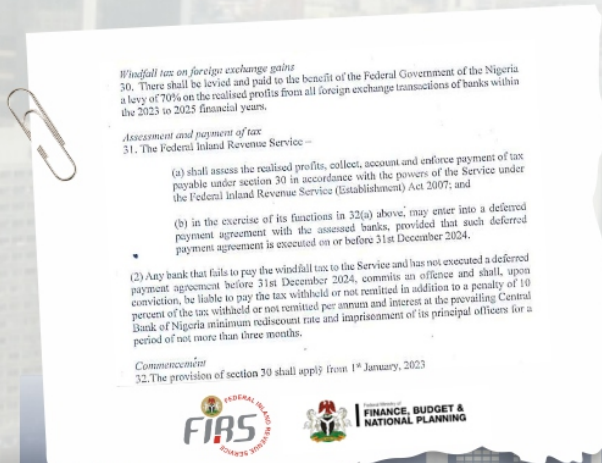




Nigeria's Windfall Tax – Moving Beyond Concerns to Governance.



Windfall TAX on FX GAINS

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'Windfall taxes are generally socioeconomic balancing acts rather than avenues for revenue-mongering' **- TheAnalysts**

This Analyst Note follows up on our July 26, 2024 note titled 'The Pains of A Windfall Tax: Appraising the NASS's Financial Act Amendment', in which we **provided an initial reaction** to the impact, implications, and import of the Finance Act-backed tax on banks. This current review takes a deeper look at the policy, reactions, and implementation realities.

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1 Executive Summary.

Nigeria's FX revaluation gains tax has spurred a slew of comments from economists, bankers, accountants, and other professionals in the financial services sector. This note reviews the multifaceted dimensions of the windfall tax and its revenue in terms of interested parties, application, allocation, uses of the tax, and its broader context to better understand both the gains and the pains.

Windfall taxes are neither new nor novel. Fiscal authorities worldwide have imposed them as a social transfer mechanism to ensure social and economic equity. However, the more common windfall tax has been one where taxes on extraordinary revenue gains by oil and gas companies when global oil and gas prices spike to deliver companies with significant, unexpected gains. The peculiarity of the Nigerian banks' FX windfall gains is that the gains being taxed here resulted from the federal government's monetary policy actions (depreciation of the naira resulting from FX market harmonisation) and not the consequence of changing supply and demand realities of a market-based pricing process.

Different views have been expressed about the tax. The pro-tax school has argued that the FX windfall gains tax is needed to moderate profiting off a country's own currency, and ensure that the consolidation of various foreign exchange rate systems into a single investors and exporters (I&E) window that led to the depreciation of the Naira and created substantial increases in the value of bank assets denominated in United States Dollars, are redistributed to establish socioeconomic equity. The **federal government** represents that the tax would achieve the following:

- Provide revenue to address pressing social cash transfer needs;
- Create a pool of ready funds to improve infrastructure;
- Provide resources to support the strengthening of human capital;
- Realign short-term private interest with a longer-term public purpose; and
- Build a framework for public-private sector collaboration to improve broad socioeconomic well-being.

Bankers have a mixed view of the tax. While the Bank Directors Association of Nigeria (BDAN) expressed reservations about it, seeking clarity on the ambiguities of the language in the amendment act that left critical questions unanswered, a few of the banks' chieftains supported it. Still, there however is consensus on

the desire that the governance built around the tax administration be transparent enough to grow confidence in its supervision.

The **alternative school** believes that the fiscal authorities could have seized the moment to strengthen bank capitalisation by allowing the unrealised FX gains to be included in the bank's tier 1 capital structure (as was the case in Italy). This, it is argued, would improve the banks' capital adequacy ratios, reduce their cost of risk (CoR), and raise bank's loan-to-deposit ratios (LDRs). Combining these stronger ratios would improve private sector credit extension (PSCE) and help grow GDP and future tax earnings. This school maintains that growing Nigeria's economy with banks' FX revaluation gains would produce a more sustainable tax model that is not subject to episodic profit spikes of corporate enterprises.

This report looks at all the issues presented by the different schools of thought in detail and concludes that the broken nexus in the public-private partnership model is real, the trust deficit in the economy requires bridging, and that this feeds into the crisis of confidence at play. That said, it is clear that as law-abiding entities; **the market must move to quickly resolve the payment of the windfall tax** and thereafter open up consultations on addressing the interpretation, administration and definition issues in this amendment act that are critical to the needed buy-in.

As Nigeria takes steps to address its current economic challenges, it will help if we move from an ad-hoc, episodic, and opportunistic approach and adopt a whole-of-society and whole-of-government approach that will allow the country use its tax policy reforms as a productivity incentive. The government should therefore act on the [Taiwo Oyedele led Presidential Committee on Fiscal Policy and Tax Reforms report and recommendations](#) – a product of an extensive consultation and subject expert insights.

