



CITN MAGAZINE

The Newsletter of the The Chartered Institute of Taxation of Nigeria (December, 2021 Edition)



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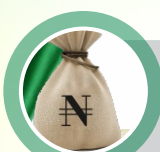
Members of Study Group 2 SEC 43, 2021

HISTORY IS MADE AS THE 15TH PRESIDENT OF THE INSTITUTE ATTAINS MEMBER OF THE NATIONAL INSTITUTE (mni)



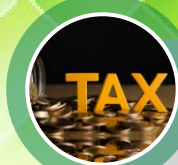
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& others...

CITN...Developing the Tax Profession!



VISION

To be one of the foremost professional
Institutes in Africa and beyond

MISSION

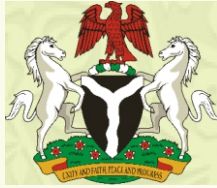
To build an Institute which will be a citadel for the
advancement of taxation in all it's ramification

MOTTO

Integrity and Service

CORE VALUES - (STEP)

* Service * Teamwork * Excellence * Professionalism



ANTHEMS



THE NATIONAL ANTHEM

Arise, o Compatriots,
Nigeria's call obey
To serve our fatherland
With love and strength and faith
The labour of our heroes past
Shall never be in vain
To serve with heart and might
One nation bound in freedom
Peace and unity.

O God of creation,
Direct our noble cause,
Guide thou our leaders right,
Help our youths the truth to know
In love and honesty to grow
And living just and true
Great lofty heights attain
To build a nation where peace
And justice shall reign.

THE NATIONAL PLEDGE

I pledge to Nigeria my country,
To be faithful loyal and honest,
To serve Nigeria with all my strength
To defend her unity
And uphold her honour and glory
So help me God.

CITN ANTHEM

1. We uphold integrity and service
With God on our side
We shall attain the dreams of our
founding fathers to achieve a
tax-driven economy

Chorus:

CITN CITN

Chartered Institute of Taxation of Nigeria
Promoting tax compliance culture
CITN is soaring higher

2. To be one of the foremost professional
Associations in Africa and beyond
To build an institute which will be a citadel
For advancement of taxation.
3. To train individuals worthy of
becoming tax professionals
with knowledge,
skills and expertise
Regulating tax practice in Nigeria.
CITN is soaring higher .

2021/2022 Council Members

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– 2016

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– 2016

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– 2017

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– 2020

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– 2020

Taopheeq Ade-Tunde ORETUGA, FCTI

– 2020

Isola Olurotimi AKINGBADE, FCTI

– 2021

Sheriff Adeyemi SANNI, FCTI

– 2021

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Abdulmumini Bala Ahmed, (Prof.), ACTI

Registrar/Chief Executive

Adefisayo Awogbade, FCTI

FROM THE DESK OF THE CHAIRMAN

HISTORY IS MADE!!!!

- i) The 15th President CITN, Mr. Adesina Isaac ADEDAYO, FCTI an "mni" is here in our midst.
- ii) Our great Institute, the CITN is 40 years and will be celebrating its RUBY jubilee in grand styles come February, 2022.
- iii) PRO BONO SERVICES: A new frontier for the tax professional has emerged as the profession evolves.
- iv) The Executive Chairman FIRS, Mr. Muhammad Mamman Nami, FCTI is elected as the 15th President of the Commonwealth Association of Tax Administrators Forum (CATA)

I feel very excited writing this particular page. A secret you would discover from the proverbial saying that "the taste of the pudding is in the eating". Join me as I take you along a pleasurable path to read through all the innovative and interesting articles lined up to enrich your taxation knowledge. With this in mind, I humbly enjoin you to adjust your seat position, take a deep breath, open the pages of this well packaged edition.

But before I leave you to take your first dip into the pudding. I will like to inform you that we have pages for your uniquely small, medium, big and giant size advert placements publication for just a token. Our magazine has the capacity to reach a wide range of our membership strength of over 24,000 tax professionals wide enough coverage to give broader visibility to your range of goods and business services. Your patronage would be highly appreciated.

On behalf of the B & CD Committee, I wish you a Merry Christmas and a Happy Prosperous New Year in advance as we look forward to receiving beautiful articles from you for our next publication.

Thank you and God bless.

Barr.(Mrs.) Cecilia Odenafenale ODIBO, FCTI

Chairman, Branding and Corporate Development Committee.
2021/2022 Presidential Year.



BRAND & CORPORATE DEVELOPMENT COMMITTEE

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 OLUWAGBAMI KEMI - SECRETARY
 LAWAL OYEBANJI - ASST. SECRETARY



Members of Study Group 2 SEC 43, 2021

HISTORY IS MADE AS THE 15TH PRESIDENT OF THE INSTITUTE ATTAINS MEMBER OF THE NATIONAL INSTITUTE (mni)

You never know how strong you are until being strong is your only choice . . . that is the story of Isaac Adesina Adedayo when he was nominated as the first ever nominee of the Chartered Institute of Taxation of Nigeria for participation in the ten months Senior Executive Course 43, 2021 sometime in February 2021 on-Getting Things Done: Strategies for Policy and Programme Implementation in Nigeria.

The journey of ten months looked long, the stress of the study appeared difficult, exhausting and tedious like an un-surmountable mountain meant only for the strong, the resolute and

possibly the Military. On a normal day, Ade (as he is fondly called) appears simple, soft and easy going. He was born, bred and schooled in Lagos about five and a half decades ago, as a civilian who took things easy as they come his ways. Ade qualified as a Chartered Accountant with the Institute of Chartered Accountants of Nigeria in November 1992, Associate Member in 1995 and Fellow in 2012. He became an Associate member of the Chartered Institute of Taxation of Nigeria (CITN) in 1996 and admitted a Fellow in 2003. He currently practices taxation and accounting under the auspices of his two firms known as AIA Professionals (Chartered Tax Practitioners) and

Adesina Adedayo & Co. (Chartered Accountants)

Like the professional that he is, Ade resumed for the course with the usual professional disposition knowing what to do and when to do. Hardly had he commenced the course that he realised that this is a different terrain meant for the strong, the mighty and the power brokers and he had no option than to be strong in order to adjust to the Course, which was structured along seven groups. Each group was expected to go on a study tour of strategic institution, study tour of two states (one in the north and another in the south), a study tour of a country within the African region and another country outside the African region, which is intercontinental.

Not only that, he must do an Individual Research Project focused on a policy related topical issue related to his profession, attend lectures and make presentations on nine policy and strategic modules, through group cohesion, interaction and dynamics towards achieving a common objective.

For the CITN boss, the most challenging part of the course was instilling discipline, effective communication and presentation, while the course insists that issues are not only identified but solutions proffered, including practical and realistic implementation strategies with datelines. His amazing discovery was the communal spirit of the National Institute. NIPSS is a mini-nation and the ability and capacity to make progress despite participant's diverse personalities, tribal and religious preferences was a must for all.

Ade continues to reminiscence the principle of a sound mind in a sound body and the regular morning drill in form of physical exercise which was incorporated as part of the curriculum on daily basis. For him, the remarkable crowning highlight of the Course is the Presidential Parley- where the President of the Federal Republic of Nigeria received members of the Senior Executive Course and the Report of the Course is discussed with the President and members of the Federal Executive Council.

And finally, the course ended on 20 November 2021 with the conferment of the Member of the National Institute (mni) on the 15th President and Chairman of Council of the Chartered Institute of Taxation of Nigeria . . . for there is time for everything under the heaven . . . and He makes all things beautiful in His time!

Now is the set time for the CITN boss to shine, to be known and be reckoned with for being listed in the nation's foremost policy 'think- tank', top-class technocrats of high intellectual capacity, and dynamic policy initiator toward strategies for national development. This attainment is a sure leap for CITN as an Institute and a great achievement for nation building.

The Branding and Corporate Development Committee along with the Society of Women in Taxation and the entire members of our great Institute celebrates our President and Chairman of Council Adesina ADEDAYO, mni, FCTI, FCA



CELEBRATING 40 YEARS OF NURTURING THE
TAX PROFESSION IN NIGERIA

OUR HISTORY, OUR PRIDE! CITN CELEBRATES @ 40

The Chartered Institute of Taxation of Nigeria with the acronym CITN is a Nigerian Professional Organisation whose members are certified as qualified tax practitioners or administrators. CITN was established on Feb 4, 1982 as Association of tax Administrators and Practitioners. This was then changed to Nigeria institute of Taxation on 21th of February the same year when it was formally launched. This association was recognised as a company Limited by Guarantee on May 6, 1987. The Federal Government then during the regime of General Ibrahim Badamasi Babagida , GCFR through the enabling Act No. 76 of 1992 chartered it. Through this Decree, it was charged to determine the standards of knowledge and skill to be attained by persons seeking to become its members among other duties.

The Chartered Institute of Taxation of Nigeria trains and conducts examinations to determine eligibility of intending members. Members of CITN cut across professions such as Accounting, Economics and Law as well as other professionals who have acquired the relevant tax experience.

CITN has affiliation with the United Kingdom-based Chartered Institute of Taxation, the South African Institute of Tax Practitioners, the West African Union of Tax Institutes, Chartered Institute of Taxation Ghana, Association of Certified Chartered Accountants (ACCA) and Association of National Accountants of Nigeria (ANAN). It is also a member of the International Tax Directors

CITN NEWS

Forum (ITDF), the Association of African Tax Institutes (AATI) and the Financial Reporting Council of Nigeria.

AIMS AND OBJECTIVES OF THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)

According to the Act, CITN has the following aims and objectives among others:

To maintain and regulate as well as raise the standard of taxation practice amongst its members.

To promote professional ethics and efficiency in tax administration and practice.

To co-ordinate, promote and encourage research for the advancement of taxation in Nigeria.

As Mr. Adesina Isaac ADEDAYO mni, FCA, FCTI, 15th president and chairman of council on behalf our great Institute rolls out drums to celebrate its 40 excellently great years of developing and regulating the Nigerian tax profession, we at the corporate and branding committee join all progressive tax professionals to say cheers to the RUBY jubilee celebrant.

We wish the CITN many happy returns of its BIG day.

Long live the Tax Professionals!

Long live the Tax Profession!!

Long live the Chartered Institute of Taxation of Nigeria!!!

Long live the Federal Republic of Nigeria!!!!

Barr. (Mrs) Cecilia Odenafenale Odibo, FCTI.

Council Member CITN,

Chairman, CITN Branding and Corporate Development Committee,

Chairman, CITN Investigation Panel,

State Coodinator SWIT Lagos Chapter.



VISION

To be one of the foremost professional associations in Africa and beyond

MISSION

To build an Institute which will be a citadel for the advancement of taxation in all its ramifications.

CORE VALUES

Service
 Teamwork
 Excellence
 Professionalism

MOTTO

Integrity & Service

cata

REFORMS AND RESULTS: EXPORTING A SUCCESS STORY TO THE COMMONWEALTH

At about 11 am, on Friday, November 12, 2021, there was a buzz among tax aficionados: Muhammad Nami, the Federal Inland Revenue Service (FIRS) boss had been elected the President of the Commonwealth Association of Tax Administrators (CATA). He is the first Nigerian in the history of CATA to be so elected.

CATA is an association constituted at the meeting of the Commonwealth Finance Ministers in Barbados in 1977 to promote the improvement of tax administration within the

Commonwealth with particular interest in developing countries. In 1978, 26 countries, including Nigeria formed CATA; the membership has grown to 47 today.

