Gains Tax Act;
  - 2.2. Introduction of a new tax returns compliance regime for the Nigerian operations of companies involved in transport business by sea or air;
  - 2.3. Repealing of (a) Rural Investment Allowance Incentive under section 34 CITA; (b) the Reconstruction Investment Allowance under section 32 CITA; and (c) the 25% Income tax exemption for hotels in relation to income derived from tourists in convertible currencies under section 37 CITA;
  - 2.4. Imposition of 0.5% levy on eligible goods, imported into Nigeria from outside Africa for the financing of Nigeria's capital contributions to named multilateral organisations under the CET Act;
  - 2.5. Imposition of excise duties on all services provided in Nigeria;



2.6. The expansion of deductible expenses under the Petroleum Profits Tax Act to include such amount contributed for de-commissioning and abandonment into a fund approved for such purpose by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) subject to any surplus from the fund being liable to tax upon decommissioning;

2.7. The amendment of the distribution formula for the allocation of the revenue from the Electronic Money Transfer Levy to reflect thus: 15% to the Federal Government; 50% to the State Government and 35% to the Local Government;

2.8. The redefinition of building to mean “any structure permanently affixed to land for all or most of its useful life” under the VAT Act; and

2.9. The amendment of the statutory due date (for filing of VAT returns for those appointed by the FIRS to withhold VAT) from the 21<sup>st</sup> day of the following month to the 14th day of the following month that the VATable transaction occurred.



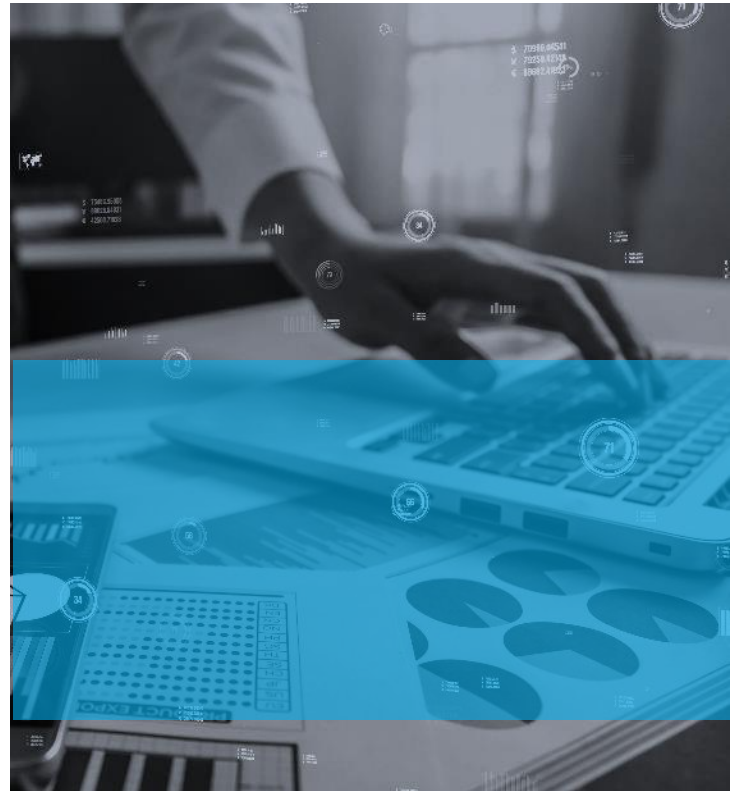
1. In **Wheatbaker Investments and Properties Limited v The Economic and Financial Crimes Commission (EFCC)**, the TAT ruled that the EFCC lacked the statutory authority to levy taxes and conduct the unilateral audits on a company's taxes. Relying on section 8 of the Federal Inland Revenue Service (Establishment) Act (**FIRSEA**) and section 2 of the Taxes and Levies Act, the TAT held that the authority to conduct audit and issue tax assessments is the exclusive preserve of the FIRS and accordingly cannot be exercised by a law enforcement agency or any other agency.
2. In **INT Towers Limited v FIRS**, the TAT, established that INT, a company engaged in the operation of telecom facilities such as infrastructure sharing and collocation, is not a telecommunications company or a GSM service provider and as such is not required to pay the 1% Profits before Tax Levy (NITDA Levy), imposed on it by the FIRS.
3. In **Stanbic IBTC Bank PLC v FIRS**, the TAT held that in determining whether certain expenses are deductible for tax purposes, those expenses must not only pass the WREN test, but must also satisfy any other specific requirements as included in the law. In the instant case, a reward scheme set up by Stanbic designed to enhance staff performance, was ruled to be a non-deductible expense though it passed the WREN test. This was owing to the fact that scheme costs should have been contractually agreed and approved by the Federal Ministry for Labour matters (FML), to be tax deductible.
4. In **Bolt Operations OU v FIRS**, where the Appellant contested the appointment of Bolt as an agent for VAT collection from food vendors and ride-hailing providers operating on its platform, the TAT upheld the FIRS' authority under the VAT Act to appoint non-resident digital platform providers as agents for VAT withholding and remittance on behalf of their customers. This decision, despite Bolt's argument that it solely facilitates customer engagement through its platform, highlights the expansive scope of the FIRS' power to engage entities in the VAT collection process, even in the context of emerging digital marketplace models.
5. In **Chi Limited v FIRS**, the TAT in ruling on the WREN test for tax deductibility re-emphasized the necessity of keeping adequate supporting documentation. The TAT held that it would grant any expense which meets the WREN test but subject to credible, supportive, and convincing oral and documentary evidence.

