Detail

TAX GUIDE

TAX AND FISCAL POLICY OUTLOOK IN NIGERIA FOR 2021

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Detail

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EXECUTIVE SUMMARY

In this edition of DETAIL'S Tax Guide, we undertake a cursory review of the tax and fiscal policy outlook in Nigeria for 2021 with focus on government policies and changes made to the tax laws and the potential impact on the economy. The following are the topics covered in this guide:

1 2020 UPDATES

This will address the key tax and fiscal policies initiated by the different tiers of Nigerian government in 2021. However, special consideration was given to COVID-19 and the different measures such as tax incentives taken by Nigerian government in response to COVID-19 pandemic.

In addition to the above, we undertook a detailed review of the key provisions of the following Nigerian tax laws as amended by the Finance Act, 2019 with a view to guiding compliance:

a) Companies Income Tax Act, Cap. C21, L.F.N., 2004 as amended **(CITA)**

b) Personal Income Tax Act, Cap. P8, L.F.N., 2004 as amended **(PITA)**

c) Petroleum Profit Tax Act, Cap. P13, L.F.N., 2004 as amended **(PPTA)**

d) Capital Gains Act, Cap. C1, L.F.N., 2004 as amended **(CGT Act)**

e) Value Added Tax Act, Cap. V1, L.F.N., 2004 as amended **(VAT Act)**

f) Tertiary Education Trust Fund (Establishment etc.) Act, 2011

(Education Tax Act); and

g) Stamp Duties Act, Cap. S8 L.F.N., 2004 as amended.

2 OUTLOOK FOR 2021

The 2020 tax year started on a promising note with the myriad of changes to the tax laws introduced by the Finance Act, 2019. Ahead of the 2021 tax year, the Federal Executive Council presented the Finance Bill 2020 to the National Assembly for review and passage (along with the 2021 budget and the 2021 Appropriation Act). The President assented to the Finance Bill, 2020 on the 31st of December 2020.

The Finance Act 2020 amends the Capital Gains Tax Act; Companies Income Tax Act; Industrial Development (Income Tax Relief) Act; Personal Income Tax Act, Tertiary Education Trust Fund (Est) Act; Customs and Excise Duties, etc. (Consolidated) Act; Value Added Tax Act; Stamp Duties Act; Electronic Transaction Levy; Federal Inland Revenue Service (Est) Act; Nigeria Export Processing Zone Authority Act; Oil and Gas Export Processing Zone Act; Crisis Intervention Fund; Unclaimed Funds Tryst Funds; Companies and Allied Matters Act; and Fiscal Responsibility Act.

Thus, it has become imperative for us to put forward our forecast for the 2021 financial year on the back of what we understand are the key provisions of the Finance Act 2020.

2020 UPDATES

President Buhari Signs the CAMA Bill 2020 into Law

President Muhammadu Buhari on 7th August, 2020, signed the Companies and Allied Matters Bill, which had earlier been passed by the National Assembly into law. The new Companies and Allied Matter Act ("CAMA 2020") which effectively repealed CAMA 1990 introduces innovative provisions that reflect modern-day commercial realities as well as reduce compliance costs and regulatory hurdles for businesses in Nigeria. Some key provisions include as follows:

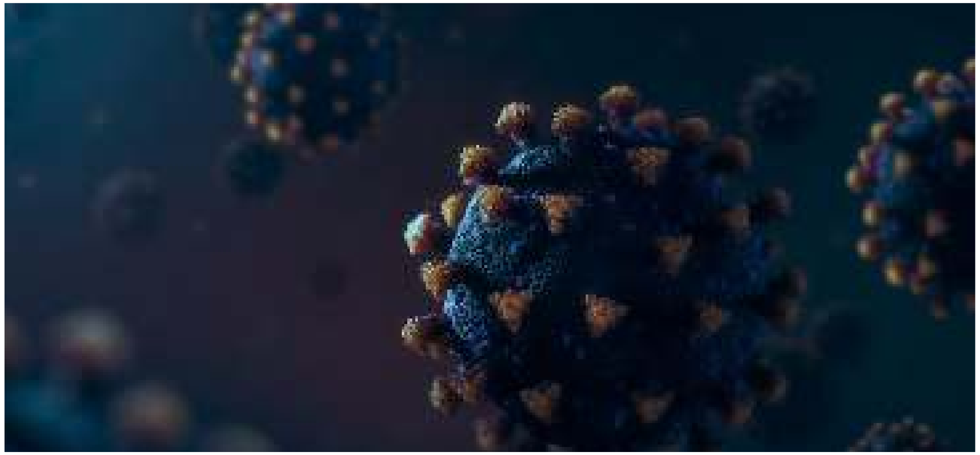
- a. Companies are no longer required to have common seal;
- b. A private company can now be established with only one member or shareholder
- c. Filing, share transfer and meetings can now be done electronically by private companies
- d. Introduction and recognition of Secured Financial Collateral Arrangements
- e. Recognition and filing of Negative Pledges
- f. Downward revision of CAC fees for registration of charges
- g. Recognition of Netting Arrangements; etc

Lagos State Codification of Taxes, Levies, Rates and Charges Regulations, 2020

The Chairman of the Lagos State Board of Internal Revenue (the "Board") in the exercise of the powers conferred by section 77 of the Lagos State Revenue Administration Law 2006, issued the Lagos State Codification of Taxes, Levies, Rates and Charges Regulations, 2020 (the "Regulations"). The purpose of the Regulations is to codify all collectable taxes, levies and rates due to the Lagos State Government, Local Government Councils and Local Council Development Areas in Lagos State, which are collectable through the Ministries, Departments and Agencies of the State Government.

The Regulations apply to all Local Government Councils, Local Council Development Areas, Ministries, Departments and Agencies of the Lagos State Government that collect such taxes, levies, rates and charges.

2020 UPDATES



Nigeria's Covid-19 Fiscal Policy Measures

The following fiscal measures were issued by the different tiers of the Nigerian government in response to COVID 19 pandemic:

1. Emergency Economic Stimulus Bill 2020

The objectives of the Bill are;

(i) to provide temporary relief to companies and individuals, and alleviate the adverse financial consequences of a slowdown in economic activities as a result of COVID-19;

(ii) to protect the employment status of Nigerians who might otherwise become unemployed;

(iii) to provide a moratorium on mortgage obligations for individuals;

(iv) to cater for the general wellbeing of Nigerians pending the eradication of the pandemic and a return to economic stability amongst others.

Fiscal Incentives Provided under the Economic Stimulus Bill

Rebate for PAYE

The Bill proposes a 50% income tax rebate in favour of employers on the actual amount due or paid as Pay As You Earn Tax under the Personal Income Tax Act provided that such employer is:

- Registered under the Companies and Allied Matters Act (CAMA); and
- Maintains the same employee workforce status, without retrenching any staff member employed as at 1st March, 2020 until the rest of the year ending 31 December, 2020. Reductions arising from death arising from natural causes, voluntary disengagement, or disengagement by virtue of a breach of the Labour Act Cap are exempted.

This rebate is, however, not available to companies wholly or partly subject to PPT Act. The period of rebate may also be extended by the President for the duration that the COVID-19 pandemic remains an urgent and sever public health emergency. However, the extension is subject to ratification by a majority of the members of the National Assembly.

Deferral of Mortgage Payment under National Housing Fund

The Bill provides that all payments of mortgage obligations on residential mortgages obtained by individual contributors to the National Housing Fund will be deferred for a period of 180 days, effective from 1st of March 2020. The President also has the power, subject to the majority vote of the National Assembly to extend the tenure by a period not exceeding 180 days.