The financial services' industry role as a transmission agent in the economy is too vital to approach without clear guardrails, just as governments role to deliver an equitable economy remains sacrosanct. The governance of this interlocking relations must therefore be built around a whole-of-government approach. This issue offers us a learning opportunity.



2 Preamble - The Concept of a Windfall Tax Contextualised.

The imposition of the windfall tax on banks' FX revaluation gains has sparked divergent opinions among stakeholders. However, analysts somewhat agree that the tax (also referred to as a levy) poses several risks: it threatens banks' ability to reinvest for growth and meet required capitalisation levels, strains their operational capacities and overall financial health, impedes their ability to support local businesses and consumers, and creates an unpredictable regulatory environment that could potentially deter investment in the sector.

In a July 2024 Analyst Note on the issue, tagged, *The Pains of a Windfall Tax: Appraising the NASS's Financial Act Amendment*, Proshare analysts raised the following issues:

- a) Windfall taxes are one-off taxes imposed during special situations resulting from higher commodity prices, from which corporations make supernormal gains. Global best practice redistributes these gains from producer surpluses to consumer surpluses (see table 1).

Table 1:

| Countries | Tax Rate and Base | Implementation Date and Duration | Uses |
|----------------|---|------------------------------------|---|
| Italy | 40% on net interest margin | August 2023, one-off | Fund Support For Families Hit By Higher Interest Rates |
| Spain | 4.80% on interest & commission income | December 2022, Two years | Address high inflation and support low-income households |
| Lithuania | 60% on net interest income above 50% of 4-year moving average | May 2023, Two years | Redistribute unexpected gains from the banks to public welfare |
| Czech Republic | 60% of net interest income of CZK 50m | December 2023, Three years | Fund support for people and firms hit by soaring electricity and gas prices. |
| Hungary | 13% social tax on investment notes and interest gains on deposits | July 2022, Four years and counting | Finance the cost of energy price caps for households and the development of the Hungarian army. |

Source: Reuters, Proshare Research. Proshare.

- b) While the tax is justifiable by the design of a windfall tax policy, regulatory actions that precede the tax imposition (FX market liberalisation, order on non-distribution of FX gains, and cap on Net Open Positions, among others) suggest deliberateness.
- c) The tax's retroactive imposition from FY 2023 presents legal and financial challenges for banks and may disrupt their financial statements, upon which tax liabilities had been assessed and filed.
- d) The 70% levy on FX gains is unusually high given an already existing implicit 30% CIT on the same tax head.
- e) The imposition of the tax coincides with ongoing bank recapitalisation efforts. Such

tax could send warning signals to external investors exploring equity opportunities with the ongoing bank recapitalisation process, as earnings could be suppressed with the extended sunset clause to 2025.

- f) The windfall tax targets realised gains from FX revaluation, but this may be intercepted with huge unrealised gains of many banks as of FY 2023. For instance, according to the MD of a tier 2 bank, only 10% of the bank's FX revaluation gains are realised as of FY 2023.
- g) The absence of key stakeholders/technical consultation in legislative and policy amendments undermines the consensus-building process critical for market integrity.

Implementing a windfall tax on the banking industry was an exception, given the relatively larger number of banks quoted on the country's bourse. Hence, the possibility of expanding the windfall tax policy to other industries as an occasional fiscal tool is partly dependent on developing the country's equities market.

The less spoken of the issue lies in the implicit irony in the definition and recognition of what is a windfall – one that ignores any consideration for the treatment of banks that incur losses during the financial year defined by the Act. This blind spot is inconsistent with a windfall is; and opens up the opportunity for any discerning reader to see it for what it is - a correction intervention by government to benefit from its decisions, a claw-back.

3 Windfall Tax Gains: Of Allocations and Applications.

Governments worldwide are caught between a rock and a hard place - stuck between a rising cost-of-living crisis and resource constraints. Simultaneously, economies continue to grapple with increasing inflation, high interest rates, and geopolitical tensions.

Various economic pressures and resource constraints have prompted economies to implement austerity measures to mitigate fiscal and revenue shortfalls. To address imbalances and enhance household welfare, governments have increasingly utilised windfall taxes to redistribute resources from surplus areas to those with limited resources to support wider social welfare considerations. Analysts note that most economies however fell short of revenue targets from the windfall tax (see illustrations 1).

