

IN-DEPTH

Tax Disputes And Litigation

NIGERIA



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In-Depth: Tax Disputes and Litigation (formerly The Tax Disputes and Litigation Review) is a practical overview of the common issues that give rise to tax disputes in key jurisdictions, the procedures for resolving those disputes, and the powers and approach of local tax authorities. With a focus on recent developments, it offers insights into the process, timescale and cost of resolving complex difficulties when they arise across multiple jurisdictions.

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Nigeria

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Introduction

Tax disputes in Nigeria are primarily resolved by the courts and the Tax Appeal Tribunal. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Taxes and Levies (Approved List for Collection) Act, LFN 2004 provide for the assessment and collection of taxes by the federal, states and local governments. The jurisdiction of the courts over tax disputes derives from whether the taxes are federal, state or local government taxes. Jurisdiction over taxes administered at both the federal and state levels, such as stamp duties, is determined by the legal personality of the taxpayer, whereas for individuals (e.g., for pay as you earn (PAYE)) it is by their place of residence.

The Federal High Court, State High Courts, the Revenue Courts of the various local government councils and Tax Appeal Tribunal are vested with jurisdiction to hear and determine tax disputes. Appeals from the Tax Appeal Tribunal lie to the Federal High Court, appeals from the Federal High Court and State High Courts lie to the Court of Appeal, and appeals from the Court of Appeal lie to the Supreme Court, which is the apex and final court in the country.

Nigerian laws also provide administrative channels for resolution of tax disputes before finally resorting to litigation. A taxpayer challenging an assessment may write an objection to the tax authority giving reasons for the challenge. The tax authority either upholds the objection and quashes the assessment or rejects the objection. Where the tax authority rejects the objection, it issues a notice of refusal to amend (NORA) to the taxpayer. The aggrieved taxpayer may within 30 days of receiving the NORA file an appeal at the Tax Appeal Tribunal or other relevant court having jurisdiction over the dispute. It is noteworthy that the available administrative channels for resolution of tax disputes do not bar an aggrieved taxpayer from proceeding directly to the Tax Appeal Tribunal or the courts, pending the exhaustion of the administrative process.^[1]

Tax disputes have been held by the Nigerian courts to be outside the purview of private arbitration and other alternative dispute resolution mechanisms. The Court of Appeal in the case of *SNEPCO and 3 Others v. Federal Inland Revenue Service*^[2] upheld the decision of the Federal High Court that disputes over company taxation are exclusive to the Federal High Court and, thus, are not arbitrable as they pertain to the revenue accruing to the sovereign government.

The Finance Act 2019, the Finance Act 2020 and the Finance Act 2023 amend some key provisions of the Companies Income Tax Act, the Value Added Tax Act (VATA), Personal Income Tax Act, the Petroleum Profit Tax Act (PPT), the Stamp Duties Act, the Tertiary Education Trust Fund (Establishment) Act and the Customs, Excise Tariff Etc (Consolidation) Act. Some of the prominent amendments effected by the Acts include the increase of the value-added tax (VAT) rate from 5 to 7.5 per cent, an additional levy of 0.5 per cent on all imported goods from outside Africa, the introduction of digital taxes to bring digital revenue derived in Nigeria by non-resident companies that have no fixed base in Nigeria into the tax net and the imposition of excise on certain imported products among other amendments.

Commencing disputes

Tax disputes can be commenced either by the taxpayer or by the relevant tax authority.

A taxpayer who objects to a tax assessment may within 30 days of receiving notice of the assessment apply by notice of objection to the Federal or State Inland Revenue Service (depending on whether it is a federal or state tax) urging the relevant tax authority to review the tax assessment along the lines of the objection raised. Where the relevant tax authority agrees with the objection, the assessment will be amended accordingly. However, where the relevant tax authority disagrees with the objection, it shall issue a NORA.^[3] Upon a NORA being issued against a taxpayer's objection, the aggrieved taxpayer shall within 30 days of receipt of the NORA, file an appeal at the Tax Appeal Tribunal or file an action at the relevant federal or state high court.

To commence proceedings before the Tax Appeal Tribunal, the appellant shall file a notice of appeal in Form Tax Appeal Tribunal 1 in the zone of the Tax Appeal Tribunal where the facts of the case arose. The notice of appeal must contain:

1. the grounds of appeal;
2. whether the whole or part only of a decision is contested;
3. the exact nature of the relief sought;
4. the names and addresses of all parties directly affected by the appeal; and
5. the address for service on the appellant and respondent.

The notice of appeal must be filed concurrently with the list of witnesses, witnesses' written statements on oath and copies of every document to be relied on at trial.

All processes filed are to be served personally on the respondent, unless an order for substituted service is granted by the Tax Appeal Tribunal. Upon receipt of the filed documents, the respondent has 30 days within which to file its opposition in Form Tax Appeal Tribunal 3. Proceedings at the Tax Appeal Tribunal are to be held in public, and the onus of proving its case rests on the appellant.^[4]

The Tax Appeal Tribunal may, after hearing both parties, confirm, reduce, increase or annul the assessment or make any such order as it deems fit.^[5]

Either party aggrieved by the final decision of the Tax Appeal Tribunal may appeal to the Federal High Court by giving notice in writing to the secretary of the Tribunal within 30 days of the service of the Tribunal's final decision on the party. Failure to appeal within this set time will mean that the assessment and demand notices become final and conclusive, or in the case of an action against a decision of the relevant tax authority, it means the decision is final and conclusive.