Import Duty Waiver

The Bill proposes the waiver of import duty on medical equipment, medicines, personal protection equipment and other medical necessities required for the treatment and management of the COVID-19 pandemic in Nigeria. The Minister for Health is required to develop regulations specifying the medical equipment which shall qualify for the waiver. The proposed waiver was to subsist from the 31st of March, 2020 until 31st of December, 2020. There is no indication if this has been extended. The import duty waiver period may be further extended by the President in exercise of his powers under the Customs & Excise Tariffs etc. (Consolidated) Act.

At this time, the Bill has been passed by the House of Representative. However, the Bill requires the concurrence of the Senate and presidential assent to become law.

2020 UPDATES

2. Concessions by Tax Authorities

The following tax authorities have granted the following concessions in response to the COVID-19 pandemic

Tax Authority	Concession Granted
FIRS	The FIRS Executive Chairman on 23rd March, 2020 announced the following tax concessions in response to the COVID-19 pandemic: a) Extension of time for filing returns for VAT and withholding tax from the 21st every month (in the case of VAT) to the last working day of the month, following the month of deduction. b) The due date for filing Companies Income Tax returns has been extended by one month. This means that the tax CIT returns will be due seven months after the financial year end. c) Tax-payers may file returns using unaudited accounts but must subsequently submit audited accounts within two months of the revised due date of filing. However, by another public notice issued on 30th July, 2020, the FIRS extended the deadline for the filing of CIT returns by an additional one week. In other words, companies that have accounting year end of 31st December who were due to submit their CIT returns on 31st July, 2020 were required to do so not later than 7th August, 2020. The timeline was later extended by one month (i.e until 30th June, 2020).

Tax Authority	Concession Granted
LIRS	The deadline for filing personal income tax returns was extended by 2 months from 31st of March to 31st of May, 2020.
FCT-IRS	The deadline for filing personal income tax returns was extended to the 30th of June, 2020.

2020 UPDATES

3. Establishment of COVID-19 Crisis Intervention Fund

The President of the Federal Republic of Nigeria approved the establishment of a N500 billion COVID-19 Crisis Intervention Fund (the **"Fund"**). At the time of its establishment, it was expected that the Fund would be financed by drawing on much-needed cash resources from various Special Funds and Accounts. The purpose of the Fund is to:

- **a** Upgrade healthcare facilities as earlier identified by the Presidential Task Force on COVID-19 as approved by the President
- **b** Finance the Federal Government's Interventions to support States in improving healthcare facilities
- **c** Finance the creation of a Special Public Works Programme
- **d** Fund any additional interventions that may be approved by the President.

4. Restructuring the Treasury Single Account ('TSA')

The TSA has been restructured to better mobilize cash donations from the public by opening accounts in specific deposit merchant banks for the receipt of donations by the public. The accounts which will form part of the existing TSA arrangement shall be opened with the following banks:

- **a** Zenith Bank
- **b** Access Bank
- **c** Guaranty Trust Bank
- **d** United Bank for Africa (UBA)
- **e** First Bank

5. Enhanced Financial Support to the Health Care Expenditure

The Federal Government will put in place the following fiscal measures[1]:

a Fully draw down on the World Bank Facility in the sum of

US $82 million

and additional financing from the REDISSE

US $100 million

project to meet COVID-19 emergency needs by States and the FCT

b **US $150 million**

to be withdrawn from the Nigeria Sovereign Investment Authority (**NSIA**) Stabilization Fund to support the June 2020 FAAC disbursement.

The Federal Ministry of Finance, Budget and National Planning will also engage with the CBN to agree on a Debt and Interest Moratorium for States in relation to Federal Government and CBN-funded loans, to create fiscal space for the States.

