



# Nigeria's Tax and Regulatory Landscape:

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**2021** & Outlook for  
in Retrospect **2022**

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January 2022

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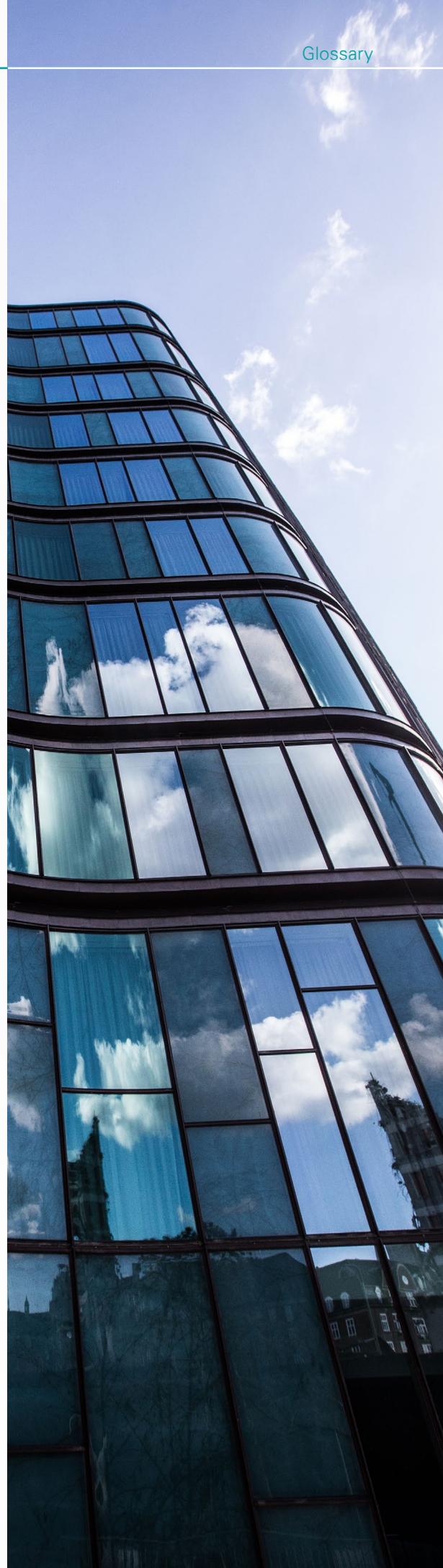
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# Glossary

<b>AEs</b>	Approved Enterprises
<b>APC</b>	Administrative Proceedings Committee
<b>ATAS</b>	Automated Tax Administration System
<b>BOFIA</b>	Banks and Other Financial Institutions Act
<b>CAMA</b>	Companies and Allied Matters Act
<b>CAC</b>	Corporate Affairs Commission
<b>CbCR</b>	Country-by-Country Reporting
<b>CGIS</b>	Comptroller General of Immigration Service
<b>CGT</b>	Capital Gains Tax
<b>CITA</b>	Companies Income Tax Act
<b>COA</b>	Court of Appeal
<b>e-OSIC</b>	electronic One-Stop Investment Centre
<b>EQ</b>	Expatriate Quota
<b>FCCPC</b>	Federal Competition and Consumer Protection Commission
<b>FGN</b>	Federal Government of Nigeria
<b>FHC</b>	Federal High Court
<b>FIs</b>	Financial institutions
<b>FIRS</b>	Federal Inland Revenue Service
<b>FIRSEA</b>	FIRS (Establishment) Act
<b>FTZs</b>	Free Trade Zones
<b>HMoFBNP</b>	Honourable Minister of Finance, Budget and National Planning
<b>HORC</b>	Hotel Occupancy & Restaurant Consumption
<b>LIRS</b>	Lagos State Internal Revenue Service
<b>MNEs</b>	Multinational Enterprises
<b>NASENI</b>	National Agency for Science and Engineering Infrastructure
<b>NIMC</b>	National Identity Management Commission
<b>NIN</b>	National Identity Number
<b>NIPC</b>	Nigerian Investment Promotion Commission
<b>NIS</b>	Nigeria Immigration Service
<b>PIA</b>	Petroleum Industry Act
<b>PITA</b>	Personal Income Tax Act (as amended)
<b>REICs</b>	Real Estate Investment Companies
<b>SEC</b>	Securities and Exchange Commission
<b>SEP</b>	Significant Economic Presence
<b>SME</b>	Small and Medium Enterprise
<b>TAT</b>	Tax Appeal Tribunal
<b>TCC</b>	Tax Clearance Certificate
<b>TET</b>	Tertiary Education Tax
<b>THDT</b>	Tertiary Hospitals Development Tax
<b>TP</b>	Transfer Pricing
<b>VAT</b>	Value Added Tax
<b>WHT</b>	Withholding Tax



# Introduction

The fiscal changes introduced in 2021 demonstrate the FGN's commitment to improving Nigeria's tax and regulatory landscape, especially following the effects of the COVID-19 pandemic on the economy. As a result, Nigeria's GDP grew by 4.03% (year-on-year) in Q3 2021, showing a sustained growth over the last four quarters since the recession witnessed in Q2 2020. The economic growth may be attributed to the recovery in crude oil prices and production, while incremental changes to the fiscal framework, such as the Finance Act, 2020, enactment of provisions and regulations to capture digital services and leveraging of technology to improve tax and regulator administration have boosted non-oil revenues.