All 47 member countries of the Association unanimously elected Muhammad Nami to lead them. The excitement was palpable. Beyond that, it held an aura that spoke more than the applause that followed Muhammad Nami's acceptance speech.

The applause of those excited representatives at the virtual session of the fifteenth General Meeting of CATA was a call to hope, for ideas, and for a leader to take on global taxation problems and fix them.

Ordinarily, the General Meeting would have been a physical event. Alas, the 2021 General Meeting was a virtual one. No thanks to the ruthless Coronavirus pandemic that has disrupted everything; from lives to jobs, to healthcare, to travel, to family, and for the men and women present at that virtual meeting, government revenue. As such it behoved on them to elect an individual that would break the mould of Covid-19 on government revenues.

Muhammad Nami knows this. Like every leader in tax administration. His country, Nigeria saw the woes of the pandemic: income for the government dwindled, jobs were lost and the burden to seek revenue introduced a desperate situation — get money wherever it can be found. This responsibility rested on his shoulder. And he has so far delivered.

In 2020 when the Coronavirus pandemic struck, economies across the world were battered and most countries suffered fiscal shocks. Revenue authorities could not shore up enough funds to meet the needs of government to execute their mandates. Despite the fiscal chaos, the FIRS was able to meet 98% of the national tax target for that year.

It had collected total tax revenue of over 4.952 trillion Naira, a little short of the target of N5.07 trillion the Federal Government had set for it. This near 100% feat was phenomenal. It was coming

in the same year the pandemic had shrunk business activities, lockdowns had frustrated commerce, while tax exemptions had been given to small companies and tax waivers had been granted by the FIRS to cushion the effects of the pandemic.

In the same year, the Service under Nami achieved 109% of its non-oil tax collection target.

How were all these possible, even in the face of a raging fiscal plunderer?

Nami came into office with a mindset of reform and result. He drew up a roadmap of the objectives he was seeking for the FIRS: rebuild its institutional framework; collaborate better with stakeholders; make the FIRS a customer-centric institution and make the institution data-centric.

These objectives have underpinned all decisions he has made as Executive Chairman of the FIRS. It is not a surprise that within the second year of his time in office he has deployed the revolutionary TaxPro Max: FIRS' homegrown digital platform for tax administration which allows taxpayers to register, file returns and pay their taxes easily from any location other than their respective tax offices.

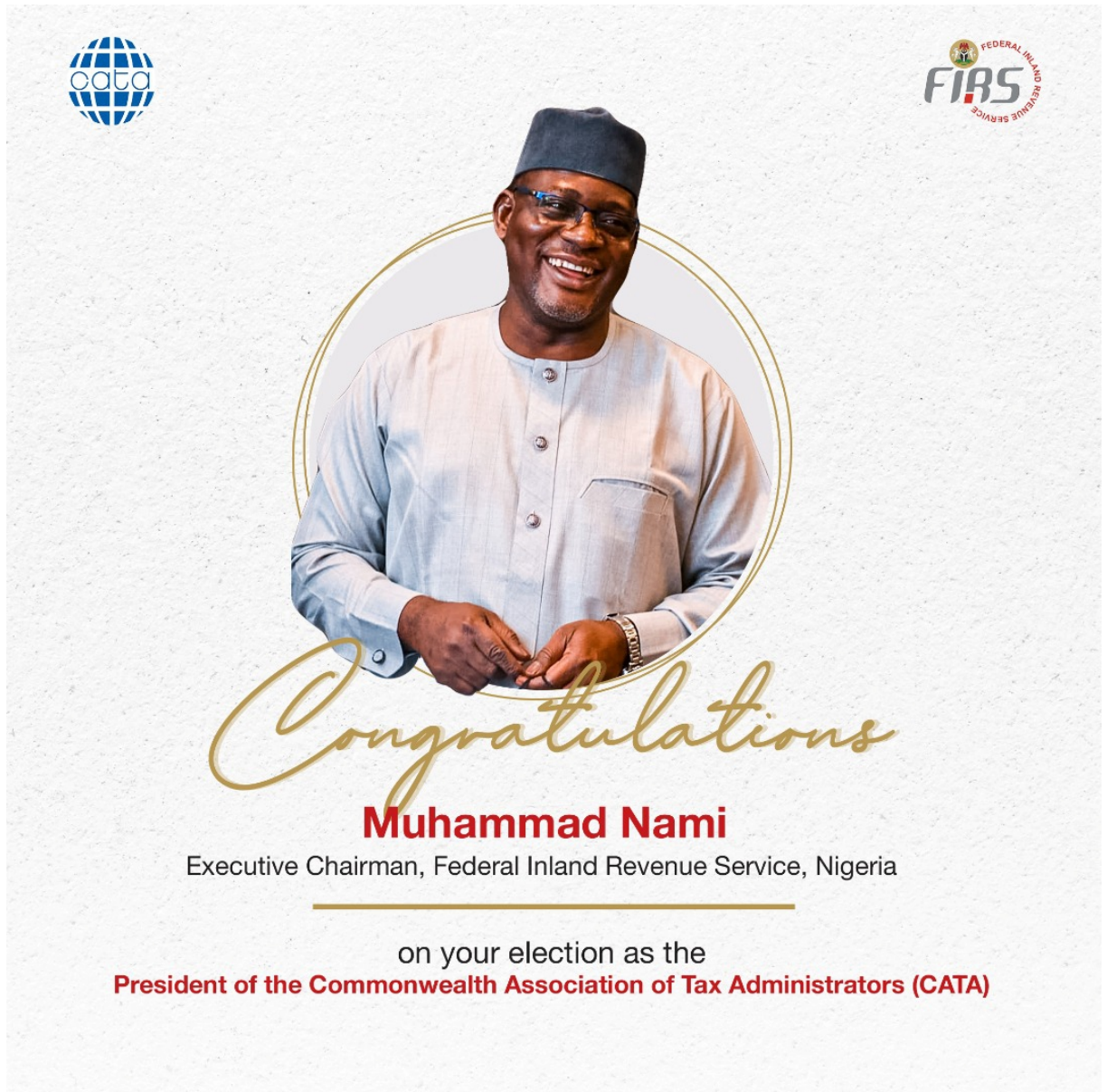
Then he set up the Tax Incentive Management Department to monitor and take charge of the tax affairs of enterprises enjoying tax exemptions and holidays and ensuring they do not take undue advantage of their status as a cover to earn taxable income and refuse to pay taxes on such income.

“Data is the new oil” is an aphorism Nami rehashes often. In line with that thought he set up

the Intelligence, Strategic Data Mining and Analysis Department of the FIRS—a department to mine data, analyse it and make sense of the transactions happening across the country and the world for tax administration.

The world is experiencing change and uncommon dynamics with technology at the forefront of the disruption. Nami has consistently advocated for reforms of operations, processes and tax laws, while pursuing the adoption of technology for revenue mobilisation and improved human capital development for tax administrators to be ahead of the curve.

It was the Finance Act of 2020 that gave the FIRS the legal backing to deploy technology for tax administration. Without that amendment to the FIRS Establishment Act, the successes recorded by the adoption and deployment of the TaxPro Max would not have witnessed the jubilation it has today. The Act also created more avenues for the



Nigeria's annual review of its Finance Act, a ritual that the FIRS boss has been a part of, is a template that fiscal reformers, serious about tackling revenue challenges should adopt.

tax authority to investigate long-abandoned potential sources of revenue; in the proposed 2021 Finance Bill, the FIRS is to be given greater powers for revenue collection.

Among others, it proposes a single tax administration authority that would ensure certainty of tax liability and ease of payment of taxes, which means that Nigeria is poised to generate far more revenue than it has done previously.

The Commonwealth nations are looking forward to the leadership of Muhammad Nami to taxi CATA through the turbulence of today's complexities and provide new thinking, strategic leadership and reform-minded development to the body of tax administrators, as is being witnessed in Nigeria.

On Friday, November 27, 2021, Muhammad Nami walked into the United Kingdom's Treasury House for his first face-to-face meeting with members of the CATA Secretariat, as well as representatives of the United Kingdom's Tax Authority - Her Majesty's Revenue and Customs (HMRC). Mr Duncan Onduru, the Association's Executive Director briefed the new President on the governance and structure of the office, as well as the prospects and challenges the Association was facing.

"We cannot afford to discuss taxation without technology anymore," Muhammad Nami quipped as he made his remarks to those present at the meeting. True to reality, tax administration must be in tune with modern technological advancements. And in fact, ahead of it.

For Nami, four items are top on his agenda for the Commonwealth Association of Tax Administrators: improve the capacity of members to meet up with the dynamics of today especially in technological advancements;

promote the Multilateral Commonwealth income Tax Relief for all member countries; promote the Bilateral Avoidance of Double Taxation Treaty among member countries; and forge strategic partnerships with developmental and multilateral institutions, for support in capacity building for CATA members.

In the next three years, the worth of Muhammad Nami's over thirty years' experience as a tax consultant, administrator and reformer would be put to test, again. The Nigerian template, whose results the numbers are already boasting of, is a ready gift to the Commonwealth. Expectations are high, given the uncommon times Nami has met in office. Yet the FIRS boss has shown that he has the right mindset, solid records and capacity to lead CATA. The Commonwealth awaits his reforms and results.

Johannes Oluwatobi Wojuola is the Special Assistant on Media & Communication to the Executive Chairman of the Federal Inland Revenue Service (FIRS) Muhammad Nami



TAX Relief

COMMONWEALTH TAX RELIEF

What is Commonwealth?

The Commonwealth is a political association of 47 member states, almost all of which are former territories of the British Empire. The association is formed for the development of free and democratic societies and the promotion of peace and prosperity to improve the lives of all the people of the member nations.

What is a Tax Relief?

Tax relief is any government program or policy initiative designed to reduce the amount of taxes paid by individuals or businesses. It may be a general tax cut or a targeted program that benefits a specific group of taxpayers or promote a particular policy of the government.

What is Commonwealth Income Tax Relief?

Commonwealth Income Tax Relief (CWTR) is a double taxation relief available to commonwealth nations for the avoidance of double taxation among the member states. This provides that tax paid on income earned in a commonwealth country may be relieved by another commonwealth country or grants reduced rate of tax on income that is taxable in another commonwealth country.

Legislative Provision in Nigeria

Section 44(1) of the Companies Income Tax Act (CITA) Cap C21 LFN 2004 (as amended) provides relief for a Nigerian company that its income has been taxed or is taxable in another commonwealth country. The section provides that:

- “(1) If any Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Service that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows:
- (a) if the Commonwealth rate does not exceed one-half of the rate of tax under the Act, the rate at which relief is to be given shall be the Commonwealth rate tax;
 - (b) in any other case the rate at which relief is to be given shall be half the rate of tax under this Act.”

In a similar manner, Section 44(2) of CITA provides relief for a company other than Nigerian company (non-resident companies) as follows:

“(2) If any company, other than a Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Service that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year of assessment in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows-

- (a) if the Commonwealth rate of tax does not exceed the rate of tax under this Act, the rate at which relief is to be given shall be one half of the Commonwealth rate of tax;
- (b) if the Commonwealth rate of tax exceeds the rate of tax under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax under this Act exceeds one half of the Commonwealth rate of tax.”

