# *Memories from 2015*

## A review of the major tax and fiscal policy events in the past year

The process of splitting the moribund Petroleum Industry Bill (PIB) started with the draft Petroleum Industry Governance and Institutional Framework (PIGIF) Bill. It is expected that there will be at least one more Bill to address fiscal regime in the oil and gas industry.

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The year 2015 will be marked as the year of slow economic growth and haphazard fiscal and monetary policies due in part to the uncertainties brought about by the change in government.  There were also leadership changes at the FIRS and a number of state tax authorities. This article outlines some of the major events of the past year.

### Tax Policy

As part of the 2015 Budget Speech, the federal government announced a review of existing tax waivers and exemptions especially pioneer status granted to upstream oil companies. In line with this, the Ministry of Industry, Trade and Investment released a list of 44 industries and products that are eligible for the pioneer status.

The Budget Speech also indicated that the Treasury Single Account (TSA) will be implemented to effectively manage and consolidate the country's revenue. This was however not fully implemented until the last quarter of 2015 after the transfer of power to the Buhari administration. A number of issues arose with the hasty TSA implementation some of which remained unresolved.

The Nigerian Stock Exchange (NSE) issued rules to guide transactions with related parties. Under these rules, listed companies are to disclose transactions with interested persons in their financial statements and also make formal disclosure to the NSE.

The Nigerian government ratified the Organisation for Economic Cooperation and Development ("OECD") Convention on Mutual Administrative Assistance in Tax Matters.  The ratification of the Convention is a significant step in the administration of taxes in Nigeria. This is likely to give the Federal Inland Revenue Service ("FIRS") new lines of enquiry about the tax affairs of multinational companies operating in Nigeria.

### Tax Administration

The FIRS released a public notice to clarify inquiries from taxpayers on the filing of full tax returns by non-resident companies (NRCs) operating in Nigeria. Based on the public notice released, the FIRS reiterated that NRCs should self-assess and file comprehensive income tax returns with actual tax and capital allowance computations.

The former Chairman of the Lagos State Board of Internal Revenue Service (LIRS), Mr. Babatunde Fowler, was appointed as the new acting Executive Chairman of the Federal Inland Revenue Service (FIRS). He was confirmed by the Senate in December 2015. To replace Mr. Fowler, Mr. Folarin Ogunsanwo was appointed as the new Chairman of the LIRS Board.

Some changes and initiatives were introduced by the FIRS including enforcement of 30% advance corporate income tax on interim dividends, proposed joint tax audits and use of consultants for tax reviews.

The federal government enacted a new law, the Federal Capital Territory Internal Revenue Service Act, 2015 to establish the Federal Capital Territory Internal Revenue Service (FCT IRS) charged with the responsibility of assessing and collecting taxes in the FCT, a power previously vested in the FIRS.

The Oil & Gas Free Zone Authority (OGFZA) established the Free Zones Tax Administration (FZTA) Unit to coordinate all tax matters relating to the free zones.

## Tax Regulation

The FIRS issued a notice to confirm that interest rate for tax default will remain at 15% for 2015 despite the fact that the CBN increased the Monetary Policy Rate (MPR) from 12% to 13% in November 2014. One year later, the CBN reduced the MPR to 11% in November 2015 but there has been no further communication from the FIRS regarding tax default interest rate which is statutorily linked to the MPR.

The Lagos State Government issued an Executive Order to reduce the charges payable on the transfer of land titles and processing Governor's Consent from about 15% to 5% of the value of property.

The federal government also reduced the rate of withholding tax on all aspects of building construction and its related services from 5% to 2.5%. Special levies were introduced on the purchase of luxury items like new private jets, luxury yachts, luxury cars, champagnes, wines & spirits, business & first class airline tickets and a 1% FCT mansion tax on residential property with a value of N300m and above. These taxes were not implemented due in large part to a weak legal framework for the imposition.

The National Information Technology Development Agency (NITDA) issued a final notice for companies to comply with the local content guidelines which came into effect in 2013. The guidelines required multinational companies to register their entities with the Corporate Affairs Commission (CAC) and carry on services that promote local content value creation.

A National Security Tax bill proposing Nigerian companies to pay up to 5% of their profits passed first reading at the upper legislative chamber and is currently before the Senate. The process of splitting the moribund Petroleum Industry Bill (PIB) started with the draft Petroleum Industry Governance and Institutional Framework (PIGIF) Bill. It is expected that there will be at least one more Bill to address fiscal regime in the oil and gas industry.

## Tax Justice

The Tax Appeal Tribunal (TAT) ruled that withholding tax should be levied on dividends paid out of gas profits by upstream petroleum companies. In another ruling, the TAT held that no capital allowance claw-back (balancing charge) should be computed on the disposal proceed relating to intangible assets on which no capital allowance had been previously claimed.

On the issue of gas flaring, the TAT ruled that the payment made by an oil producing company to flare gas in the course of crude oil production is not a fine to be disallowed for tax purposes but a necessary business expense that is fully tax deductible. This is regardless of whether a written permit was obtained from the government to flare gas.

PwC secured a landmark TAT decision in a VAT case on imported services where the TAT ruled that VAT is not applicable on imported services rendered by a foreign company outside Nigeria to the extent that the foreign provider is not carrying on business in Nigeria. In another decision also secured by PwC, the TAT ruled that a deemed income assessment for PAYE purposes cannot be based on general expectation or what was imposed on another company.

A private educational institution received a favourable judgement stating that it is exempted from paying income tax on its profit.

## The Global Stage

The OECD released its final package on the Base Erosion and Profit Shifting (BEPS) Action Plans designed to curb aggressive tax avoidance by multinational entities. Also, the OECD and United Nations Development Programme (UNDP) officially launched a joint initiative tagged Tax Inspectors Without Borders (TIWB) to help developing countries build tax audit capacity in order to effectively deal with tax evasion and aggressive tax avoidance.

The Economic Community of West African States (ECOWAS) approved a Common External Tariff regime (2015-2019) with Supplementary Protection Measures aimed at regional integration.

HM Revenue & Customs in the UK launched online tax accounts as part of a wider plan to make all taxes digital by 2020 while Greece implemented an asset registration system effective January 1st 2016 to compare earnings with asset accumulation and better detect any undeclared earnings.

In the U.S. the implementation of the Foreign Accounts Tax Compliance Act (FATCA) gained momentum while the South African Revenue Service (SARS) issued its first comprehensive guide on capital gains tax (CGT) and Zimbabwe suspended a 15 percent tax on raw platinum exports. Kenya reintroduced CGT and Tanzania re-enacted a new VAT legislation. In a bid to address the European immigration crisis, the Norwegian government agreed to levy tax on electricity consumption and air fares effective from 2016 to help pay for a record inflow of asylum seekers.

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