The FGN in a bid to consolidate on the wins in 2021 has designed the 2022 *"Budget of Economic Growth and Sustainability"* to achieve diversification of the economy with renewed focus on strategies for continued development and growth of the Micro, Small and Medium Enterprises. It is, therefore, hoped that with the continuous improvements of the regulatory and fiscal laws, Nigeria's economy will witness a sustained growth in 2022.

This publication provides a summary of the key events that occurred in the Nigerian tax and regulatory space in 2021 and highlights the outlook for 2022 which should be anticipated by the stakeholders as the year unfolds.

The background is a solid dark blue color. Overlaid on this is a complex pattern of thin, light blue lines that form a grid. This grid is distorted to create a funnel or hourglass shape, with the lines curving inward from the top and bottom edges towards the center. The overall effect is a sense of depth and perspective.

# 2021 in Retrospect

# Federal Tax Issues

## **1.1. Guidelines on simplified VAT compliance regime for non-resident suppliers**

The Federal Inland Revenue Service (FIRS) issued Information Circular No.: 2021/19 on Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers (NRSs) of goods, services, or intangibles to persons in Nigeria through electronic, digital or similar platforms.

The Circular was issued pursuant to the provisions of Section 10(5) of the VAT Act Cap.V1 LFN 2004 (as amended) and replaces other notices and publications issued by the FIRS in this regard. The Guidelines was scheduled to take effect from 1 January 2022 with respect to supply of services and intangibles, and 1 January 2024 for goods. Although there are still concerns regarding some of the provisions of the Guidelines, it is hoped that the FIRS will update the Circular to address some of these issues before it becomes operational.

Please click [here](#) to read our Newsletter on the Guidelines.

## **1.2. Petroleum Industry Act, 2021**

His Excellency, President Muhammadu Buhari, GCFR, on 16 August 2021, signed the Petroleum Industry Act (PIA), 2021 into law, following its passage by the National Assembly in July 2021. The PIA introduced significant changes to the regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities, and related matters. The PIA also repealed various pieces of legislation that governed the oil and gas industry prior to its enactment.

Please click [here](#) to read our Newsletter on the PIA.

## **1.3. Value Added Tax (Modification Order), 2021**

The VAT (Modification) Order, 2021 ("the Order") was signed on 30 July 2021 by the Honourable Minister of Finance, Budget and National Planning (HMoFBNP), Mrs. Zainab Shamsuna Ahmed, pursuant to her powers under Section 38 of the VAT Act, Cap. V1, Laws of the Federation of Nigeria, 2004 (as amended). The Order was subsequently published by the Federal Government of Nigeria (FGN) in its Official Gazette No. 167, Vol.108 of 21 September 2021.

The Order replaced the VAT (Modification) Order 2020, amends the First Schedule to the VAT Act by defining and expanding the list of goods and services listed in the First Schedule to the VAT Act, and provides clarification on the amendments introduced to the VAT Act by Finance Act, 2020.

Click [here](#) to read our Newsletter on the Order.

## **1.4. Introduction of TaxPro-Max e-filing platform**

On Friday, 4 June 2021, the FIRS issued a Public Notice providing guidelines on the administration of its TaxPro-Max e-filing platform ("the Platform"). The Platform was introduced to facilitate ease of tax registration, filing, payment, and automated issuance of withholding tax (WHT) and other credits to taxpayers' accounts. Consequently, taxpayers were required to submit all Naira-denominated tax returns on the Platform from 7 June 2021.

Please click [here](#) to read our Tax Alert on the subject.

## **1.5. Guidelines on the validation of unutilized withholding tax credit notes**

The FIRS issued Information Circular No.: 2021/07 ("the Circular") providing guidelines on the validation of unutilized WHT credit notes in line with its mandate to achieve full automation of WHT administration. The Circular was issued pursuant to the provisions of Section 25(4) of the FIRS Establishment Act (FIRSEA), 2007 (as amended), and provides procedures for validation of unutilized physical WHT credit notes under expected and exceptional circumstances.

Please click [here](#) to read our Tax Alert on the subject

## **1.6. Deployment of Automated Tax Administration System**

On 30 March 2021, the FIRS issued a Public Notice announcing its intention to commence the deployment of its Automated Tax Administration System (ATAS or "the System"). The ATAS will access for tax purposes, relevant data, information, records, etc., held in systems, electronic devices, or cloud computing facilities, including point of sales or invoicing platforms maintained, operated, owned, or controlled by taxpayers or their agents.

Please click [here](#) to read our Tax Alert on the subject.