In defining the tax that qualifies for the relief, Section 44(3) of CITA provides as follows:

“(3) For the purposes of this section-

“Commonwealth income tax” means any tax on income or profits of companies charged under a law in force in any country within the Commonwealth or in the Republic of Ireland which provides for relief from tax charged both in that country and Nigeria in a manner corresponding to the relief granted by this

section

Section 44(1) & (2) of CITA as cited above, provides a Commonwealth Tax Relief for both resident and non-resident companies whose profits have been subjected to a tax in commonwealth member nation or in the Republic of Ireland. Such companies will be entitled to relief from tax paid or payable in Nigeria on the same profit, either in whole or in part, as a means of mitigating double taxation in Nigeria.

Conditions to the Application of Commonwealth Relief

1. For Nigerian companies, the applicable rate of tax for relief is the rate of tax paid in the other commonwealth country, subject to a maximum relief of $\frac{1}{2}$ Nigerian tax rate, (i.e., maximum of 10% for medium size companies or 15% for large size companies).
2. For a non-resident company from a commonwealth country, where the rate of tax charged in its home commonwealth country does not exceed $\frac{1}{2}$ Nigerian tax rate (i.e., 10% or 15% as the case may be), then the full rate of tax charged or chargeable in the other commonwealth country shall be allowed as a relief against the full Nigerian rate of tax.
3. However, for a non-resident company, where the rate of tax charged in its home commonwealth country exceeds the Nigerian tax rate (i.e. more than 20% or 30% as the case may be), the applicable rate of relief will be limited to the amount at which the Nigerian rate of tax exceeds $\frac{1}{2}$ of the rate of tax charged in its home commonwealth country (i.e. relief shall be 20% or 30%, as the

case may be, minus $\frac{1}{2}$ of the tax rate in its home country).

4. There must be a corresponding relief of the same kind in the other jurisdiction in such a way that provide reciprocity between the two countries, i.e., for a Nigerian company to benefit from the relief in respect of income derived from a commonwealth country, the income must have been subject to commonwealth tax relief in the source commonwealth country. Similarly, for a non-resident company from a commonwealth country to enjoy the relief in Nigeria, similar relief must be available to Nigerian companies that derived income from such commonwealth country.
5. The Company that seeks to benefit from the relief in Nigeria must furnish proof of a corresponding tax deduction or payment in the other jurisdiction.
6. Claims for relief of commonwealth tax for any year of assessment can be made not later than six years after the end of the year the tax was incurred or paid.
7. The tax to be relieved shall be available for set-off against the tax which the company is liable to pay in Nigeria for that year of assessment.
8. It should also be noted that the provisions will not be applicable in respect of any commonwealth country with which Nigeria has a Double Taxation Agreement (DTA), as Sections 45 and 46 of CITA, which provides for the application of DTA, has overriding effect on other relevant provisions of the Act.

Challenges of the Relief

As good as this relief is for cross-border trade and investment, not many businesses have the knowledge or understanding of this provision of CITA. Also, not all commonwealth countries have similar provisions in their tax legislations. Therefore, most businesses that operate overseas cannot enjoy this relief, because of lack of reciprocity from the other tax jurisdiction. This is because reciprocity is the pillar on which the relief is activated, and it is the most important pre-condition for granting the relief in Nigeria.

Conclusion

Cross-border trade and investment will be better enhanced if the commonwealth countries that are yet to have the Commonwealth tax relief emulates Nigeria to develop similar provision in their tax legislation.

Article written by: Olufemi Michael Olarinde, Technical Assistant (Tax Policy) to the Executive Chairman, FIRS



THE INITIATION OF PRO BONO SERVICES INTO THE TAX PROFESSION

1. Introduction

The Coordinator of the Society for Women in Taxation (SWIT) Lagos Branch, whose investiture is being done today is a personality whose eagerness for public service is palpable. We know her as the founder of MAHUEMOLEN ADUKE ODIBO FOUNDATION, which specialises in fighting for victims of medical negligence. My take is that if she can dedicate her life and time to such charitable work, then the organisation she heads must partake of this innate quality in her. For the records, Mrs. Cecilia Odibo is not just the 4th Coordinator of SWIT, Lagos Branch, she is

also a Council member of CITN, Chairperson of the Publicity and Branding Committee as well as the Chairperson of the Investigation Panel Committee of CITN. Thus, she stands in a position to lead this revolution of incorporation of pro bono services into the tax profession, if she so decides. From the Objectives of SWIT, there can be no greater contribution they can make to the Society more than engaging in this CORPORATE SOCIAL RESPONSIBILITY by way of offering pro bono services to those that need it most.

2. Meaning, Origin and Purpose of Pro Bono Services

The term, pro bono, is derived from Latin phrase "pro bono public", which means "for the public good".

The pro bono services seems long, complicated and hazy. The term has gradually attained a generic connotation "as services that are

rendered by a professional for free or at a lower cost." It is widely practised by professionals in the Western world.

Pro bono can support business objectives by simultaneously bolstering employee morale, developing talents, improving the company's reputation, and driving internal innovation. Volunteers who donate their skills to organizations

that serve the community can derive a greater sense of purpose about their job and their employer, while developing their own career and skills. At the same time, pro bono shares value with community partners by delivering capacity building services to help nonprofits grow and achieve their mission.

3. Areas of Pro Bono Services in Taxation

1. Simplification of tax statutes, subsidiary legislations such as Orders and Regulations, and circulars



SWIT members should wholly by themselves or in collaboration with other organisations simplify basic rights and duties of taxpayers in Nigerian languages. In due course, they can extrapolate this function into simplification of tax laws in such a way women, youths and other vulnerable taxpayers can understand it. The jargons in tax laws makes it difficult for the uninitiated to understand it. As we know, taxation is substantially law, and ignorance of

the law is not an excuse.

2. Advocacy on Tax Rights and Duties

The slogan of SWIT is: "WOMEN TALKING TAX." The "talking" in this slogan means advocacy. It will, therefore, be incongruous for your association not to live by its slogan. You translate your talk to action through pro bono services.

3. Representation before tax authorities in appropriate cases

In appropriate cases, you can make representation to tax authorities on behalf

of vulnerable taxpayers. There are many women in the markets and young entrepreneurs who complete NYSC and commence businesses through bank loans or through equity. Many of them are confused on how to handle issues around tax compliance. This is where SWIT can come in to fill the gap as some of them don't have resources to brief accountants and tax consultants. Even some have the money are held up by phobia of the taxman.

4. ***Tax Education and Enlightenment***

Part of your TAX WEEK should be used to enlighten those in the informal sector through their market associations on the benefits of voluntary tax compliance, how to self-assess themselves, when administrative assessment will apply, issues around audit, objection to assessments and dispute resolution mechanism in the tax system.

5. ***Feedback on the impact of tax enforcement and taxpayers' perception to tax authorities***

SWIT members can through a survey or otherwise obtain feedback from taxpayers in relation to the impact of the implementation of tax laws within their localities including the Local Government Areas. The outcome of such survey can be delivered to tax authorities to help them in their response and enforcement mechanisms.

6. ***Intervention in the presentation of complaints, objections, and grievances of***



taxpayers

There are instances some Local Government Councils use thugs and consultants to lock up shops of women in the markets and they are directed to negotiate with consultants. Many of these vulnerable women will be overjoyed to see that they have a veritable fulcrum in a women organisation like yours.

7. ***Holding tax authorities like FIRS and LIRS to their Service Charters***

FIRS and LIRS have well articulated Service Charters. The Chief Celebrant of today coincidentally is the Tax Controller of FIRS, Ojo Alaba MSTO. She occupies a position where she can testify whether the Service Charter is being followed. You also have members in LIRS who should testify whether LIRS is doing the needful.

You have a duty to courteously communicate these government agencies in writing advising them as to where there are implementation gaps. SWIT can play this role if the will is there.

4. Taxpayers that can benefit from SWIT Pro Bono Services

- a) Taxpayers in the informal sector;
- b) Women
- c) Young entrepreneurs
- d) Taxpayers in the SMEs (See the definition of small company in section 105 of CITA as amended by section ...of the Finance Act, 2019.
- e) Some NGOs.

5. How SWIT can carry out Pro Bono Services

- a) Constitute a Pro Bono Committee to design procedures and processes of the practice of pro bono in tax matters.
- b) Invite experts in Pro Bono Services from other organisations to organise seminars and workshops on Pro Bono Services.
- c) Constitute a Tax Simplification Committee that should work with paid experts to translate tax legislations into Yoruba Language and Pidgin English. If you are serious in the Project, I believe that tax authorities will assist you. The outcome of their assignment will be used for pro bono work.
- d) Follow the LIRS Example by entering into MOU with market unions.

- e) Enter into MOU with the Organised Private Sector to offer Pro Bono Services to their young entrepreneurs. The Women and Youth segments of NECA, NASME, MAN and NECA will be ready to partner with SWIT.

6. Conclusion

My colleagues, you will agree with me that the best way women can talk tax is by SWIT engaging in the corporate social responsibility of pro bono services. By that measure, you will prove that tax professionals can give back to the society. Meanwhile, members of SWIT must prepare themselves intellectually and pragmatically before embarking on this task in order to reduce shocks and embarrassment because some of your targets understand the tax system in different degrees hence you are expected to communicate from the area of sufficient knowledge and not from the area of half-knowledge.

I wish the chief celebrant an exciting tenure in office.

An extract from the paper presented at the Investiture Ceremony of Barr. (Mrs.) Cecilia Odenafenale Odibo, LLB, LLM, BL, CNA, FCTI. As the 4th State Coordinator, SWIT Lagos Chapter by:

Barr. Chukwuemaka Eze, FCTI.
Legal Adviser, CITN.



LIST OF TERTIARY INSTITUTIONS OFFERING TAXATION AS PROGRAMME

S/N	State/Institution	Programme
1.	Ogun State Institute of Technology, Igbesa	ND
2.	Waziri Umaru Federal Polytechnic, Birni-Kebbi.	HND
3.	Federal Polytechnic, Ilaro	HND
4.	Federal Polytechnic, Nekede	HND
5.	Federal Polytechnic, Oko, Anambra	HND
6.	Nuhu Bamaili Polytechnic, Zaria	ND
7.	Abubakar Tatari Ali Polytechnic, Bauchi	ND
8.	Nasarawa State University, Lafia	BSc
9.	University of Benin, Edo State	BSc/MSc
10.	Caleb University	BSc/MBA
11.	Usman Danfodio Univeristy, Sokoto	BSc
13.	University of Uyo	BSc
14	Kwara State University, Malete.	BSc
15.	Bayero University, Kano	BSc & MSc in Taxation & Revenue Administration
16.	University of Maiduguri	M.Sc. Taxation
17.	Adamawa State Uni., Mubi	B.Sc & Masters in Taxation & Revenue Administration
18.	Federal University Dutse	BSc in Taxation
19.	Benue State University Makurdi	BSc in Taxation
20.	Federal Polytechnic, Ado-Ekiti	ND
21.	Lagos State Polytechnic	ND
22.	ANAN University	MSc. In Taxation and Fiscal Policy and MTax and Fiscal Policy
23.	Federal Polytechnic, Ede	HND
24.	Yaba College of Technology	ND
25	Lagos State University	LLM Taxation, MLS Taxation

