

# THE GHOST OF TAXES PAST – DEMANDS FOR BACK TAXES FROM FOREIGN SHIPPING COMPANIES THAT DERIVED INCOME FROM NIGERIA

1. <https://www.tradewindsnews.com/tankers/tanker-owners-surprised-to-be-hit-with-nigerian-back-tax-claims/2-1-1466814>
2. <https://splash247.com/suez-max-rates-surge-as-nigeria-is-sues-tanker-owners-with-backdated-tax-demands/>
3. This withdraws and replaces the previous FIRS Information Circular 2021/14 of June 3, 2021 on the same subject.
4. Cap. C21, LFN 2004 (as amended).

It was recently reported<sup>1</sup> that some international shipping companies (specifically, owners of motor tankers used for transporting crude oil and petroleum products) engaged in Nigerian trade may be considering terminating their operations in the country, with the largest economy in Africa, following the receipt of Notices of Taxes Assessment (the “**Notices**”) from the Federal Inland Revenue Service (the “**FIRS**” or the “**Service**”). We also understand the Notices have resulted in a surge in charter rates for motor tanker vessels that service the Nigerian market as owners are now actively avoiding Nigeria for fear of possible detention by FIRS<sup>2</sup>.

In the Notices, FIRS referred to its Information Circular dated **May 11, 2022**<sup>3</sup> which relate to, inter alia, the “**tax compliance of international shipping lines deriving income from Nigeria**” (the “**Circular**”). The FIRS, relying on Section 14 of the Companies Income Tax Act (“**CITA**”)<sup>4</sup>, stresses that the full profits of foreign shipping companies (based on freight income) derived from Nigeria are taxable in Nigeria and same shall be determined in line with the provisions of CITA. The Service also states that foreign companies engaged in shipping that are residents of countries that have a double taxation treaty (“**DTT**”) with Nigeria are exempt from Nigerian income tax if the DTT grants unconditional tax exemption. On the other hand, where the DTT grants unconditional tax exemption, the foreign company will not pay tax in Nigeria but only in their respective home countries, where Nigerian resident companies also operate ships in international traffic calling at the ports of the treaty partner. Where there is no corresponding operation of ships of Nigerian companies in international traffic calling at the ports of that treaty partner, the foreign companies’ resident in such country are assessable to tax in Nigeria in respect of their freight income in Nigeria and at the rate specified in the respective DTTs.

*The Circular further states, unequivocally, that the foregoing provisions would apply to any vessel that carries crude oil, gas, petroleum products or any other item from Nigeria, irrespective of where or with whom the carriage contract was executed.*

Without doubt, the FIRS, being Nigeria’s principal tax regulatory agency, has the power to issue demand notices to tax subjects where it believes that the tax subject has not discharged its tax obligation under relevant law. It is also not in doubt that by Section 14 of CITA (as amended by Section 8 of the Finance Act, 2020), non-Nigerian shipping companies must pay income tax on profit earned from freight activities. However, it must be noted that the extent of the aforesaid liability is to be determined on a case-by-case basis having regard to, inter alia, any applicable DTT between Nigeria and the country of residence of a relevant international shipping.

It is also noteworthy that, in practice, the income of these shipping companies is subject to withholding tax (“**WHT**”) deductions and where such deductions were indeed made at source and remitted to the FIRS, any further assessments must take into cognizance the WHT remitted on behalf of the foreign shipping companies.

Also, Nigerian law provides a time frame within which FIRS can assess a tax subject which has not been assessed or has been assessed at a less amount than that which ought to have been charged, except where any form of fraud, wilful default or neglect has been committed by or on behalf of such tax subject in connection with any tax imposed under a relevant law. Consequently, any demand issued by the Service which reflects an assessment for a period beyond the time limit provided by law may be challenged on that basis.



Also, the cargo loading location, in Nigeria, may also provide a defense to the Notices.

Finally, in its Public Notice of December 17, 2021, the FIRS requested all international shipping companies deriving income from Nigeria to regularize their tax compliance status **not later than February 28, 2022**. The Service also indicated that it would collaborate with other regulatory agencies in the maritime sector and security agencies to enforce the tax laws against defaulting entities.

Also, by Section 14(6) of CITA (as amended by Section 5 of the Finance Act, 2023), regulatory agencies in the shipping and other relevant sectors shall mandate all companies taxable under Section 14 of CITA to present evidence of income tax filing for the preceding tax year and Tax Clearance Certificates, showing income taxes paid for the three (3) preceding tax years, in order to continue to carry on business in Nigeria or obtain any relevant approvals and permits.

It is therefore necessary that foreign shipping companies deriving income from Nigeria engage the FIRS through their legal or tax advisers to resolve issues around any assessment that may be made by the FIRS without further to avert sanctions that will have an undesired effect on their operations or assets in Nigeria. Going forward, foreign shipping companies deriving income from Nigeria should have their charterparties reviewed, from a Nigerian law perspective, to avert 'surprises' (like back taxes) in the future.

While we note that the recent actions of FIRS, as reflected in the recent demand notices issued to foreign shipping companies, does not necessarily reflect a change of policy, since the relevant tax laws imposing taxes on the income of foreign shipping companies predates the President Tinubu GCFR led Federal Government of Nigeria, it is important that affected companies take necessary steps given the current disposition of the administration to plug leakages and shore up revenue for campaign promises.

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