[1]Ministerial Press Statement on Fiscal Stimulus Measures in Response to the Covid-19 Pandemic & Oil Price Fiscal Shock

2020 UPDATES

FEDERAL MINISTRY OF FINANCE

Nigeria's Minister of Finance issued VAT Modification Order, 2020

In the exercise of the power conferred on the Finance Minister by section 38(b) of the VAT Act to modify the VAT exemption list, the Finance Minister on 3rd February, 2020 issued a VAT modification order titled "Value Added Tax Act (Modification Order), 2020" (the **"Order"**). The Order modifies the list of the exempted goods and services in the First Schedule to the VAT Act and expands the list of VAT exempted items in Nigeria. Interestingly, this Order was issued after the Finance Act, 2019 which had also expanded the list of the VAT exempted items in the VAT Act.

However, following the issuance of the Order by the Finance Minister, the FIRS issued a Public Notice titled "the Value Added Tax Act (Modification Order), 2020: Items not Exempted from VAT" (**"FIRS Notice"**) attempting to provide clarification with respect to items that are not exempted from VAT under the Order. This FIRS Notice sharply conflicts with the provisions of the Order.

FIRS issued 7 Information Circulars Clarifying the Amendments made by the Finance to the Tax Laws

Following the enactment of the Finance Act, 2019 on 13th January, 2020, the FIRS, on 29th April 2020, issued the following seven (7) information circulars clarifying the amendments to the tax laws by the new Finance Act:

a. Information Circular No: 2020/02 titled "Clarification on the Implementation of the Value Added Tax Provisions in the Finance Act 2019"

b. Information Circular No: 2020/03 titled "Circular on Tax Implications of the Operation of Regulated Securities Lending Transaction ('SEC Lending') in Nigeria"

c. Information Circular No: 2020/04 titled "Clarification on Sundry Provisions of the Finance Act 2019 as it Relates to Companies Income Tax Act"

d. Information Circular No: 2020/05 titled "Clarifications on the Provisions of the Stamp Duties Act"

e. Information Circular No: 2020/06 titled "Clarification on Commencement and Cessation Rules, and Business Reorganisation: Sections 29 Of CITA, 32 of CGTA and 42 of VATA (As Amended by the Finance Act, 2019)"

f. Information Circular No: 2020/07 titled "Circular on Tax Implications of Operation of Real Estate Investment Companies ('REIC') in Nigeria"; and

g. Information Circular No: 2020/08 titled "Clarification on the Amendment to Section 16 of the Companies Income Tax Act in Relation to Taxation of Insurance Companies".

FIRS
FEDERAL INLAND REVENUE SERVICE

OUTLOOK FOR 2021

OUTLOOK FOR 2021

As stated in the Executive Summary of this Tax Guide, the Finance Act, 2020 was signed into law on 31st December, 2020, with the administrative processes required to make the law effective were concluded in January, 2021. The Finance Act, 2020 is a fiscal instrument enacted to help the government meet up with its revenue target for the year 2021 and beyond pending its amendment or replacement by another Finance Act or law.

Accordingly, we have highlighted below, the key changes and innovations made to the different laws covered under the Finance Act, 2020 with particular focus on the changes to the tax laws.

Highlights of The Finance Act 2020

1.1 CITA

a) Reduction in Minimum Tax

The minimum tax payable by companies in relation to Companies Income Tax ("CIT") returns for the years of assessments due between 1st January, 2020 and 31st December, 2021 (both days inclusive) has been reduced from 0.5% to 0.25% of gross turnover less franked investment income[2].

b) 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 other exigency are allowable deductions[3]. The amount that is allowed for deduction will be limited to 10% of the assessable profit after deductions of other allowable donations made by such company.

c) Non-Resident Companies that Derive Profits from Nigeria to File Tax Returns in Relation to their Nigerian Operations Only

Non-resident companies that derive profits from Nigeria or are taxable in Nigeria are to file tax returns in relation to their Nigerian operations only. However, where in a year of assessment the non-resident company only earns income on which withholding tax is the final tax under CITA, the non-resident company will have no obligation to file a tax return in that year of assessment.

d) Form of Accounts for Small and Medium Companies

The Federal Inland Revenue Service (FIRS) may prescribe the form of accounts other than audited financial statements for small and medium companies[4]. It may mean that small and medium companies may no longer need to submit audited accounts. This is of course, subject to the view of the FIRS.

e) Mandatory Requirement to Maintain Books of Accounts

Every company, including those exempted from incorporation or not and required to pay tax under CITA, are now mandatorily required to maintain books or records of accounts, containing sufficient information of all its transactions[5] .