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Illustration 1:

| ALLOCATION AND APPLICATION OF WINDFALL TAX GAINS ACROSS SELECTED ECONOMIES | | | | | | |
|--|---|--|--|---|--|--|
| | Spain | U.K | Italy | Lithuania | Hungary | Czech |
| Allocation | To help vulnerable households deal with the effect of energy crisis. | Ease cost of living crisis largely due to high food and energy prices. | Ease the cost of living pressures to support small and medium-sized Italian enterprises via state guarantee and tax cut. | Budgetary allocation and military spending. | Support households and cushion pains from energy crisis. | Support households and cushion pains from energy crisis. |
| Trigger | Energy price spike | Response to higher prices due to Russia-Ukraine war and COVID shocks. | Windfall gains by banks due to linked rates by ECB. | Excess profits generated from rising interest rates by ECB. | Energy price spike | Sharp increase in profit of banks, following multiple rate hikes by ECB. |
| Sector/ Application | Energy companies: 1.2% of revenue above € 1bn. Banks: 4.8% charge on interest and commission income. | Energy profits levy: Initially 25% later increased to 35%. | Banks: 40% levy on a bank net interest margin, exceeding previous years margin by at least 10% | Banks: 60% of Net interest income above 50% from the year moving average. | Banks: 13% off on 50% of previous year pre tax earnings. | Banks: 60% of net interest income of CZK50mn |
| Duration | 2023 - 2025 2022 - 2024 | 2023 - 2029 | 2023 - 2024 | 2023 - 2024 | 2023 - 2025 | 2023 - 2025 |
| Target | €3bn in 2022 €3bn in 2023 | £5bn in 2023 | €3bn in 2022 €2.6bn in 2023 | €410mn | \$1.6trn for interest and \$2.6bn in 2022 and 2023. | CZK85bn in 2023 CZK39bn in 2024, CZK25bn in 2025 |
| Actual | €1.26bn for FY23 | £2.6bn in 2023 | Nothing raised on banks as of May 2024. €2.8bn as of July 2023. | €240mn for 2023 | | Much less than expected ≤ CZK5bn. |

Source: Proshare Research

Proshare.

Despite a widening fiscal deficit, Nigeria faces significant infrastructure, education, healthcare, and public welfare constraints. Inadequate road networks, unreliable power supply, and insufficient water and sanitation facilities plague the country's infrastructure. According to President Bola Tinubu, the funds generated from Nigeria's windfall tax would be directed towards infrastructure development under the renewed hope agenda. Proshare analysts have supported a public-private sector approach to closing the country's high infrastructure gap, estimated at **US\$2.3trn** by Dataphyte and **US\$3trn** by Augusto & Co. The analysts' position is that resolving the infrastructure gap is a key step towards addressing the country's poverty challenge.

Several fiscal policy analysts have highlighted Nigeria's relatively low tax-to-GDP ratio of 9% compared to South Africa's 25%. The **windfall tax on FX revaluation gains temporarily plugs** some of the large gap between the present rate and the average continental tax-to-GDP ratio. The Nigerian fiscal authorities need revenue, and taxation is one of the direct tools for achieving higher revenues. The challenge however is with the tax base and its revenue application. This is where the government needs to fall back on the [Taiwo Oyedele led Presidential Committee on Fiscal Policy and Tax Reforms report and recommendations](#) – a product of an extensive consultation and subject expert insights. Critical areas for using taxes from increased productivity,

not just windfall tax revenue, include education (digital literacy), healthcare, roads, housing, and technology infrastructure.

For example, the Nigerian educational sector also struggles with issues such as overcrowded classrooms, outdated curricula, and insufficient funding, which contribute to low literacy rates and unemployability, a feeder for unemployment outcomes. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), over 9 million Nigerian children are out of school, making it the country with the highest number of out-of-school children globally. This is a pool of deviants-in-the-making, for which the state will have to spend significant public funds to manage i.e healthcare, policing, prisons et al.

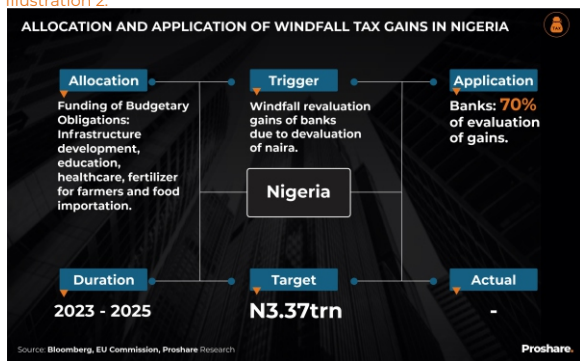
The struggles in the healthcare industry include underfunding, a shortage of medical professionals, and inadequate facilities, leading to limited access to quality care and high rates of medical tourism (which impacts FX). Communication from relevant agencies suggests one of the key allocations of the windfall tax is to build new hospitals, particularly in rural and underserved areas, and upgrade existing ones; suggesting that the government understands the severity of the problems, but not the gaps in models to resolve it.

More broadly, according to a campaign document obtained by Proshare Research, the strategic

objectives of the windfall tax are:

1. To help fund capital infrastructural development, education and healthcare access, and public welfare initiatives.
2. To drive economic revenue expansion push.
3. To potentially reduce socio-economic inequality and access to national wealth.
4. To provide governments with additional revenue for public services and social development.
5. To significantly redistribute excess profits in one area of the economy to raise funds for the greater social good of all.
6. To deliver timely sensitisation and strategic advocacy that promotes government policy for the greater good of all beyond rhetoric (see *Illustration 2*).

