Narrative Report on Nigeria

PART 1: NARRATIVE REPORT

Nigeria is ranked 34th on the 2020 Financial Secrecy Index, based on a relatively high secrecy score of 70 combined with a tiny scale weighting of 0.1 per cent of the global market in offshore financial services.

Introduction and Overview

Nigeria, with approximately 200 million people, is the most populous nation in Africa.[1] The country's population also makes it a market for import commodities. Nigeria's trade exports are predominantly crude oil exports, which accounted for 85 per cent of total exports in the second quarter of 2019.[2] Thanks to its oil-rich Niger Delta, Nigeria is the largest producer of oil in Africa and the 13th largest in the world.[3]

It has a statutory corporate income tax rate of 30 per cent[4] — 7 per centage points higher than the world average corporate income tax rate of 23 per cent.[5] However, its tax-to-GDP ratio is one of the lowest in the world at 5.7 per cent.[6] This is largely due to poor regulatory compliance, weak institutions and a lack of transparency. Nigeria has a vibrant banking industry with 18 commercial, five merchant and two non-interest banks.[7] Furthermore, the country currently has ratified double taxation agreements with 15 countries including Mauritius, which is popularly known as a corporate tax haven and a conduit for illicit financial flows from Africa.

Nigeria's Secrecy Profile

At independence in 1960, agriculture was the mainstay of Nigeria's economy, accounting for up to 69 per cent of GDP. The oil boom in the 1970s ushered in a period where petroleum contributed up to 87 per cent of total exports.[8] International oil companies engaged in oil exploration became the major drivers of foreign direct investment. The macroeconomic policies put in place to attract such investment included import duty relief, accelerated depreciation and easy repatriation of profits.[9] These incentives, coupled with additional tax avoidance practices, made illicit flows of funds to other secrecy jurisdictions easier.

The incomes of upstream petroleum companies are taxed at 85 per cent for joint ventures and 50 per cent for production sharing contracts. In addition to the statutory rates of tax, production sharing contracts between the government and petroleum companies also contain fiscal terms to govern the operations. These contracts are highly concessional and currently offer investment tax credits of 50 per cent of qualifying expenditures for companies in the deep offshore industry.[10] Details of the individual contracts, however, are not made public. The Petroleum Industry Bill, which seeks to improve disclosure and transparency in the industry, is yet to be assented to by the president. In 2017, Nigeria scored 17 out of 100 on the Revenue Governance Index (RGI) and ranked 77th out of 89 countries in licensing transparency.[11] However, in November 2019, the Nigerian government announced that it will unveil a Beneficial Ownership Register Portal[12] for the oil and mining industry in January 2020 through the Nigerian Extractive Industry Transparency Initiative.[13]

Rank: 34 of 133

How Secretive? 70

Moderately secretive	0 to <25
	25 to <50
	50 to <75
Exceptionally secretive	75 to 100

How big? 0.1%

huge

large

small

tiny

huge: >5% large: >1% to 5% small: >0.1% to 1% tiny <0.1%

Nigeria accounts for 0.1 per cent of the global market for offshore financial services. This makes it a tiny player compared to other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Full data is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit

http://www.financialsecrecyindex.com.

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Furthermore, in the case of oil companies engaged in oil exploration on floating storage production and offloading (FSPO) vessels, maritime havens have been set up on these floating oil vessels insulated from labour, financial and environmental legislation and agreements of the host country.[14] The Egina and Agbami Oil Fields, located within 200 nautical miles of the exclusive economic zone, are two of the deep-water offshore fields where such FSPO vessels are used. Personal income tax, for example, is paid to the state where a person resides.[15] However, there is currently no direct legislation to ascertain which state is entitled to personal income tax of the offshore workers based on these oil vessels that are moored in Nigeria's deep offshore waters. In practice, littoral states demand personal income tax from the employers of offshore workers on some geographical basis.[16] A possible problem with this is that an FPSO may spread across two or more states, with each state laying claim to taxing rights.[17] This uncertainty creates an avenue for double taxation or under-assessment of tax.