[2] Section 13 of the Finance Act

[3] Section 11 of the Finance Act 2020

[4] Section 16 of the Finance Act 2020

[5] Section 17 of the Finance Act 2020

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f) Provisions Affecting the Aviation Sector
The Act exempts commercial aircraft (including their engines and spare parts), 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.

g) 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[6].

h) 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.

1.2 TERTIARY EDUCATION TAX

Exemption from Tertiary Education Tax

The Finance Act exempts small companies, which is defined as companies with turnover of less than N25,000,000, from payment of Tertiary Education Tax (TET)[7]. TET is currently chargeable at 2% of the assessable profit of a Nigerian company.

[6]Section 9 of the Finance Act 2020 [7]Section 34 of the Finance Act 2020

1.3 INDUSTRIAL DEVELOPMENT INCOME TAX RELIEF ACT

Pioneer Status Incentives in the Agricultural Sector

The Finance 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. Medium sized company means a company that earns gross turnover that is greater than N25,000,000 but less than N100,000,000 per annum. This is a slight deviation from the regular tax-free period granted to other pioneer industries, which is for a cumulative period of five years and not six years.

OUTLOOK FOR 2021

1.4 PITA

a) Exemption for Minimum Wage Earners

Low-income earners earning minimum wage (N30,000) or less are now exempted from personal income tax[8]. This addresses complaints by small business owners of irregularities relating to Pay As You Earn (PAYE) during tax audits.

b) Introduction of "Significant Economic Presence" for Personal Income Tax

The Act introduces the concept of "Significant Economic Presence" (SEP) for Personal Income Tax. In this regard, the gains or profits from trade or business that include technical, management, consultancy, or professional services, furnished by a non-resident individual, executor, or trustee 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 for Finance[9].

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

1.5 NEPZA ACT

Filing Requirement for Free Zone Enterprises

For Free Zone Enterprises (FZEs) operating in free trade zones, the exemption from taxes does not relieve the FZEs from filing CIT returns to the FIRS under section 55(1) of CITA[10]. FZEs that fail to file returns in the form prescribed in Section 55(1) of CITA will 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 the 1st of January, 2021.

[8] Section 30 of the Finance Act, 2020 [9] Section 25 of the Finance Act, 2020

[10] Section 58 of the Finance Act, 2020

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1.6 VAT ACT

a) Tax Registration for Non-Residents

A non-resident person that makes a taxable supply to Nigeria is required to register for tax with the FIRS 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. This provision effectively amends the former provision of section 10(1) of the VAT Act that required the non-resident to effect the registration using the address of the person with whom it had a subsisting contract in Nigeria. In the past, FIRS went after these Nigerian companies even long after the Nigerian company's transaction with the non-resident companies had been concluded and the transaction to which FIRS was investigating relates to a different transaction between the non-resident company and a different Nigerian company.

b) 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[11]. 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.

c) 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[12]. This is presumably to promote the development of indigenous agricultural activities.

1.7 CGT ACT

Exemption for Compensation Payments

The Finance 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 such N10,000,000.00. 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 Pay-As-You-Earn Regulations[13].

1.8 STAMP DUTIES ACT

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 imposition of 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 Government on a derivation basis of 15% and 85% respectively[14].

[11]Section 45 of the Finance Act, 2020 [12]Section 45 of the Finance Act, 2020

[13]Section 36(4) of CGTA (as amended) [14]Section 48 of the Finance Act, 2020

OUTLOOK FOR 2021

1.9 FIRS ACT

a) Dedicated Tax Refund accounts

Account for Tax Refunds: The Accountant General for 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 and funded based on annual budgets for tax refund for each tax type as may be approved by the National Assembly.[15]

b) Virtual Proceedings at the Tax Appeal Tribunal

The Tax Appeal Tribunal may now conduct its hearing remotely via virtual means, using such technology or application as may be necessary to ensure fair hearing.[16]

c) 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 N1,000,000 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.