## **1.7. Tax offices for tax filing by Approved Enterprises in Free Trade Zones, etc**

On Tuesday, 30 March 2021, the FIRS published the list of its tax offices designated for filing of income tax returns by Approved Enterprises (AEs) operating in Nigeria Export Processing Zones and Oil & Gas Free Zones (collectively called "the Zones") further to the amendment of Section 18(1) of the Nigeria Export Processing Zones Authority Act and Oil and Gas Free Zone Authority Act ("the Acts") by Finance Act, 2020.

The amendment to Section 55 of the CIT Act requires AEs to submit their income tax returns with the FIRS. Therefore, the FIRS assigned tax offices based on geographical locations of the Zones for ease of compliance.

Please click [here](#) to read our Tax Alert on the subject.

### **1.8. Guidelines on the taxation of NGOs**

In April 2021, the FIRS issued Information Circular No.: 2021/01 (“the Circular”) providing guidelines on the taxation of incomes of Non-Governmental Organisations (NGOs) and other statutory obligations on their operations and activities, pursuant to the relevant legislation. The Circular outlined registration and income tax filing requirements for NGOs as well as their CIT, Personal Income Tax, VAT, and CGT obligations.

Please click [here](#) to read our Tax Alert on the subject.

### **1.9. Guidelines on the applicability of VAT on financial services**

The FIRS in April 2021 issued Information Circular No.: 2021/04 (“the Circular”) to provide clarification on what will constitute a supply of taxable services by financial institutions (FIs), in line with the provisions of the VAT Act, Cap. V1, LFN, 2004. The Circular outlines the tax obligations of FIs and provided detailed clarification on the administration of VAT on services provided by FIs.

Please click [here](#) to read our Tax Alert on the subject.

### **1.10. Requirements for enlisting organizations under the 5th Schedule to CITA**

The FIRS issued Information Circular No.: 2021/02 on the procedures for enlisting Funds, Bodies, and Institutions (FBIs) under the Fifth Schedule to the CIT Act. The Circular was issued pursuant to the provisions of Section 25 of the CITA and Requirements for FBIs (under the 5th Schedule to the CIT) Regulations, 2011 (“the Regulations”).

The guidelines in the Circular are based on the provisions of Parts III and IV of the Regulations. However, there may be concerns on the legality of Order No. 1 of 2011, the Regulations and Circular issued by the FIRS further to it. Consequently, the FIRS may need to revisit the provisions in the Circular and reissue the Regulations and the Guidelines accordingly.

Please click [here](#) to read our Tax Alert on the subject.

### **1.11. The National Agency for Science and Engineering Infrastructure**

The National Agency for Science and Engineering Infrastructure (NASENI or “the Agency”) was established by the NASENI Act, Cap N3 LFN 2004

(“the Act”) in 1992. The Agency has a mandate to manage the research and development of capital goods, production, and reverse engineering to enhance local mass production of standard parts, goods, and services required for the nation’s technological advancement.

Please click [here](#) to read our Newsletter on the Act.

### **1.12. Guidelines on the applicability of VAT on toll, parking and other related services**

The FIRS issued Information Circular No.: 2021/03 (“the Circular”) on the application of VAT on road tolls, paid parking, access pass, recreational or entertainment parks, admission to events and other related services based on Section 2 (1) of the VAT Act.

Please click [here](#) to read our Tax Alert on the subject.

### **1.13. Prosecution of taxpayers for tax offences**

The FIRS issued a Public Notice informing the general public of its intention to prosecute taxpayers for non-compliance with tax laws, regulations and other related tax offences, especially those listed in Part IV of the FIRSEA. These include tax evasion, tax fraud, failure to deduct or remit tax, obstruction, false declaration, counterfeiting of documents, failure to file tax returns, etc.

Further, the FIRS noted its intention to invoke the provisions of Section 49(2) of the FIRSEA and prosecute all relevant persons involved in the management of the affairs of the non-compliant company, firm or association.

Please click [here](#) to read our Tax Alert on the subject.

### **1.14. Guidelines on the claim of capital allowance for CWIP and assets in a state of temporary disuse**

The FIRS issued Information Circular No.: 2021/20 on the extension of the meaning of “in use,” pursuant to the provisions of Paragraph 16 of the Second Schedule to the CIT Act.

The Circular provides guidelines on the claim of capital allowances on capital work-in-progress and assets in periods of temporary disuse, in line with Paragraph 16 (1 and 2) of the Second Schedule to the CIT Act.

Please click [here](#) to read our Newsletter on the subject.