Nigeria's Financial System Strategy 2020 was launched by the Central Bank of Nigeria in 2006 to transform the financial sector. Part of its objective was to establish an international financial centre in Lekki, Lagos, to create a legal and financial framework linked to international jurisdictions.[18] This remains to be implemented, however, and the government has focused on strengthening the integrity of the internal market and automation of payments in the banking sector.[19]

Investment Incentives

In 1992, the Nigerian Export Processing Zones Authority was established by an enabling act. It gave the authority the power to manage export processing zones that can be established by an order of the president. Currently, there are 13 active free trade zones in Nigeria, with the Lekki Free Trade Zone being the most vibrant. The Nigerian Investment Promotion Council promotes investment activities and maintains a one-stop investment centre for registration and licensing of foreign direct investment. Incentives available to enterprises in the export processing zones include an exemption from federal, state or local taxes, levies and duties. Businesses in the zones may also be completely foreign-owned, and repatriation of foreign capital and profit is guaranteed.[20]

Similarly, the Industrial Development (Income Tax Relief) Act empowers the government to grant pioneer status to companies in designated industries registered in Nigeria and whose minimum capital investment is N10,000,000 (US$27,800). The tax holiday is for an initial period of three years, which may be extended by two years. The Nigerian Investment Promotion Council manages the process of granting pioneer status to designated industries and products. Currently, there are 99 industries and products granted pioneer status including financial and administrative services.[21]

There are major challenges facing the pioneer status regime. First, the Nigerian Investment Promotion Council has sometimes granted upfront full five-year holidays upon justification by the applicant.[22] The Council has addressed this situation by issuing notices to such corporate taxpayers restricting the initial period to three years. Similarly, the Federal Inland Revenue Service issued notices of assessment to these taxpayers that are expected to apply retroactively by covering the last two years.[23] Some experts have noted that such retroactive application exposes the tax authorities to possible litigation.[24] Another problem is incentives shopping by footloose entities. It has been possible to replicate the pioneer status of the same businesses by applying through a new set of entities that have changed in name only. Companies that have enjoyed pioneer status may simply leave the country after the period of the holiday.[25] Another criticism of the pioneer status regime is the absolute discretion of the Nigerian Investment Promotion Council in the granting of pioneer status without approval by the National Assembly.[26] This has arguably led to the grant of pioneer status to undeserving applicants such as some production or exploration companies.

Studies suggest that, generally, incentives do not top the list of investment factors in developing countries. Instead, factors such as economic stability, cost of raw materials and legal transparency are more important to investors.[27] Profit-based incentives like pioneer status, as opposed to cost-based incentives, are inefficient because they subsidize investments that would have been profitable and hence, undertaken without the incentive.[28]

Some studies indicate that corporate incentives are costly and inefficient. In a 2015 report, ActionAid found that Nigeria was losing up to 0.5 per cent of its GDP in corporate income tax incentives given to companies with pioneer status. Using the 2015 budget figure, the estimated losses were put at US$2.6 billion per year.[29] Shell was the largest single private sector recipient of the incentives and it received import duty exemptions of up to N24 billion (US $148 million) between 2011 and 2013.[30] The opportunity cost of these losses is significant for Nigeria's infrastructure and socioeconomic metrics.

For example, US $2.6 billion would put 7 million of the 10.5 million out-of-school[31] children in Nigeria back in school.[32] The same amount allocated equally between the 36 states of the federation would increase each state's budgetary allocation by N26 billion, an increase of about 9 per cent of the current highest allocation to a state and almost 90 per cent of the lowest allocation to a state.[33]

Money Laundering

Nigeria is a signatory to the United Nations Convention against Transnational Organised Crime, popularly called the Palermo Convention.[34] Nigeria is also a member of Inter-Governmental Action Group against Money Laundering in West Africa.[35] Its Money Laundering (Prohibition) Act enacted in 2011 prohibits the removal from Nigeria of funds or the concealment of such funds that are the proceeds of an unlawful act, and it punishes the act by imprisonment of up to 10 years.[36] A cap of N5,000,000 (US $13,900) in the case of individuals and N10,000,000 (US$27,800) for corporate institutions, also exists over cash transactions — otherwise they must be done through a financial institution.[37]