[15]Section 50 of the Finance Act, 2020 [16]Section 57 of the Finance Act, 2020

NIGERIA CUSTOMS SERVICE

1.10 CUSTOMS AND EXCISE TARIFF, ETC. (CONSOLIDATED) ACT

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.[17]

Reduction of Import Duty: Section 38 of the Finance Act has reduced the import duty on the following:

a) Tractors from 35% to 5%

b) Motor vehicles for transport of more than ten persons from 35% to 10%

c) Motor vehicles for transport of persons (cars) from 30% to 5%

d) Motor vehicles for the transport of goods from 35% to 10%.

[17]Section 37 of the Finance Act, 2020

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1.11 COMPANIES AND ALLIED MATTERS ACT

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 6 years will be transferred to the Unclaimed Funds Trust Fund.[18]

1.12 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 billion 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 Act.

1.13 ESTABLISHMENT OF THE UNCLAIMED FUNDS TRUST FUND

From the commencement of the Finance 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 for a period of not less than six years from the date the dividend was declared shall be transferred immediately to the Unclaimed Funds Trust Fund which is a sub-fund of the Crisis Intervention Fund.[19] 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).

[18]Section 60 of the Finance Act, 2020

[19]Section 77(2) of the Finance Act, 2020

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

In this section of the Tax Guide, we have provided snapshots of key provisions of the major tax laws as amended to date. In this regard, the changes made to these tax laws by the recently enacted Finance Act 2020 were incorporated to guide compliance.

1. INCOME TAXES

1.1 COMPANIES INCOME TAX ACT

Background **Section 9 CITA**	CITA is the primary legislation on taxation of income of companies in Nigeria. Accordingly, Companies Income Tax is imposed upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria.
Taxable Persons	All companies doing business in Nigeria whether resident or non-resident, other than companies in petroleum operations (i.e. companies in upstream oil sector).
Taxable Income **Section 9 CITA**	The taxable incomes are profits accruing in respect of: a) any trade or business; b) rent, dividends, interests, royalties, discounts, charges or annuities; c) any benefit arising from a pension or provident fund; d) fees, dues and allowances (wherever paid) for services rendered; and e) profits/gains arising from acquisition and disposal of short-term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.
Quantum of Income that is Taxable **Sections 9 and 13(2) CITA**	Resident companies are taxed on their worldwide income. Non-residents are taxed only on the profits or incomes they derive from Nigeria. However, where the actual profit the non-resident made in Nigeria cannot be determined or is difficult to determine, the FIRS may at its discretion assess the non-resident to CIT on a deemed profit/turnover basis. In other words, a percentage of the non-resident's turnover in Nigeria is deemed as profit and taxed accordingly.
Triggers for Liability of Non-Residents to Nigerian Tax **Section 13(2) CITA**	Non-resident companies are taxed on their trading income in Nigeria under any of the following conditions: a) If the non-resident company has a fixed base or permanent establishment in Nigeria; or b) If the non-resident company habitually operates in Nigeria through dependent agent authorised to conduct on its behalf, or on behalf of some other companies controlled by it; or c) If the non-resident is engaged in the supply of digital goods or services in Nigeria to such an extent that it is deemed to have significant economic presence in Nigeria as defined in the Companies Income Tax (Significant Economic Presence) Order 2020; or d) If the trade or business or activities of the non-resident involves a single contract for surveys, deliveries, or installations or construction, the profit from that contract; or e) If the non-resident is involved in artificial or fictitious transactions with connected or associated member(s); or f) If the trade or business of the non-resident comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has significant economic presence in Nigeria. Provided that the withholding tax deducted from the income of the non-resident under this paragraph shall be the final tax on the income of the non-resident recipient unless it is caught up by any other provisions of (a)-(e) above in which case the withholding tax shall not be the final tax.