### **1.15. FIRS Circulars on implementation of Finance Act, 2020**

Following the enactment of Finance Act, 2020, the FIRS issued 14 Circulars to provide clarifications to taxpayers on the implementation of the provisions of the Act, as follows:

- i. Circular on the Claim of Tax Treaties Benefits in Nigeria
- ii. Guidelines for Filing Income Tax Returns by Foreign Companies
- iii. Taxation of Non-Residents in Nigeria
- iv. Clarification on the Implementation of the VAT Act
- v. Clarification on the Provisions of the CGT Act
- vi. Clarification on Commencement and Cessation Rules, and Business Reorganisation: - Sections 29 of CITA, 32 of CGTA, Section 24 & 25 of PITA and 42 of VATA (as amended by Finance Act)
- vii. Clarifications on Sundry provisions of Finance Act 2020 relating to Companies Income Tax Act
- viii. Clarifications on the Provisions of the Stamp Duties Act
- ix. Clarification on the Taxation of Seafarers and Onshore or Offshore Platform Workers
- x. Taxation of Companies Engaged in Shipping, Air, Transport and Cable Undertakings
- xi. Guidelines for Filing of Income Tax Returns by Approved Enterprises within the Export Processing and FTZs
- xii. Clarification on the Amendment to Section 16 of CITA in Relation to Taxation of Insurance Companies
- xiii. Circular on Tax Implications of Operation of 'REIC' in Nigeria

- xiv. Clarification of the Provisions of Finance Act, 2020 relating to PIT

Please click on [Matters Arising from Implementation of Finance Act, 2020](#) to access our e-book providing detailed commentaries on the FIRS' Circulars.

### **1.16. Payment of outstanding taxes by tax collection agents**

The FIRS issued a Public Notice reminding persons appointed as agents of tax collection by the relevant provisions of the CIT Act and the VAT Act of their obligation to collect, deduct or withhold taxes on supply of taxable goods and services and remit same to the FIRS. The FIRS requested such persons who have collected, deducted, or withheld taxes to remit same to the FIRS within 30 days from the date of the Public Notice, i.e., by Thursday, 3 June 2021.

Further, the FIRS noted its intention to exercise the "power of substitution" conferred on it by Section 31 of the FIRSEA to recover any outstanding taxes, including applicable penalties and interest, from the assets of defaulting taxpayers after the deadline.

Please click [here](#) to read our Tax Alert on the subject.

### **1.17. Payment of outstanding taxes by tax collection agents**

In May 2021, the FIRS issued a Public Notice suspending the local filing obligations under Regulation 4 of the Income Tax (Country-by-Country (CbC) Reporting) Regulations, 2018 ("the Regulations") for branches and subsidiaries of Multinational Enterprises (MNEs) operating in Nigeria.

Therefore, affected MNEs are no longer obligated to submit such information to the FIRS.

Please click [here](#) to read our Tax Alert on the subject.

# State Tax Issues

## 2.1. Update on Hotel Occupancy and Restaurant Consumption Tax in Lagos State

In March 2021, the Lagos State Internal Revenue Service (LIRS) issued a Public Notice to clarify the definitions of “hotels,” “event centres” and “restaurants” in Section 17 of the Hotel Occupancy & Restaurant Consumption (HORC or “Consumption”) Law, 2009 and the compliance obligations of their owners for consumption tax. In the Public Notice, the LIRS reiterated its intention to commence enforcement of the sanctions provided in the relevant sections of the HORC Law, 2009 for non-compliance with the consumption tax obligation and filing requirements.

Click [here](#) to read our Tax Alert on the subject.

## 2.2. Amendments to PITA introduced by Finance Act, 2020

In June 2020, the LIRS issued a Public Notice to provide clarifications on the revised definition of gross income and exemption of minimum wage or lower employment income from Personal Income Tax (PIT), pursuant to the amendments introduced by Finance Act, 2020 to the PIT Act.

In the Public Notice, the LIRS urged taxpayers to ensure that their payroll register or application in use for pay-as-you-earn tax computations complies with the new definition of gross income, and the exemption of minimum wage.

Click [here](#) to access our Tax Alert on the subject.

## 2.3. States VAT laws

The Federal High Court (FHC)’s judgement nullifying the VAT Act Cap V1, LFN 2004 in the case between *Attorney General for Rivers State and FIRS & Attorney General of the Federation*, provided a legal basis for States to enact their VAT laws. Following the FHC’s judgement:

- Rivers State on 19 August 2021 enacted its VAT Law imposing VAT of 7.5% on goods and services in the State.
- Lagos State’s VAT Law was enacted on 10 September 2021 and imposes VAT of 6% on goods and services in the State.
- Ogun State’s VAT Bill also passed its first and second readings at the Ogun State House of Assembly in September 2021

However, the Court of Appeal on 10 September 2021, ordered all parties to maintain the status quo on the collection of VAT pending the resolution of the FIRS’ appeal of the FHC’s judgment.

Click [here](#) to access our Tax Alert on the Rivers State VAT Law, and [here](#) for our Tax Alert on the Lagos State VAT Law.

# Immigration Issues

## **3.1. National Identification Numbers mandatory for expatriates resident in Nigeria**

The Head, Corporate Communications of the National Identity Management Commission (NIMC), announced the requirement for the National Identity Number (NIN)-SIM integration for mobile network subscribers. The NIMC extended the deadline for NIN-SIM integration multiple times to give the NIMC adequate time to complete the registration of outstanding persons. The FG had earlier directed telecommunication companies to link all SIM cards with the NIN of their subscribers by 31 December 2020 to avoid disconnection.

