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ANALYSIS OF THE NIGERIAN TAX REFORM BILLS

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INTRODUCTION

On 3 October 2024, President Bola Ahmed Tinubu transmitted the following Tax Bills to the National Assembly:

a. Nigeria Tax Administration Bill (HB. 1756);

b. National Tax Bill (HB. 1759)

c. Nigeria Revenue Service Bill (HB. 1757);

d. Joint Revenue Board Bill (HB. 1758).

This factsheet contains an analysis of these Tax Reform Bills. The analysis outlines the relevant key provisions of the Bills and highlights their objectives; issues they seek to address; duties and responsibilities being imposed; and the social and economic impact, particularly how they will affect Nigerian citizens and the operations of small businesses and Non-Governmental Organisations (NGOs).

The Bills have been referred to the Committee on Finance in the Senate and House of Representatives.

OBJECTIVES OF THE BILLS

- The Nigeria Tax Bill seeks to repeal the principal taxation legislation, amend fiscal provisions in other legislations and provide a unified fiscal legislation governing taxation in Nigeria.
- The Nigeria Tax Administration Bill seeks to provide the legal framework for the assessment, collection and accounting for revenue accruing to the Federation and the three tiers of government.

- The Nigeria Revenue Service Bill seeks to provide for a legal, institutional and regulatory framework for the administration of taxes and revenue under any law made by the National Assembly and to account for such taxes and revenue collected.
- The Joint Revenue Board Bill seeks to establish the Joint Revenue Board, the Tax Appeal Tribunal, and the Office of the Tax Ombuds for the coordination, harmonisation and settlement of disputes arising from tax administration.

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IMPLICATIONS OF THE NIGERIAN TAX REFORM BILLS

General implications of the Tax reform bills on individuals, and small businesses are outlined thus:

a. Small businesses with an annual turnover of N50 million or less are exempt from income tax.[1]

b. There is no withholding tax deduction on business income of small businesses. This also includes an exemption from the requirement to deduct and account for tax on payments to vendors.[2]

c. There is a reduction in companies income tax from the current rate of 30% to 27.5% for 2025 and 25% for subsequent years[3].

d. Workers earning ₦800,000 annually and below will be exempted from taxes[4]. According to the Nigerian Financial Services Market Report, only 10% of Nigerians earn above ₦100,000, this would mean most Nigerians will experience a reduction in their income tax upon the passage of the bills.

e. Essential items such as food, education, healthcare will enjoy 0%[5] Value Added Tax (VAT) while rent, public transportation, and renewable energy will be exempted[6], providing relief for low-income households that spend nearly 100% of their income on these necessities.

f. Businesses will be granted tax credits for VAT paid on their assets and all expenses incurred to produce Vatable goods and services. This means up to 7.5% reduction in the cost of production[7]. This proposed measure will eliminate the VAT cost currently borne by businesses and should therefore lead to lower prices. Going forward, this measure will ensure that businesses in Nigeria no longer bear VAT cost regardless of the rate.

g. Economic development incentives on profits or gains of friendly societies, co-operative societies, educational, ecclesiastical, or charitable organisations, trade unions, and government entities, provided such profits or gains are not derived from trade or business activities[8].

h. There is tax exemption on compensation for loss of employment not exceeding ₦50,000,000.[9]

1 Clause 56 of the Nigeria Tax Bill
2 Clause 22 of the Nigeria Tax Administration Bill
3 Clause 56 of the Nigeria Tax Bill
4 Clause 58 and 1st Schedule of the Nigeria Tax Bill
5 For a "zero-rated good," the government doesn't charge tax on its sale and allows businesses to get a refund for the VAT they paid on the materials used to make it. For an "exempt good," the government doesn't tax its sale either, but businesses can not get a refund for the VAT they paid on the materials used to produce it.
6 Clause 188 of the Nigeria Tax Bill
7 Chapter VIII of the Nigeria Tax Bill
8 Chapter VIII of the Nigeria Tax Bill
9 Clause 50 of the Nigeria Tax Bill