Possible triggers of tax disputes include:

1. information garnered by the relevant tax authority during periodic audits;
2. information delivered by bankers to the Federal Inland Revenue Service as provided by law;^[6]
3. periodic returns filed by a taxpayer; and
4. assessment or additional assessment by relevant tax authority.

Generally, the nature of a tax determines the mode of commencement of disputes.

1. **Personal income tax:** Disputes relating to personal income tax may be commenced before the revenue courts, magistrates' courts, State High Courts, the Tax Appeal Tribunal or the Federal High Court. The choice of court depends on the jurisdiction of the court, the amount of tax involved and the nature of the parties.
2. **Company income tax:** Company income tax is a federal tax and all disputes relating to its payment are commenced before the Tax Appeal Tribunal or the Federal High Court.
3. **Wealth taxes:** Individuals are not taxed on their net wealth as a separate tax in Nigeria. Property taxes, withholding tax (WHT) on dividends and capital gains taxes, are charged on companies or individuals. Commencement of tax disputes would depend on the taxpayer and the tax base.
4. **Partnerships:** Partnerships are treated as transparent or flow-through entities for tax purposes in Nigeria and only the individual partners are taxed on their respective shares of the partnership profit. Disputes arising out of taxes on the individual partners may be commenced before magistrates' courts, State High Courts, the Tax Appeal Tribunal or the Federal High Court, depending on the jurisdiction of the court, the taxpayer, the amount of tax involved and whether the action is against the federal or state tax authority.
5. **Indirect taxes:** Indirect taxes in Nigeria include VAT, consumption tax and customs and excise duties. As with federal taxes, disputes are commenced at the Tax Appeal Tribunal and the Federal High Court. However, where it involves individuals, the commencement procedure for individuals and partnerships as listed above apply.
6. **Stamp duty:** Disputes over stamp duties may be commenced before the State High Courts, the Tax Appeal Tribunal or the Federal High Court depending on whether the duties accrue to the federal or state government and whether they involve individuals, partnerships or corporations.

The courts and tribunals

In practice, administrative channels within the relevant tax authority are usually the first step for resolution of tax disputes. Unresolved disputes proceed to the Tax Appeal Tribunal or Federal High Court, or where the tax is a state tax, to the magistrates' court or State High Court. The High Courts at the federal and state levels, customary and magistrates' courts within states have jurisdiction to hear tax disputes. The Tax Appeal Tribunal is the only tribunal set up under the Federal Inland Revenue Service Act to hear tax disputes over federal taxes on the conditions earlier set out above.

Customary courts, magistrates' courts and State High Courts are the venues for disputes arising from levies and taxes imposed by local government authorities and the state. Claims below 600,000 naira lie before the customary court in the state the transaction occurred.^[7] Claims in excess of 600,000 naira but less than 10 million naira may be

commenced before the magistrates' court.^[8] Claims for taxes imposed by state laws, in excess of 10 million naira are commenced before the State High Courts, which are courts of unlimited jurisdiction. The customary courts, magistrates' courts and State High Courts are composed of a single judge for the determination of disputes. Appeals from the decision of the customary or magistrates' courts lie to the State High Courts, while appeals from a decision of the State High Courts lie to the Court of Appeal.

The Tax Appeal Tribunal is vested with jurisdiction to hear disputes arising from:

1. the Companies Income Tax Act;
2. the Petroleum Profits Tax Act;
3. the Personal Income Tax Act;
4. the Capital Gains Tax Act;
5. the Value Added Tax Act (VAT Act);^[9] and
6. any other federal enactments.

The jurisdiction of the Tax Appeal Tribunal over Personal Income Tax Act is restricted to the taxation of:

1. persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force and the Nigerian Police Force;
2. officers of the Nigerian Foreign Service; and
3. persons resident outside Nigeria who derive income or profit from Nigeria.

The Tax Appeal Tribunal is composed of tax commissioners appointed by the Minister of Finance. The Tax Appeal Tribunal has eight zones, each headed by a chair and four commissioners, and its proceedings are conducted by a panel of three or five commissioners.^[10] Most tax disputes are resolved at the Tax Appeal Tribunal. Appeals from the decisions of the Tax Appeal Tribunal lie as of right to the Federal High Court on questions of law.

The Federal High Court has exclusive jurisdiction in any dispute pertaining to taxation of companies, bodies established or carrying on business in Nigeria and all other persons subject to federal taxation.^[11] An action may be commenced before the Federal High Court at first instance once its jurisdiction is rightly invoked. It is equally possible to apply to the Federal High Court to quash the directive or decision of the Tax Appeal Tribunal through the prerogative writs of *certiorari* and prohibition. Appeals from the decisions of the Federal High Court lie to the Court of Appeal.

The Court of Appeal has appellate jurisdiction over tax disputes from the Federal High Court and State High Courts. Tax appeals lie as of right to the Court of Appeal where they are either final decisions or the ground of appeal involves questions of law alone and questions as to the interpretation of the Constitution.^[12] In all other cases, leave of court must be obtained to appeal.^[13] The Court of Appeal is composed of no fewer than three justices. Appeals from the Court of Appeal lie to the Supreme Court.