The Nigeria Immigration Service (NIS) therefore urged all expatriates resident in the country to obtain NIN as it will become a requirement for renewal of their residence permits.

Please click [here](#) to read our Tax Alert on the subject.

## **3.2. NIS requirement for expatriates to present evidence of tax payment for renewal of residence and work permits**

The Comptroller General of the Nigeria Immigration Service (CGNIS), Mr. Muhammad Babandede, directed that effective 1 April 2021, all expatriates, including nationals of the Economic Community of West African States, must present evidence of tax payment in order to renew their resident and work permits by the Nigeria Immigration Service (NIS). This directive is in the exercise of the powers conferred on him by Sections 37 and 39 of the Immigration Act, 2015.

Therefore, all applications for renewal of residence and work permits must, in addition to other requirements, include copies of valid tax clearance certificates (TCCs), Personal Income Tax (PIT) remittance schedules and evidence of payment of PIT due before the application can be processed.

Please click [here](#) to read our Tax Alert on the subject.

ECONOMIC COMMUNITY OF  
WEST AFRICAN STATES  
(ECOWAS)



# Other Notable Regulatory Issues

## 4.1. TAT (Procedure) Rules, 2021

The HMoFBNP on 10 June 2021 approved the Tax Appeal Tribunal (TAT) (Procedure) Rules, 2021 ("the Rules") pursuant to her powers under Section 61 of the FIRSEA.

The Rules, which replaces the defunct TAT (Procedure) Rules, 2010, enables the Tribunal to deal justly, fairly, and expeditiously with appeals and promotes the settlement of disputes among parties.

Please click [here](#) to read our Tax Alert on the Rules.

## 4.2. Commentaries on Companies Regulations, 2021 published by CAC

The Honourable Minister for Industry, Trade and Investment approved the Companies Regulations 2021 ("the Regulations") pursuant to Section 4 of the Companies and Allied Matters Act (CAMA) 2020. The Regulations, which was published by the Corporate Affairs Commission (CAC), replaces the Companies Regulations, 2012 issued pursuant to the repealed CAMA, 1990.

The Regulations includes provisions that are aimed at leveraging technology to automate certain CAC's administrative processes, clarifying certain compliance requirements of the CAMA 2020, and providing a comprehensive governance and procedural framework in line with global regulatory best practices

Please click [here](#) to read our Newsletter on the subject.

## 4.3. CAC constitutes Administrative Proceedings Committee

The Registrar General of the CAC, Alhaji Garba Abubakar, announced the constitution of the Administrative Proceedings Committee (APC) to fulfil its statutory mandate. The APC was introduced by Section 851 of CAMA 2020 as an administrative tribunal for the resolution of disputes or grievances arising from the operation of CAMA.

The comparative ease of commencement of action at the APC and its expected speedy resolution of disputes should make it attractive for parties to refer their disputes to it for resolution in the first instance before appeal to the FHC.

Please click [here](#) to read our Tax Alert on the subject.

## 4.4. BOFIA 2020: Impact on the Financial Services Industry

His Excellency, President Muhammadu Buhari, GCFR, signed the Banks and Other Financial Institutions Act, 2020 ("BOFIA 2020" or "the Act") into law. The Act repealed the erstwhile BOFIA 2004 which was originally enacted in 1991 and amended in 1997, 1998, 1999 and 2002.

BOFIA 2020 covers more ground than its 2004 predecessor with an expansion of the Central Bank of Nigeria's regulatory oversight and discretionary powers over the financial services industry. Other significant changes introduced by the Act include measures for managing failing banks and a new tribunal for the enforcement and recovery of bad bank loans.

Please click [here](#) to read our Newsletter on the subject.

## 4.5. CAC registration portal upgrade

The Corporate Affairs Commission (CAC) in January 2021 announced the upgrade of its website and online registration portal ("the Portal") to include features, which allow for the automation of some selected services and processes in line with the Federal Government's mandate of improving the ease of doing business in Nigeria. The selected services and processes include electronic search of company records and electronic pre- and post-incorporation filings.

Please click [here](#) to read our Tax Alert on the subject.

## 4.6. Introduction of Incubation Period for a Specific Category of Fintech Businesses

In June 2021, the Securities and Exchange Commission (SEC) announced a new set of Guidelines for a Regulatory Incubation program for FinTech companies seeking to provide innovative capital market services. The SEC noted that the purpose of the Guidelines is to create a controlled environment for FinTechs to provide capital market services in a limited form before they become established. The services would be financial services which ordinarily fall under the SEC's oversight, albeit, offered in an innovative form by FinTechs.

Please click [here](#) to read our Tax Alert on the subject.

#### **4.7. Extension of deadline for companies to issue unallotted share capital**

The Honourable Minister of Industry, Trade, and Investment through the CAC (or “the Commission”) extended the deadline for existing companies to fully issue any unallotted share capital to **31 December 2022**. Regulation 13 of the Companies Regulations, 2021 (“the Regulations”) had fixed an initial deadline of 30 June 2020 for all companies in Nigeria to comply with this requirement.