OBLIGATIONS OF NGOs UNDER THE TAX REFORM BILL

a. All Non-Governmental Organizations (NGOs) are expected to register for tax purposes and obtain Tax Identification ID. NGOs are required to file annual Company Income Tax (CIT) returns with the Nigeria Revenue Service (NRS) in line with clause 11 of the Nigeria Tax Administration Bill. The administrative penalty for failing to file tax returns or for filing incomplete or inaccurate returns has increased significantly. Previously set at N25,000 for the first month and N5,000 for each subsequent month, the penalties are now N100,000 for the first month of non-compliance and N50,000 for each subsequent month of continued default[10]

b. NGOs must deduct Withholding Tax (WHT) on payments made to suppliers and contractors and remit the tax to the relevant tax authorities in the currency of the transactions.[11]

c. Clause 168 of the Nigeria Tax Bill exempts NGOs from capital gains tax on gains from the disposal of chargeable assets, provided that the gains are not derived from assets acquired for non-approved activities and are applied exclusively to the organisation's approved activities.

d. Goods purchased by NGOs for use in humanitarian donor-funded projects are zero-rated[12]. However, VAT applies to goods purchased for non-humanitarian purposes. NGOs are also required to pay VAT on services they procure or consume unless these services are exempt under the Nigeria Tax Bill. Furthermore, NGOs must self-account for VAT on taxable goods and services supplied by non-resident vendors or entities not liable to charge VAT. They are also required to charge VAT on all taxable goods and services they supply and remit the tax to the NRS. NGOs must file VAT returns monthly, on or before the 21st day of the following month[13].

It is also important to note that the Tax reform bills are not without any implications and burdens. Some of which include:

a. There is a restrictive definition of small business. This excludes companies that are offering professional services. For these companies, the incentives applicable to small businesses under the Tax reform bills are not applicable to them.[14]

b. There is the potential of an increased compliance burden due to mandatory Tax IDs for personal accounts and stricter filing requirements. There are also potential barriers for low-income earners due to stringent penalties for non-compliance.

KEY PROVISIONS

THE NIGERIA TAX ADMINISTRATION BILL 2024 (HB. 1756)

This Bill in its explanatory memorandum seeks to provide a uniform procedure for a consistent and efficient administration of tax laws in order to facilitate tax compliance by taxpayers and optimise tax revenue. Accordingly, the Bill will provide the legal framework for the assessment, collection and accounting for revenue accruing to the Federation and the three tiers of government. The Nigeria Tax Administration Bill consolidates the existing administrative provisions in the existing tax legislations

10 Clause 96 of the Nigeria Tax Administration Bill
11 Clause 50 of Nigeria Tax Administration Bill
12 Clause 187 of the Nigeria Tax Bill
13 Clause 22 of the Nigeria Tax Administration Bill
14 Clause 143 of the Nigeria Tax Administration Bill

such as the Companies Income Tax Act, Personal Income Tax Act, Petroleum Profits Tax Act, the Value Added Tax Act, Stamp Duties Act, and Capital Gains Tax Act, and upon enactment will apply as the primary legislation for the administration of the Nigeria Tax Bill.

a. Scope of jurisdiction of the Nigeria Revenue Service (the Service) and the relevant tax authorities of the States and the Federal Capital Territory to administer taxes.

The Bill provides for the scope of the powers of the Service and tax authorities of the States and the Federal Capital Territory over different aspects of taxations. The distribution of jurisdiction under clause 3 of the Bill is consistent with the present statutory framework and practice. It should be noted that the Bill seeks to retain the powers of the Service over VAT. However, the National Assembly presently lacks the constitutional powers to legislate VAT as was decided by the Federal High Court in *Attorney General of Rivers State v Federal Inland Revenue Service* and other cases. In the absence of a constitutional amendment to make VAT an Exclusive List or Concurrent List item, the powers of the Service to administer VAT is likely to be subject of further litigation.

b. VAT Revenue Distribution Formula

The Administration Bill seeks to introduce a new distribution formula from revenue earned from the VAT which is to be distributed as follows – (i) Federal Government – 10%; (ii) State Government and F.C.T – 55%; and (iii) Local Government – 35%. Significantly, 60% of the amount for the states and local government is to be distributed on the basis of derivation[15].