The Supreme Court is the apex and final court in Nigeria. Tax appeals from the decisions of the Court of Appeal lie to the Supreme Court as of right where they are on questions of law alone and on questions as to the interpretation of the Constitution. The Supreme Court is duly constituted if it consists of no fewer than five justices, provided that in cases involving the court's original jurisdiction^[14] or actions relating to the interpretation of the Constitution, the court shall be constituted by seven justices.^[15]

In the authors' experience, time spent on litigating tax disputes increases with each level of appeal. Tax disputes at the Tax Appeal Tribunal are resolved in a much shorter time (sometimes within the year of commencement) than the higher courts. The Supreme Court takes the longest, with appeals taking over five years to be resolved.

The various court hierarchies and the Tax Appeal Tribunal are independent of the tax authorities, and their decisions are equally binding on the tax authorities as on the taxpayers.

Penalties and remedies

Tax disputes are usually civil matters, but may also be quasi-criminal, or criminal matters.

The remedies and penalties available in tax disputes are as follows.

Criminal penalties: what they are and where they are available

Under the Companies Income Tax Act (the CITA), any person guilty of an offence under the Act or who contravenes or fails to comply with the provisions of the Act shall be liable on conviction to a fine of 20,000 naira. Where the offence is the failure to furnish a statement or information or to keep the required records, a further sum of 2,000 naira for each day of default of payment, or imprisonment for six months in the event of defaulting on penalty payment, is imposed.^[16]

Offences under the CITA include:

1. failure to comply with the requirements of a notice without sufficient cause;
2. failing to answer to a notice or summons;
3. knowingly making any false statement or false representation; and
4. aiding, abetting, assisting or inducing another person to make false return or statement or to keep false accounts or unlawfully refuse or neglect to pay tax.^[17]

The above provisions are replicated in the Personal Income Tax Act.^[18]

Under the Finance Act, 2019, a failure to register for VAT is punishable by a fine of 50,000 naira for the first month in which the failure occurs and 25,000 naira for every subsequent month of default.^[19] Furthermore, the Act provides that a failure to remit VAT within the stipulated time is liable to a penalty of 10 per cent per annum (plus interest at the commercial rate) of the amount of tax to be remitted being added to the tax. It may also result in enforcement proceedings being instituted against the defaulting taxpayer.^[20]

Civil liability and administrative penalties: what they are and where they are available

Civil sanctions under Nigerian tax laws take the form of administrative penalties and civil liability^[21] such as the following:

1. the relevant tax authorities are empowered to raise assessments according to the best of their judgement where returns are not filed;^[22]
2. additional assessments may be raised by the relevant tax authority within the year of assessment or within six years of the expiry thereof if it opines that a taxpayer has not been assessed or has been assessed at a lesser amount than that which ought to have been charged;^[23]
3. if any income tax charged by any assessment is not paid within two months, an interest sum equal to 10 per cent of such tax shall be added thereto;^[24] and
4. monetary fines as prescribed by law may be imposed on the taxpayer by the relevant tax authority.

Where an assessment has become final and conclusive and a demand note has been served upon the taxable person, if payment of the tax is not made within the time limited by the demand note, the relevant tax authority may, for the purpose of enforcing payment of the tax due:

1. distrain the taxpayer's goods or other chattels, bonds or other securities;
2. distrain any land, premises or place in respect of which the taxpayer is the owner; and
3. recover the amount of tax due by sale of anything so distrained.^[25]

Where income tax assessed has been sued for and recovered in a court of competent jurisdiction, the full cost of the action may be recovered from the person charged as a debt due to the federal government of Nigeria.^[26]

Damages are remedies that are imposed at the discretion of the court. They may be awarded in favour of the taxpayer or the relevant tax authority depending on the nature of the claim.

Tax claims

Recovering overpaid tax

The Nigerian tax laws provide that taxpayers may at any time, not later than six years after the end of the year of the assessment complained of, make an application in writing to the relevant tax authority for relief of excess tax paid by reason of some error or mistake in the return, statement or account made.

The relevant tax authority may give by way of repayment of tax or such relief as appears to be reasonable and just^[27] or, if it disagrees with the application, refuse to repay the overpaid tax. The taxpayer may file an appeal at the Tax Appeal Tribunal, or an action at the relevant high court having jurisdiction and claim the overpaid tax.

Where the relevant tax authority agrees with the application or a decision of the court is reached ordering a repayment of the overpaid tax, the relevant tax authority shall give a certificate of the amount of the tax to be repaid under any of the provisions of statute or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant General of the Federation or relevant state shall cause repayment to be made in conformity therewith.^[28] In practice, the excess sum paid is treated as tax credit for the taxpayer against any future tax liability.

Challenging administrative decisions

Administrative decisions can be challenged by taxpayers where such decisions depart from the law. Taxpayers have brought claims against the relevant tax authorities and have been awarded judgments. Remedies could be varying the assessment, quashing the assessment or damages.

