

Benchmac & Ince

Newsletter

April - June, 2020

Q2, 2020 Edition

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Getting Started

By Ike C. Ibeku

Managing Partner, Benchmac & Ince

It seems just like yesterday that you let us into your space to share our Q1 edition.

Quite a lot has happened since then and the new normal is fully settled in. How are you coping? The economy is no longer the main topic, rather one's health and the ability to stay safe. On page 6 we compare the pandemic numbers in Nigeria as at end of Q1 and Q2, community transmission is on the rise and we do need to stay safe even beyond the curve flattening.

We sincerely appreciate those that sent feedback on Q1 edition and we look forward to yours.

1. THE ECONOMY

FEC APPROVES NESP'S N2.3 TRILLION STIMULUS PLAN

The Federal Executive Council (FEC) on June 24, 2020, approved the immediate implementation of the N2.3 Trillion, Nigeria Economic Sustainability Plan (NESP).

The Minister of Finance, Zainab Ahmed announced that N500 billion of the stimulus package has been provided in the amended 2020 Appropriation Act and would be funded from special accounts. According to her, "the NESP is a 12-month 'Transit' Plan between the Economic Recovery and Growth Plan (ERGP) and the ERGP-successor-plan currently being worked upon".

She also stated that the transit plan is meant to be implemented quickly and to that effect, the FEC has agreed that the procurement processes be relaxed in such a manner that the Committee in charge of the NESP can adopt a faster mode as opposed to using the current longer procurement process.

PRESIDENT BUHARI RECEIVES THE REPORT OF THE ECONOMIC SUSTAINABILITY COMMITTEE

The Economic Sustainability Committee, chaired by Vice-President Yemi Osinbajo, was inaugurated by the president on March 30 in response to the threat of the most severe economic downturn in the nation's history, largely caused by the COVID-19 pandemic. The committee was specifically charged with the responsibility of developing a clear Economic Sustainability Plan in response to challenges posed by the COVID-19 pandemic, and to propose monetary policy measures in support of the plan, among others. The committee came up with the Nigerian Economic Sustainability Plan (NESP) and recommended a N2.3 trillion stimulus plan to support the Nigerian economy in the face of the disruptions and challenges of the Covid-19 pandemic.

To download the full report please click [Here](#).

FEDERAL GOVERNMENT UNVEILS U.S.\$1.2 BILLION PROGRAMME TO BOOST AGRICULTURE

The Federal Government in May, 2020 unveiled "The Green Imperative", a 10-year agricultural programme worth \$1.2 billion and targeted at creating five million jobs and injecting \$10 billion into the economy.

The project, according to the ministers of Information and Culture, Alhaji Lai Mohammed, and his counterpart at the Ministry of Agriculture

and Rural Development, Alhaji Sabo Nanono, is a Nigeria-Brazil bilateral agriculture development that will be implemented for over a period of 5 to 10 years.

According to the ministers, the funding will come from the Development Bank of Brazil and Deutsche Bank, with insurance provided by Brazilian Guarantees and Fund Management Agency and the Islamic Corporation for Insurance of Export Credit of the Islamic Development Bank, and coordinated by Getúlio Vargas Foundation.

CBN POLICY MEASURES IN RESPONSE TO COVID-19

The Central Bank of Nigeria (CBN) in response to tackling the negative effect of COVID-19 has set out several policy measures, including; the Extension of Moratorium, Reduction of Interest Rates, Creation of a N50 billion Credit Facility, Credit Support for Healthcare Industry, Regulatory Forbearance etc.

The Apex bank continues to reiterate that it stands ready to provide liquidity back-steps as and when required in view of its role as a banker to the Federal Government of Nigeria and a lender of last resort. To read more please click [Here](#).

