

HIGHLIGHTS OF THE FINANCE ACT 2020

INTRODUCTION

The Finance Act, 2020 (the Act) was signed into law by President Muhammadu Buhari on 31st December, 2020. The objectives of the Act include reforming Nigerian tax laws to align with global best practices, supporting small businesses in line with the ongoing ease of doing business reforms, raising revenue for the government, amongst other laudable objectives.

The Act made sweeping changes to the provisions of the Capital Gains Tax (CGT) Act, Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Customs and Excise Tariff, Etc. (Consolidated) Act, Value Added Tax (VAT) Act, and Nigeria Export Processing Zones Authority (NEPZA) Act. Other tax laws amended by the Finance Act 2020 are: Oil and Gas Export Free Zone Act, Industrial Development (Income Tax Relief) Act, Stamp Duties Act, Tertiary Education Trust Fund (Establishment) Act (Education Act), Federal Inland Revenue Service (Establishment) Act (FIRS Act), Fiscal Responsibility Act, Public Procurement Act, and Companies and Allied Matters Act (CAMA).

This article examines the key areas of the Act that should be noted by all investors, tax professionals, analysts, tax authorities and the government. The following are the highlights and key changes introduced by the Act.

1. REDUCTION IN MINIMUM TAX

The minimum tax payable by companies has now been reduced from 0.5% to 0.25% of gross turnover less franked investment income – provided that the tax returns are prepared and filed in respect of an accounting period that ends on any date between 1st January, 2020 and 31st December, 2021 (with both days inclusive). (Section 13 of the Act). It is important to note that minimum tax is applicable where a company is in a loss position in a year of assessment or where the ascertained profit results in no tax being payable or the tax payable is less than the minimum tax.



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2. DONATIONS FOR PANDEMICS AND NATURAL DISASTERS TO BE ALLOWABLE DEDUCTIONS

Donations made by companies in cash or in kind to any fund set up by the Federal or State Government, in respect of any pandemic, natural disaster or any other exigency, are deemed allowable deductions. (Section 11). The amount that is allowed for deduction will be limited to 10% of the assessable profit after deductions of other allowable donations made by a company.

3. EXEMPTION FROM TERTIARY EDUCATION TAX

The Act exempts small companies, which are defined as companies with turnovers of less than 25,000,000, from payment of Tertiary Education Tax (TET) (Section 34). TET is currently chargeable at 2% of the assessable profit of every Nigerian company.

4. PIONEER STATUS INCENTIVES IN THE AGRICULTURAL SECTOR

The Act amends the Industrial Development Income Tax Relief Act by granting small or medium-sized companies engaged in primary agricultural production an initial tax-free period of four years, which may be extended by an additional maximum period of two years. This is a slight deviation from the regular tax-free period granted to pioneer industries, which is for a cumulative period of five years and not six years as it is with these new incentives.

4. FORM OF ACCOUNTS FOR SMALL AND MEDIUM-SIZED COMPANIES

The FIRS may prescribe the form of accounts other than audited financial statements for small and medium-sized companies. (Section 16). It may mean that such companies would no longer need to submit audited accounts. This is of course, subject to the view of the FIRS.

5. MANDATORY REQUIREMENT TO MAINTAIN BOOKS OF ACCOUNTS

All companies, including those exempted from incorporation or not required to pay tax under CITA, are now mandatorily required to maintain books or records of accounts, containing sufficient information of all their transactions (Section 17).

6. EXEMPTION FOR MINIMUM WAGE EARNERS

Low-income earners earning minimum wage (N30,000) or less are now exempted from personal income tax. (Section 30). This addresses complaints by small business owners of irregularities relating to Pay-As-You-Earn (PAYE) during tax audits.

7. INTRODUCTION OF "SIGNIFICANT ECONOMIC PRESENCE" FOR PERSONAL INCOME TAX

The Act introduces the concept of "Significant Economic Presence" (SEP) for Personal Income Tax (PIT). The gains or profits from trade or business that includes technical, management, consultancy, or professional services, furnished by a non-resident person to a Nigerian resident will be subject to tax, to the extent that such individual has SEP in Nigeria. SEP is to be determined by the Minister of Finance (Section 25).

The Withholding Tax (WHT) paid by a non-resident person who is liable to PIT under the SEP provision would constitute final tax for that person.

8. FILING REQUIREMENT FOR FREE ZONE ENTERPRISES

For Free Zone Enterprises (FZEs) operating in Free Trade Zones, exemption from taxes is subject to compliance with tax filing and returns obligations to the FIRS as prescribed under section 55(1) of CITA. (Section 58). FZEs that fail to file returns CITA will lose their tax-exempt status and will be liable to pay the penalties as set out under CITA.

It is important to note that the Finance Act has a commencement date of 1st of January, 2021. Thus, this obligation is effective from that date.

9. TAX REGISTRATION FOR NON-RESIDENTS

A non-resident person that makes a taxable supply to Nigeria is required to register for tax and obtain a Tax Identification Number (TIN), include VAT on its invoice, and may appoint a representative in Nigeria for the purpose of its tax obligations. The FIRS may issue guidelines for this purpose.

10. PURCHASES, LEASES AND RENTAL OF REAL PROPERTY EXEMPTED FROM VAT

The Act excludes land and buildings, money and securities from the definition of goods and services for VAT purposes. (Section 45). Therefore, there will be no VAT on transfer of land or purchase of real property. By implication, this means that there will be no VAT on rentals and leases of real property, whether residential or commercial.