6. In **Kandelite Engineering Company Ltd. V FIRS**, the Court of Appeal affirmed that companies are liable for the non-payment of VAT by their customers, as the law places the burden on the companies to collect and remit the said tax on behalf of the Federal Government of Nigeria. Thus, the Appellant was solely responsible for the collection and accounting for the VAT charged to its customers.
7. In **Little Company Nigeria Limited v FIRS**, the Tribunal found that the unilateral transfer of the Tax records of a company by the FIRS from one tax office to the other was improper.
8. In **Checkpoint Software B. V. Nigeria Limited v FIRS**, the TAT found that the Income Tax (Country by Country) Regulations 2018 (the **CbCR Regulations**) were not issued in accordance with the provisions of the FIRSEA which granted the Board of the FIRS the exclusive authority to make subsidiary legislation. Accordingly, the TAT ruled that the CbCR Regulations were not made by the FIRS Board, duly constituted and properly composed as it was dissolved and had not been reconstituted by the Government at the time when the said regulation was made. Furthermore, the TAT took the position that the Regulations were to be made within the limit, terms and conditions set by the principal legislation. Therefore, the fact that the CbCR Regulations sought to expand the penalties under section 26(3)(b) of the FIRS Act, is unconstitutional.
9. In **MTN Nigeria Communications PLC v FIRS**, the TAT held that VAT is chargeable on the supply of software licensing and upgrade services by a nonresident person to a resident entity in Nigeria since the service was consumed in Nigeria.
10. In **NPF Microfinance Bank v FIRS**, the TAT held that bad debts constitute valid tax deductions, independent of the discretion of the FIRS Board, so far as they have been proven demonstrably bad.

# GOVERNMENT POLICY AND TAX ADMINISTRATION

The fiscal year 2023 was characterized by a sustained emphasis on tax revenue generation, demonstrably evidenced by series of regulations, circulars, and notices issued by the FIRS and state tax authorities. Leveraging its statutory powers under the FIRSEA, the FIRS implemented a multitude of measures aimed at streamlining tax processes, diversifying collection channels, and intensifying taxpayer education. State tax authorities, notably the Lagos State Internal Revenue Service (**LIRS**), mirrored these initiatives by aligning their policies with the national imperative of optimizing revenue collection. In the light of this concerted effort, some of the most salient policy highlights emanating from the regulatory landscape in 2023 are enumerated below:

1. The FIRS published its Guidelines on the Withholding and Self-Account of VAT to provide guidance to the general public on the operation of VAT withholding regime in line with the provisions of the VAT Act (as amended).
2. The FIRS released the Guidelines for the Refund of VAT Paid by Diplomats, Diplomatic Missions and International Organisations on Goods and Services Purchased. The Guidelines provide guidance to diplomats and international organizations, and it clarifies the provisions of the VAT Act on the conditions and processes for refunding VAT on goods and services purchased. It should be noted that goods and services purchased by diplomats



are zero rated, as provided under part III, first schedule to the VAT Act

3. FIRS and LIRS signed a Memorandum of Understanding (**MoU**) on Joint Tax Audit and Investigation with the aim of fostering collaboration between the two tax authorities on joint tax audits and investigations.
4. The FIRS signed an MoU with His Royal Majesty's Revenue and Customs (HMRC) to foster collaboration on capacity building between both tax authorities and to improve capacity of tax officers for revenue collection.

5. The LIRS issued a Public Notice on the process of obtaining Tax Clearance Certificate (TCC) through its end-to-end administration platform. The Notice states that taxpayers can now obtain TCC through the LIRS e-Tax platform. In the same vein, the LIRS issued another notice outlining step-by-step guidelines on the process for generating new electronic Tax Clearance Certificate (e-TCC) as well as the conditions precedent for its application..
6. The FIRS issued a Public Notice on the Tax Compliance of International Shipping Companies (ISCs) in August 2023 requesting all international shipping lines to regularize their tax affairs with the FIRS within three (3) months of the date of that publication.
7. Further to the above, the Federal Government granted a six-month grace period to nonresident vessel owners/ISCs to clear their ten-year outstanding tax bill. This grace period was granted to ensure the regularization of the tax compliance status of the affected companies, and to help said companies avoid any consequence of noncompliance.
8. The FIRS released a Public Notice to all enterprises operating within Free Trade Zones and Export Processing Zones, reiterating the requirement for all affected enterprises to file their tax returns accordingly.
9. The FIRS published a Taxpayer Information Guide on Stamp Duty to assist taxpayers on applicable rates for various transaction documents and the process of e-payment of stamp duties
10. The Ministry of Finance announced in November 2023, that the importation of LPG utilizing HS Codes 2711.12.00.00, 2711.13.00.00, and 2711.19.00.00 is now exempt from Import Duty and Value-Added Tax, resulting in a 0% duty rate and 0% VAT rate, effective immediately.
11. The Federal Government established a Presidential Committee on Fiscal Policy and Tax Reform led by Mr. Taiwo Oyedele as chairman. This committee's primary mandate is to review Nigeria's fiscal policies, particularly focusing on tax administration and laws. As part of its recommendations, the committee has suggested several changes, including modifications to tax administration and the elimination of specific taxes. The committee is currently receiving inputs from various stakeholders, and expected to deliver its final report within the course of 2024
12. The FIRS also issued a circular informing taxpayers including NGOs, governmental ministries and departments of the FIRS intention to commence a nationwide review of VAT and WHT compliance monitoring exercise.
13. The Federal Government announced the introduction of an Annual Vehicle Ownership Verification Fee of ₦1000.
14. The FIRS issued a public notice dated 02 December 2023, waiving all interests and penalties on all outstanding tax liabilities for taxpayers. This concession, exercised in line with section 32 of the FIRSEA was granted in recognition of the challenges faced by many taxpayers in settling their outstanding tax liabilities, and in line with the commitment of the current administration to support businesses.



# CONCLUSION



Nigeria's tax environment is evolving rapidly, transcending the achievements of 2023. The present administration remains steadfast in its commitment to enhancing tax revenue through innovative digital strategies. President Tinubu's new year message specifically assured Nigerians that the government would race against time to ensure that the current tax reform initiatives are codified and simplified to ensure that the business environment does not destroy value. He further assured that all clogs in the wheels of the ease of doing business will be removed and he is confident that Nigeria will be a destination for both local and foreign investments.

In view of this, I anticipate that specific sectors will receive tax incentives and exemptions, which in the long run, will contribute to an expanded tax base and increased revenue for Nigeria.

I wish you all a prosperous 2024

Happy New Year



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