Therefore, the CAC noted that any unissued share capital after 31 December 2022 will be derecognised from a company’s share capital until such shares are re-issued or reduced.

Please click [here](#) to read our Tax Alert on the subject.

#### **4.8. NIPC launched e-OSIC as part of its continuous transformation for Investors’ Ease**

In November 2021, the Nigerian Investment Promotion Commission (NIPC) announced the introduction of its electronic One-Stop Investment Centre (e-OSIC), the digital version of OSIC which was designed to bring together 27 participating government agencies (including Corporate Affairs Commission, FIRS, etc.) to provide efficient, transparent and fast-tracked services to investors.

Please click [here](#) to read our Tax Alert on the subject.

#### **4.9. FCCPC launched Online Merger Notification Portal**

The Federal Competition and Consumer Protection Commission (FCCPC or “the Commission”) launched its online merger notification portal (“the Portal”) to automate the submission of merger notifications to the Commission.

The Portal eliminates the need for physical submission of documents relating to merger transactions and will improve the merger notification process and ease of engagement with the FCCPC on merger-related issues.

Please click [here](#) to read our Tax Alert on the subject.

# Key judicial pronouncements on contentious tax and regulatory matters

We have highlighted some of the landmark judicial decisions delivered in 2021 below:

## **5.1. FIRS vs New Cross Petroleum Limited (Suit No.: TAT/LZ/PPT/001/2020) on validity of tax assessments following taxpayer's failure to object within the statutory period**

The Tax Appeal Tribunal (TAT or "the Tribunal") Lagos Division on 10 June 2021 ruled in favour of the FIRS on the validity of its tax assessments, including interest and penalties following the respondent's failure to object to the assessments within the statutory period. The judgement serves as a caution to taxpayers who are remiss in challenging a tax assessment, as the appeal might have decided differently had NPCL provided an acknowledged copy of its objection letter to the FIRS additional tax assessments.

Please click [here](#) to read our Newsletter on the judgement.

## **5.2. Attorney General for Rivers State and FIRS & Attorney General of the Federation (Suit No.: FHC/PH/CS/149/2020) on the legal basis for VAT administration**

The Federal High Court ("the Court") Port Harcourt Division on 9 August 2021 held that the Federal Government of Nigeria (FGN) lacks the power to impose and collect taxes that are not listed under Items 58 and 59 of Part I of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended) ("the Constitution"). Consequently, taxes such as VAT, WHT, Tertiary Education Tax, the National Information Technology Development Agency Levy, etc., which are not specifically listed under the said Items are outside of the jurisdiction of the FGN.

The FHC's decision led to the enactment of State VAT Law by Rivers and Lagos States while the process of enactment of Ogun State's VAT Bill is inconclusive. However, the COA sitting in Abuja, on 10 September

2021 ordered both Rivers and Lagos States to maintain the status quo on the collection of VAT pending the resolution of the FIRS' appeal.

Please click [here](#) to read our Newsletter on the judgement and [here](#) to access our Tax Alert on the COAs order for status quo.

## **5.3. Multichoice Nigeria Limited vs FIRS (Suit No.: TAT/LZ/CIT/062/2021) – Applicability of statutory charge deposit**

The Tribunal sitting in Lagos on 10 September 2020 delivered a contrary judgement to that of the TAT Benin on the applicability of VAT on rental income.

The TAT held that rental income derived from the lease of real estate properties, whether used for residential or commercial purposes, is beyond the scope of the VAT Act and, therefore, not subject to VAT. The TAT also reiterated that FIRS Information Circulars do not constitute a delegated or subsidiary legislation and have no enforceable legal basis.

Please click [here](#) to read our Tax Alert on the judgement.

## **5.4. Seplat Petroleum Development Company Plc vs FIRS (Suit No.: TAT/LZ/CIT/016/2020) on the eligibility of taxpayer's claim of downstream gas utilization incentives**

The TAT Lagos Division on 12 November 2021 held that the Appellant's claim of five (5) years tax holiday (granted under Section 39 of the CIT Act to companies engaged in downstream gas utilization) was unlawful and invalid.

The TAT's decision to void the incentive claimed by the Company was on the basis that the Company failed to obtain a valid certification of its date of commercial production of gas.

Please click [here](#) to read our Newsletter on the judgement.





Outlook for  
2022

# Tax Outlook

## 1. Digital taxation of non-resident companies

Finance Act, 2021 has included specific provision in the CITA on the FIRS' power to assess non-resident companies to income tax in Nigeria based on a fair and reasonable percentage of the turnover attributable to their Nigerian operations (i.e., deemed profit basis). Although the FIRS has always had the general power to do this in Section 30 of the CITA, the specific provision has now made it clear that this power will be exercised in the case of non-resident companies with significant economic presence in Nigeria.

Further, the Act modifies the administrative provisions of the VAT Act relating to Business-to-Customer (B2C) e-commerce transactions and empowers the FIRS to appoint non-resident B2C service providers as agents for VAT collection. The modification effectively codifies the FIRS' Information Circular No.: 2021/19 on *Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers (NRSs)* which has been scheduled to take effect from 1 January 2022 for supply of services and intangibles, and 1 January 2024 with respect to goods. This is to prevent tax leakage on transactions between digital suppliers and individual customers who would ordinarily be unable to deduct and remit the tax as required under the VAT Act. This will also allow VAT on B2C transactions to be easily captured and remitted from an aggregation point.