Where a taxpayer challenges an administrative decision on the basis that one or more taxpayers received a waiver, the peculiarities of each case would determine the outcome. The government sometimes offers tax amnesties to taxpayers owing interest and penalties. As such, taxpayers who use these windows may enjoy a flexible payment plan that would not have been available otherwise. No cause of action will be sustainable based on such differential treatment. The federal government's Voluntary Assets and Income Declaration Scheme (VAIDS) and Voluntary Offshore Assets Regularization Scheme (VOARS) are examples of these tax amnesty programmes.

In the case of *SEDCO Forex International Incorporated v. Federal Inland Revenue Service*,^[29] the taxpayer challenged the decision of the relevant tax authority to disallow the deduction of recharges paid by a foreign company. The Tax Appeal Tribunal in refusing the taxpayer's contention and in pronouncing on the reliance on the doctrine of legitimate expectation held that to benefit from the doctrine, there must be fairness and openness of dealings; thus, a person must have made full disclosure or displayed utmost good faith in the transaction. The doctrine cannot stand where it conflicts with a clear statutory provision. The Tax Appeal Tribunal held that the taxpayer's action must fail as recharges are not allowable deductions when calculating a foreign company's income tax.

Claimants and related parties

Tax claims are brought by the taxpayer or the relevant tax authority. A tax claim can only be brought by the person who bears the economic burden of the charge. Thus, where a taxpayer is aggrieved by a tax assessment or demand notice, the *locus standi*^[30] to enforce the relief sought rests on the taxpayer as he or she bears the economic burden.

Where the tax was paid in consideration other than money, a decision in favour of the taxpayer will be based on the market value of the consideration.^[31]

Costs

Recovery of costs varies from court to court. The Federal Inland Revenue Service (Establishment) Act provides that parties to an appeal at the Tax Appeal Tribunal shall bear their own costs.^[32]

However, it is noteworthy that the various enactments on taxation provide that tax may be sued for and recovered in court by the tax authority with full cost of the action claimed from the taxpayer and charged as a debt due to the government.^[33]

At the High Courts, Court of Appeal and Supreme Court, costs follow events. It is not unlikely for the courts to award costs in favour of the successful party. However, the imposition of costs is at the discretion of the court and the court is required to exercise that discretion judicially and judiciously in the interest of justice between the parties.

Alternative dispute resolution

The decision of the Court of Appeal in the case of *SNEPCO and 3 Others v. Federal Inland Revenue Service and Another*^[34] is to the effect that tax disputes are not arbitrable as they relate to the revenue of the federation and thus, fall under the exclusive jurisdiction of the Federal High Court by the provision of the Constitution. The court held that where an arbitral tribunal sits on a tax dispute, the award of the tribunal will be unenforceable for conflicting with the express provisions of the Constitution.

Curiously, the same court in the case of *Statoil (Nig) Petroleum v. NNPC*^[35] earlier held that once parties have agreed to arbitrate their disputes, the courts are not to interfere with same, even where the dispute relates to tax issues. However, it is instructive that tax disputes are usually between the relevant sovereign tax authority and the taxpayer and not between private individuals.

We consider the *SNEPCO* decision a better judgment in this regard.

Anti-avoidance

The Nigerian tax laws have general anti-avoidance provisions with the intention of curbing the penchant for taxpayers to take advantage of loopholes in tax laws to minimise the tax payable or tax liability.

An anti-avoidance provision is contained in Section 22 of Companies Income Tax Act.^[36] This provision states that:

Where the Board is of the opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, it may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would otherwise be effected, by the transaction and any company concerned shall be assessable accordingly.

In the case of *Addax Petroleum Services Limited v. Federal Inland Revenue Service*^[37], the court identified Section 30 of the Companies Income Tax Act as an anti-avoidance provision. Section 30 provides that where in any assessment year, the trade or business of a company produces either no assessable profits or the assessable profits are less than might be expected to arise from that trade or business, or where the true amount of the assessable profits of the company cannot be ascertained, the relevant tax authority may, in the case of a Nigerian company, assess and charge it to tax on such fair and reasonable percentage of the turnover of the trade or business as the relevant tax authority may determine, and in the case of a foreign company that has a fixed base or executes a single contract involving surveys, deliveries, installations or construction in Nigeria, assess and charge the foreign company to tax on a percentage of the turnover as may be attributable to the permanent establishment, or single contract.

Transfer pricing is governed by the Income Tax (Transfer Pricing) Regulations 2018 (TPG), which replaced the 2012 Transfer Pricing Regulations. In the case of *Prime Plastichem Nig Ltd v. Federal Inland Revenue Service*,^[38] the taxpayer challenged the Federal Inland Revenue Service's imposition of additional income tax assessments on a transaction between the plaintiff and a related company pursuant to the 2012 Transfer Pricing Regulations. The additional assessments arose from the transfer pricing adjustments made by the Federal Inland Revenue Service. The Tribunal, upon hearing arguments of the parties, upheld the Federal Inland Revenue Service's assessment and dismissed the appeal in its entirety, holding that the plaintiff had failed to provide information that was considered reliable and sufficient to show that its transaction was at arm's length. The decision reinforced the established position of the Transfer Pricing Regulations: the burden of proof of the arm's-length nature of a controlled transaction falls on the taxpayer, who must not only be able to provide sufficient information to justify any position taken in its transfer pricing affairs but must also disprove any assertions made against it by the Federal Inland Revenue Service.^[39] The Tax Appeal Tribunal's decision in the *Prime Plastichem* case represents the first major transfer pricing ruling in Nigeria since the introduction of the Transfer Pricing Rules in 2012.