Illustration 2:



Some quarters believe that allocating windfall tax revenue for general budgetary purposes **contradicts** global best practices and could increase banks' exposure to shocks, especially since FX revaluation gains **were intended as a counter-cyclical buffer** for future adverse FX movements.

The allocation of windfall tax revenue for general budgetary purposes underscores potential risks to financial stability and banks' ability to provide credit. According to the ECB, imposing ad hoc taxes on credit institutions for general budgetary purposes could introduce these risks, threatening growth. However, the Nigerian government affirmed that the policy poses no risk to financial stability and allows banks to **make payments in four instalments** to prevent sudden withdrawals that could affect system liquidity.

Proshare's Economy and Market Intelligence (EMI) unit estimated N3.37trn in windfall tax revenue for the government in FY 2023 and Q1 2024. The windfall tax proceeds tripled the industry's annual tax in the past five years, as the eleven (11) listed banks incurred N575.17bn in FY 2023 and N209.61bn in FY 2022.

Significantly, the windfall tax proceeds exceed some banks' total assets, indicating its potential to efficiently buffer their capital base and drive more robust credit creation. An attempt to assess whether the pains for the banking industry outweigh the gains for the citizens and economy presents questions that the industry has to ponder on and resolve, viz:

- a) There appears to be no clear definition of the specific infrastructure or projects. Can a detailed plan be made available to the public to ensure proper accountability and verification?
- b) Allocating less than N5trn across four objectives with large deficits/ gaps could open room for waste and inefficiency. Could the funding be allocated to a single project that can be tracked? If not, can the percentage allocation of windfall tax proceeds across the targeted projects be provided?
- c) What framework is in place to track the use of the windfall tax proceeds for the targeted projects and assess the passthrough to households, businesses, and investors?
- d) What happens to CBN's earlier directives about the non-usage of the FX revaluation gains? Will the regulator set funds aside in case of counter-cyclical exchange rate movement to cushion banks' exposure?

4 Windfall Tax Pains: Banks, Conventional Taxes, and the Implications.

Robbing Peter to pay Paul is a familiar fiscal dynamic occurring globally. Governments often use this approach to achieve income redistribution by imposing taxes on industries with supernormal profits to fund social or development projects. In Nigeria, roughly 70% of banks' FX revaluation gains from 2023 to 2025 will be appropriated for government use. In an earlier report, Proshare analysts outlined **the impact of this tax on** banks' financial statements, recapitalisation efforts, and the need for transparency in the fund's usage. Further details on the utilisation of windfall tax revenue and the estimated revenue generated have prompted a broader analysis of the gains and pains for the different parties (banks and government).

The government's disclosure that windfall tax revenue will be used to fund capital infrastructure development, education, healthcare access, and social interventions (direct transfers) does not address earlier questions regarding these projects' initial statutory budgetary allocation.

- e) The effectiveness of the federal government's social intervention through direct transfers on household welfare has been debatable, with many raising questions about the vulnerable registers and historical data on regional and state allocation. Will the social intervention through windfall tax differ with documented surveys, data, and transparent portals to track household transmission?

5 The Case for Nigeria's FX Windfall Tax.

According to an explainer published in TheCable on July 29, 2024, by Arabinrin Aderonke, technical assistant (broadcast media) at the Federal Inland Revenue Service, stated that the windfall tax is a **one-time windfall levy aimed at addressing the substantial gains made by Nigerian banks due to changes in exchange rates.**

“The Windfall Tax, recently introduced under Nigeria's Finance Act, promises many benefits for the nation. The tax will channel funds into important public services, including infrastructure development, healthcare, and education, by redistributing these unexpected gains.

*This redistribution is expected to **improve public amenities, support the quality of education and healthcare, and address economic disparities. Moreover, the funds will likely stimulate job creation and promote economic growth.***

*The federal government seeks to amend the Finance Act through a **windfall tax on extraordinary foreign exchange gains** realised by banks. This measure ensures that **the financial benefits of recent economic reforms are shared with the public.** This proposal is framed to drive national development while avoiding additional tax burdens on ordinary citizens.*

*The concept of windfall taxes is not unique to Nigeria. Globally, windfall taxes have been implemented in many ways with different outcomes. The **Czech Republic** has levied a 60% tax on energy firms and banks, raising US\$3.4 billion to help those affected by **energy price hikes.** **Hungary** has used its tax to promote government bond purchases and introduced a new social tax. Lithuania allocates its windfall revenue to military funding, while **Sweden** uses it to strengthen public finances. Parliament is considering a windfall tax on banks in the **United Kingdom** to address economic inequality and support public services. All these international*

contexts indicate that windfall taxes are a standard method for managing and redistributing unexpected profits.