LIST OF TERTIARY INSTITUTIONS OFFERING TAXATION AS A UNIT COURSE

S/N	State/Institution	Programme
1	Yusuf Maitama Sule University	Unit course
2	Police Academy, Wudil	Unit course
3	Sky line University	Unit course
4	Kano Polytechnic.	Unit course
5	Hassan Adamu Federal Polytechnic	Unit course
6	Bilyaminu Usman Polytechnic, Hadej	Unit course
7	Jigawa State Poly, Dutse	Unit course
8	Fed. Uni. Dutsin ma	Unit course
9	Umaru Musa YarAduwa, University.	Unit course
10	Alqalam University (Private)	Unit course
11	Hassan Usman Katsina, Polytechnic	Unit course
12	Fed. Uni. Gusau	Unit course
13	Fed. Poly. Kauran Namoda	Unit course
14	Audu Gusau Poly.	Unit course
15	Usmanu Danfodiyo University	Unit course
16	Sokoto State University	Unit course
17	Sir Aliyu Shinkafi Poly	Unit course
18	Fed. Uni. Birnin Kebbi	Unit course
19	Waziri Umaru Poly	Unit course
20	ATBU	Unit course
21	Bauchi State University, Gadau	Unit course
22	Abubakar Tatari Ali Poly.	Unit course
23	Fed. Uni. Gashuwa	Unit course
24	Fed. Poly, Damaturu	Unit course
25	Mai IdrisAlooma Poly, Geidam	Unit course
26	Fed. Univ. Kashere	Unit course
27	Gombe State University	Unit course
28	Fed. Poly, Kaltungo (Newly Estab.)	Unit course
29	Borno state University	Unit course
30	Ramat Polytechnic	Unit course
31	Maddibo Adamu University, Yola	Unit course
32	Adamawa State Poly, Numan	Unit course
33	Fed. Poly. Mubi	Unit course
34	American University of Nigeria (Private)	Unit course
35	Fed. University, Wukari	Unit course
36	Taraba State University Jalingo	Unit course
37	Federal Polytechnic, Bali	Unit course
38	Ahmadu Bello University, Zaria	Unit course
39	University of Lagos	Unit course
40	Rivers State University	Unit course
41	University of Lagos	Unit course
42	Lagos State University	Unit course

LIST OF TERTIARY INSTITUTIONS WITH TAX CLUB

S/N	Institutions Rep	Location
1	Abubakar Tatari Ali Polytechnic	Bauchi
2	Ahmadu Bello University	Zaria
3	Federal Polytechnic	Ilaro
4	Federal Polytechnic	Nekede
5	Federal Polytechnic. Oko	Anambra
6	Kano Polytechnic	Kano
7	Lagos State University	Lagos
8	Lead City University	Ibadan
9	Moshood Abiola Polytecnic	Abeokuta
10	Nasarawa State University, Lafia	Nasarawa
11	Nnamdi Azikiwe, University	Anambra
12	Nuhu Bamaili Polytechnic, Zaria	Kaduna
13	Obafemi Awolowo University, Ife	Osun
14	Rivers State University	Rivers
15	University of Lagos	Lagos
16	University of Nigeria Nsukka	Enugu
17	Usman Dan Fodio University	Sokoto
18	Waziri Umaru Federal Polytechnic, Birni-Kebbi.	Kebbi
19	Gusau Polytechnic, Talata Mafara	Zamfara



AN EXAMINATION OF TAXPAYER'S RIGHT OF OBJECTION TO AN ASSESSMENT NOTICE UNDER THE COMPANY INCOME TAX ACT

1.0 INTRODUCTION

Virtually in every human endeavor, disputes or disagreements arise in the cause of transactions and even taxation is not immune to this. Disagreement between Tax Authority and Taxpayer cannot be totally eradicated in any tax jurisdiction. This is because, one of the features of tax is that, it is a compulsory payment imposed by law which is not necessarily linked to a direct benefit in return to the tax payer. Hence few persons, if any at all, are willing to pay tax to the state on a continuous basis of all amount assessed against them without objecting to it, hence the saying 'no one pays tax with a smile'. Recently, with the coming into force of the Federal High Court (Federal Inland Revenue Service) Practice Direction 2021, there have been many debates on whether the said

Practice Direction has infringed on the rights of taxpayers in Nigeria. This article does not seek to address such arguments but rather seek to examine one of such taxpayers' right: "the taxpayer right of objection to an Assessment Notice." It is significant to state that, for there to be

objection by a taxpayer there must have been an assessment to object to. The article will therefore examine the validity of an Assessment Notice, service of an Assessment Notice, Legal framework for the Taxpayers' right to objection under the law, time within which an objection can be raised, what constitutes a valid objection and mode of raising objection, Status of Notice of refusal to amend (NORA), challenges/limitations to effective exercise of Taxpayer's right of Objection to an Assessment Notice. The article will proffer some recommendations before its conclusion.

2.0 THE VALIDITY OF AN ASSESSMENT NOTICE

An Assessment in tax parlance can be defined as the determination of the share of tax to be paid by a Taxpayer for a particular year or period of assessment. The Court in the case of *Oando Supply and Trading Limited v FIRS* (2011) define an assessment as "A decision as to the amount of tax due from the tax payer to whom it is addressed, and an Order directing him to pay the

amount....” An Assessment Notice therefore refers to a Notice containing the assessed tax liability of a taxpayer demanding payment of same to the issuing tax authority.

The Law is the basis of taxation, accordingly, a valid Assessment Notice must be issued in accordance with the relevant tax law. For instance, a valid Companies Income Tax Assessment Notice must be issued by the tax authority in compliance with the provisions of the Companies Income Tax Act. The Court in the case of *Addax v FIRS* (2012) held that “A correct Assessment is of course the assessment that complies with the relevant tax law, with regard to Petroleum profit tax, the PPTA is the relevant litmus test.” This is to say once an Assessment Notice is issued and it does not comply with the requirement of the relevant tax law or the basis for such assessment is not found on the relevant tax law it seeks to enforce, such an Assessment can be regarded as invalid and can serve as a basis for objection by Taxpayer. Therefore, an Assessment should not be arbitrary, punitive or vindictive, but should be reasonable in all circumstances and issued based on the available fact on the Taxpayer’s income and in accordance with the relevant tax law.

Worthy of note is that, for every general rule there is always an exception. Section 70(1) & (2) of Companies Income Tax Act provides thus:

(1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and

effect in conformity with or according to the intent and meaning of this Act or any enactment amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—(i) the name of a company liable or of a person in whose name a company is chargeable; or (ii) the description of any profits; or (iii) amount of tax charged;

(b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment the notice thereof shall be duly served on the company intended to be charged or the person in whose name such company is chargeable and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

It means therefore, if an Assessment Notice is defective in form and not in substance it cannot be regarded as invalid nor form a basis for an objection by a Taxpayer. For any defect on an Assessment Notice to render it invalid, it must be a defect that is in substance. The Court has given a literal and unambiguous interpretation of the above section in the case of *Halliburton Energy Services Nigeria Limited v FIRS* (2013). Furthermore, the Federal High Court through judicial activism in the case of *Reiss & Co (Nig) Ltd v FIRS* (1977) further expands the operation of Section 70 of CITA to the extent that even where the Body of Appeal Commissioner (now Tax

Appeal Tribunal) validate an Assessment Notice on the wrong principle of law, if there are enough material facts (documentary evidence) before the appellate Court, the Court will substitute its own order in place of that of the Tax Appeal Tribunal to validate the Assessment affirmed by the lower Court.

3.0 SERVICE OF AN ASSESSMENT NOTICE

The Service of an Assessment Notice is fundamental to the determination of when time begins to run against the Taxpayer within which he/she can object to the Assessment Notice, it also forms part of the nitty-gritty of the requirement of law for the enforcement of an Assessment Notice against any Taxpayer in the Court of law. Section 68 of CITA as amended by Section 18 of Finance Act, 2021 Provides for the service of notice of assessment, thus:

“The Service shall cause to be served on or sent by registered post, courier service, email or any other electronic means, as directed by the Service in any notice issued pursuant to this Act or any other relevant law to each company, or person in whose name a company is chargeable, whose name appears on the assessment lists, a notice stating the amount of the total profits, the tax payable, the place at which such payment should be made, and setting out the rights of the company under the next following section.”

It is interesting to note that, the 2021 Finance Act has given credence to E-Service of Assessment Notice. This suggests therefore, that just as the society is dynamic, the tax law has to also evolve to meet the demand of the contemporary society. The E-Service of Assessment Notice is equally in conformity with Order IV of Federal

High Court (FIRS) Practice Direction 2021 and the TAT Covid 19 Practice Direction. Therefore, gone are the days when taxpayers will deliberately avoid service of Assessment Notice, the Tax Authority now has been empowered by the Finance Act 2021 to issue a Notice in-form of a circular to all taxpayers directing the manner by which Assessment Notice can be served aside the electronic medium of service through Email that was expressly provided for by the amendment. A print out of mail containing an Assessment Notice served electronically is a sufficient proof of service. Section 84 of the Evidence Act 2011(As Amended) provided for admission of electronically generated evidence in Court.

Section 68 of CITA expressly mandated the Tax Authority to cause to be served on or sent by registered post, courier service, email or any other electronic means the Assessment Notice on each company, or person in whose name a company is chargeable, whose name appears on the assessment lists. Therefore, where the Tax Authority chooses to serve an Assessment Notice other than by electronic means, it must serve such an Assessment Notice on the registered office of the Taxpayer. Section 104 of the CAMA 2020 (formerly Section 78 of the CAMA 1990), expressly provided for how any Notice, documents or Court process can be served on a Company in Nigeria. Section 104 of CAMA provides that: “A court process shall be served on a company in the manner provided by the rules of Court and any other document may be served on a company by leaving it at, or sending it by post to, the registered or head office of the company” (the underlined is mine for emphasis). Hence, an Assessment Notice shall be served on the

registered office of a company. The Court in the case of *FBIR v J.H Doherty Limited* (1971) held thus: “The Notices (assessment Notices) dispatched by the Plaintiff (Tax Authority) to the Defendant (Taxpayer) through its Auditor were not served in accordance with Section 16(3) of CITA 1961 and therefor, were not properly served.....such Notice must be served on a tax paying company itself and at its registered office. Service by another means is invalid”.

4.0 LEGAL FRAMEWORK FOR THE TAXPAYERS' RIGHT TO OBJECTION UNDER THE LAW

In any tax jurisdiction globally, the tax laws are enacted with specific provision that empowers the taxpayer to object to an Assessment Notice issued against it by relevant Tax Authority. This is the global best practice in conformity with the principle of taxation as to “equity and fairness” as advocated by Adam Smith and other philosophers. This will check-mate arbitrariness on the side of the Tax Authority. Under the Companies Income Tax and Nigeria Tax System, the following are the basis or foundation upon which a taxpayer can exercised his or her right of objection to an Assessment Notice served on him.

1. Section 69 (1) of CITA as Amended by Section 19 Finance Act 2021 “If any company disputes the assessment it may apply to the Service, by notice of objection in writing, delivered in person, by courier service, email or any other electronic means, as directed by the Service in any notice issued pursuant to this Act or any other relevant law to review and to revise the assessment made upon it.”

2. Section 31(5) of FIRSEA “The provisions of this Act with respect to objections and appeals

shall apply to any notice given under this section as if such notice were an assessment.”

3. Paragraph 13(1) of the 5th Schedule to FIRSEA “A person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws referred to in paragraph 11, may appeal against such decision or assessment or demand notice within the period stipulated under this Schedule to the Tribunal.”