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Tax Exemption

Section 23 CITA

Section 23 of CITA exempts the profits of certain entities or certain activities carried on by these entities from tax. The profits exempted from tax include amongst others:

a) the profits of any company being a statutory or registered friendly society or engaged in ecclesiastical, charitable or educational activities of a public character, in so far as such profits are not derived from a trade or business carried on by such entity;

b) the profits of any company being a co-operative society registered; and

c) dividend distributed by Unit Trust etc.

Allowable Deductions

Section 24 CITA

All expenses that satisfy the WREN test (i.e expenses that are wholly, reasonably, exclusively and necessarily incurred in the production of the income of the business) are allowable deductions unless they are specifically exempted.

Such allowable deductions include the following:

a) Interest on local loans (Interest on foreign loans must satisfy the conditions in Section 11 and 3rd Schedule to CITA);

b) Rents;

c) Salaries and wages;

d) Bad debt and doubtful debts proven to the satisfaction of the tax authority to have become bad;

e) Expenses incurred in repair of premises, plant and machinery or fixtures; and

f) Contribution to pension or other retirement benefit funds, society or schemes approved by the tax authority etc.

Minimum Tax and Rate

Section 33 CITA

a) Minimum tax is essentially applicable/payable 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.

b) The rate of minimum tax is 0.5% of gross turnover of the taxable company, less franked investment income. Provided, that the minimum tax is reduced to 0.25% for tax returns prepared and filed for any year of assessment falling due on any date between 1st January, 2020 and 31st December, 2021, both days inclusive.

Minimum Tax Exemption

Section 33(3) CITA

The following companies are exempted from minimum tax:

a) Every company in the first four calendar years of its commencement of business;

b) A company that earns gross turnover of less than N25,000,000 in the relevant year of assessment (i.e. Small Companies); and

c) Companies carrying on agricultural trade or business.

Tax Rate

Section 40 CITA

The tax rate is determined by the turnover of companies as follows:

Type Of Company	Basis Of Categorization (turnover)	Company Income Tax Rate
Small Company	N25 million or less	0%
Medium-Sized Company	Over N25 million and less than N100 million	20%
Large Company	N100 million and above	30%

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Filing Requirements **Sections 55(1) and 55(1A) CITA**	Every company is required to file Self-Assessment Tax returns with FIRS whether or not the company is liable to pay tax in a tax year. The tax returns should include the following among other requirements: a) Audited accounts; b) Tax and capital allowances computation; c) Statement detailing the amount of profit from each and every income source; d) Duly completed and attested self-assessment form; and e) Evidence of payment of the whole or part of the tax due. Non-resident companies that derive profit from Nigeria or are taxable in Nigeria are required to compute and file tax returns based on the profits attributable to their Nigerian operations. However, where in a year of assessment the non-resident company only earns income on which withholding tax is the final tax under CITA, the non-resident company will have no obligation to file a tax return in that year of assessment.
Due Date for Tax Returns Filings **Section 55(2) CITA**	A newly incorporated company is required to file within eighteen (18) months from the date of its incorporation or not later than six (6) months after the end of its first accounting period, whichever is earlier; Other companies are required to file not more than six (6) months after the end of their accounting year.
Penalties for Late Filing **Section 55(3) CITA**	N25,000 in the first month of failure to file; and N5,000 for each subsequent month of failure.
Due Date for Tax Payment **Section 77(5) CITA**	Tax payments are due on or before the due date of filing, in one lump sum or in instalments: Instalment payment is predicated on satisfaction of the following conditions: a) the taxpayer must first write, with evidence of payment of the first instalment, and obtain the approval of FIRS to pay in such number of instalments as may be approved by FIRS; and b) the final instalment must be paid on or before the due date of filing.
Penalties for Late Payment **Section 32 of FIRS (Establishment) Act**	a) Penalty of 10% per annum of the tax not remitted. b) For naira remittance - Interest at the prevailing minimum rediscount rate of the CBN (now Monetary Policy Rate which is 11.5% currently), plus a spread to be determined by the Minister of finance (5% spread approved on 1st July, 2017). c) For foreign currency remittance - Interest at the prevailing LIBOR or minimum rediscount rate (i.e MPR) of the CBN whichever is higher, plus a spread to be determined by the Minister of finance (5% spread approved on 1st July, 2017).