*In recent discussions at the national assembly, **Wale Edun, the finance minister, and Zacch Adedeji, chairman of the Federal Inland Revenue Service (FIRS), provided information on the rationale behind this tax.** The minister highlighted that imposing such levies is a **common practice worldwide** and is designed to ensure that the benefits resulting from government policies are shared with the public.*

*Adedeji, in his comments, emphasised that **the windfall tax would help mitigate economic inequalities, particularly in light of recent harmonisation policies in the foreign exchange market.** The Federal Inland Revenue Service (FIRS) has worked closely with the Central Bank of Nigeria (CBN) to ensure the levy supports rather than disrupts the banking sector.*

Banks must work closely with the federal government on the windfall tax. This partnership ensures the efficient allocation of funds to enhance public services, promote economic stability, and maximise benefits for all Nigerians. Together, they pave the way for a prosperous nation.”

Beyond the above, key drivers of this policy and its expected goals, as represented by the rationale provided by Edun and Adedeji, include:

1. A windfall tax could expand economic opportunities if applied to strategic human capital development/education interventions. It could upgrade Nigerian student's learning experiences and prepare them for a changing job market
2. If targeted at small and medium-sized enterprises (SMEs), the tax could help reduce barriers to smaller loans and support microbusinesses. Nigeria is estimated to have roughly 41 million SMEs, accounting for over half of the country's GDP.
3. Directing the tax revenues to the real sector of the economy could be a shot in the arm for sustainable GDP growth. Many analysts fear that tax proceeds could end up filling fiscal spending gaps. This would cut down the fiscal deficit but would provide little if any gas for growth (see illustration 3)

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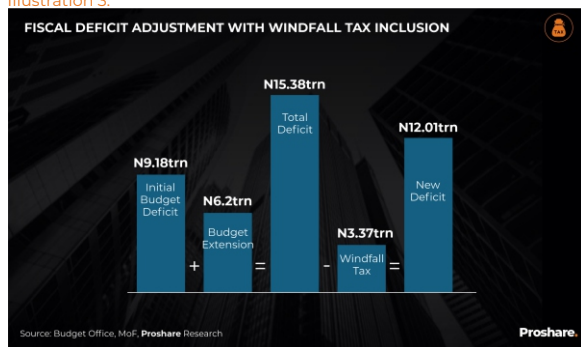
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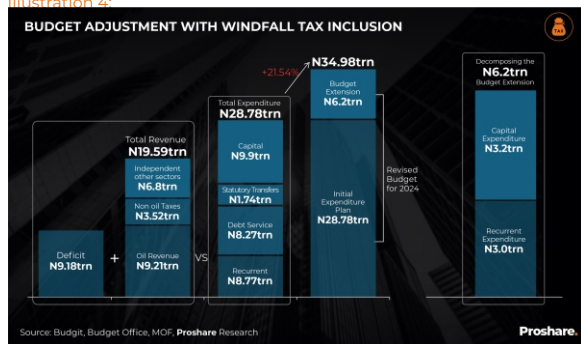
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Illustration 3:



While the fiscal authorities may consider the tax a significant way of ironing out the creases in the budget with less public debt, the argument, as credible as it appears, could fall flat if the tax discourages economic agents from acting in ways that lead to economic expansion (see Illustration 4).

Illustration 4:



6 The Finance Act and Windfall – Matters Arising.

The Windfall Tax Act, recently introduced by the current Administration through the Finance Act (Amendment Bill) 2024 (HB. 1611), amends the Provision of the Finance Act 2023 to impose and charge a levy on banks, and to provide for the administration of the tax; and related matters.

- Section 30 of the Finance Act (Amendment Bill) 2024 states:** "There shall be levied and paid to the benefit of the Federal Government of Nigeria a levy of 70% on the realised profits from all foreign exchange transactions of banks within the 2023 to 2025 Financial year.
- Section 31 of the Finance Act (Amendment Bill) 2024** makes provisions for the assessment and payment of taxes by the Federal Inland revenue Service (FIRS) and states the legal provisions for entering into deferred payment agreements (s31.b) and penalties for non-compliance with the levy payments, which includes a 10% penalty

charge on unremitted amounts in the absence of an executed deferred payment agreement and imprisonment of its principal officers for a period of not more than three (3) months.

- Section 32 of the Finance Act (Amendment Bill) 2024 states,** "The Provision of Section 30 shall apply from 1st January 2023." making it retrospective.
- Section 33 of the Finance Act (Amendment Bill) 2024** defines financial year as beginning from 1st January 2023 to 31st December 2023 et al; and banks to mean any bank licensed to carry out exchange transactions under BOFIA 2020, and all other relevant Nigerian Laws

A few points needs to be made on this amendment act:

- The period covered as described in section 30(2023 to 2025 Financial year) lends itself to interpretation and signals, intended or otherwise, that this may not be a one-off levy.
- The retrospective nature of the windfall tax law has implications for banks' 2023 audited financial statements (AFS) as it would require a restatement of these accounts and distort corporate/investor valuation of the banks based on the previous audited statements. As we have seen in the case **O.H.M.B V Garba (2002) 14 NWLR at page 554 paras (B-H)**. It was held that it is a cardinal principle of law that, unless it affects purely procedural matters, a statute cannot apply retrospectively unless it is made to do so by clear and express terms. The question remains: is the amendment to **section 33** sufficient to give it a retrospective effect?
- The law itself sends a strong signal that the government **will not allow financial institutions to profit from the country's currency challenges** and undermine its exchange rate convergence, hence the punitive rate of 70%.