The proposed formula for distributing revenue generated from Value Added Tax (VAT) has sparked controversy and criticism from members of the Northern Governors Forum. They expressed concerns that Northern states will receive a smaller share of VAT revenue under the new framework, which suggests distributing funds based on where goods and services are consumed. Northern leaders argue that this approach may place them at a disadvantage and potentially increasing the economic disparity between regions, as allocations to States will be made based on how much they contribute.

However, the proposed reform represents a significant shift from a headquarters-based remittance model to a consumption-based derivation model, fundamentally altering the basis for revenue allocation among states. This approach is consistent with the global “destination principle”, which prioritises allocating tax revenue to jurisdictions where goods and services are consumed, rather than where they are produced or headquartered. Under the Nigeria Tax Administration Bill, VAT revenue will be distributed as follows: 10% to the federal government, 55% to state governments (including the FCT), and 35% to local governments.

Notably, 60% of the allocations to states and local governments will be based on derivation linked to actual consumption within each jurisdiction. To operationalise this, companies filing VAT returns will be required to submit a detailed sales schedule providing a state-by-state breakdown of sales. This reform is designed to create a fairer and more consumption-aligned distribution of VAT revenue.[16]

15 Clause 77 of the Nigeria Tax Administration Bill

16 Clause 22(12) of the Nigeria Tax Administration Bill

c. Increase in VAT Rate

A notable concern regarding the proposed VAT reform is the claim that increasing the VAT rate from the current 7.5% to 10%, and ultimately to 15% by 2030,[17] will lead to higher inflation and an increase in the prices of goods. While this concern has merit, it is important to highlight that the Tax Reform Bills include several measures designed to mitigate these effects. These measures aim to reduce production costs, limit the VAT burden on essential goods and services, and exempt more small businesses from VAT obligations, thereby addressing potential inflationary impacts.

Key measures introduced include a 0% VAT rate for essential goods and services, which account for 82% of average household consumption. This exemption covers critical items such as food, medical services, education, transportation, fuel, and rent,[18] ensuring that low-income earners are shielded from additional financial burdens. Furthermore, businesses will benefit from tax credits for VAT paid on assets and production expenses, effectively lowering production costs by up to 7.5%. This measure eliminates VAT-related cost pass-through to consumers, contributing to price stability.

The reform also increases the VAT exemption threshold for small businesses from ₦25 million to ₦50 million[19], removing VAT obligations for a larger segment of businesses and directly benefiting their low-income customer base. Importantly, the VAT rate increase will apply only to 18% of consumption items, primarily targeting luxury goods such as beverages, entertainment, and cars, which are predominantly consumed by higher-income earners. These targeted measures ensure that the VAT reforms promote economic equity, protect low-income earners and small businesses, and effectively address concerns about inflation and price increases.

d. Expansion of the Tax Net

The Nigeria Tax Administration Bill contains important provisions aimed at expanding the tax net and increasing tax revenue. One of the ways by which the Bill seeks to expand the tax net is the proposed introduction of mandatory tax registration by all taxable persons and the issuance of a tax identification card.[20] The tax identification card is intended to replace tax identification number and would be a requirement to open or operate an account with banks, stocking broking firms or other financial institutions.[21] This requirement is similar to what is obtainable in South Africa and Kenya. A key provision of this Bill is the empowerment of tax authorities to independently register and assign a Tax Identification Number (TIN) to any person obligated to obtain a TIN who fails to do so. This grants the tax authority the discretion to **suo motu** (on its own volition) register such individuals for tax purposes, ensuring compliance with registration requirements[22].