NIGERIA COMMEMORATES DEMOCRACY DAY ON JUNE 12

In commemoration of Democracy Day, President Muhammadu Buhari while recognizing the adverse effect of COVID-19 on Nigerians also addressed the Nation on what his administration has been doing to better the lives of Nigerians. Part of his speech centered on; agriculture, power, unemployment, security, digital economy, education, rule of law and the anti-corruption campaign, housing, transportation and youth, women and persons with disabilities.

2. IP UPDATE

PUBLICATION OF NEW TRADEMARK JOURNAL

The Nigerian Trademark Registry on May 29, 2020, released a new Trademark Journal, Vol 1, No. 3(Online) dated May 29, 2020 advertising online trademark applications for opposition purposes.

The deadline for filing possible oppositions to applications published in the Trademark Journal is July 29, 2020. Any person may file a notice of opposition within two months of the date of

publication of the trademark application in the Trademarks Journal.

Further to the above, on June 30, 2020 the registry published Trademark Journal Vol 1, No. 4 (Online, IPAS/PRE IPAS) June 30, 2020 advertising online, IPAS and PRE IPAS trademark applications for opposition purposes. The deadline for filing possible oppositions to applications published in this journal is August 30, 2020. Any person may file a notice of opposition within two months of the date of publication of the trademark application in the Trademarks Journal.

WORLD INTELLECTUAL PROPERTY DAY

The World Intellectual Property Day was celebrated on April 26, 2020. It is an annual celebration which emphasizes on the importance of Intellectual Property rights and the role it plays in encouraging creativity and innovation across the globe. The theme of the 2020 World IP day focused on how intellectual property rights encourage green innovation. It emphasized on Intellectual Property and Innovative technologies that protect the environment.

WORLD ANTI-COUNTERFEITING DAY 2020

In commemoration of the World Anti-counterfeiting Day, the Anti-Counterfeiting Collaboration (ACC) Nigeria on June 10, 2020 held a webinar to discuss the Dynamics of Anti-Counterfeiting During Covid-19 and Likely Impact Going Forward. Stakeholders and regulators participated and shared industry perspectives on the impact of counterfeiting on the economy. It was agreed that in the fight against counterfeiting all stakeholders, regulators and law enforcement authorities must continue to work together to fight the menace.

3. PPP & INFRASTRUCTURE

FG KICKS OFF POWER SECTOR REVAMP AGREEMENT WITH SIEMENS

The Federal Government (FG) has kicked off the next phase of a deal with Siemens AG to upgrade the nation's dilapidated power infrastructure. Recall that the FG and Siemens AG had in July last year signed a Six-year Power Agreement which entails rehabilitating and then expanding the country's electricity capacity to 25,000 megawatts by 2025 in three (3) phases.

The presidency on May 27, 2020 instructed the Ministry of Power, the Ministry of Finance, Budget

and National Planning, as well as the Bureau of Public Enterprise, to conclude the engagement with Siemens AG to commence the pre-engineering & concessionary financing aspects of the deal.

The Siemens deal will require more than N1.15tn to execute, according to the Technical and Commercial Proposal released on May 7, 2019. However, the project will be financed by concessionary loans covered by Euler Hermes Group SAS, a large provider of credit insurance.

N'ASSEMBLY, DISCOS DEFER PROPOSED HIKE IN ELECTRICITY TARIFFS TILL EARLY 2021

The leadership of the National Assembly (NA) on the evening of 29th June, 2020 waded into the controversy on the planned hike in electricity tariffs from July 1st, 2020 and succeeded in convincing the Distribution Companies (DisCOs) to defer the plan till the first quarter of 2021.

At the meeting of the NA leaders and the DisCOs, the NA leaders were emphatic at the meeting that the timing of the planned hike was wrong even though they had not much issue with the need to introduce a cost-reflective tariff for the power sector to attract the much needed investment.

The representatives of the DISCOs said if the planned hike is eventually deferred till next year, the government should continue to bear the difference in the present tariff and what was considered as the appropriate tariff.