7 The Other Side of a Conversation: Interested Parties and Stakeholders' Stance.

As with other key national issues, there schools of thought on the windfall tax has emerged, each presenting valid claims on the impacts and applicability. The first school, to which the **Federal Government (FG) and its agencies lead**, believes the greater good of deploying the windfall tax revenue in socially beneficial endeavours supersedes the supposed pains of those who had

benefited from the economic shift in exchange rate. The **Bankers school** have a mixed view of the tax even as they have a consensus on the desire that the governance built around the tax administration be transparent enough to grow confidence in its supervision. The **alternate school**, to which the analysts subscribed, opined that the imposition of the windfall tax is of greater pain for the banking sector than the proposed social good, which may get cluttered with inefficiencies and recurrent spending.

In the case of the former, President Tinubu's letter to the Senate to amend the 2023 Finance Act to impose a one-time windfall tax on banks' foreign exchange (FX) gains noted that *'the tax would help fund capital infrastructural development, education and healthcare access as well as public welfare initiatives all of which are essential components of the Renewed Hope Agenda'*. The Federal Inland Revenue Service (FIRS), which is both the initiator and repository of the tax policy, working with the CBN, has also alluded to the gains of the tax. According to the revenue agency, the windfall tax is not a new levy imposed on banks but a tax on profits already earned. Additionally, the government is merely redistributing wealth to sustain the country's progress and prosperity, as it aims to offset the losses suffered by the manufacturing sector due to the forex gains recorded by the banks through a tax redistribution mechanism.

Banking sector leaders have lent their voices to the need and validity of a windfall tax. However, some analysts argue that the bankers giving the nod to the tax either had minimal FX revaluation gains or made losses. In an **Op-ed Femi Otedola**, a strong presence in the capital market and Chairman of First Bank Holdings Plc (FBNH), pointed out that *'taxing extraordinary gains of companies ensures a fairer distribution of wealth, allowing those who benefit disproportionately to contribute more significantly to the broader societal good. The revenue generated from windfall taxes can be channelled into essential public services such as healthcare, education, and infrastructure, benefiting all citizens and helping to reduce social inequalities.'* A similar view was expressed by the **Chairman of the UBA Group, Tony Elumelu**, who also highlighted the importance of the tax. He said, *"We believe in democratising prosperity and that Nigerians have access to the good life. So, ...about the Windfall Tax, we support the government. We believe that where there is extraordinary income, it should go towards helping to alleviate poverty in the country, which is what the government intends to do."* Other

proponents have argued that it was necessary to have stricter laws and policies to resolve the issues posed by the banks' excess earnings, as global best practice is such that excess profits resulting from favourable government policies can be subject to taxation.

The move to capture excess profits arising from shifts in the country's exchange rate policies has been justified on social equity grounds. The government acted, in its capacity, to redistribute wealth and share surpluses among the broader society. Whilst these views resonate with the essence of windfall taxes, the context and the chains of events that preceded the implementation of the tax, in specific order, including FX market liberalisation, huge devaluation, restriction on paying FX gains as dividends, and the federal government's call for alternative tax revenue, appears to connect the dots on how the taxation was pre-planned in an orchestrated endgame rather than as a deference to unexpected economic changes.

Proshare Analysts, in an earlier report, had argued that while a windfall tax may be reasonable, it required deeper introspection. The analysts argued for the following measures to be considered:

- a) Clear identification of the tax beneficiaries and channels of tax distribution
- b) Calculate the realised bank FX gains that serve as the basis for the windfall tax and provide indicative forecasts of likely tax revenues in 2023, 2024 and 2025. This would clarify the amounts **expected** to be raised and the **actual** amounts raised. The difference would indicate tax effectiveness. **In countries that have implemented windfall taxes, raised quantities were lower than expected. The recent exception is Italy, where raised amounts exceeded the forecast. The Italian windfall tax on exceptional bank incomes is instructive concerning application and revenue raised.**
- c) Create a transparent and credible revenue generation and deployment framework, supporting the government's efforts at closing the public fiscal trust gap.
- d) Partner with strategic social interest groups in monitoring tax performance along clear project execution timelines.
- e) Create an FX revaluation windfall tax dashboard that allows the public to monitor tax generation and utilisation/performance; this would build credibility concerning the tax and grow confidence in public sector fiscal management.