5.0 TIME WITHIN WHICH AN OBJECTION CAN BE RAISED BY A TAXPAYER

The proper time to contest an Assessment Notice is by objecting to the Assessment Notice within the time provided by law which is 30days. Section 69(2) of CITA provides thus “An application under subsection (1) of this section shall-(a) be made within thirty days from the date of service of the notice of assessment; and” Therefore any Taxpayer who is aggrieved with any Assessment Notice Served on him must at an early stage object to such Assessment within the time provided for by the relevant tax law. This is because failure to do so without reasonable ground will make such an Assessment upon the expedition of time provided for to become final and conclusive against both the said taxpayer and the Tax Authority. The Court in the case of *FBIR v Azigbo Brothers Ltd* (2012) pronounced on the need for a taxpayer aggrieved with an Assessment to take appropriate step, the Court held thus: “It is open to the company on receiving the Notice of Assessment to apply by objection in writing to the Tax Authority in line with provision of applicable law to review and revise the Assessment made.”

Ignorance is not an excuse in law, many taxpayers are making the mistake of writing and inviting the Tax Authority for a meeting or reconciliation without first taking the legal step of objecting the Assessment Notice duly served on them. It is worthy to note that, all the period of correspondence of letters or negotiations between the Taxpayer and Tax authority after service of an Assessment Notice does not stop the 30 days period from running. The Court in the case of *Gulf Oil Company Nigeria Limited v FBIR* (2000) held that "Negotiation between the Tax Authority and Taxpayer does not stop time from running"

It is significant that the taxpayer who is served with an Assessment Notice which he does not agree with, to act by objecting to it at the earlier stage in compliance with the relevant law. The Tax Authority will not fold their hand looking at the Taxpayer, but will carry out its mandate of collecting tax by enforcing such Assessment Notice earlier served on the Taxpayer. This is so, because such an Assessment will become final and conclusive after 30 days if not objected. The Court has held in the case of *FBIR v Azigbo Brothers Ltd* (2012) thus "Where the defendant has not in fact, objected in writing to assessment, but waited until action for payment of income tax thereon has commenced and then in his statement of defence avers that the assessment are arbitrary, the amounts of the estimated assessment income becomes final and conclusive when no valid objection or appeal has been lodged within the prescribe time"

It is trust worthy to note that, it will amount to exercise in futility for a taxpayer to ask the competent Court of law or Tax Tribunal to

examine the merit of an assessment Notice served on him where he fails, neglects or refuses to raise objection against such an Assessment Notice within the time allowed by Law. Smith S.P.J in the case of *FBIR v Azigbo Brothers Ltd* (2012) supra held that: "It is not for this Court in an action for recovery of income tax to investigate whether or not capital allowances should have been deducted in estimating the assessable income, which should properly have been raised by the Defendant by objection and appeal. All that is required of this Court is to decide whether the view of the Board in ignoring capital allowances until they were claimed was prima facie reasonable."

6.0 MODE OF RAISING A VALID OBJECTION TO AN ASSESSMENT NOTICE

The right to object to an Assessment Notice is statutorily provided for the taxpayer as explained in Paragraph 4.0 above, but such right can only be exercised in accordance with the law. For instance a Taxpayer cannot validly object to an Assessment Notice Served on him orally or by calling an officer of the Tax Authority over a phone and verbally object to it. Such a verbal objection is not a valid objection in law. Also Notice of objection from taxpayer stating only to the fact that "he has objected the Assessment served on him" does not constitute a valid "Notice of Objection" such a Notice of Objection must comply with the essential requirements of a valid Notice of Assessment as enumerated in the Section 69 of CITA. An objection is considered valid where the taxpayer states the ground of objection and the amount of tax due (if any) to the tax authority. This would typically involve the submission of documents such as receipts, evidence of tax filings and other documents that

will support the taxpayer's position to the Tax Authority. For the avoidance of doubt, Section 69 (1) & (2) CITA as Amended by Section 19 of Finance Act, 2021.

- “(1) If any company disputes the assessment it may apply to the Service, by notice of objection in writing, delivered in person, by courier service, email or any other electronic means, as directed by the Service in any notice issued pursuant to this Act or any other relevant law to review and to revise the assessment made upon it.
- (2) An application under subsection (1) of this section shall—
- (a) be made within thirty days from the date of service of the notice of assessment; and
 - (b) contain the ground of objection to the assessment, that is—
 - (i) the amount of assessable and total profits of the company for the relevant year of assessment; and
 - (ii) the amount of tax payable for the year, which the company claims should be stated on the notice of assessment.” (The underline is mine for emphasis)

The above provision provided the answer to a question “what constitutes a valid objection to tax assessment?” Also worthy of note, is that, just as the Tax Authority is empowered to serve Assessment Notice by electronic means, so also is the taxpayer is allowed to issue Notice of Objection through electronic means. This position has received endorsement of the Tax Appeal Tribunal, Lagos Zone in *Earth Moving International Ltd. v FIRS* (unreported Judgment delivered on September 17, 2019 in Appeal No.

TAT/C2/CIT/030/2018) the Tribunal pronounced that electronic service of a taxpayer's objection, against a Notice of Assessment issued by the Federal Inland Revenue Service, is valid and binding on the FIRS. The Tribunal also held that an industrial action can extend the statutory timeframe, within which a taxpayer may object to a notice of assessment issued by the FIRS.

The Conditions precedent for the validity of a Notice of Objection to an Assessment Notice under Companies Income Tax Act are as follows:

1. It must be in writing (whether on paper or electronically),
2. It must be issued within 30 days from the date of service of the Assessment Notice,
3. It must Contain in clear term; the ground(s) of the objection,
4. The Ground of objection must state the following:
 - (a) The amount of Assessable and Total Profits of the company for the relevant year of assessment;
 - (b) The amount of tax payable for the year, which the company claims should be stated on the Notice of Assessment.

The requirement of 30 days within which to object to an Assessment Notice is not sacrosanct but has an exception. Section 69 (3) of CITA provides condition under which the 30 days period allowed to a Taxpayer within which to object to a Notice of Assessment can be extended. The section provides thus: “If the Service is satisfied that owing to absence from Nigeria, the person in whose name an as-assessment is made is unable to make an application within the thirty days specified in subsection (2) of this section, it shall

extend the time for making the application to such time as may be reasonable in the circumstances." Also, a competent Court of law can extend time within which the taxpayer can issue its Notice of objection for a good and justifiable reason. What is a good and justifiable reason? Is subjective and not objective, and is entirely left to the discretion of the Judge to determine judicially and judiciously. However, the Tax Appeal Tribunal in *Earth Moving International Ltd. v FIRS* supra (above) held to the extent that, an industrial action can be a good justifiable ground to extend the statutory timeframe, within which a taxpayer may object to a Notice of Assessment issued by the FIRS. Other grounds may be, civil unrest, act of God, natural disaster, and any condition that will make it practically impossible for the taxpayer to be able to object to the assessment issued on him within the time allowed by law.

The Taxpayer however, reserves the right to issue a Notice of Objection immediately he is served with an Assessment Notice and later before the expiration of the statutory 30days, served on the Tax Authority the ground of his objection with the supporting document as required under Section 69 of Companies Income Tax Act.

7.0 STATUS OF NOTICE OF REFUSAL TO AMEND (NORA)

Once the Taxpayer issues a valid Notice of Objection to the Tax Authority, the Tax Authority are under an obligation to review the Notice of Objection and where necessary, request for additional documents or information or facts that will aid in the determination of the Notice of Objection. At the end of its determination, the Tax authority may either reverse the Assessment,

or amend the assessment, or refuse to amend the assessment at all, which means they have rejected the objection issued by the Taxpayer.

Section 69 (4) of CITA provides thus: "On receipt of the Notice of Objection referred to in subsection (1) of this section, the Service may require the company giving the notice of objection to furnish such particulars as the Service may deem necessary and to produce all books or other documents relating to the profits of the company, and may summon any person who may be able to give evidence respecting the assessment to attend for examination by an officer of the Federal Inland Revenue Service on oath or otherwise."

Where the Tax Authority are not convinced after the review of the Taxpayer's Notice of Objection that such Objection should be sustained or where both the Tax Authority and Taxpayer could not agree on the actual tax liability of the Taxpayer, The Tax Authority is in such case under a statutory obligation to notify the Taxpayer with its Notice of Refusal to Amend (NORA). For avoidance of doubt. Section 69 (5) of CITA provides thus:

"In the event of any company assessed, which has objected to an assessment made upon it, agreeing with the Service as to the amount at which it is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such company: Provided that if an applicant for revision under the provisions of subsection (1) of this section fails to agree with the Service the amount at which the company is liable to be assessed, the Service shall give notice of refusal to amend the assessment as desired by such company and

may revise the assessment to such amount as the Service may, according to the best of its judgement, determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this proviso."

In what looks like silent error on the side of the drafter of the above section 69(5) CITA, no time was provided within which the Tax Authority is to issue NORA to the Taxpayer despite the fact that Section 69(2) CITA cited above provides for 30days within which the taxpayer is to object to an assessment Notice. There is no reciprocal or corresponding period of 30days provided for under Section 69(5) of CITA. However this gap was filled by the Lagos Zone of the Tax Appeal Tribunal in the case of Oando Supply & Trading Ltd V FIRS (2011) where it determined the timeframe within which the Tax Authority should issue a response to a Notice of Objection forwarded to it by a taxpayer. The tribunal held thus: "Where a Taxpayer files a Notice of Objection to FIRS, the latter, if they do not agree with the Taxpayer's objection in any material particular, must issue their NORA within reasonable time- we suggest 90days. This Tribunal can treat FIRS's failure to issue NORA within reasonable time or at all as a 'deemed decision' (within the meaning of paragraph 13(2) of the fifth Schedule to FIRS Act) refusing amendment in terms of the Taxpayer's Objection or at all, in effect as a deemed NORA" The effect of TAT Judgment in Oando Supply &

Trading Ltd V FIRS supra are as follows:

1. FIRS has reasonable time within which to issue NORA provided for under Section 69(5) of CITA which is maximum of 90days was suggested.
2. Where no NORA was issued by FIRS within reasonable time, the law presumed the issuance of 'deemed NORA' under paragraph 13(2) of the fifth Schedule to FIRS Act
3. The presumption of 'deemed NORA' will be regarded as a 'decision' of the FIRS which if aggrieved by it, the Taxpayer can approach the Tax Appeal Tribunal by filing Notice of Appeal.
4. The Taxpayer is not under any obligation to wait for issuance of NORA before he can approach the Tax Appeal Tribunal over his grievances on the Assessment Notice and the failure to consider his Notice of Objection.