FG BACKTRACKS ON FULL DEREGULATION OF DOWNSTREAM OIL SECTOR, REMOVAL OF PRICE CAP ON FUEL

In a release on June 04, 2020, the Petroleum Products Pricing Regulatory Agency (PPPRA) noted that henceforth Premium Motor Spirit (PMS) prices would be fully determined by market forces. The document noted that the agency would only continue to monitor trends in the crude oil market and advise the Nigerian National Petroleum Corporation (NNPC) and oil marketers accordingly.

This was seen as a move towards the full deregulation of the downstream petroleum sector, however, in what may be considered a sharp contrast and a twist of the tale, the PPPRA on June 07, issued another statement in a clear reversal of its 'Market Based Pricing Regime for Premium Motor Spirit (PMS) Regulations, 2020. In the statement of June 07, 2020, Mr Saidu (the Executive Secretary of the PPPRA) denied "giving marketers the freedom to fix the price of petrol above the stipulated price."

He said the announcement by the PPPRA “was to create a legal framework for the regulation on the market-based pricing regime announced earlier by the Minister of State for Petroleum Resources”. Stakeholders in the sector in reaction to this trend called for caution by the PPPRA in the management of the fuel pricing regime in the country.

4. CORPORATE NEWS

CAC ISSUES GUIDELINES ON HOLDING OF ANNUAL GENERAL MEETINGS OF PUBLIC COMPANIES USING PROXIES

Late March 2020, the Corporate Affairs Commission (CAC) issued a circular on guidelines for public companies to hold their annual general meeting (AGM) by proxies (pursuant to Section 230 of the Companies and Allied Matters Act (CAMA)).

The guideline among others stated that the approval of the Commission must be first had and obtained before such AGM is held. Applications for approval may be sent to the Commission’s head office in Abuja or any of the branch offices in any of the states. Furthermore, the guideline encourages all companies seeking to hold their AGM by proxy to be guided by the provisions of their Articles and CAMA.

Comment

While the CAC’s regulatory intervention is laudable, it is also understood that a mandatory proxy model may not be accepted by all shareholders or shareholder groups.

To download the Guideline please click [Here](#):

NITDA GIVES NOTICE ON EXTENSION OF TIME FOR FILING OF 2020 AUDIT REPORT

In line with the provisions of the Nigeria Data Protection Regulation (NDPR), the National Information Technology Development Agency (“the NITDA”) in a recently issued directive recognised the disruption that the coronavirus pandemic (COVID-19) is having on businesses and has extended the deadline for the submission of 2019 annual protection audit report from March 15, 2020, to May 15, 2020.

It is expected that companies and organizations that are yet to submit the annual audit report will take all necessary steps to meet the new submission date of May 15, 2020, to avoid the imposition of sanctions under the Regulation and the NITDA Act.

Compliance can be done by engaging a licensed Data Protection Compliance Organization (DPCO) to review data collection and processing activities and to carry out the necessary measures for complying with the Regulation.

FCCPC ISSUES GUIDANCE ON BUSINESS CO-OPERATIONS RELATING TO COVID-19

Following the COVID-19 pandemic and the resultant disruption of the economy, the Federal Competition and Consumer Protection Commission (“FCCPC” or “the Commission”) issued the Business Guidance Relating to COVID-19 on Business Co-operation to address certain concerns on business co-operation and consumer rights in a bid to mitigate the severe effects of the crisis.

The Business Guidance also encourages anyone with information or concerns about fraudulent and illegal schemes or other COVID-19 related complaints to contact the FCCP via - <https://covid19.fccpc.gov.ng/> or 07086159973 (WhatsApp only). Further, the document while recognizing the need for businesses to cooperate and coordinate in response to COVID-19 crisis, mandates that businesses keen on cooperating and collaborating to first seek and obtain authorization from the commission. The request for authorization may be submitted by email to exemptionapplications@fccpc.gov.ng with accompanying relevant information as to the collaboration.