Double taxation treaties

Nigeria has concluded double taxation treaties (DTTs) with more than 22 countries. However, for a treaty between Nigeria and any country to have the force of law, it must be enacted into law by the National Assembly.^[40] Consequently, only residents of countries whose DTTs with Nigeria have been enacted into law by the National Assembly can rely on the provisions of such treaties. In 2018, various DTTs were negotiated, concluded or ratified, including the Nigeria–Spain DTT and DTTs with Cameroon, Ghana, Singapore, South Korea and Sweden.

The application of DTTs in Nigeria follows the international principle of double tax agreements, which is to avoid both double taxation and double non-taxation. In the case of *Saipem Contracting Nig Ltd and 2 Others v. Federal Inland Revenue Service and 2 Others*,^[41] the plaintiffs (consisting of a Nigerian, a Dutch and a French company) commenced an action via originating summons claiming among other things that by virtue of the provisions of the Nigerian tax laws and the DTTs between Nigeria and France and Nigeria

and the Netherlands, the second and third defendants were not liable to pay VAT, WHT and companies income tax under their contract with the third defendant (Shell). The court held that the plaintiffs were liable to pay Nigerian tax because there was no evidence to show that the plaintiffs had paid tax in their countries of residence.

The recently issued Deduction of Tax at Source (Withholding) Regulations, 2024, by Nigeria introduces a significant shift by imposing varying tax rates on resident and non-resident entities. This divergence has raised concerns regarding potential conflicts with the non-discrimination provisions found in Nigeria's DTTs and Bilateral Investment Treaties (BITs) with its treaty partners.

Historically, before the 2024 Regulations, the applicable WHT rates were uniform for both resident and non-resident corporate and unincorporated entities. However, the new regulations now impose notably higher tax rates on non-resident entities in several cases. For example, whereas resident companies are taxed at 5 per cent on commissions, non-resident entities are subject to a 10 per cent rate. Similarly, directors' fees are taxed at 15 per cent for residents, whereas non-residents face a 20 per cent tax rate. Moreover, winnings from lotteries, gaming and reality shows are taxed at 5 per cent for residents but at a considerably higher rate of 15 per cent for non-residents.

For businesses and individuals from treaty countries, the 2024 Regulations defer to the rates prescribed in the applicable DTTs. However, this may not fully address the issue of tax rate disparities for non-residents from treaty countries. Many DTTs allocate taxing rights to the source country without explicitly prescribing specific rates for certain types of income, such as directors' fees, leaving domestic tax law to determine the applicable rate. In these instances, the source country, such as Nigeria, may impose tax rates on non-residents that are more burdensome than those applied to residents.

To mitigate such disparities, DTTs typically incorporate non-discrimination provisions aimed at ensuring that individuals and entities from one contracting state are not subjected to higher taxes or more onerous tax obligations than those imposed on residents of the source country. The introduction of differential tax rates under the 2024 Regulations may raise concerns about compliance with these non-discrimination provisions and their potential impact on Nigeria's international obligations. The proposed tax rate disparities may undermine Nigeria's commitment to upholding the principle of equitable taxation, thereby potentially discouraging foreign investment and violating the non-discriminatory treatment outlined in Nigeria's international treaties.

It is recommended that Nigeria reviews these regulatory provisions to ensure they align with the country's obligations under existing DTTs and BITs. This review would help foster a more investment-friendly tax environment, which complies with international standards and mitigates potential conflicts with non-discrimination clauses in its treaties.

Year in review

The Nigerian Tax Appeal Tribunal (TAT) has in recent times delivered some consequential decisions. These are described below.

Power of Federal Inland Revenue Service to collect withholding tax as an advance payment of companies income tax

The TAT (Lagos Zone) in *Investment Holdings Limited v. Federal Inland Revenue Service*^[42] (FIRS) held that FIRS is empowered to administer and collect WHT as an advance payment of income tax. The TAT also clarified that WHT is not another type of tax different from companies income tax (CIT). Rather, it is a form or structure of an advance collection of CIT. Furthermore, the TAT reaffirmed the subsidiary legislative function vested in the Minister of Finance, under the CITA (as amended), to issue regulations for the administration of the WHT regime.

Telecommunication network facilities providers are not liable to pay the national information technology development levy

In *INT Towers Limited v. FIRS*,^[43] the TAT examined the provisions of Section 157 of the Nigerian Communications Act 2003 (the NCC Act), which defined 'telecommunication' as 'any transmission, emission, or reception of signs, signals, writing, images, sounds, or intelligence of any nature by wire, radio, visual or electro-magnetic systems' and Section 12(2)(a) and the Third Schedule to the National Information Technology Development Levy (NITDA levy) Act (the NITDA Act). The TAT ruled that network facilities providers are not telecommunications companies and are outside the scope of the NITDA Act. Consequently, INT Towers Limited was held not liable to pay the NITDA levy chargeable on the profits of telecommunication companies.