11. AGRICULTURAL EQUIPMENT EXEMPTED FROM VAT

The hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes are now exempt from VAT. This is presumably to promote the development of indigenous agricultural activities.

12. EXEMPTION FOR COMPENSATION PAYMENTS

The Act exempts compensations of up to N10,000,000.00, received for loss of office, from CGT. The exemption will not apply to any excess on that amount. Every payer of a compensation for loss of office is under an obligation to remit the applicable CGT to the relevant tax authority, within the timeframe under the PAYE Regulations (Section 36(4)).

13. PROVISIONS AFFECTING THE AVIATION SECTOR

- The Act exempts commercial aircraft (including their engines and spare parts), and airline transportation tickets issued and sold by commercial airlines registered in Nigeria from VAT.
- There is now duty-free importation of aircrafts and its parts (whether purchased or leased) for commercial airlines in Nigeria.

14. TAX RATE FOR INSURANCE COMPANIES

The Act provides that the tax payable by insurance companies shall not be less than 0.5% of gross premium for non-life insurance and 0.5% of gross income for life insurance business. (Section 9).

15. ELECTRONIC MONEY TRANSFER LEVY

The Act introduces a one-off levy of N50 known as the Electronic Money Transfer Levy on electronic transfers and deposits of money in the sum of N10,000 or more to replace the Stamp Duties on such transfers. This levy is to be accounted for by the person to whom the transfer or deposit is made and will be distributed between the Federal and State Governments on a derivation basis of 15% and 85%, respectively.

16. PROVISIONS RELATING TO THE FIRS

- **Adhesive Stamps:** The FIRS is required to utilize adhesive stamps produced by the Nigerian Postal Service when denoting documents by adhesive stamps.
- **Account for Tax Refunds:** The Accountant General of the Federation is now required to open dedicated accounts for each tax type for the payment of tax refunds to be administered by the FIRS. The accounts will be funded based on annual budgets for tax refunds for each tax-type as may be approved by the National Assembly (Section 50).
- **Notice of Assessments and Objections:** This may now be communicated through courier services, email or electronic means.

17. VIRTUAL PROCEEDINGS AT THE TAX APPEAL TRIBUNAL

The Tax Appeal Tribunal may now conduct its hearings remotely via virtual means, using such technology or application as may be necessary to ensure fair hearings.

18. PROVISIONS ON IMPORT DUTY, EXCISE TARIFFS, ETC.

- **Telecommunication Services:** The Act now includes telecommunication services provided in Nigeria as services for which duties of excise are chargeable at rates to be specified by an Order of the President. (Section 37).



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- **Reduction of Import Duty:** Section 38 of the Act has reduced the import duties on the following
 - (a) tractors from 35% to 5%;
 - (b) motor vehicle for transport of more than ten persons from 35% to 10%;
 - (c) motor vehicle for transport of persons (cars) from 30% to 5%; and
 - (d) motor vehicles for the transport of goods from 35% to 10%.

19. NON-RESIDENT COMPANIES INVOLVED IN SHIPPING AND AIR TRANSPORT

According to the Act, section 14 of CITA (which deals with the taxation of the income of non-resident companies engaged in shipping or air transport in Nigeria) does not apply to income from leasing, containers, non-freight operations or any incidental income of such companies that are otherwise liable to tax in Nigeria.

20. PRIVACY OF TAXPAYERS' DATA

The Act enjoins the FIRS to treat taxpayer information as confidential by adhering to data protection laws. The Act also sets out a fine of N1 million or 3 years imprisonment or both for any unauthorised release or use of taxpayers' information. There is an exception for situations where taxpayer's data is used or released in relation to Double Taxation Agreements (DTAs) for tax relief or avoidance of tax..

21. RIGHT OF SHAREHOLDERS TO CLAIM DIVIDENDS

For private companies, shareholders have a period of 12 years within which to claim dividends. Dividends that remain unclaimed after this period are to be included in the distributable profits of the company

and distributed to other shareholders of the company. For public companies quoted on the Nigerian Stock Exchange (NSE), dividends unclaimed after six years will be transferred to the Unclaimed Funds Trust Fund. (Section 60).

22. ESTABLISHMENT OF A CRISIS INTERVENTION FUND

The Act establishes a fund to be known as the Crisis Intervention Fund to be capitalized with the sum of N500,000,000,000.00 or such sums as may be approved by the National Assembly. The fund will be utilised in making funds available to meet crisis-related expenditure as provided in the Annual Appropriation Acts.

23. ESTABLISHMENT OF THE UNCLAIMED FUNDS TRUST FUND

From the commencement of the Act, any unclaimed dividend of a public limited liability company quoted on the NSE and any unutilized amount in any dormant bank account maintained by a deposit money bank in Nigeria, which has remained unclaimed or unutilised for a period of not less than

six years from the date the dividend was declared or fund was domiciled in a bank shall be transferred immediately to the Unclaimed Funds Trust Fund, which is a sub-fund of the Crisis Intervention Fund. (Section 77 (2)). The above provision of the Act was made pursuant to the provisions of section 44(1) and (2) of the Constitution of the Federal Republic of Nigeria (as amended).

CONCLUSION

The Act is clearly geared towards revenue generation. It also provides clarity on a few grey areas in the Finance Act 2019. Moreover, it is now established that the present administration will continue to enact a Finance Act to accompany the Appropriation Act for each year. With the annual changes that have been made and will be made to the Nigerian tax laws and regulatory frameworks, it is imperative that all corporate and non-corporate taxpayers operating in Nigeria or with Nigerian counterparts seek legal advice on how these provisions impact their tax obligations.

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