The Bill also provides that a taxable person shall notify the relevant tax authority of a change in its particulars within 30 days of the occurrence of the change. Such notification is required for a change in name, including trading name, location of business, telephone numbers or e-mail address, and registered address.[23] Failure to notify the tax authority of a change in address within 30 days of such

17 Clause 146 of the Nigeria Tax Bill
18 Clause 188 of the Nigeria Tax Bill
19 Clause 22 of the Nigeria Tax Administration Bill
20 Clause 4 of the Nigeria Tax Administration Bill.
21 Clause 8 of the Nigeria Tax Administration Bill.
22 Clause 7 of the Nigeria Tax Administration Bill.
23 Clause 9 of the Nigeria Tax Administration Bill.

change, or where a taxable person gives a wrong address or fails to comply with the requirement for notification of permanent cessation of trade or business would occasion an administrative penalty[24]. This provision is a new introduction to the taxation regulatory regime, stating specific notification requirements.

Presently, TIN is only required as a precondition for opening or operating an account in relation to companies and business or trading accounts of individuals. The Bill seeks to extend the requirement of a TIN to all accounts, including individuals' personal accounts. A notable provision of the Bill is the obligation placed on the tax authority to ensure the confidentiality of taxpayers' information. This provision aligns with data protection requirements and obligations.

The registration by all taxable persons and the use of a tax identification card for banking investment purposes would bring a lot more persons within the tax net and enable the government to better track the income of individuals for the purpose of assessments.

Furthermore, the Nigeria Tax Administration Bill seeks to impose a mandatory obligation on banks, financial institutions, insurance companies, and stock brokerage firms to submit quarterly reports of financial transactions to the relevant tax authorities. For individuals, reporting is required when transactions reach a cumulative total of ₦25,000,000 or more within a month. For corporate entities, the reporting threshold is set at ₦100,000,000.[25] Again, this will enable tax authorities to track transactions and income of taxable persons for the purpose of tax assessments.

The Bill also seeks to extend the tax registration requirement to all non-resident persons deriving business income from Nigeria, regardless of their tax liability in the country. This means that non-resident persons exporting goods to Nigeria must register for tax, even if they do not have a permanent establishment in Nigeria and are not subject to tax. While this provision aims to enhance tax oversight, its rigorous enforcement may discourage foreign investment in Nigeria.

e. Requirement for Employees to File Returns

In addition to the existing obligation for employers to remit income taxes and file returns under the Pay-As-You-Earn (PAYE) scheme, the Nigeria Tax Administration Bill introduces a requirement for employees to file annual tax returns on their total income. Unlike PAYE returns, which cover only employment income, these returns will capture both employment and non-employment income. This measure will enable tax authorities to effectively assess and tax non-employment income, thereby contributing to increased tax revenue.

f. Monthly Returns for Non-resident Airlines and Shipping Companies

While the basis of taxation, the determination of assessable profits and the minimum effective tax rate of non-resident airlines and shipping companies will remain the same, the Nigeria Tax Administration Bill seeks to introduce monthly tax payment for these companies.[26] When implemented, this will make it easier to collect taxes in this sector and increase compliance.

24 Clause 106 of the Nigeria Tax Administration Bill
25 Clause 28 of the Nigeria Tax Administration Bill.
26 Clause 18 of the Nigeria Tax Administration Bill.

g. Anti-Avoidance

In addition to the general provisions empowering relevant tax authorities to disregard artificial transactions and make necessary adjustments to ensure appropriate taxation of income and profits, the Nigeria Tax Administration Bill introduces comprehensive anti-avoidance measures aimed at curbing tax avoidance schemes.

For instance, clause 29 of the Bill mandates that any person who enters into or intends to enter into a transaction or agreement—defined as a *disclosable transaction or agreement*—whose primary purpose is to obtain a tax advantage, must, without prior notice or request, disclose relevant information about such transactions to the appropriate tax authority. This provision effectively introduces a *principal purpose test* to counteract tax avoidance, aligning Nigeria's approach with global tax practices. This disclosure requirement will enable tax authorities to identify potential tax planning schemes in advance, discouraging aggressive tax planning and facilitating the collection of taxes that might otherwise be lost.

