

The Burden of Tax Compliance in Nigeria for the Petroleum Shipping Industry

Background

The petroleum shipping industry is an international industry whose operations traverse the length and breadth of the world's waterways. Vessels operate in multiple jurisdictions where they load and discharge petroleum products. The transactions and contractual arrangements in the petroleum shipping industry are also complicated, given the enormous financial requirements, the environmental, market, and operational risks associated with the management of effective and standard-compliant shipping operations.

As an oil and gas exporting country, Nigeria is a regular destination for non-resident ships, tankers and vessels that transport crude oil and liquefied natural gas out of the country. The activities and operations of these vessels within the Nigerian maritime boundaries may create footprints with potential tax consequences and obligations for the diverse economic agents involved in financing, operating, and maintaining these petroleum vessels. Details of the Case

In 2019, almost 20 years after the Delta State Board of Internal Revenue (DSBIR) wrote to different banks, including Ecobank (Bank) notifying the banks of its intention to carry out a review of the PAYE tax remittances made to the Delta State government for the 2000 – 2010 tax periods, DSBIR served Ecobank in Delta State a letter of notice to carry out a review of PAYE tax remittance.

The Bank objected to the intended investigation, and DSBIR eventually raised a Best of Judgment assessment on the Bank. The Bank appealed the additional assessments on the grounds that they were statute barred and DSBIR had not proved the existence of any of FWDN.

It is interesting to note that DSBIR had earlier, at least twice before, audited those years and raised additional assessments which the Bank settled without admitting liability.

Before and during the trial, DSBIR claimed that its decision to conduct the investigation was because of some intelligence it had, ostensibly that the Bank had committed fraud and wilfully defaulted by failing to report certain allowances paid to its employees, thereby paying lower taxes.

Technical Details

Given the offshore nature of the petroleum shipping industry and the tax administration and enforcement challenges therein, the non-resident petroleum-shipping companies and vessels with activities in Nigeria may be unaware of their corporate tax obligations in the country. The Companies Income Tax Act (CITA), which provides the legal basis for subjecting companies to corporate tax in Nigeria, has a specific section dedicated to the taxation of international companies and vessels engaged in the business of transport by sea in Nigeria. In specific terms, Section 14(1) of the CITA provides that:

“Where a company other than a Nigerian company carries on the business of transport by sea or air and ship or aircraft owned or chartered by it calls at any port or airport in Nigeria, its profit or loss to be deemed to be derived from Nigeria shall be the full profit or loss arising from the carriage of passengers, mails, livestock, or goods shipped, or loaded into an aircraft in Nigeria”

Section 14(1) of the CITA implies that freight income earned by a non-resident shipping company for petroleum cargoes shipped or loaded from Nigeria will be liable to the Companies Income Tax (CIT). Furthermore, the non-resident shipping company will be required to file annual CIT returns and pay the taxes due on its activities in the preceding financial year. While the requirement to comply with Section 14 of the CITA is indisputable for non-resident shipping companies who transport petroleum cargoes out of Nigeria, the stringent compliance obligations imposed on these companies may not have taken into consideration the peculiarities of their business and could pose a challenge to these companies from willingly complying with the tax laws in Nigeria.

In this article, we have examined some of the unfavourable compliance requirements that may deter a non-resident shipping company from complying with provisions of the CITA and made recommendations that may improve their compliance level in Nigeria as follows:

Onerous Tax Filing Requirement

In the recently issued information circular on “Taxation of Companies Engaged in Shipping, Air Transport and Cable

Undertakings” (The Circular), the Federal Inland Revenue Service (FIRS), in note 4.1 (a) emphasized the requirement for shipping companies to submit “full audited financial statements on the resident company and the financial statements of the Nigerian operations, attested by an independent qualified or certified accountant in Nigeria”, as part of the annual CIT returns to be filed with the FIRS.

This requirement by the FIRS imposes an additional compliance burden on non-resident shipping companies, especially for a company that has limited operations in Nigeria such as a one-off operation in a particular year. The requirement to prepare financial statements as a pre-condition for filing tax returns may be uneconomical, discourage compliance and eventually encourage tax evasion.

Advance Payment of Tax Requirement

The circular in note 5.0 introduced the concept of “Advance Payment of Tax Requirement”, which requires non-resident companies involved in the shipping business in Nigeria to remit on a monthly basis, 2% of their monthly revenue to the FIRS. This requirement appears not to have any legal basis in CITA. Section 78-81 of CITA provides the basis for deduction of withholding tax (WHT) which is an advance payment of tax, on the payment due to company liable to CIT in Nigeria and does not require any company to directly remit any portion of its revenue to the FIRS on a monthly basis. Furthermore, the CIT (Rates of tax deducted at source (WHT)). Regulations issued pursuant to the CITA, does not require an advance payment of tax by international shipping companies.

Determination of Fair Percentage of Turnover for Assessing International Shipping Companies to Tax in Nigeria.

The CITA in section 14 (3) provides that “Where at the time of assessment, the provision of subsection 2 of this section cannot for any reason be satisfactorily applied, the profit to be deemed to be derived from Nigeria may be computed on a fair percentage on full sum receivable in respect of carriage of passengers, mails, livestock and goods shipped or loaded in Nigeria”. In defining what constitutes a fair percentage for this purpose, the circular

referenced the consistent government policy of applying 20% of the total sum receivable as the total profit.

While the adoption of 20% of turnover as total profit for non-resident companies operating in other sectors may be justifiable, the peculiarities of the international shipping business ought to be considered in arriving at the fair percentage specified in the CITA. The petroleum shipping industry is well known for being highly cyclical with a long spell of overcapacity, historically low freight rate and losses. Therefore, adopting an unfair percentage may encourage tax evasion in a sector where enforcement activities are currently burdensome for the FIRS.

Conclusion and Recommendations

Onerous compliance obligation for non-resident shipping companies in Nigeria increased the risk of noncompliance for tax purposes and makes Nigeria an unattractive business destination. Consequently, it is imperative for the country’s tax system to be guided by the principle of fairness, simplicity, convenience, and low compliance cost to improve the ease of doing business and enhance the prospect of turning Nigeria into a regional maritime hub in West Africa.

In specific terms, the FIRS should consider easing the filing requirements for international shipping companies to encourage payment of CIT on income derived from Nigeria by considering the following:

- FIRS can adopt a certified revenue statement for international shipping for filing under section 14(3) of the CITA.
- The Service should review the deemed profit rate in line with the economic realities of the international shipping business to arrive at a fair percentage specified in section 14 (3) of the CITA.
- Alternatively, the FIRS may maintain the payment of CIT at 2% of turnover in line with Section 14(4) of the CITA.

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