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KEY ISSUES FOR SHIPOWNERS AND CHARTERERS IN CARRIAGE OF GOODS TRANSACTIONS

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The Nigerian Revenue Service ("NRS") formerly known as the Federal Inland Revenue Service (FIRS) is actively pursuing historic freight tax liabilities against non-resident shipping companies that called at Nigerian ports, through multi-pronged enforcement strategy. These assessments, which relate to income earned from the carriage of passengers, mail, livestock, and cargo shipped or loaded in Nigeria, have long existed in Nigerian tax law but have gained renewed enforcement momentum in recent years.

The passage of the Nigeria Tax Act 2025 (the "NTA") which repealed and consolidated the Companies Income Tax Act ("CITA") and related fiscal legislation, does not extinguish outstanding assessments for earlier periods but reframes the legislation within which current and future claims will be determined. The successor provisions to section 14 of the CITA are now found in section 18 of the NTA, and they preserve the essential character of the freight tax regime; profits arising from carriage of goods shipped or loaded in Nigeria remain fully taxable to the non-resident company that earned those profits.

The implications for the shipping industry are significant. Shipowners that have received claims from NRS should not assume the liability is theirs simply because they are the registered entity tied to the vessel. Time charterers who derive the freight profit directly may bear primary statutory liability and face direct pursuit by NRS. Charterparty indemnity provisions may allocate risk between the parties contractually, but they do not bind the tax authority. Understanding the interplay between statutory liability, contractual allocation, and enforcement strategy is now essential for all participants in the Nigerian maritime sector.

LEGAL FRAMEWORK FOR TAXATION OF FREIGHT INCOME

Section 18 of the NTA establishes the charging framework for profits derived by non-resident companies from maritime and air transport operations connected with Nigeria.

Under the provision, where a non-resident company carries on business by sea or air and its vessel or aircraft calls at a Nigerian port or airport, profits attributable to the carriage of passengers, mail, livestock, or goods shipped or loaded in Nigeria are deemed to be derived from Nigeria and are therefore subject to Nigerian taxation.

The NTA permits NRS to determine taxable profits by applying the company's global profit ratio to its Nigerian operations. Where satisfactory accounts are unavailable, the tax authority may assess profits on a fair and reasonable basis. In addition, the NTA introduced a statutory minimum tax floor of 2% of gross freight revenue attributable to the Nigerian operations, thereby ensuring a minimum level of tax liability irrespective of the profit margin reflected in the taxpayer's accounts.

The statutory framework therefore focuses not on ownership of the vessel itself, but on the profits arising from the carriage operation.

ATTRIBUTION OF LIABILITY WITHIN THE CHARTERPARTY CHAIN

The central question in most freight tax disputes is as to who earned the freight.

The Nigerian freight tax regime is directed at the entity that derives the profits from the carriage of goods loaded or shipped in Nigeria. Determining that entity requires careful examination of the commercial arrangements underpinning the voyage.

In a voyage charterparty, the freight is ordinarily earned by the party contracting directly with cargo interests. In many cases, this will be the carrier or operator undertaking the transportation obligation.

In a time charter arrangement, the shipowner generally earns hire for the use of the vessel, while the time charterer earns the freight by entering into cargo carriage contracts. As a result, the time charterer may be the party liable for freight tax under Nigerian law. However, because NRS typically encounters the registered owner through port and vessel documentation, shipowners may initially be targeted for assessment. The actual freight-earning entity often only becomes apparent after a review of charterparties, bills of lading, and other commercial documents, potentially exposing charterers to direct tax liability.

CHARTERPARTY RISK ALLOCATION AND ITS LIMITS

Most modern charterparties contain clauses that address the allocation of taxes, duties, and governmental charges.

These clauses often seek to allocate responsibility for freight taxes between owners and charterers through indemnity mechanisms or express tax allocation provisions. Such clauses are commercially important and frequently determine which party ultimately bears the economic burden of any assessment.

However, charterparty provisions do not alter the statutory powers of NRS. The tax authority is usually not a party to the charterparty and is not bound by contractual arrangements between commercial counterparties. NRS retains the right to pursue the entity that it considers liable, irrespective of how the parties have allocated risk between themselves.