Interestingly, the Tribunal in the case of Oando Supply & Trading Ltd V FIRS (2011) at page 117 supra further decided on whether the issuances of NORA by FIRS is a condition precedent to commencing an appeal at Tax Appeal Tribunal? The Court held thus: "The FIRS (Establishment) Act, does not require a Notice of refusal to amend (NORA) issue from the Tax Authority to the Taxpayer before the latter can approach this tribunal for redress. Provision in other statutes purporting to stipulate any such condition are inconsistent with the provision of Section 68 of FIRS (Establishment) Act, void.....NORA is not a requisite pre-action protocol for proceedings at the Tribunal, Neither Section 69 nor Section 72 of CITA governs appeal to the Tribunal"

8.0 CHALLENGES/LIMITATION TO THE TAXPAYER RIGHT OF OBJECTION TO ASSESSMENT NOTICE

There are several factors limiting the effective exercise of a taxpayer rights of objection to an Assessment Notice served on him which amongst others includes:

1. Failure by Taxpayer to comply with requirement of law under Section 69(2) of CITA as to content of Notice of Objection may render their objection invalid in law.
2. Dishonesty on the side of taxpayer in making unsubstantiated and baseless objection to an Assessment Notice. And when the Tax Authority calls upon such Taxpayers to produce documentary evidence to support their objection, they would not be able to do so thereby causing the Tax Authority to issue NORA
3. Failure of the Taxpayer to issue their Notice of Objection within 30days without just cause, thereby making such Assessment Notice to become final and conclusive.
4. Attitude of Tax Authority in exercise of their statutory power of substitution under Section 31 of FIRS (Establishment) Act where in most cases, the taxpayers right of objection provided for under Section 69(5) of CITA and referred to by Section 31(5) of FIRS (Establishment) Act are denied or trample upon by the Tax Authority.
5. The Act of Taxpayer engaging the FIRS in negotiation or reconciliation without first issuing its Notice of Objection to the Tax Authority as required under Section 69 (1) & (2) of CITA post a challenge. This is because, when after long period of time,

negotiation or reconciliation failes and parties could not reach an agreement, the taxpayer will then want to approach the Tribunal or Court to ventilate its grievances. Unfortunately for the Taxpayer, by that time such an Assessment Notice already served on him would have become final and conclusive. The Tribunal has held that negotiation between the Taxpayer and the Tax Authority over an Assessment Notice issued does not stop the 30days period from running where no valid Notice of Objection is issued.

9.0 RECOMMENDATIONS/WAY FORWARD.

The writer after a careful examination of the challenges, recommends the following:

1. The Taxpayer to always comply with the requirement of Section 69 of CITA as to what its Notice of Objection should contain and clearly state what in its opinion is his tax liability should be for the period in question.
2. FIRS should come up with internal manual for determination of Notice of Appeal and set a period of 30days to 60days maximum for the determination of every Notice of Objection and issuance of NORA where necessary.
3. All Letters of substitution issued by FIRS in exercise of its statutory power under Section 31 of FIRS (Establishment) Act 2007 to banks should clearly spell out the rights of objection of Taxpayer whose account is to be frozen as provided under Section 69 of CITA and 31 (5) of FIRS (Establishment) Act 2007.
4. Taxpayer should always remember to issue their Notice of objection within 30days from the date such an Assessment Notice was

served on them before embarking on negotiation, reconciliation or any forms of correspondences after issuance of Assessment Notice.

5. Taxpayer should be honest in raising objection to an Assessment Notice served on them, as Notice of Objection is not a substitute for unavailability of fund to pay tax liability. Or delay factor to withhold tax revenue due to government under the disguise of the taxpayer right of objection without any justifiable ground.

10.0 CONCLUSION:

Disagreement between the Taxpayer and Tax Authority on what amounts should be contained in an Assessment Notice is generally inevitable. However, where there exist a good understanding and relationship between the Taxpayer and Tax Authority on the manners on which Taxpayers' profit are being assessed to tax; in compliance with the relevant tax laws. Such will positively impact on the tax revenue

generation of the Nation and invariably promote the economic development of the nation, this will also indirectly promote the taxpayers' businesses and result to gaining more assessable profit at the long run. Therefore, the internal statutory and administrative mechanism for ventilation of taxpayer's grievances on the Assessment Notice, decisions, stands. Opinions, action or in-action by the Tax authority should be strengthened administratively and/or by amendment of the relevant Tax laws. At all times, the Taxpayer's right to objection to an Assessment Notice whenever such Taxpayer is aggrieved by it should be jealously guided and protected by the law to checkmate the arbitrariness of some few officials of the Tax Authority in raising baseless and unfounded Assessment Notice.

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Oando Supply and Trading Limited v FIRS (2011)4TLRN pg. 113 at 126

Addax v FIRS (2012) 7 TLRN Pg. 74 at 84

S. 70 (1) & (2) Company Income Tax Act Cap C21 LFN 2004

Halliburton Energy Services Nigeria Limited v FIRS (2013)1 TLRN Pg. 81

Reiss & Co (Nig) Ltd v FIRS (1977)3 FRCR 251 or (1977) NCLR 443

S.68 Company Income Tax Act Cap C21 LFN 2004 as amended by Section 18 of Finance Act, 2021

Section 104 of the Companies and Allied Matters Act,

FBIR v J.H Doherty Limited (1971)1 NMLR at 169

FBIR v Azigbo Brothers Ltd(2012) 6 TLRN 79 at 85

Gulf Oil Company Nigeria Limited v FBIR (2000) 1 NLR 27

FBIR v Azigbo Brothers Ltd(2012) 6 TLRN 79 at 85

FBIR v Azigbo Brothers Ltd(2012) 6 TLRN 79 at 85

S.69 (1) & (2) Company Income Tax Act Cap C21 LFN 2004 as amended by Section 19 of Finance Act, 2021.

Earth Moving International Ltd. v FIRS (unreported Judgment delivered on September 17, 2019 in Appeal No. TAT/C2/CIT/030/2018) <https://www.banwo-ighodalo.com/grey-matter/tax-appeal-tribunal-rules-validity->

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S.69 (3) Company Income Tax Act Cap C21 LFN 2004 as amended by Section 19 of Finance Act, 2021

Ibid fote not no. 16

S.69 (4) Company Income Tax Act Cap C21 LFN 2004 as amended by Section 19 of Finance Act, 2021

S.69 (5) Company Income Tax Act Cap C21 LFN 2004 as amended by Section 19 of Finance Act, 2021

Oando Supply & Trading Ltd V FIRS (2011) 4 TLRN Pg. 113 at 115

Oando Supply & Trading Ltd V FIRS (2011) 4 TLRN Pg. 113 at 117

THE ROLE OF ICT IN EFFICIENT TAX ADMINISTRATION

With regard to the modernization of internal management processes, Tax administrations generally have full autonomy to adopt information and communication technologies (ICTs) depending only on their own resources. This is the case for modern human resource management systems, cost control, etc. Other internal systems in the business areas follow the same line, such as automation for the management control in the administrative area.

However, the modernization requires a strong interaction with taxpayers and other organizations of society, and in this regard the broad use of ICTs, considering also the legal aspects, is essential.

In this case, in a general perspective, the broad and effective use of ICTs by the tax administration would be inevitably linked to the availability and extended use of these technologies by the society in general.

A key problem facing revenue administrations in many developing countries is that they operate manual paper-based recording system. Revenue leakages are common and occur because of untimely collection, corruption and

under-collection. Difficulties emerge in estimating how many taxpayers are missing from their registered rolls, how many of those who are registered are inactive, and how much is actually being evaded through non-payments, corruption and ineffective billing systems. To address these challenges and with recent advances in information and communications technology (ICT), there has been a strong drive to use ICT across developing economies to increase the efficient collection of tax revenues. However, experiences with the introduction of ICT-systems are mixed and many initiatives have failed.

Is implementation of ICT the solution?

Creating a sustainable administrative revenue system that can administer own source revenues in an easy, efficient and cost effective manner is a goal that many national and sub-national governments around the world share. Key challenges for revenue departments are to: (1) raise more revenue; (2) improve internal organisation; (3) ensure greater accountability, transparency and integrity; (4) improve taxpayer compliance; and (5) improve service delivery to taxpayers.

Modernisation of revenue administration attempts to improve tax efficiency and tax fairness as pillars to support revenue collection. The utilisation of ICT can bridge the gap between taxes, fees and charges owed and those that are collected. However, ICT administration projects are often complex, expensive and take time to realise the benefits and savings. It is therefore important for revenue departments to make the right decisions. This is particularly important in a developing economy,

where purchasing an 'off-the-shelf' system may not be suitable. ICT solutions have to meet the needs of the surrounding environment. This may mean that simpler, more robust systems are the best option.

Engr. Onyebadi Chimdindu
FIRS, Alaba Msto

TAX LAW 101 SERIES: MERRY CHRISTMAS EDITION

Tax Dispute Resolution in Nigeria: The LEGAL FRAMEWORK of the evolution from the Body of Appeal Commissioners (BAC) to Tax Appeal Tribunal (TAT) as a Dispute Resolution Entity between 1961 and this year (2021):

A. Section 71 of CITA, 1961

Establishment and constitution of Body of Appeal Commissioners

(1) The Minister may establish by notice in the Federal Gazette, a Body of Appeal Commissioners.

(2) The Body of Appeal Commissioners shall consist of not more than twelve persons, none of whom shall be a public officer and one of whom shall be designated as chairman by the Minister.

B. Section 60 of PIT Decree No. 104 of 1993

Establishment of Body of Appeal Commissioners

(1) The State Commissioner may, by notice in the State Gazette, establish a body of Appeal Commissioners.

(2) An Appeal Commissioner -

(a) shall be appointed by the State Commissioner, by notice in the State Gazette, from among persons appearing to him to have had experience and shown capacity in the management of a substantial trade or business or the exercise of a profession of law, accountancy or taxation in Nigeria;

(b) shall, subject to the provisions of this subsection, hold office for a period of three years from the date of his appointment;

(c) may at any time resign as an Appeal Commissioner by notice in writing addressed to the State Commissioner, except that on the request of the State

Commissioner he may continue to act as an Appeal Commissioner after the date of his resignation and sit at any further hearing in a case in which he has already sat before that date to hear an appeal, until a final decision has been given with respect to that appeal;

(d) shall cease to be an Appeal Commissioner if the State Commissioner determines that his office be vacant and on notice of the determination being published in the State Gazette or on his acceptance of a political appointment.

(3) The State Commissioner shall designate a public officer to be the Secretary to the body of Appeal Commissioners and the official address of the Secretary shall be published in the State Gazette.

(4) Subject to this section, the body of Appeal Commissioners shall remain in office until a new body is sworn in.

C. SECOND SCHEDULE TO VAT ACT, CAP. V1 LFN, 2004

Establishment of the Value Added Tax Tribunal

REF: [Section 20 (2)]

1. The Minister may by notice in the Federal Gazette, establish a Value Added Tax Tribunal in each Zone of the Federal Inland Revenue Service.
[1999 No. 30.]

2. Each of the Zonal VAT Tribunals shall consist of not more than eight persons, none of whom shall be a serving public officer and one of whom shall be designated as chairman by the Minister.

3. The chairman of each of the Zonal VAT Tribunals-
(a) shall be a legal practitioner of not less than fifteen years' experience;
(b) shall preside over the proceedings of the Tribunal....

Note: This Tribunal has become defunct based on judicial annulment and the enactment of section 59 of the Federal Inland Revenue (Establishment) Act, 2007.

D. Section 59 of the Federal Inland Revenue (Establishment) Act, 2007

Establishment of the Tax Appeal Tribunal

1) A Tax Appeal Tribunal is established as provided for in the fifth Schedule to this Act.

(2) The Tribunal shall have power to settle disputes arising from the operations of this Act and under the First Schedule.

E. Gazetting the TAX APPEAL TRIBUNAL (ESTABLISHMENT) ORDER, 2009 by the Federal

Minister of Finance.

