



Windfall Tax for Banks in Nigeria under the Finance Amendment Bill 2024: Matters Arising

The Finance Amendment Bill 2024 in Nigeria introduces significant changes aimed at financial institutions, particularly banks. The most notable amendments are the imposition of a Windfall Tax on realized profits from foreign exchange transactions for banks Starting the 2023 financial year.

From Last year, France, Hungary, Italy, Spain and Sweden joined the league of European markets imposing a windfall tax on banks profiting from rate increment, with an economy like Czech going as high as 60 per cent. Windfall tax receipts helped Nigeria's African peer South Africa in 2022 to pay down debt and repair public sector infrastructures.

This Briefing Note examines the implications of the proposed Windfall Tax, including the categories of persons affected, the potential for double taxation arguments, and the consideration of reliefs for foreign exchange losses.

Categories of Persons Affected

The primary targets of the Windfall Tax are all banks licensed under the Banks and Other Financial Institutions Act (BOFIA) in Nigeria.

According to Naira Metrics, Financial statements from seven listed commercial banks in the country showed that approximately N3.37 trillion was recorded as profit from foreign exchange revaluation in the full year of 2023 and the first quarter of 2024.

These institutions will be required to pay up to 70% tax on their realized profits from all foreign exchange transactions conducted within the 2023 financial year. This measure aims to capture extraordinary profits that banks might have gained due to favorable foreign exchange conditions during this period.

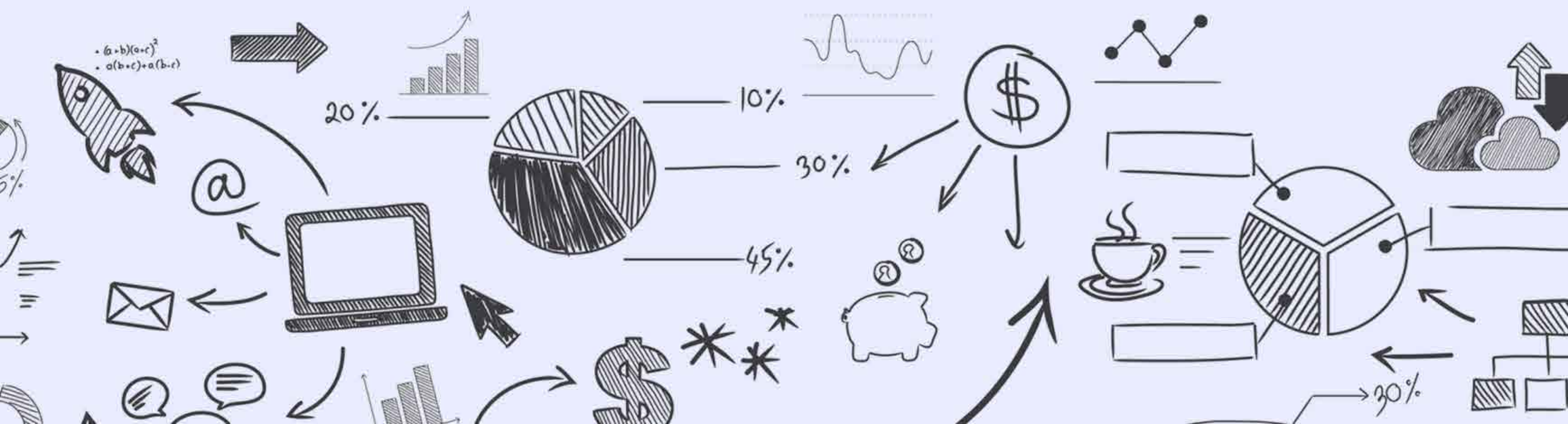
An Argument of Double Taxation?

A critical issue raised by the imposition of this Windfall Tax is the potential for double taxation. Currently, realized profits from foreign exchange transactions are already subject to taxation under the Companies Income Tax Act (CITA). The introduction of a Windfall Tax on these same profits raises concerns about fairness and the risk of double taxation.

Double taxation occurs when the same income is taxed twice by the same taxing authority, which can be viewed as an unfair financial burden on the affected Tax payers. In this case, banks would be subjected to both the standard Corporate Income Tax (CIT) and the new Windfall Tax on the same stream of income. Therefore, it is necessary to clarify if the banks would need to pay incremental tax above 30% Corporate Income Tax (CIT) already paid or whether the Windfall Tax would be applicable on a flat basis without consideration of Corporate Income Tax (CIT) already assessed and paid.

What is Good for the Goose is Good for the Gander - making a case for a special loss relief regime for foreign exchange losses

Another important consideration is whether the government will allow reliefs for banks that incurred foreign exchange losses. The current focus of the windfall tax is solely on the gains from foreign exchange transactions, with no mention of how losses will be treated. This omission raises questions about equity and fairness, as it would be unjust to tax gains without providing relief for losses (if any).



Retroactive Taxation Concerns

The Finance Bill 2024 includes a provision for retroactive application of the Windfall Tax to the financial year 2023. Nigeria's tax policy has traditionally not supported retroactive taxation, as it can create legal uncertainties and undermine taxpayer confidence. Retroactive taxation can be seen as changing the rules after the game has already been played.

Broader Implications and Sectoral Fairness

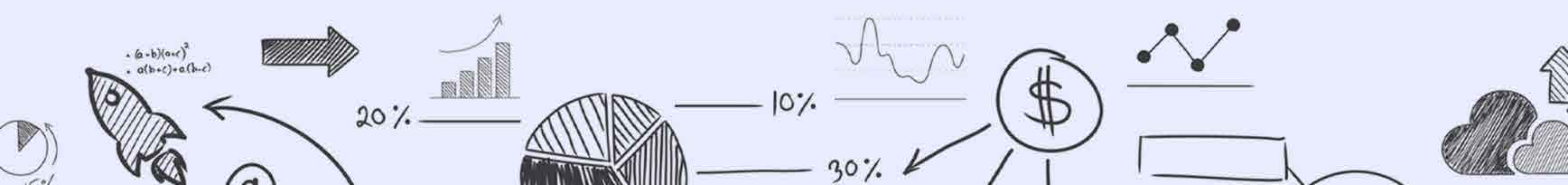
The Finance Bill 2024 raises broader questions about the fairness of targeting only the banking sector. While banks have indeed benefited from foreign exchange revaluation gains, other sectors may have also experienced significant profits from similar conditions. The Central Bank of Nigeria (CBN) unified the multiple foreign exchange rate systems into the Investors' and Exporters' (I&E) window on June 14, 2023, which led to a substantial depreciation of the Naira and increased the US Dollar rate. This policy shift impacted various businesses, not just banks, suggesting that the financial sector may not be the sole beneficiary of the forex revaluation gains.

Conclusion

The proposed Windfall Tax under the Finance Bill 2024 represents a significant shift in Nigeria's approach to taxing extraordinary profits in the banking sector. While the intention to ensure that banks contribute fairly to society during periods of exceptional profitability is understandable, several critical issues need careful consideration.

The potential for double taxation, the need for a special regime on foreign exchange loss reliefs and the retroactive application of the tax are all matters that require thorough examination and thoughtful resolution. Additionally, the exclusive focus on banks might be seen as unfair when other sectors have also profited from the same market conditions.

As the debate around this Bill unfolds, it will be crucial for policymakers to balance the goals of revenue generation and economic fairness to maintain a stable and conducive environment for financial institutions in Nigeria.



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The foregoing, information should not be considered as tax advice. If you have any questions or require further assistance, please contact any of the following:

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