Proshare analysts believe that the FX windfall tax was a successful fiscal strategy in Italy but differs in essential features from the Nigerian variant. The analysts noted that an FX revaluation windfall tax was not necessarily bad but required tinkering. It was viewed within the context of a sustained economic growth plan rather than a plug to the fiscal spending hole. The **Bank Directors Association of Nigeria (BDAN)** expressed a similar view, with specific concerns around *the quantum of levy (70% tax rate), the need for stakeholders in the banking sector to have been consulted before the enactment of such significant changes in the Finance Act 2023, the ambiguities of the language in the amendment act that left critical questions unanswered, such as whether the windfall tax will be implemented as a Total Tax charge on banks incorporating other taxes already levied, the clarification on what constitutes "FX transactions" to be taxed and the treatment of banks that may incur losses rather than gains during this period.* Professional bodies and other institutions appear to sit on the opposite aisle of a few analysts and bankers, playing it safe and hoping for a consensus for the national good. (see Illustration 5).

suspect that the moderate number of bourse-listed Nigerian banks (11), with available professionally audited financial information, made the industry a viable windfall tax base. (see table 2).

Table 2:

| Sectors | No. of Companies |
|---------------------------|------------------|
| ICT | 8 |
| Industrial Goods | 13 |
| Financial Services | 40 |
| Consumer Goods | 21 |
| Oil and Gas | 8 |
| Services | 22 |
| Agriculture | 5 |
| Conglomerates | 5 |
| Construction/Real Estates | 5 |
| Natural Resources | 4 |
| Healthcare | 7 |

Illustration 4:

| Support | | Oppose | |
|---------------------------|---|---------------------------|--|
| Bodies/Firms / Individual | Opinions | Bodies/Firms / Individual | Opinions |
| CITN | <ul style="list-style-type: none"> Increase government revenue to finance infrastructural projects. Redistribution of economic gains. | BDAN | <ul style="list-style-type: none"> Timing and implementation seem ambiguous. Improper timing alignment with ongoing bank recapitalisation. Unclear mode of tax implementation. Non-involvement with relevant stakeholders. |
| ANAN | <ul style="list-style-type: none"> Redistribution of wealth | PWC | <ul style="list-style-type: none"> Diversion from the status quo of Nigerian Banks. Retroactive tax system creates bias. Generates marginal revenue relative to the government's objectives. |
| Otedola | <ul style="list-style-type: none"> Fair redistribution of wealth. Funding of critical infrastructural development. | Anderson | <ul style="list-style-type: none"> Retroactive approach negates principles of taxation. Ill-timed due to the recapitalisation exercise. Discourages foreign direct investment. Reduces fiscal borrowings. |
| Tony Elumelu | <ul style="list-style-type: none"> Fund Poverty Alleviation. Curb bank executives' wasteful spending. | KPMG | <ul style="list-style-type: none"> No consultation done before implementation. Absence of publicly available policy costing document. Retroactive tax system discourages potential investors. Distraction for banks during recapitalisation exercise. Absence of tax relief in the amendment bill to cushion tax impacts. |

The government's **decision to extend the windfall tax deduction till 2025 may suggest further naira depreciation;** or a simple precautionary move. None of the government's declarations addressed the possibility of exchange rate appreciation, which could result in FX revaluation losses for banks. Therefore, there is a need to clarify whether windfall tax deductions for banks will persist in the years ahead.

5 Windfall Tax - **Of Numbers, Account Integrity and Investors.**

Nobody knows the exact amount the government's windfall tax would generate. Many factors will determine how much would be available to the government; since the tax base is the realised FX revaluation gains, the **government can only tax the proportion of the FX revaluation that the banks book as realised sums.** Even though the total amount is estimated at N3.37trn, perhaps only half of this amount would be taxable, to make 70% available to the federal treasury.

6 Posing the Social Equity and **Market Sustainability Questions.**

Questions on fairness and social equity were raised in our earlier report to justify the isolation of the banking industry among sectors with positive FX revaluation gains and the neglect of sectors with losses (*non-compensation*). The **government appeared silent on sectors with substantial FX losses.** Still, it emphasised the banks' significant profits from tight monetary policy and naira devaluation, unlike other industries with smaller revaluation gains. Analysts

How much the government will receive is anybody's guess and will depend on banks realising their FX revaluation gains. Different organisations calculated the expected tax revenue to range between N980bn and N1.23trn in contrast to the government's N3.37trn projections. The FX revaluation tax would require bank auditors to restate the 2023 financial position of banks as such accounts had been finalised without consideration of the FX windfall tax. This would affect the banks' net 2023 earnings and investor valuation, especially for banks considered as tier 1 lenders under Proshare's Bank Strength Index (PBSI), [the class of 2024.](#)

10 Closing Thoughts: **After the Act, Learning to Comply and Other Lessons.**

After Proshare's initial intervention on the windfall tax issue, the conversation has broadened across stakeholders. Two dominant schools of thought have emerged: those that support the tax and those that oppose it. The time is now ripe to move on from the issue and focus on its implementation, whilst addressing the applicability issues that stems from its execution.