Accordingly, a shipowner may find itself responding to an assessment notwithstanding the existence of a contractual provision requiring the charterer to bear the relevant tax liability. In such circumstances, the owner's remedy lies against the charterer under the contractual indemnity rather than against the tax authority.

The distinction between statutory liability and contractual recovery rights is therefore fundamental to any assessment of freight tax exposure.

HISTORIC ASSESSMENTS AND LIMITATION ISSUES

One of the most significant concerns arising from recent enforcement activity relates to the retrospective nature of many assessments. Industry participants have reported assessments covering multiple years of vessel operations and numerous Nigerian port calls. These claims often require taxpayers to reconstruct historical voyage records and identify the commercial arrangements applicable to transactions that occurred many years earlier.

The availability of documentation, therefore, becomes critical. Charterparties, fixture recaps, bills of lading, freight invoices, agency records, and operational correspondence may all become important evidence in establishing who earned the freight income and whether the assessment has been correctly issued. Taxpayers should carefully scrutinise the statutory basis upon which historic liabilities are asserted and evaluate whether the procedural requirements governing assessments have been properly satisfied.

The transition from CITA to the NTA does not extinguish liabilities arising before the commencement of the new legislation. Existing rights, obligations, liabilities, and enforcement actions generally continue notwithstanding the repeal of the former legislation. Section 146(d)-(e) of the Nigeria Tax Administration Act 2025 ("NTAA"), ensures that enforcement actions commenced under the old CITA regime continue seamlessly under the new legislation.

While historic liabilities remain, taxpayers should verify that assessments satisfy statutory limitation periods. Under Section 36(2) of the NTAA, there is a clear six-year period limitation for assessing under-taxed persons, a critical safeguard for taxpayers against the indefinite re-opening of historic years. While there is an exception for cases involving deliberate misstatement, the burden of proof lies with the revenue authority to establish such misconduct.

PRACTICAL RISK-MITIGATION MEASURES

In light of the increasing enforcement focus on freight tax liabilities, shipping companies, charterers, operators, and maritime financiers should take proactive steps to assess and manage potential exposure.

A priority exercise should be a comprehensive review of historical Nigerian port calls to identify voyages that may have generated freight tax liabilities and to quantify any potential exposure arising from such operations.

Equally important is a detailed analysis of the relevant charterparty chain. Parties should determine which entity earned the freight income on each voyage and assess whether existing contractual indemnities and tax allocation provisions adequately address the resulting tax risk.

Market participants should also review and update their standard charterparty documentation. Particular attention should be given to provisions dealing with Nigerian freight tax liabilities, compliance obligations, cooperation during regulatory investigations, and indemnity mechanisms.

Operational preparedness is equally critical. Vessel agents and other personnel involved in port operations should be familiar with NRS information requests and appropriate document management procedures to ensure that information provided to regulators is accurate, consistent, and supported by the underlying records.

Where assessments have already been issued or disputes have arisen, parties should adopt a strategy that considers both the tax and maritime law sides of the matter. This includes evaluating potential indemnity claims, preserving evidential records, and ensuring that any litigation or arbitration strategy aligns with the broader commercial objectives of the parties involved.

CONCLUSION

The renewed enforcement of Nigerian freight tax liabilities represents a significant development for the maritime industry. What was once regarded by many market participants as a largely dormant area of tax law has emerged as a material compliance and dispute-risk issue.

For shipowners, the principal challenge lies in ensuring that assessments are directed at the entity that actually earned the freight income and in preserving contractual recovery rights where liabilities are allocated elsewhere in the charterparty chain.
For charterers and operators, the risk is more direct where freight profits have been generated from cargo shipped or loaded in Nigeria, NRS may seek to establish primary liability against the freight-earning entity itself.

The NTA confirms the continued taxation of freight income connected with Nigerian operations and provides a modern legislative framework through which those liabilities will be assessed and enforced.

Maritime stakeholders should therefore treat freight tax exposure as an active legal, tax, and commercial risk requiring careful management. Early assessment of historic exposure, robust contractual protections, and a response strategy will be essential in navigating the increasingly complex enforcement landscape.

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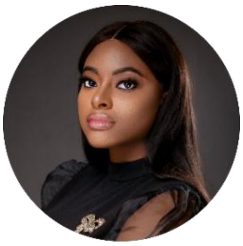

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