The TAT's jurisdiction to adjudicate on legislation enacted by states

In the case of *Bayelsa State Board of Internal Revenue v. Century Energy Services Limited delivered*,^[44] the Bayelsa State Board of Internal Revenue filed a claim against Century Energy Services Limited for alleged non-compliance with filing returns and paying PAYE taxes on the income of the company's Bayelsa-resident employees and for failure to pay taxes and submit returns for the infrastructural maintenance levy and development levy imposed by the Bayelsa State Infrastructural Maintenance Levy Law. Relying on Item 11 of the First Schedule to the FIRS Act, the TAT (set up by the federal government) held that it possessed the jurisdiction to adjudicate over issues arising from the operation of the Bayelsa State Infrastructural Maintenance Levy Law, provided that its provisions do not conflict with those of the PITA, and the law remains valid and enforceable. The TAT further held that an employer who fails to submit returns to the relevant tax authority has committed an infraction under the PITA.

Appeals on the decisions of the TAT

In *Sterling Oil Exploration & Energy Production Co Ltd v. Bayelsa State Board of Internal Revenue*,^[45] the TAT held that a taxpayer cannot successfully appeal in a tax matter unless the adjudged sum has been paid in accordance with Paragraph 16 of the FIRS Act. This decision in Appeal No. TAT/SSZ/013/2020 is the literal interpretation of the Federal High Court Tax Appeal Rules, 2022, which came into effect 1 February 2022.

A contrary decision was reached in *Newton Energy Limited v. Federal Inland Revenue Service*,^[46] where the respondent objected to the competence of the appeal and the jurisdiction of the Tax Appeal Tribunal on the ground that the appellant failed to pay the 50 per cent deposit. In dismissing the objection, the Tax Appeal Tribunal held that Order III Rule 6 of the Rules is inconsistent with Section 15(7) of the Federal Inland Revenue Service (Establishment) Act, 2007, which gives the Tribunal discretion to decide on the amount to be deposited as security where the Tribunal finds that an appeal is frivolous or vexatious, or the taxpayer has for the year of assessment concerned failed to submit tax returns in accordance with the relevant tax laws. The Tribunal accordingly voided Order III Rule 6 on account of this inconsistency.

However, in 2023, the Federal High Court in *Joseph Bodunrin Daudu SAN v. Minister of Finance, Budget and National Planning & 2 Ors*,^[47] declared unconstitutional, null and void, and contrary to the principle of fair hearing, the provisions that mandatorily require an alleged tax debtor to deposit either the judgment sum or 50 per cent of the disputed tax amount as a condition precedent for pursuing an appeal at the Federal High Court or the Tax Appeal Tribunal.

Matters related to government tax policy and regulatory oversight

The FIRS published the Guideline on the Withholding and Self-Account of Value Added Tax on 3 March 2023. The VAT Withholding Guidelines aimed at providing clarity on the provisions of the VAT Act regarding the operation of the VAT withholding regime in Nigeria. According to the Withholding Guidelines, oil and gas companies, government ministries, departments and agencies, Nigerian deposit money banks, telecommunication companies and any other companies that the FIRS may designate in writing from time to time must withhold VAT charged on invoices of all taxable supplies that it receives and must maintain a VAT withholding account separate from its typical VAT account. The company will remit the VAT withheld from such taxable supplies to the FIRS.

The FIRS also issued the Guidelines for the Refund of Value Added Tax Paid by Diplomats, Diplomatic Missions and International Organisations on Goods and Services Purchased in March 2023. Under the VAT Act, goods and services purchased by diplomats and goods purchased for use in humanitarian donor-funded projects are classified as zero-rated. This means that diplomats who pay VAT on any goods and services supplied to them are entitled to a refund of the amount paid as VAT. Applications by diplomats for a VAT refund are to be made to the FIRS through the Ministry of Foreign Affairs.

The Expatriate Employment Levy Handbook (Handbook) was issued by the Ministry of Interior on 27 February 2024. The Handbook requires employers of varying sizes operating in Nigeria, including small and medium-sized enterprises that engage expatriate personnel, to register their expatriate personnel, and it also imposes a mandatory annual levy of US\$15,000 for directors and US\$10,000 for other categories of expatriates. The levy sought to be imposed by the Handbook appears to take the form of a tax that has been subject to various criticisms, pursuant to which the Handbook was suspended on 8 March 2024. The taxpayers that the tax authorities target depend on the governing legislation, and they range from individuals to business and corporate entities.

Outlook and conclusions

On 3 October 2024, President Bola Ahmed Tinubu transmitted four tax reform bills to the National Assembly: the Nigerian Tax Bill, the Nigeria Tax Administration Bill, the Nigeria Revenue Service Bill and the Joint Revenue Board Bill (collectively referred to as the 'Tax Reform Bills'). These bills represent a comprehensive effort to reform Nigeria's tax system, with objectives ranging from legislative consolidation and improved administration to revenue optimisation and enhanced taxpayer protection. As of March 2025, the House of Representatives has passed the Tax Reform Bills, pending harmonisation with the Senate's version. Below are the key provisions of each bill:

Nigeria Tax Administration Bill (HB. 1756)

This Bill seeks to establish a uniform and streamlined tax administration framework across the country. It consolidates administrative provisions from existing tax statutes, such as the Companies Income Tax Act, VAT Act and Personal Income Tax Act. The Bill has set out the following:

1. VAT reform: a new VAT revenue allocation formula is proposed: FG – 10 per cent, States and FCT – 55 per cent, LGs – 35 per cent. State and LG shares will be distributed based on equality, population and consumption.
2. VAT threshold: the VAT exemption threshold for small businesses has increased to 50 million naira (turnover) and 250 million naira (fixed assets).
3. Expansion of the tax net: mandatory registration of all taxable persons and issuance of tax identification cards (TINs) are proposed. These TINs will be required for all bank accounts, including personal accounts.
4. Mandatory financial reporting: financial institutions must report high-value transactions: 50 million naira monthly for individuals and 250 million naira for companies.
5. Employee returns: employees will be required to file annual returns disclosing all income sources.
6. Monthly WHT returns: non-resident airlines and shipping companies must remit taxes monthly.
7. Anti-avoidance rule: a principal purpose test has been introduced requiring disclosure of tax avoidance schemes.
8. Joint audits and information sharing: encourages cooperation between tax authorities for joint enforcement.
9. Electronic fiscal system: the Nigeria Revenue Service (NRS) may introduce systems to record taxable supplies electronically.
10. Penalties: significant penalties for non-compliance, including fines and imprisonment for tax evasion or failure to remit WHT.
11. Power to distrain: tax authorities may seize and sell assets for unpaid taxes.
12. Revocation of licences: non-payment of royalties or taxes by oil or mining companies may lead to licence revocation.
- 13.

Deleted provisions: the House of Representatives has deleted provisions relating to tax investigations by the authorities.

Nigeria Revenue Service (Establishment) Bill (HB. 1757)

This Bill replaces the FIRS with the NRS and expands its scope, including:

1. Functions and powers: the NRS inherits all powers of the FIRS and may administer taxes under any applicable law, not just those enacted by the National Assembly.
2. Intergovernmental assistance: enables the NRS to assist subnational governments with tax collection.
3. Funding: the NRS will be funded by a share of revenues that it collects, as appropriated by the National Assembly.

Joint Revenue Board (Establishment) Bill (HB. 1757)

This Bill establishes the Joint Revenue Board (JRB), the TAT and the Office of the Tax Ombud. Details of these are as follows:

1. TAT: jurisdiction is expanded to include disputes under both federal and state tax laws, resolving previous limitations. However, appeals can only be filed at the Federal High Court, which may be challenged as infringing on the jurisdiction of State High Courts.
2. Tax Ombud: provides an independent avenue for taxpayers to lodge complaints and resolve tax-related disputes. However, its powers are limited: it cannot interpret legislation, determine tax liability, or review ongoing court or tribunal cases.
3. Statute of limitation: removes limitation periods and pre-action notice requirements for appeals before the Tribunal.
4. Suit limitations against the JRB: any action against the JRB must be initiated within six months, with a one-month pre-litigation notice.

Nigeria Tax Bill (HB. 1759)

This Bill repeals existing tax laws and consolidates them into a single, comprehensive legislation covering corporate income tax, personal income tax, VAT, stamp duty, capital gains tax and petroleum profit tax, as follows:

1. Corporate income tax: introduces tiered rates – small companies are tax-exempt, standard companies are taxed at 30 per cent and companies in designated priority sectors enjoy a reduced rate of 25 per cent.
2. Personal income tax: introduces a progressive rate regime. The first 800,000 naira of income is tax-exempt.
- 3.

Minimum effective tax rate: companies with turnovers above 50 billion naira or multinationals with global turnover above €750 million must pay a minimum 15 per cent effective tax rate.

4. Development levy: a 4 per cent levy on company profits (excluding small and non-resident companies) is proposed, to fund national development initiatives across education, technology, defence and infrastructure.
5. Capital gains tax exemption: gains from share disposals are exempt if total proceeds are below 150 million naira and gains under 10 million naira within a 12-month period.
6. Digital assets: cryptocurrencies and non-fungible tokens are taxable assets, with gains from their disposal subject to capital gains tax.
7. Increased compensation threshold: exemption for compensation on loss of office is increased from 10 million naira to 50 million naira.
8. Expanded VAT exemptions: essential goods and services such as food, education, healthcare, transport, rent and fuel are VAT-exempt.
9. Double taxation relief: offers unilateral relief for foreign taxes on foreign-sourced income brought into Nigeria, while excluding global minimum tax payments from double taxation reliefs.
10. Economic Development Tax Incentive: replaces the Pioneer Status Incentive with a broader regime to support investment in priority sectors and vulnerable groups.
11. Deleted VAT increase: earlier proposals to raise VAT from 7.5 to 10 per cent (and eventually 15 per cent) have been removed. VAT remains at 7.5 per cent.

Collectively, the Tax Reform Bills present a significant overhaul of Nigeria's fiscal regime. Although they do not introduce major additional tax burdens, they aim to widen the tax net, promote administrative efficiency and enhance revenue generation. Key innovations include digital asset taxation, mandatory taxpayer registration, new institutional frameworks and a stronger dispute resolution mechanism. Effective implementation will depend on harmonisation with the Senate's position and careful balancing of enforcement with taxpayer fairness and investment protection.

In May 2025, both houses of the National Assembly passed all four tax reform bills proposed by President Tinubu. These four bills will be imminently transmitted and signed into law by President Tinubu after both houses have harmonised the areas of difference in their versions of the bills.