Nigeria's politically exposed persons are involved in most publicised money laundering cases in Nigeria. For example, a former vice president of Nigeria was fingered in the laundering of over US$40 million through his wife from the year 2000 to 2008 during his term in office.[38]

The Panama Papers implicated a former minister for petroleum in an elaborate scheme where several funds, including US$1.76 billion in assets, were laundered through oil contracts awarded to companies belonging to cronies of the former minister.[39]

Treaties and agreements

In 2017, Nigeria signed the Common Reporting Standard Multilateral Competent Authority Agreement, which aims to facilitate the exchange of financial information among jurisdictions.[40] With a view to implementing the OECD Guidance for Common Reporting Standard, the country's Federal Inland Revenue Service released the Income Tax (Common Reporting Standard) Regulation in 2019. Under the regulation, Reportable Financial Institutions are to carry out comprehensive due diligence on old and new accounts to identify 'reportable accounts' and to file information returns on an annual basis.

Nigeria currently has double taxation agreements with 22 countries, including the UK, Netherlands, Canada, South Africa, China, Philippines, Pakistan, Romania, France, Belgium, Mauritius, South Korea, Sweden, Slovakia and Italy. Treaties with the United Arab Emirates, Kenya, Poland, South Korea, Singapore, Qatar, Spain, Cameroon and Ghana are not in force as they are yet to be ratified.[41]

In a report by ActionAid in 2014,[42] Nigeria was advised that its proposed double taxation treaty with Mauritius would promote treaty shopping and tax evasion, yet the country has gone ahead and signed and ratified the treaty. Mauritius has also been signalled as one of the most aggressive tax treaty partners towards Africa.[43]

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Endnotes

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NIGERIA

PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

33	1. Banking Secrecy
50	2. Trust and Foundations Register
100	3. Recorded Company Ownership
50	4. Other Wealth Ownership
100	5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

100	6. Public Company Ownership
100	7. Public Company Accounts
100	8. Country-by-Country Reporting
75	9. Corporate Tax Disclosure
100	10. Legal Entity Identifier

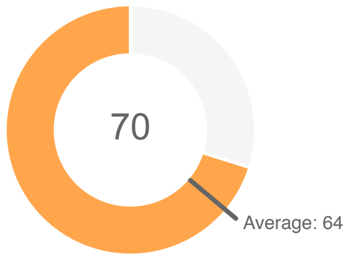
INTEGRITY OF TAX AND FINANCIAL REGULATION

88	11. Tax Administration Capacity
75	12. Consistent Personal Income Tax
100	13. Avoids Promoting Tax Evasion
100	14. Tax Court Secrecy
25	15. Harmful Structures
60	16. Public Statistics

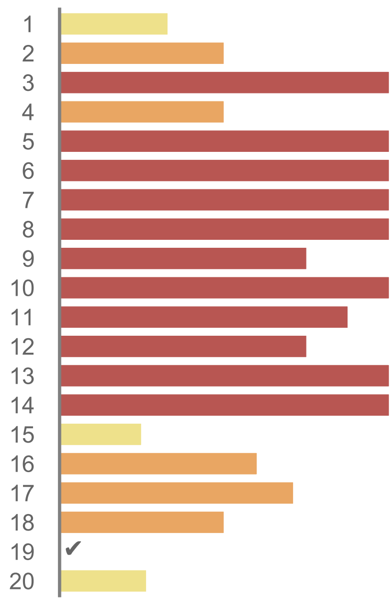
INTERNATIONAL STANDARDS AND COOPERATION

71	17. Anti-Money Laundering
50	18. Automatic Information Exchange
0	19. Bilateral Treaties
27	20. International Legal Cooperation

Secrecy Score



Key Financial Secrecy Indicators



Notes and Sources

The FSI ranking is based on a combination of a country's secrecy score and global scale weighting (click here to see our full methodology).

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

A grey tick in the chart above indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

Full data is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit http://www.financialsecrecyindex.com.