h. Joint Tax Audit and Exchange of Information

The Nigeria Tax Administration Bill seeks to mandate relevant tax authorities to share relevant tax information with each other and conduct joint audits where for instance, a tax authority discovers an instance of non-compliance by a taxpayer of its tax obligations to another tax authority.[27] This will synchronise tax enforcement efforts by relevant tax authorities and assist in effective tax enforcement. It is also likely to aid in the resolution of disputes between different tax authorities and prevent cases of double taxation where, for instance, a joint tax audit discloses that the tax that is sought to be collected by one tax authority has already been paid to the other tax authority involved in the audit.

i. Deployment of Value Added Tax Electronic Fiscalisation System

The Nigeria Tax Administration Bill seeks to empower the Nigerian Revenue Service (NRS)[28] to introduce an electronic fiscal system for the purpose of recording taxable supplies, and taxable persons would be mandated to deploy any such system introduced by the NRS.[29] This will enable the NRS to track taxable supplies and optimally collect VAT.

j. Filing of Returns by Taxable Persons Enjoying Incentives

The Bill provides that all taxable persons enjoying incentives administered by the relevant tax authorities, including incentives provided under chapter eight and clause 60 of Nigeria Tax Bill, shall, in addition to annual tax returns, submit Annual Tax Incentives returns to the relevant tax authority in the form prescribed by the Service covering income tax and any incentive other than those which are generally available to all taxpayers.[30]

k. Administrative Penalties

A taxable person who fails or refuses to register for tax will be liable to pay an administrative penalty: (a) ₦50,000 in the first month in which the failure occurs; and (b) ₦25,000 for each subsequent

27 Clause 47 of the Nigeria Tax Administration Bill.
28 The Nigerian Revenue Service is to be established by the Nigerian Revenue Service Bill to replace the Federal Inland Revenue Service.
29 Clause 23 of the Nigeria Tax Administration Bill.
30 Clause 26 of the Nigeria Tax Administration Bill.

month in which the failure continues. Notably, where a company awards a contract to an unregistered person, such a company shall be liable to pay an administrative penalty of N5,000,000[31]. In our view, this penal provision is high and could exacerbate financial hardship for low-income individuals.

The Bill also provides that a person who has an obligation to collect, deduct or withhold tax under the relevant tax laws, and fails to collect, deduct or withhold the tax due is liable to an administrative penalty of 40% of the amount not deducted. This is a significant increase of the administrative penalty for failure to deduct or remit from the present 10%.[32]

NIGERIA TAX BILL 2024 (HB. 1759)

This Bill seeks to repeal the principal taxation legislation, amend fiscal provisions in other legislation and provide a unified fiscal legislation governing taxation in Nigeria. Specifically, the Nigeria Tax Bill seeks to (i) repeal the Companies Income Tax Act, Personal Income Tax Act, Petroleum Profits Tax Act, the Value Added Tax Act, Stamp Duties Act, and Capital Gains Tax Act and (ii) consolidate the legal frameworks relating to taxation and enact the Nigeria Tax Act to provide for taxation of income, transactions and instruments, and for related matters. The Bill contains fiscal provisions relating to all the tax types in Nigeria, namely income tax, value added tax, stamp duty, capital gains tax, petroleum profit tax, the hydrocarbon tax as introduced by the Petroleum Industry Act 2021 (PIA), and other new introductions and changes to the fiscal system in Nigeria. Ultimately the Bill is intended to provide a unified fiscal legislation governing taxation in Nigeria.

a. Ascertainment of Profits and Income

The Bill provides for the deduction of all expenses wholly and exclusively incurred for the production of income when computing the profits or loss from any trade, business, profession. It then sets out specific expenses that would be deductible. Presently, expenses are required not only to be wholly and exclusively incurred, but also be necessarily and reasonably incurred to be deductible. By this provision, expenses only need to be wholly and exclusively incurred in producing income to be deductible. This is consistent with the position in other jurisdictions, particularly the UK.

b. Revision of Income Tax Rate

The Bill provides new corporate income tax rate for companies in Nigeria. Under the extant Companies Income Tax Act (CITA), the tax rate for companies is: 0% for small companies, 20% for medium companies and 30% for large companies. However, under the Nigeria Tax Bill, the tax rates are as follows - i. for a small company - Zero (0%) percent; and ii. any other company, at the rate of - 27.5% in 2025 year of assessment, and 25% from 2026 year of assessment[33]. Under the current regime, a small company is defined as a company that earns gross turnover of N25,000,000 (Twenty-Five Million) or less. The Nigeria Tax Bill now defines a "small company" to mean a company that earns gross turnover of N50,000,000 or less per annum with total fixed assets not exceeding N250,000,000, provided that any business providing professional services shall not be classified as a small company.