Note that the TAT started sitting in 2010 when the Commissioners were appointed.

F. Section 60 of PITA as Amended by Section 14 of the Personal Income Tax (Amendment) Act, 2011

Clear provision in PITA incorporating by reference section 59 FIRS Act, supplanting the provision for BAC, and making provision that the TAT shall have powers to entertain all disputes arising from the operations of the Personal Income Tax Act

The Tax Appeal Tribunal established pursuant to section 59 of Federal Inland Revenue Service (Establishment) Act, 2007 shall have the powers to entertain all cases arising from the operations of this Act.

Corrections and comments are invited.

I wish my readers a Merry Christmas and Prosperous New Year.

Compiled by CHUKWUEMEKA EZE, Chairman, Tax Appeal Tribunal, South East Zone.

26/12/2021



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Complete List Of Approved Bank Charges in Nigeria By CBN

1. As a result of the new CBN guide, transactions below ₦5,000 would incur a maximum fee of ₦10; transfers between ₦5000 and ₦50,000 will attract a charge of ₦25; and transfers beyond ₦50,000 will receive a charge of ₦50.

2. The present account card maintenance cost has been eliminated because the accounts already have an account maintenance fee. Savings accounts will now be charged a card maintenance cost of ₦50 every quarter, rather than ₦50 every month.

3. The annual card maintenance cost for cards denominated in foreign currency (FCY) has been decreased from \$20 to \$10.

4. After the third withdrawal within a month, ATM fees are lowered to ₦35 from ₦65.

5. The charge for a hardware token will be based on cost recovery and will be capped at ₦2,500, down from the previous maximum

charge of ₦3,500.

6. Fees for required SMS alerts will be based on a cost-recovery model, with a maximum price of ₦4 in place previously.

7. Payment of bills via e-channels will incur a maximum charge of ₦500, based on 0.75 percent of the transaction value up to ₦1,200.

You may also want to read [How To Easily Access CBN AGSMEIS SME Loan](#)

[Full List Of Approved Bank Charges in Nigeria By CBN 2022](#)

Below is the full list of approved bank charges in



Nigeria by Central Bank of Nigeria (CBN): INTERNET BANKING

Hardware Token — There is a maximum charge of #2,500 for cost recovery.

There is no payment for the Software Token – One-Time Password (OTP). Charges will be based on a cost recovery basis if the OTP is delivered to the customer through SMS.

Replacement of hardware tokens — Cost recovery is limited to #2,500. Only in the event of physical damage, token loss, or replacement after expiration will the customer be charged.

Payment of bills (including payments made through other E-channels) – Negotiable and limited to #500 per beneficiary payable by the sender.

CURRENT ACCOUNT MAINTENANCE FEE (CAMF)

Exclusively applicable to current accounts for customer-initiated debit transactions to third parties and debit transfers/lodgments to the customer's account in some other bank. It should be noted that CAMF does not apply to Savings Accounts.

The charge is negotiable, but it cannot exceed #1 per mille.

ELECTRONIC FUNDS TRANSFER

The fees accrued for electronic fund transfers include:

Below #5,000 – #10

#5,001 – #50,000 – #25

Above #50,000 – #50

CARD MAINTENANCE

Foreign Currency Debit/Credit Cards — \$10 per year (or its equivalent)

Naira Debit/Credit Cards:

Cards linked to the current account- No charge

A maximum of #50 per quarter is charged for cards linked to savings accounts.

CREDIT CARD CHARGES

Fee for issuing a credit card — #1,000 (one-off charge). Regardless of the type of card used, the charge is the same (i.e. regular or premium card).

Fee for reissuing for lost or damaged cards (at the customer's request) — #1,000 (one-off charge). Regardless of the type of card used, the charge is the same (i.e. regular or premium card)

Renewal Fee — #1,000 (when existing cards expire) (one-off charge). Regardless of the type of card used, the charge is the same (i.e. regular or premium card)

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- ii. The MPTP will be billed exclusive of the Subscription fee for 2022 and beyond.

Members are hereby enjoined to ensure that they take steps to attend the compulsory MPTP as no refund will be made for non-attendance.

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Adefisayo Awogbade, FCTI
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1	LAGOS	<ul style="list-style-type: none"> Tax Returns: Errors, Prevention and Correction Strategies Corporate Tax Risk Management and Governance 	March 8, 2022	Webinar
2.	ABUJA	<ul style="list-style-type: none"> Tax Returns: Errors, Prevention and Correction Strategies Digitalization and Ethical Tax Practice: A Panacea to Quality Tax Management 	Thur. March 17, 2022	Webinar
3	ENUGU	<ul style="list-style-type: none"> Voluntary Tax Compliance and Taxpayer Charter Corporate Tax Risk Management and Governance 	Tue. March 29, 2022	Webinar
4.	YENAGOA	<ul style="list-style-type: none"> Digitalization and Ethical Tax Practice: A Panacea to Quality Tax Management Value Added Tax and Revenue Generation: The Finance Act Perspective 	Tue. April 12, 2022	Physical
5.	KADUNA	<ul style="list-style-type: none"> Tax Planning Strategies for SMEs Value Added Tax and Revenue Generation: The Finance Act Perspective 	Thur. April 21, 2022	Physical
6.	OWERRI	<ul style="list-style-type: none"> Tax Planning Strategies for SMEs Taxpayer Rights and the Concept of Legitimate Expectation 	Tue. June 7, 2022	Webinar
7.	LAGOS	<ul style="list-style-type: none"> Blockchain Technologies and Tax Implications of Cryptocurrencies Digitalization and Ethical Tax Practice: A Panacea to Quality Tax Management 	Thur. June 16, 2022	Webinar
8.	WARRI	<ul style="list-style-type: none"> Value Added Tax and Revenue Generation: The Finance Act Perspective Blockchain Technologies and Tax Implications of Cryptocurrencies 	Tue. June 21, 2022	Webinar
9	IBADAN	<ul style="list-style-type: none"> Tax Planning Strategies for SMEs Multiplicity of Taxes and Business Survival 	Tue. July 5, 2022	Webinar

10	PORT HARCOURT	<ul style="list-style-type: none"> • Tax Returns: Errors, Prevention and Correction Strategies • Blockchain Technologies and Tax Implications of Cryptocurrencies 	Thur. July 14, 2022	Physical
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13	JOS	<ul style="list-style-type: none"> • Digitalization and Ethical Tax Practice: A Panacea to Quality Tax Management • Voluntary Tax Compliance and Taxpayer Charter 	Tue. September 6, 2022	Physical
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17.	KANO	<ul style="list-style-type: none"> • Tax Returns: Errors, Prevention and Correction Strategies • Value Added Tax and Revenue Generation: The Finance Act Perspective 	Tue. October 11, 2022	Physical
18.	MAKURDI	<ul style="list-style-type: none"> • Local Government Revenue Administration: Taxes & Levies Collectible for Sustainable Development • Multiplicity of Taxes and Business Survival 	Tue. November 1, 2022	Webinar



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FINANCE BILL, 2021

AND NIGERIA'S UNILATERAL RESPONSE TO THE GLOBAL CORPORATE MINIMUM TAX AGREEMENT

1. Introduction

The media was awash in various publications of 7th December, 2021 that President Buhari had transmitted the Finance Bill, 2021 to the National Assembly to undergo the legislative process in order to support the implementation of the 2022 Budget that was presented by the President to the National Assembly in October 2021. Precisely, on 8th December, 2021, the Finance Bill that was transmitted to the National Assembly was in the public domain and had gone viral.

Pundits of international taxation rummaged through the provisions of the Bill, which is expected to be passed by the National Assembly before the end of December 2021, presumably without any amendment, to ascertain whether the Federal Government had adopted the essential provisions of the global corporate minimum tax agreement in the Bill, or whether it has taken unilateral measures to impose digital tax on multinational and non-resident companies.

The finding of this writer is that Nigeria has ignored the fundamental provisions of the Global Corporate Minimum Tax Agreement and has taken unilateral measures, especially going by the tenor of the proposed amendments to section 13 (which had earlier been amended in Section 4 of the Finance Act, 2019 and Section 7 of the Finance Act, 2020) and Section 30 of the Companies Income Act ("CITA"), which will enable FIRS to compute corporate tax based on turnover.

2. Implied introduction of Digital Services Tax through proposed amendments to CITA vide the Finance Bill, 2021

The proposed amendments, which are quite sweeping, or all encompassing, are as follows:

Amendment of Section 13 of the Companies Income Tax Act

Section 13 of the Companies Income Tax Act is amended by repealing subsection (2) and re-enacting a new subsection (2) as follows -

“(2) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from or taxable in Nigeria where:

(a) that company has a fixed base of business

in Nigeria to the extent that the profit is attributable to the fixed base;

- (b) it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profit is attributable to the business or trade or activities carried on through that person;
- (c) it transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity;
- (d) that trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract;
- (e) the trade or business comprises the furnishing of technical, management,

consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has significant economic presence in Nigeria;

Provided that the withholding tax applicable to the income under this paragraph shall be the final tax on the income of a non-resident recipient who does not otherwise fall within the scope of subsection 2(a) - (d); and

- (f) the trade or business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profit adjusted by the Board to reflect arm's length transaction."

Amendment of Section 30 of the Companies Income Tax Act

Section 30 of the Companies Income Tax Act is amended by -

- (a) inserting after sub paragraph 30(b)(ii), a new subparagraph 30(b) (iii) –
- "30(b)(iii) That company transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to

Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover attributable to that presence;"

- (b) Renumbering the paragraphs accordingly.

3. Global Corporate Minimum Tax Agreement and the naysayers

History was made in international taxation rules on October 8, 2021, when 136 countries out of the 140-member OECD BEPS Inclusive Framework agreed to a 15 per cent global minimum effective corporate tax rate; as well as new rules that will compel multinational enterprises to declare and pay more in the countries where they do business. The finance and extractive industries were excluded from the arrangement.

The OECD estimated the Agreement will reallocate \$25 billion of profits from around 100 of the world's largest and most profitable multinational corporations to countries worldwide thus ensuring that these firms pay a fair share of tax wherever they operate and generate profits.

Companies with turnover exceeding €20bn will be required to allocate 25 per cent of their profits in excess of a 10 per cent margin to the countries where they operate, based on their sales. The 10 per cent profitability margin will be calculated using an averaging mechanism, based on profit before tax.

Nigeria, Kenya, Sri Lanka, and Pakistan have refused to sign the Agreement for the reasons contained herein.

The Financial Times of November 28, 2021 reported that the refusal of Nigeria and other developing countries to sign up is the concern about the lack of revenue they stand to make from the deal on fairer distribution of profits and taxing rights. They argue that this is worsened by the removal of digital service taxes, which Nigeria and Kenya consider as deal breaker, despite OECD estimates showing they would gain.

In a report by Carlos Mureithi, the East African correspondent of Reuters on November 2 but updated on November 9, 2021, titled "Why Kenya and Nigeria haven't agreed to a historic global corporate tax deal", the Kenya Revenue Authority (KRA) Commissioner for Intelligence and Strategic Operations, Terra Saidimu, said that "only 11 companies that fit this requirement operate in Kenya, yet they currently have 89 companies paying the Digital Service Tax (DST), which targets such businesses". Kenya introduced a DST of 1.5% in January 2021, thus entering the new global tax agreement would mean stopping the DST.