COURT FINES CUSTOMS N5 MILLION, SAYS DUTY ON PERSONAL LUGGAGE ILLEGAL

The Federal High Court sitting in Abuja, in its judgement in Suit No: FHC/ABJ/CS/1113/2019 slammed the sum of N 5 million on the Nigeria Customs Service (NCS) for unlawfully collecting the sum of N156,955.20 from one Kehinde Ogunwumiju as duty on personal effects he brought into the country.

The plaintiff, Ogunwumiju, had approached the Federal High Court seeking a declaration that in view of the provisions of Section 8 of the Customs, Excise Tariff, etc. (Consolidation) Act and the 2nd Schedule to the Customs, Excise Tariff, etc. (Consolidation) Act, it was unlawful for the defendants, NCS to have demanded and collected import duty and other related charges from him in respect of his personal effect found in his baggage following a search by the defendants upon his arrival at the Nnamdi Azikiwe International Airport, Abuja on June 24 2019.

The Court held that goods contained in a passenger’s baggage provided that the said goods are not intended for sale, barter or exchange and

personal and household effects are exempt from import duty and other related charges, thus declaring the actions of the defendant unlawful, null and void. The court also ordered the Customs to refund the sum of N156, 955.20k (One Hundred and Fifty-Six Thousand, Nine Hundred and Fifty-Five Naira, Twenty Kobo) in import duty and other related charges to the plaintiff and also to pay to the plaintiff the sum of N5,000,000.00 (Five Million Naira) as exemplary damages.

Following this judgement, it is now unlawful for officers of the Nigerian Customs Service to demand and collect import duty and other related charges from anyone in respect of goods/personal effects found in their baggage provided that the said goods/personal effects are not meant for sale, barter or exchange.

NJC RELEASED GUIDELINES FOR COURT SITTINGS AND RELATED MATTERS IN THE COVID-19 PERIOD

On March 23, 2020, when it became clear that the COVID-19 virus had gained momentum in Nigeria, the Chief Justice of Nigeria issued Circular No. NJC/CIR/HOC/11631 where he directed all heads of courts in the Federal and State Judiciaries to suspend courts activities for an initial period of 2 weeks, save for urgent or time-bound matters. This was in a bid to safeguard the health of Judges, lawyers and litigants.

Subsequently, on May 7, 2020, the National Judicial Council (the NJC) released Guidelines for Court Sittings and Related Matters in the Covid-19 Period (the Guidelines). The Guidelines are intended to aid the various courts to conduct proceedings remotely or virtually in order to meet the ends of justice, particularly with respect to time-bound cases, matters not requiring oral evidence (except where those of extremely urgent nature) and matters ripe for judgment, whilst ensuring the safety of judicial officers and workers, legal practitioners, litigants and the general public.

However, the Guidelines do not stand alone and are not in any way meant to replace the Rules of Court or existing Practice Directions but to complement same. The Guidelines can also be modified by Heads of Court to fit the needs of particular courts.

NBA ELECTIONS TO HOLD ON JULY 24, 2020

The members of the Nigerian Bar Association (NBA) are getting set to elect national officers into the executive committee of the NBA. The Electoral Committee of the NBA received nominations from forty-three (43) Aspirants for various offices. However, at the close of the screening of

nominations by the committee twenty-four (24) Aspirants were granted provisional clearance to contest the elections, while nineteen (19) Aspirants were disqualified for various reasons.

The 2020 NBA elections shall be conducted electronically and shall hold between 00:00 hours of Friday 24th to 23:59hours of Saturday 25th July, 2020.

5. TAX UPDATE

MINISTER OF FINANCE ISSUES COMPANIES INCOME TAX (SIGNIFICANT ECONOMIC PRESENCE) ORDER, 2020

The Honourable Minister of Finance, Budget and National Planning recently issued the Companies Income Tax (Significant Economic Presence) Order, 2020 (“the Order”). The Order, which is effective 3rd February 2020, defines the concept of “Significant Economic Presence” as it relates to the taxation of non-resident companies under the Companies Income Tax Act (CITA) as amended by the Finance Act, 2019.