The amendments align with the FGN's mandate to deepen taxation of the digital economy and expand Nigeria's tax base. Consequently, non-resident suppliers, especially those operating in the digital economy, should take necessary steps to ensure compliance with the new VAT regime.

## 2. Enforcement of the Nigeria Police Trust Fund (NPTF) levy

The NPTF Act ("the Act") was signed into law by the President on 24 June 2019. However, there was little or no progress regarding enforcement of the levy due to several practical challenges associated with the implementation of the Act, some of which include the absence of the body responsible for collecting the levy, uncertainty about the due date of remittance of the levy, and whether the levy would be payable on demand or by self-assessment, and penalty for failure to remit it.

Based on the provisions of Finance Act, 2021, the FIRS is now responsible for the collection and enforcement of the NPTF levy. Consequently, it is expected that the FIRS will issue guidelines on the administration of the levy in 2022.

Please click [here](#) to read our Tax Alert on the provisions of Finance Act, 2021.

## 3. Expiration of tax exemption period for bonds and short-term government securities

Based on the CIT (*Exemption of Bonds and Short-Term Government Securities*) Order, 2011, the 10-year CIT exemption of interest earned on short-term government securities and corporate and government bonds, excluding Federal Government bonds, expired on 2 January 2022. Consequently, all interests accruing to debt instruments, except Federal Government bonds, will now be subject to withholding tax (WHT) and CIT, effective from 2 January 2022.

Similarly, the VAT exemption provided by the VAT (*Exemption of Proceeds of the Disposal of Government and Corporate Securities*) Order, 2011 on proceeds from disposal of short-term government securities and corporate and government bonds, excluding Federal Government bonds, expired on 2 January 2022. However, Finance Act, 2020 has amended Section 46 of the VAT Act to exclude securities from the definition of "goods" liable to VAT. Consequently, proceeds from disposal of debt instruments will continue to enjoy exemption from VAT.

Please click [here](#) to read our Tax Alert on the subject.

## 4. Imposition of CGT on gains from disposal of shares

With the passage of Finance Act, 2021, gains from disposal of shares in any Nigerian company where the gross proceeds from such sales in any 12 consecutive months exceed ₦100million will now be subject to CGT at 10%. However, the Act provides a proportionate waiver from CGT where the whole or part of the disposal proceeds are reinvested within the same year of assessment in acquisition of shares in the same or other Nigerian companies. Further, gains from transfer of shares in a Securities and Exchange Commission (SEC)'s regulated securities lending transaction are exempt from CGT.

This amendment aligns Nigeria with global practices where gains on shares sold by investors are subject to CGT at the point of disposal.

## 5. Taxation of educational institutions

Finance Act, 2021 amended Section 23(1)(c) of the CIT Act to remove specific reference to income from educational activities. Consequently, such institutions would only benefit from the general exemption applicable to not-for-profit organisations providing ecclesiastical or charitable activities of a public character. Educational institutions that are profit oriented will be liable to CIT at 20% or 30% of their profits depending on whether they are classified as medium or large companies.



## 6. **Increased TET rate for Nigerian companies**

Finance Act, 2021 has increased the TET rate from 2% to 2.5% for Nigerian companies. This represents a 25% increase in the TET rate for the affected companies. Consequently, companies will have to re-evaluate their projected financial performance in 2022 to determine the impact of the increase on their effective tax rate.

## 7. **HMoFBNP to issue Regulations on allocation and distribution of stamp duties and Electronic Money Transfer (EMT) levy collected between 2015 and 2019 fiscal years**

In August 2021, the Attorney Generals of the 36 States of Nigeria filed a suit at the Supreme Court against the Attorney General of the Federation (AGF) to determine the authority of States to collect stamp duties on instruments executed between persons or individuals within their respective States. One of the key issues for determination was whether the AGF was constitutionally obliged to render account of all stamp duties collected since 2015 on transactions involving individual persons resident in the various States.

Finance Act, 2021 has amended Section 89 of the Stamp Duties Act to empower the HMoFBNP to make regulations regarding the “auditing, accounting, allocation and distribution of stamp duties and EMT levies collected between 2015 and 2019 fiscal years.” It is expected that the HMoFBNP will issue the relevant regulations during the year to guide the administration of the EMT levy and stamp duties which will, hopefully, resolve the dispute between the States and the AGF.

Please click [here](#) to read our Tax Alert on the provisions of Finance Act, 2021.

## 8. **Enactment of Tertiary Hospitals Development Tax Bill**

In October 2021, the Senate passed the Tertiary Hospitals Development Tax Bill for the rehabilitation, restoration, and consolidation of tertiary healthcare in

Nigeria. However, in line with legislative procedure, the Bill must also be passed by the House of Representatives before it is presented to the President for assent. Therefore, it is expected that the FG will conclude the legislative procedure in enacting the Bill for implementation in 2022.

