INTERTANKO
The International Association of Independent Tanker Owners
– For safe transport, cleaner seas and free competition –
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For the attention of:

Mr Abdullahi Aliyu
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Monday, July 10, 2023
Our Ref.: 63730-986/SC

Dear Sirs

Nigerian Tax Compliance Review Exercise (2010 – 2019)

We write as a follow up to your response of 14 June, which we are grateful for, and to also comment on your remarks during the Nigerian Chamber of Shipping webinar held on 4 July.

The FIRS have now stated that they consider that freight income attributable to Nigeria is taxable from non-resident vessels lifting crude oil from Nigeria in line with provisions of the Companies Income Tax Act (CITA). The FIRS say that their assessments have been made based on the gross freight revenue earned on each voyage and that this information has been provided by intelligence reports from other government agencies in the maritime sector. However, it is still not clear who the FIRS consider that the tax is due from. The FIRS have sent their demands to ship owners but as a tax on freight this should more appropriately be addressed to Charterers or those operating on a voyage charter basis since income is not derived from lifting freight by Owners under a time charter. Moreover, some INTERTANKO Members have commented that where they have access to freight figures, the total gross freight figures provided by the FIRS do not correlate to actual figures.

If this retrospective tax is to be levied against Owners who are not earning freight, Owners will now face costly, multi-jurisdictional recourse actions against their Charterers who did earn freight. Such actions may be time barred against Charterers, some of whom may no longer be trading, and there will be circumstances where Owners simply do not have the funds to pay. Had there been proper notification of this tax prior to implementation, Owners would have had the opportunity to factor this tax into their negotiations with Charterers to ensure the commercial viability of their charterparties and that ultimately those profiting from freight would be paying the tax on it.

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Instead, Owners now also face the time and costs involved in challenging the demands: on whether any tax is due, on the amounts alleged and the rates claimed in circumstances where Charterers are unlikely to provide confidential information on the freight they have earned.

It is not clear what percentage of tax is said to be due. We understand that it is only the opinion of the FIRS that the 2% tax rate stated in section 40 of CITA is a minimum tax rate, which would apply where the results from actual operations is less than the minimum tax rate. We also understand that the demands are the FIRS's interpretation of the CITA and therefore not law and can be challenged.

It is not clear that tax is in fact due. We understand that there are exemptions: including through Double Taxation Treaties; where Withholding Tax has been paid; and dependent on the cargo loading location. We also understand that there is a six-year time bar within which such taxes may be pursued except where any form of fraud, wilful default or neglect has been committed. This is not tax evasion: Owners have not profited from their Charterers by not paying a tax that they had no knowledge of.

INTERTANKO is not aware of any proper notification prior to implementation, with the exception of a retrospective Public Notice attached to demands received by Members placed in the Nigerian national paper *The Daily Trust* on 17 December 2021. Not only is this retrospective notice, although it is addressed to International Shipping Companies, the notice was not placed in the international shipping press but rather in a Nigerian national newspaper and may not even have been available or visible on their website.

The FIRS has commented that there was no need for notification prior to implementation and Owners should have known about the freight tax in Nigeria but given that thousands of vessels appear to have been affected, there appears to be an issue with communications between the tax authorities and the oil and gas sector.

Given the lack of prior notification and clarity , INTERTANKO therefore requests that the retrospective Tax Compliance Review Exercise is dispensed with. The Exercise has achieved the result of drawing to the international shipping community's attention that the FIRS consider that freight income attributable to Nigeria is taxable in line with provisions of the CITA from non-resident vessels lifting crude oil. INTERTANKO instead requests that the FIRS now focuses on tax compliance going forwards from a set date, providing clarity on who it's due from, what is due and any other requirements.

INTERTANKO thanks the FIRS for the invitation to join the technical committee to consider the implementation of the FIRS tax on shipping and charterers, and potential implications on oil and gas exports from Nigeria and looks forward to hearing further on this. INTERTANKO will also make itself available should the FIRS wish to engage in a separate dialogue.

We look forward to hearing from you further.

Yours faithfully,

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