The Order has clarified that “electronic and wireless apparatus” in Section 13 (2) (c) to include digital or related activities carried on through satellite by foreign company.

As at the time of this report, the modality for implementation of the Order and deduction/collection of the required taxes remains unclear.

To download and read more about the order click [Here](#).

FIRS ISSUES NOTICE TO CLARIFY WHICH GOODS ARE EXEMPT FROM VAT

Further to the Finance Act, 2019 which amended several provisions in the Value Added Tax (VAT) Act, the Federal Ministry of Finance issued a Value Added Tax (Modification) Order, 2020 (the “Order”) with a commencement date of 3 February 2020. The Order clarifies and expands the list of exempt items as contained in the First Schedule of the VAT Act. The exempt items included natural gas, essential raw materials for production of pharmaceutical products, renewable energy equipment, and raw materials for production of baby diaper and sanitary towels.

The Federal Inland Revenue Service (FIRS) on Wednesday, 24 June 2020 issued a Public Notice to clarify enquiries received from taxpayers on the tax-exempt status of some items included in the

Order. Among the clarifications included, the statement that the following items - natural gas, essential raw materials for production of pharmaceutical products, renewable energy equipment; and raw materials for production of baby diaper and sanitary towels - though included in Paragraph 2 of the Order, remain liable to VAT at 7.5% until they are exempted by an appropriate statutory instrument.

Comment:

It is important to state that the issuance of the Order and the amendment of the First Schedule to the VAT Act are within the statutory powers of the Honourable Minister of Finance (HMoF) under the VAT Act. Therefore, the provisions of the Order are binding on all stakeholders in the tax system, including the FIRS. However, the issuance of the Public Notice by the FIRS, which contradicts the express provisions of the Order, raises the question whether a Public Notice issued by the FIRS can override a subsidiary legislation.

To answer that question, it is pertinent to refer to the judgement of the Federal High Court (FHC) in the case of Warm Spring & Ors. vs FIRS (FHC/L/CS/157/2015), where the court upheld that *“...neither the FIRS nor its Chairman is legally empowered to make an order to either amend, vary or modify the list of VAT exempt items...”* Thus, where the FIRS is of the view that the alleged non-exempt items were erroneously included in Paragraph 2 of the Order, the error cannot be validly corrected through a public notice. A public notice is an administrative document and cannot override the Order duly issued by the HMoF and published in the Official Gazette of the Federal Government. Hence, the Order would remain effective until further action by the HMoF to ensure certainty in the tax system.

Please click [Here](#) to download a copy of the order and [Here](#) to download the Public Notice:

FIRS INTRODUCES N50 STAMP DUTY ON ELECTRONIC RECEIPTS

In a circular that was released in May, the Federal Inland Revenue Service (FIRS) announced that stamp duty will now be attached on all forms of electronic notifications acknowledging receipts of funds.

“Any electronic receipt for, or electronic transfer of money deposited with any bank or with any banker in any type of account of an amount from N10,000 upwards shall attract a singular or one-off duty of the sum of N50,” Muhammad Nami, executive chairman of the FIRS said on the tax agency’s website.

By this circular, the FIRS clarifies that stamp duties apply on written, printed or electronic dutiable documents and receipts, and provides examples such as e-mails, short message service (sms), instant messages (IM), documents on website or cloud-based platforms, POS receipts, and Automated Teller Machine (ATM) printouts.

The instruments subject to charge, as listed in the circular, include; fixed duty instruments such as Power of Attorney, Certificate of Attorney, Proxy forms, Appointment of receivers, Memorandum of Understanding, Joint Venture Agreements, Guarantors form, Ordinary agreements and Receipts; and Ad-valorem instruments such as Tenancy or lease agreements, legal mortgage or debentures, Sales agreements and Deed of assignments.

COURT HOLDS THAT THE MINISTER OF FINANCE CANNOT MODIFY THE TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT.