The government has since made a compelling case for the tax and illustrated its benefits for capital development and social intervention to cushion the fall in the disposable incomes of society's most vulnerable. That was never in dispute however, but for the trust deficit in governments earnings utilization and priorities. The government represents that it expects to raise N3.37trn from the tax covering recurrent and capital expenditure increases of N6.2trn in 2024; and would ensure accountability. That is yet to be seen.

There is a moot point to be made though. Not all financial lenders saw FX revaluation gains in 2023; some, like the FBN Group, experienced revaluation losses. The largest beneficiaries of revaluation gains in 2023 were commercial lenders like Access Holdings, the Zenith Bank Group, and the UBA Group. Banks not listed on the NGX also made FX gains, but the amounts were relatively smaller, and the data is unavailable to the public. Nevertheless, all banks carrying out exchange transactions under BOFIA 2020 must comply since the tax has been passed into law.

While the lack of consensus among bankers on the benefits and implications of the FX revaluation gain tax suggests poor consultation before the tax law was passed, it equally revealed the broken nexus in the public-private partnership model. This cannot be a sustainable template for public policy execution, primarily when it affects the incomes of private enterprises; in an economy that is presented as being market-friendly; and consequentially widens the trust deficit in the economy. Democracy requires comprehensive consultation to obtain the broad consensus of as many interest groups as possible concerning public policy, if the public trust deficit is to be bridged.

Public policy effectiveness requires consultation and support, which rests on appropriate policy communication; poor communication typically leads to weak policy outcomes. Even a King

requires consensus to survive. For now, the market must move to quickly resolve the payment issues; address the interpretation of the 2025 financial year provisions and the signaling it sends, and take on the bigger challenge or building bridges to resolve the crisis of confidence in the economy.

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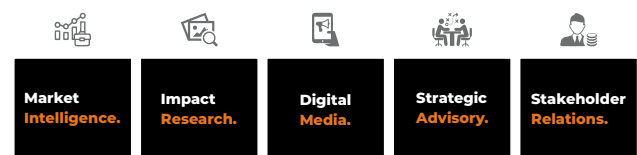
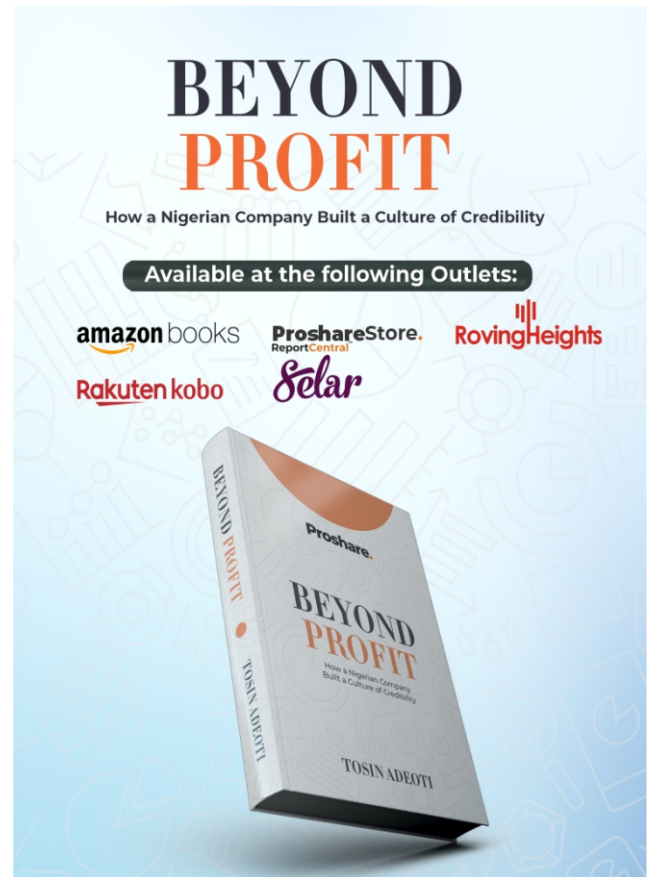
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Teslim SHITTA-BEY
 Managing Editor/CE


Tosin IGE
 Head, Research



Contacts.

- | | |
|--|--|
|  Olufemi AWOYEMI , <i>mni</i> ceo@proshare.co |  www.proshare.co |
|  Teslim SHITTA-BEY teslim.bey@proshare.co |  +234 902 407 5284 |
|  Tosin IGE research@Proshare.co |  @proshare |
|  Ademidun SHOGO ireconomist@Proshare.co |  proshare.co |
| |  proshare.co |
| |  proshare.co |

 Plot 590b, Lekan Asuni
 Close, Off Toyin Omotosho Street,
 Omole Phase 2, Isheri Olowora
 Ikeja, Lagos, Nigeria **PC: 105102**
 Tel: **0700 – PROSHARE**
 E-mail: info@proshare.co