31 Clause 95 of the Nigeria Tax Administration Bill
32 Clause 100 of the Nigeria Tax Administration Bill
33 Clause 56 of the Nigeria Tax Bill

c. Revision of Personal Income Tax Rate

The proposed bill introduces a new progressive tax system for personal income, with different rates applied to specific income brackets. Under this structure, the first ₦800,000 of income will not be taxed, providing relief for lower-income earners. Income exceeding ₦800,000 but up to ₦3,000,000 will be taxed at 15%, while income between ₦3,000,001 and ₦12,000,000 will attract an 18% tax rate. For income between ₦12,000,001 and ₦25,000,000, a 21% tax rate will apply. Income above ₦25,000,000 but up to ₦50,000,000 will be taxed at 23%, and any income exceeding ₦50,000,000 will be subject to the highest tax rate of 25%. This structure ensures that tax obligations increase progressively with higher income levels.

d. Digital Assets as Chargeable Assets

The Nigeria Tax Bill incorporates a definition for "digital assets," aligning with their introduction as chargeable assets under the Finance Act 2023. Digital assets are defined as digital representations of value that can be exchanged electronically, including but not limited to crypto assets and non-fungible tokens (NFTs). Under the proposed provision, all digital assets, including cryptocurrencies and non-fungible tokens (NFTs), are classified as property or assets and are deemed chargeable for tax purposes. This classification implies that any individual or entity, whether a Nigerian resident or a Non-Resident Company (NRC), deriving gains from the disposal of digital assets, such as cryptocurrencies or NFTs, will be subject to taxation in Nigeria. This framework underscores the government's intent to regulate and capture tax revenue from the growing digital asset economy, ensuring compliance from both domestic and international entities engaging in taxable transactions within its jurisdiction.

e. Compensation for Personal Injury

The Nigeria Tax Bill seeks to increase the exempt amount of compensation for loss of office or employment from N10,000,000 to N50,000,000. It also seeks to impose a limit on the amount of compensation for injury or wrong suffered by an individual to his person, office or vocation that would be exempt[34]. This provision will provide relief for lower-value transactions.

f. Expanded list of exempted items

The Bill provides a proposed list of goods and services exempt from VAT. The proposed exemption list comprises the new introductions in addition to items that were previously zero-rated. One of such are goods or services supplied to a diplomatic mission, a diplomat or a person recognised under the Diplomatic Immunities and Privileges Act whose activity is in public interest, and not for profit. The Bill provides a proposed list of goods and services that are VAT zero rated. The new zero-rated list comprises items that were previously exempted and a new introduction. They include electricity generated by generation companies (GENCOs) and supplied to National Grid or Nigeria Bulk Electricity Trading Company (NBET), electricity transmitted by Transmission Company of Nigeria (TCN) to Electricity Distribution Companies (DISCOs), and exported incorporeal property, amongst others.

34 Clause 50 of the Nigeria Tax Bill

g. Dutiable instruments and applicable rate

Unlike what applies under the extant Stamp Duties Act, the Nigeria Tax Bill contains a detailed list of dutiable instruments, applicable rates, and the party liable to pay stamp duty. It also provides conditional exemption of dutiable instruments from stamping[35]. In addition to the conditional exemptions for stamping of dutiable instruments, the Bill provides an outright exemption of specific instruments from stamping.