It is hoped, however, that the House of Representatives will, in reviewing the Bill, give due consideration to the concerns of the private sector on multiple taxation that increases the cost of doing business and further aggravates the challenges

Please click [here](#) to read our Tax Alert on the subject.

## 9. **Improved Fiscal and financial responsibility amongst the three tiers of government**

Finance Act, 2021 amended the Fiscal Responsibility Act (FRA) to control the level of borrowing by all tiers of government and enhance public financial management. According to the International Monetary Fund (IMF)'s Fiscal Monitor Report published in October 2021<sup>11</sup>, Nigeria's gross debt-to-GDP ratio increased from 29.2% in 2019 to 35.7% in 2021 and is forecasted to rise to 36.9% in 2022. The control reforms introduced in the FRA demonstrates the FGN's plan to reduce Federal, State and Local Government debt from 2022.

## 10. **Improved Fiscal and financial responsibility amongst the three tiers of government**

In 2021, the FIRS migrated fully to its automated tax administration system - TaxPro-Max, for tax administration and collection. The TaxPro-Max is designed to automatically compute late filing penalties for all taxes after the relevant due dates. Therefore, taxpayers must ensure strict compliance with the relevant provisions of the laws pertaining to the respective industries to avoid incurring unnecessary penalties.

<https://www.imf.org/-/media/Files/Publications/fiscal-monitor/2021/October/English/text.ashx>

# Transfer Pricing (TP) Outlook

## **1. Increased drive for TP audits and likely impact of Nigeria's non-participation in the OECD 2-Pillar framework on audits of MNEs**

In 2021, the International Tax and Transfer Pricing Division of FIRS was more aggressive in conducting TP audits and adopted a more pragmatic approach to resolving issues raised during audit exercises. We envisage more of this in 2022 especially given the dwindling FGN's crude oil revenue.

Further, the FGN's rejection of the Organisation for Economic Cooperation and Development (OECD)'s two-pillar solution for taxation of digital economy implies that the FIRS will continue to assess players in the digital economy with taxable presence in Nigeria to tax based on Nigeria's tax laws. This is expected to result in additional TP audits for Multinational Enterprises during the year.

# Immigration Outlook

## 1. Revision of Travel Advisory

The COVID-19 pandemic resulted in frequent revisions to Nigeria's travel advisory publications, especially the list of citizens restricted from entry into Nigeria. In October 2021, the Secretary to the Government of the Federation (SGF) and Chairman of the Presidential Steering Committee on COVID-19, Mr. Boss Mustapha, reversed the travel restrictions and additional entry guidelines imposed on passengers from (i) Brazil, India, & Turkey, and (ii) South Africa which became effective in May and June 2021, respectively. The SGF had earlier announced the removal of India from the list in September 2021 after a significant reduction in the reported cases of COVID-19 infections in the country.

It is expected that the list will be revised as reported cases of the COVID-19 Omicron variant continue to increase globally. Meanwhile, it is hoped that with the improved global vaccination rate, the spread of the virus will be mitigated, and this will prevent the importation of new variants into the country.

## 2. Issuance of a Revised Handbook on Expatriate Quota Administration

The Federal Ministry of Interior (FMI) held stakeholders' fora in April and October 2021, respectively, to review the draft handbook on Expatriate Quota (EQ) administration that will address the challenges of the current regulations and provide solutions for efficient and effective service delivery.

The approved version of the handbook is expected to be issued in 2022 and may include changes in the following areas of administration:

- Statutory fees for processing and approval of EQ applications
- Documentation requirements for processing EQ application
- Lifespan of EQ positions
- Revalidation of Permanent Until Reviewed (PUR) EQ approvals

## 3. Harmonization of Database for Nigeria Immigration Service (NIS) and National Identity Management Commission (NIMC)

In January 2021, the NIS requested all expatriates resident in Nigeria to obtain the National Identity Number (NIN) to avoid being denied future immigration facilities. This was pursuant to the FGN's plan to harmonize the databases of the NIS and National Identity Management Commission (NIMC) as announced by the former Comptroller General of the Nigeria Immigration Service (CGIS), Mr. Muhammed Babandede in August 2017.

Although the requirement for NIN registration for expatriates is yet to be enforced by the government, it is expected that the FGN will embark on a comprehensive data integration exercise to consolidate the personal data of Nigerian citizens and residents currently held by its different regulatory agencies in a central database. Therefore, expatriates and their Nigerian employers will be expected to comply with this requirement in 2022 fiscal year.

## 4. Evidence of Tax Payment for Renewal of Residence and Work Permits

Earlier in 2021, the former CGIS, Mr. Muhammad Babandede, directed all expatriates, including nationals of the Economic Community of West African States, to present evidence of tax payment to renew their resident and work permits by the NIS. While this directive was not strictly enforced during the year, it is expected that the NIS will drive compliance with this requirement to ensure tax compliance by all foreigners working in Nigeria.

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