The same publication reports Matthew Gbonjubola, Coordinating Director at the

Federal Inland Revenue Service and co-chair of the BEPS Inclusive Framework as saying that only six companies will be covered by the new deal in Nigeria. "The truth is that there's little or no money coming from either Pillar 1 or Pillar 2 to developing countries, we shouldn't deceive ourselves", Gbonjubola said at the KRA Tax Forum in Nairobi recently.

4. Why Nigeria has not signed the Agreement

THISDAY newspaper had on September 21, 2021 published a news item: "FG: Why Nigeria has not Endorsed OECD'S proposal on Digital Economy". The newspaper reported that the Minister of Finance, Budget and National Planning, Hajia Zainab Ahmed, while speaking at the 17th General Assembly and 10th anniversary of the West African Tax Administrations Forum (WATAF) held in Abuja, gave copious insight into the reasons Nigeria did not sign the global tax agreement. The Minister stated as follows, among others:

"I am aware that some countries have endorsed the agreement. While I believe that the decision to do so lies within the policy choice of each jurisdiction, I crave your indulgence to highlight one or two implications of the proposed solution, for us. First of all, the scope threshold of Pillar 1 covers only Multinational Enterprises (MNEs) with €20 billion global revenue and above 10% profitability, which means just about 100 companies across the world, are within the scope of the rules. This threshold has left many of the well-known MNEs exploiting the digital space out of the scope of Pillar 1, and will significantly reduce any benefit that may accrue to market jurisdictions from Amount A taxing right.

"Even where the non-resident company (NRC) meets the revenue and profitability threshold, there is still the requirement of operating in and meeting a local sales threshold of 1m euros in the market jurisdiction, except for jurisdictions with a GDP of 40 million USD and below that have the in-scope revenue threshold fixed at 250,000 euros."

According to her, the proposed scope reduction after seven years of implementation provides for some conditions, which include effective implementation of mandatory binding dispute resolution mechanism. She observed that there is no certainty of the reduction in the in-scope threshold, adding that the rule may continue to apply to only the few companies that fall under the scope revenue and profitability threshold.

The finance minister noted that in addition, the building blocks on Unilateral Measures require that all jurisdictions withdraw their existing legal framework for taxing all NRC deriving income through digital means without a physical presence, and refrain from introducing any other ones subsequently.

She pointed out: "The implication of this is that it restricts the number of non-resident companies engaged in digitalised businesses that may pay tax in our jurisdictions to only the 100 that are in-scope of the threshold, to the exclusion of all others, regardless of the actual number. It should further be noted that the unilateral measures to be withdrawn is not restricted to Digital Service Taxes but also includes other relevant measures that have not been defined, that taxes non-resident companies without physical presence in the market jurisdiction."

Ahmed noted that this is a challenge because Withholding Taxes on royalties and fees for technical services, which represent a significant source of revenue generation to countries where payments are made, may be included in subsequent definitions of those measures. Such taxes, she explained, may no longer be collectible under the proposed rule.

She also observed that the project introduces a mandatory binding dispute resolution mechanism for Amount A and issues connected to it including all Transfer Pricing and business profits disputes, which implies that most tax disputes involving MNEs cannot be determined under the domestic legal framework, but under international arbitration. According to her: "The question therefore arises: why has Nigeria not endorsed the OECD proposed solution to the issues affecting the digital economy? Simply put, Nigeria seeks to prioritise the importance of securing a fair deal that provides for equitable global re-allocation of profits to all market jurisdictions, and it is our view that the agreement has not met this objective".

5. ActionAid support for Nigeria's position

Prior to the official position of the Minister of Finance, ActionAid Nigeria had in their Press Release of 19 July, 2021. ActionAid Nigeria emphatically stated:

"ActionAid Nigeria recognises and welcomes progressive moves by the Federal Republic of Nigeria to put in place unilateral measures to tax the digital economy through the Finance Act of 2019 and Significant Economic Presence Rule

(sic) of 2020. We call on the Federal republic of Nigeria to maintain these measures until an acceptable and beneficial deal is met. While the new deal is disappointing, it underlines the need for comprehensive reforms of the international tax practices and treaties. In conclusion, the current OED Tax deal is neither beneficial to the country as a tax rate or FDI attractor. The worst concern about it is that it can only be reviewed in the next seven years. Hence, it is better for Nigeria and any developing nations to stand away from ratifying it."

6. FIRS opposes the Agreement

The above recommendations of ActionAid were echoed by FIRS in its Press Release of November 30, 2021 titled: "Why Nigeria didn't sign OECD minimum corporate tax deal - FIRS." The FIRS complained of high cost of implementation of the new deal, the unreliable premise of Pillars 1 and 2, and that bulk of money that will be accrued from the project would go to the developed countries leaving a minuscule for developing countries. FIRS further lamented over the Agreement by claiming that the OECD statement required the withdrawal of unilateral measures by countries which Nigeria does not have a problem with (Nigeria does not have any unilateral measure targeted at digital service companies).

7. Conclusion

With the proposed changes to sections 13 and 30 of the Companies Income Tax Act in the Finance Bill, 2021, which, if passed by the National Assembly, will take effect on 1st January, 2022, Nigeria will operate a full-blown Digital Services Tax with a rate seemingly higher than that of

Kenya. Already, Facebook, as at 10th December, 2021, has placed a 7.5% tax from all adverts emanating from Nigeria on its platform.

From the perspective of international law, Nigeria is not obligated to implement the provisions of the Global Corporate Minimum Tax Agreement as this will require amendment to Section 40 of our CITA in order to tinker with the rate of 30% of assessable income of large companies payable as Companies Income Tax to a lower rate with its insalubrious consequence on the realisation of the estimated revenue component of the 2022 Budget.

Article 34 of the Vienna Convention on Law of Treaties, 1969 provides that: "A treaty does not create either obligations or rights for a third State without its consent." In other words, since Nigeria has neither signed nor ratified the Global Corporate Minimum Tax Agreement (otherwise known as BEPS Inclusive Framework Agreement), it is not obligated to implement the deal hence the freedom it has exercised to introduce unilateral measures to tax multinational and non-resident companies through the relevant provisions of the Finance Bill, 2021.

There is no gainsaying that these measures will, on a positive note, help in funding the 2022 Budget of N16.4 trillion with its deficit of N6.25 trillion. On a negative note, the cost of digital services in Nigeria will rise astronomically; there might be reduced foreign direct investment into our economy, and there may be, in the long run, a diplomatic backlash depending on the assessment of the Joe Biden Administration, regard being had to the statement of President Joe Biden of the U.S. during the G20 Meeting in

Rome held between 30 and 31 October, 2021, that: "This is more than a tax deal - it's diplomacy reshaping our global economy and delivering for our people."

Nigeria is a sovereign country and one of the incidents of sovereignty is the ability to make laws and maintain order within the country's geographical boundaries. This principle has since been recognized under customary international law on the basis of *par in parem non habet imperium*. Time will tell whether these unilateral measures will be sustained in subsequent years or whether Nigeria will cave in to pressure in due course and join the rest of the BEPS IF members to key into the Global Corporate Minimum Tax Agreement.

Chukwuemeka Eze is the Lead Legal Adviser of the Chartered Institute of Taxation of Nigeria as well as the Chairman of the Tax Appeal Tribunal, South East Zone.



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To assist members.

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Adefisayo Awogbade, MSc, FCA, FCTI
Registrar/Chief Executive

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NATURE AND IMPLICATIONS OF DIGITAL CURRENCY & eNAIRA FOR TAXATION

1. Overview of eNaira

eNaira is the digital form of the physical Naira created by the Central Bank of Nigeria (CBN) . It is Nigeria's Central Bank Digital Currency.

All crypto currencies are digital currencies but not all digital currencies e.g. stable currencies are crypto currencies. The eNaira is the Nigerian example of a digital currency that is not a crypto currency.

2. Features of eNaira

- i. It is the digital form of the physical naira.
- ii. It is not a crypto currency.
- iii. It is exchanged for the exact value of the physical naira i.e. 1 e-Naira = 1 physical naira.
- iv. It does not give rise to any exchange difference with any form of Nigeria's currency i.e. no exchange gain or loss
- v. It is maintained or carried in electronic wallets of individuals, merchants, and in the future, MDAs.
- vi. E-wallet (which contains e-naira) is linked to a regular bank account and funded from there. i.e. physical naira is swapped for digital naira.
- vii. It is the liability of the CBN and not a deposit

liability of commercial banks.

- viii. The e-naira balance in e-wallet does not yield interest.
- ix. There are daily transactional limits and maximum cumulative balance for e-wallets for individuals.
- x. There are six (6) tiers or account type of e-wallets.

3. eNaira and Taxation

- i. eNaira, like the physical naira, is a measure of value, medium of exchange, unit of account and store of value for now and so, does not give rise to any form of taxable profit, gain, chargeable income or any tax base in itself as a currency or legal tender.
- ii. eNaira however will have administrative tax implications as means of payment of tax liability or obligations.
- iii. eNaira operational platform or architecture will have implications for tax audit and investigation.

4. e-Naira Currency for Tax Payment

- i. Section 54 of CITA, Sec. 40 of PPTA and Sec 10(3) of VATA expressly, and other relevant sections of other tax laws impliedly, require that tax be assessed and/or paid in the currency of transaction. This is either the

Naira or the exact foreign currency of transaction.

- ii. eNaira is the same Naira but in the digital form. Tax consequences of transactions executed using the eNaira will certainly be paid in Naira.

The question is: which of the Naira? Physical or digital?

- iii. FIRS, like other government agencies, will come onboard e-Naira in the future according to the eNaira Implementation Roadmap developed by the CBN. What happens to tax payable from transactions conducted using the e-Naira by individuals and merchants with their counterparties that occur in the phase 1 of the roadmap while the e-naira wallets of FIRS and SIRSs are planned to come on stream at phase 3?
- iv. FIRS and SIRSs would need to work with the CBN to achieve special alignment in the implementation phases for tax administrative purposes.
- v. If the roadmap is to stay the way it is, FIRS and SIRSs will need to come up with clear communication to taxpayers and the relevant members of the public that may come to be affected with taxable transactions conducted in eNaira.

5. Tax Audit and Investigation and e- Naira Speed Wallet

- i. Data, information and transactions in e-Naira wallets are managed by the CBN using a Distributed Ledger Technology (DLT). These items cannot be found in bank statements of individuals and merchants

with commercial banks except for transfers to/fro e-Naira wallet.

- ii. Revenue, other income, cost of sales/direct costs, other expenses, proceeds from disposals may have portions thereof that have been transacted using e-Naira. Verification or validation of these line items and their resultant tax bases for tax audit and investigation on e-Naira wallets will only be independently done if tax authorities can access e-Naira wallet details themselves.
- iii. FIRS and SIRSs will need to work with the CBN for the possibility of deploying an API which uses the BVN and TIN of taxpayers to extract the eNaira wallet transactions log for relevant periods.

6. Conclusion

From currency perspective, as the eNaira is the same as the physical Naira in every way except in tangibility, there are only tax implications which would need to be proactively dealt with by FIRS and the CBN for clarity and swift tax administration. It is less of taxpayers baggage the way it stands.

From the eNaira Design and Architecture perspective, there is need for synergy between the FIRS/SIRSs and the CBN to deal with the tax audit and investigation implications that will be associated with e-Naira wallets.

O.J. Samuel, FCTI

Chairman, Information and Communication Technology Committee

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