Endnotes

- 1 *Oando Supply and Trading Limited v. Federal Inland Revenue Service* (2011) 4 TLRN 113. [^ Back to section](#)
- 2 *SNEPCO and 3 Others v. Federal Inland Revenue Service and Another* CA/A/208/2012. Judgment delivered on 31 August 2016. [^ Back to section](#)

- 3 Section 69 Companies Income Tax Act (CITA) Cap. C21, Laws of the Federation of Nigeria, 2010. [^ Back to section](#)
- 4 Section 15(5), Fifth Schedule, Federal Inland Revenue Service (Establishment) Act, 2007. [^ Back to section](#)
- 5 Section 15(8), *ibid.* [^ Back to section](#)
- 6 The law requires bankers to make quarterly returns to the Federal Inland Revenue Service specifying details of transactions of 5 million naira and above for individuals and 10 million naira and above for corporate bodies. [^ Back to section](#)
- 7 See, for example, Section 20(1) and First Schedule to the Customary Courts Edict. [^ Back to section](#)
- 8 Section 28(2) of the Magistrates' Court's Law of Lagos State (2011). [^ Back to section](#)
- 9 Section 11, Fifth Schedule, Federal Inland Revenue Service Establishment Act, 2007. [^ Back to section](#)
- 10 Section 2, Fifth Schedule Federal Inland Revenue Service Act. [^ Back to section](#)
- 11 Section 251(1)(b) 1999 Constitution (as amended). [^ Back to section](#)
- 12 Section 241 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). [^ Back to section](#)
- 13 Section 242 of the 1999 Constitution (as amended). [^ Back to section](#)
- 14 Disputes between the Federal Government, States and National Assembly. Section 232 of the 1999 Constitution (as amended). [^ Back to section](#)
- 15 Section 234 of the 1999 Constitution (as amended). [^ Back to section](#)
- 16 Section 92 of the CITA. [^ Back to section](#)
- 17 Section 94 of the CITA. [^ Back to section](#)
- 18 Sections 94–96 of the Personal Income Tax Act (PITA). [^ Back to section](#)
- 19 Section 35 of the Finance Act. [^ Back to section](#)
- 20 Section 40 of the Finance Act. [^ Back to section](#)
- 21 MT Abdulrazaq (2016) *Taxation System in Nigeria: Gravitas Legal and Business Resources Ltd*, pp. 225–226. [^ Back to section](#)

- 22 Section 65(3) of the CITA; Section 54(3), PITA. ^ [Back to section](#)
- 23 Section 66 of the CITA; Section 55, PITA. ^ [Back to section](#)
- 24 Section 32 of the Federal Inland Revenue Service (Establishment) Act 2007. ^ [Back to section](#)
- 25 Section 86 of the CITA; Section 104 PITA; Section 33 of the Federal Inland Revenue Service (Establishment) Act. ^ [Back to section](#)
- 26 Section 87 of the CITA; Section 78, PITA. ^ [Back to section](#)
- 27 Section 90 of the CITA; Section 83, PITA. ^ [Back to section](#)
- 28 Section 91 of the CITA; Section 84, PITA. ^ [Back to section](#)
- 29 (2015) 18 TLRN 42. ^ [Back to section](#)
- 30 Legal standing to institute an action. ^ [Back to section](#)
- 31 Section 5(3) of the VATA. ^ [Back to section](#)
- 32 Section 22, Fifth Schedule Federal Inland Revenue Service Act. ^ [Back to section](#)
- 33 Section 87 of the CITA; Section 78, PITA. ^ [Back to section](#)
- 34 *SNEPCO and 3 Others v. Federal Inland Revenue Service and Another* CA/A/208/2012. Judgment delivered on 31 August 2016. ^ [Back to section](#)
- 35 (2014) 15 TLRN 1. ^ [Back to section](#)
- 36 With corresponding provisions in Section 17, PITA and Section 20, Capital Gains Tax Act. ^ [Back to section](#)
- 37 (2013) 9 TLRN 136–138. ^ [Back to section](#)
- 38 Appeal No. Tax Appeal Tribunal/LZ/CIT/015/2017. Available at https://pwcnigeria.typepad.com/files/tat-ruling_tp-case-prime-plastich-em-nig-ltd-v.-firs.pdf. ^ [Back to section](#)
- 39 Paragraph 6(10) of the Transfer Pricing Regulations. ^ [Back to section](#)
- 40 Section 12(1) Constitution of the Federal Republic of Nigeria, 1999 (as amended). ^ [Back to section](#)
- 41 (2014) 15 TLRN 76. ^ [Back to section](#)

- 42** Appeal No. TAT/LZ/CIT/090/2021. [^ Back to section](#)
- 43** Appeal No. TAT/LZ/CIT/2022 judgment delivered on 3 February 2023. [^ Back to section](#)
- 44** Appeal No. TAT/SSZ/003/2021 judgment delivered on 23 March 2023. [^ Back to section](#)
- 45** Appeal No. TAT/SSZ/013/2020 judgment delivered on 24 August 2023. [^ Back to section](#)
- 46** Appeal No. TAT/LZ/PPT/003/2022 cited as 2022 (68) TLRN 1. [^ Back to section](#)
- 47** FHC/ABJ/CS/12/2022 delivered on 9 November 2023. [^ Back to section](#)



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