The Federal High Court sitting in Lagos has held that the Minister of Finance does not have the competence to modify the Taxes and Levies Approved List for collection Act. The Act delineated the taxing powers of government into the various tiers of government as provided by the Nigerian Constitution.

On May 26, 2015, the then Minister of Finance, Dr. Okonjo Iweala, had amended the schedule of the Act to introduce novel taxes like the 'National Information Technology Development Levy' for the Federal Government and several others like 'land use charge', 'Hotel, Restaurant, or Event Centre Consumption Tax', 'Entertainment Tax' et al.

6. Q2 FEATURED ARTICLES

THE IMPACT OF THE ELIGIBLE CUSTOMER REGULATION 2017 (PART 2)

In Part 1 of this series we looked at what constituted the Eligible Customer Policy Directive, the categories of Eligible Customers and its impact on the NESI. Further, we discussed the key players in the NESI and how the directive also impacts the key players in the NESI. Please click [Here](#) to read the full article.

COMBATING COUNTERFEIT DRUGS IN NIGERIA: A LEGAL RECOURSE

It is no doubt that Nigeria has faced an overwhelming counterfeit drug menace for many decades. This article seeks to show the administrative, legislative and judicial measures that have been put in place to combat the menace

of counterfeit drugs in Nigeria. Please click [Here](#) to read the full article.

7. COVID -19: NIGERIA UPDATE

FGN GRADUALLY EASES LOCKDOWN: ENCOURAGES STATES TO MANAGE LOCKDOWN

The Federal Government of Nigeria (FGN) on 27th April, 2020 announced a gradual easing of COVID-19 lockdown over a six-week period starting from 4th May 2020. Thereafter it also approved the extension of the second phase of the eased lockdown by another 4 weeks with effect from Tuesday, June 30, 2020, to midnight of July 27, 2020.

This second phase gave approval for interstate travels outside of curfew hours with buses only carrying 50% capacity and the compulsory use of facemask. Also, it approved the safe reopening of schools with only students in graduating classes, that is primary 6, Junior Secondary School 3 (JSS 3) Senior Secondary School (SS3) will be allowed to return to school to enable them to prepare for exams. The PTF, however, noted that daycare schools, primary schools, secondary schools and tertiary institutions are to remain closed.

States have been encouraged to manage the coronavirus situation in their territory. The government stated that it has increased its capacity to test for the virus and can now carry out more than 1,000 a day. It also reiterated the fact that many businesses have been negatively impacted and that country cannot afford the full impact of a sustained lockdown while awaiting the development of vaccines or cures.

Following the ease of the lockdown, government and private establishments have commenced operations and also resumed working hours (for government employees only those above Level 14 have fully resumed) from June 1, 2020.

Some stakeholders, especially medical practitioners have opined that the government's decision to ease restrictions had been premature as the number of new coronavirus cases does not appear to be tailing off.

FAAN, AIRLINES STALLED PLANS TO RESUME FLIGHT OPERATIONS

The Minister of Aviation, Sen. Hadi Sirika, in conjunction with the Presidential Task Force on COVID -19 (PTF) had proposed to open the Nigeria airspace for business on June 21, 2020, hence, the Federal Airports Authority of Nigeria (FAAN) and eight other local airlines began making preparations to resume flights. However, a few days to the proposed date of resumption the Nigerian Civil Aviation Authority (NCAA) disclosed that the approved five airports under FAAN were only 57 per cent ready, while three of the eight scheduled carriers still had challenges of compliance with COVID-19 safety regulations. Consequently, the PTF on COVID-19 issued a statement saying that it was no longer likely that the nation's airspace would reopen on June 21, as earlier proposed.

Following the approval for interstate travels, the PTF has advised that the airports can now open as soon as the necessary precautions are in place

COVID-19 UPDATE AS AT THE END OF Q1 2020



COVID-19 UPDATE AS AT THE END OF Q2 2020



For more information and up to date happenings in the Nigerian legal/corporate space kindly check our corporate blogs on our website.