h. Imposition of Developmental Levy

The Nigeria Tax Bill introduces a development levy on the assessable profits of all companies, excluding small companies and non-resident companies. For the 2025 and 2026 assessment years, the levy will be set at 4%. This rate will decrease to 3% for the 2027, 2028, and 2029 assessment years, and further reduce to 2% from 2030 onwards. The revenue generated from the levy in 2030 and beyond will be dedicated exclusively to the Student Education Loan Fund[36]. The development levy is designed to streamline and consolidate the various taxes and levies currently imposed on companies. This initiative will replace the 3.0% Education Tax, the 0.25% National Agency for Science and Engineering Infrastructure (NASENI) tax, and the 1% National Information Technology Development Levy. Under the new structure, companies will pay a single development levy of 4% until 2029, which will subsequently reduce to 2%. The proceeds from this levy will be dedicated to funding the Nigerian Education Loan Fund.

i. Relief from Double Taxation

The Nigeria Tax Bill provides for unilateral relief for taxes suffered outside Nigeria on income that is brought into Nigeria[37]. It provides for credit for taxes paid outside Nigeria, provided that the income is brought into Nigeria through approved channels. This differs from the current position which provides a deduction for taxes paid outside Nigeria. The Bill further provides that Double Taxation Agreements (DTAs) between Nigeria and any other country shall have effect upon domestication. It also empowers the Minister to issue Regulations for the implementation of DTAs. Presently, the Company Income Tax Act and Personal Income Tax Act confer precedence on DTAs over domestic tax legislation. The Nigeria Tax Bill seeks to remove the precedence. It also seeks to amend the DTAs by excluding additional taxes paid in conformity with global minimum tax rules from the reliefs granted under DTAs. The question, however, is whether Nigeria can unilaterally amend the provisions of her DTAs.

j. Economic Development Tax Incentive

The Nigeria Tax Bill seeks to introduce the Economic Development Tax Incentive (EDTI), granting specific incentives to priority sectors. The EDTI will replace the Pioneer Status Incentive granted under the Industrial Development (Income Tax Relief) Act (IDITRA) for pioneer industries. The Bill contains provisions on eligibility for the EDTI, the duration of EDTI, and addresses other incentives that may be enjoyed by certain categories of businesses, post their utilisation of EDTI.[38] Some of these include, profits or gains of friendly societies, co-operative societies, educational, ecclesiastical, or charitable organisations, trade unions, and government entities, provided such profits or gains are not derived from trade or business activities.

35 Clause 186 of the Nigeria Tax Bill
36 Clause 59 of the Nigeria Tax Bill
37 Clause 119 of the Nigeria Tax Bill
38 Clauses 167 – 185 of the Nigeria Tax Bill

Dividends distributed by authorised collective investment schemes, dividends or rental income received by real estate investment companies on behalf of shareholders, provided at least 75% of such income is distributed within 12 months are also exempted from income tax. However, shareholders and the company remain taxable on other forms of income or undistributed amounts. Gains from the disposal of assets by angel investors, venture capitalists, and others in labelled startups, provided the assets were held for at least 24 months in Nigeria. These provisions aim to promote investment, protect vulnerable groups, and ensure certain public and non-profit activities remain tax-free.

THE NIGERIA REVENUE SERVICE (ESTABLISHMENT) BILL 2024 (NRS BILL) (HB. 1757)

The NRS Bill seeks to provide for a legal, institutional and regulatory framework for the administration of taxes and revenue under any law made by the National Assembly and to account for such taxes and revenue collected. The Bill proposes a repeal of the Federal Inland Revenue Service (Establishment) Act, No.13, 2007 (the "FIRS Act") and in its stead, the enactment of the Nigeria Revenue Service (Establishment) Act to establish the Nigeria Revenue Service (the "NRS or Service"). The Bill seeks to reform the extant Federal Inland Revenue Service (FIRS) into the NRS, stipulating its functions and powers. While the Bill retains most of the provisions of the FIRS Act, some new provisions have been introduced.

a. Functions of the NRS

The functions of the Service under the NRS Bill are similar to the functions of the FIRS under the FIRS Act. They include assessing persons including companies, and enterprises chargeable with tax. One important introduction under the NRS Bill is the power of the NRS to assist, on request, a State or Local Government, in the collection or administration of taxes. This, however, only applies to taxes in respect of which the requesting government has the statutory right to collect or administer.

The Bill provides that all powers vested in the FIRS will continue to be vested in the NRS. It also provides that all actions taken by the FIRS are deemed to have been taken by the NRS. Similarly, all enforcement processes or proceedings commenced or pending under the FIRS Act will continue to subsist under the Bill. This also applies to all rights, interests, obligations and liabilities under any contract or instrument, or in law or equity.

b. Fund of the Service

The NRS Bill provides that the Service will be funded by a percentage, as may be determined by the National Assembly, of the total revenue collected by the Service. This differs from the previous position in the FIRS Act. Under the FIRS Act, funding of the FIRS from tax revenue was limited to non-oil revenues.

JOINT REVENUE BOARD (ESTABLISHMENT) BILL, 2024 (JRB BILL) (HB. 1758)

The JRB Bill in its explanatory memorandum seeks to establish the Joint Revenue Board, the Tax Appeal Tribunal, and the Office of the Tax Ombuds for the coordination, harmonisation and settlement of disputes arising from tax administration.

The JRB Bill represents another tax reform which the Federal Government is seeking to introduce to refine the tax administration process in Nigeria. Overall, the JRB Bill is designed to streamline tax administration, increase intergovernmental cooperation, and introduce new avenues for dispute resolution, aiming to create a fairer and more consistent tax environment in Nigeria.

a. Establishment of Tax Appeal Tribunal

The JRB Bill establishes a Tax Appeal Tribunal ("Tribunal")[39] for the resolution of tax-related disputes. The provisions are consistent with the provisions of the FIRS Act relating to the Tribunal. Upon repeal of the FIRS Act, provisions relating to the Tribunal under the FIRS Act will cease to exist and corresponding provisions under the JRB Bill will become effective upon enactment of the JRB Bill. When enacted, the Tribunal will continue to hear and conclude any proceeding commenced before the coming into effect of the JRB Bill, as if they were commenced under the JRB Bill[40].

b. Establishment of the Tax Office of the Ombud

The JRB Bill also establishes a Tax Ombud[41] to deal with complaints brought against tax authorities. This office has a mandate, amongst others, to investigate tax-related grievances, mediate disputes, institute proceedings on behalf of the taxpayer, and inspect premises related to tax administration. The Office also serve as an independent and impartial arbiter to review and resolve complaints relating to tax, levy, regulatory fee and charges, customs duty or excise matters; review complaints against tax officials and authorities and resolve them through mediation or conciliation by adopting informal, fair and cost-effective procedures; receive and investigate complaints lodged by taxpayers regarding the actions or decisions of the tax authorities, agencies or their officials and to also serve as a watch-dog against any arbitrary fiscal policy of the government or by any of its agency and report such policy to the National Assembly.[42] An investigation by the Tax Ombud is required to be conducted within 14 days of receipt of the complaint, provided that the Office of the Tax Ombud may, where necessary, extend the period of an investigation by seven days.[43]

39 Clause 23 of the Joint Revenue Board Bill
40 Clause 29 of the Joint Revenue Board Bill
41 Clause 35 of the Joint Revenue Board Bill
42 Clause 40 of the Joint Revenue Board Bill
43 Paragraph 2 of third schedule to the Joint Revenue Board Bill

CONCLUSION

The provisions outlined in the Tax Reform Bills offer considerable opportunities for revenue optimisation. These measures primarily aim to ensure the appropriate taxation of income, profits, and transactions that are rightfully taxable. Aside from the proposed increase in the VAT rate, many experts have stated that the provisions do not introduce substantial additional tax burdens on businesses or individuals, and they are unlikely to lead to adverse economic distortions.

To ensure the effective implementation of these provisions, the government must adopt approaches that balance efficiency with minimal taxpayer burden. Specifically, the enforcement of minimum tax provisions should be carefully structured to avoid negatively impacting investment and profitability.

About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making process.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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