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Capital Allowance Second Schedule

Capital Allowance is an allowance claimed by a company against its assessable profit on Qualifying Capital Expenditure. It is incurred in a particular year of assessment. It is the tax equivalent of accounting depreciation. The expenditures that qualify for capital allowance are essentially expenditures that are incurred on tangible non-current assets. However, expenditure on research and development is the only tangible non-current asset that qualifies for capital allowance.

The applicable rate of capital allowance on different qualifying assets are as follows:

S/N	Qualifying Capital expenditure	Initial Allowance Rate (%)	Annual Allowance Rate (%)
1	Building (Industrial & non-industrial)	15	15
2	Mining	95	Nil
3	Plant: Agricultural Production	95	Nil
4	Plant: Others	50	25
5	Furniture and fittings	25	20
6	Motor Vehicle - Public transportation	95	Nil
7	Motor Vehicle - Others	50	25
8	Plantation Equipment	95	Nil
9	Housing estate	50	25

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

1.2 PERSONAL INCOME TAX ACT

Background

PITA is the primary legislation setting out the legal framework for the collection of personal income tax in Nigeria.

Taxable Persons

Section 1 PITA

PITA is payable by individuals (resident and non-resident), communities, families, trustees or estate.

Taxable Income

Section 3 PITA

The taxable incomes include:

a) Gain or profit from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

b) Any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites given to any employee other than reimbursable expenses;

c) Gain or profit including any premiums arising from a right granted to any other person for the use or occupation of any property;

d) Dividend, interest or discount;

e) Any pension, charge or annuity; and

f) Any other profit, gain or other payment not listed above.

Quantum of Income Taxable

Sections 3 and 6 PITA

Resident individuals amongst others are taxed on their worldwide income.

Non-residents are taxed only on the quantum of profits or income they derived from Nigeria. However, in determining what portion of a non-resident's income is derived from Nigeria, it is important to note that the specific provision of section 10(5) of the previous version of PITA which provides that a non-resident carrying on the duties of their employment in Nigeria will be taxed to the extent that the duties of employment are performed in Nigeria has been deleted. This suggests that such non-residents may be liable to tax on their worldwide income not withstanding that the duties resulting from their employment were only partly performed in Nigeria.

Tax Rate

Sixth Schedule to PITA

The applicable rate is as follows:

Tax Band	Rates
First 300,000	7%
Next 300,000	11%
Next 500,000	15%
Next 500,000	19%
Next 1,600,000	21%
Above 3,200,000	24%

Triggers for Liability of Non-Resident Individuals Liability to PIT

Sections 6 and 10 of PITA

Articles 5 and 14 of DTA

This is dependent on whether the individual earns business income or employment income. It is also dependent on whether the individual is resident in a country that has a double taxation agreement (DTA) with Nigeria.

Trading/Business Income – Non-Resident Individuals Resident in Non-DTA Countries:

Section 6 of PITA is to the effect that the gains or profits of the trade or business of a non-resident individual/trustees/executors shall

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

be deemed to be derived from Nigeria and taxable:

a) If the non-resident individual has a fixed base in Nigeria from which it carries on the trade/business; or

b) If the non-resident individual habitually operates in Nigeria through a dependent agent that is authorised to conclude contracts on his behalf, or on behalf of some other person related to him; or

c) If the non-resident individual habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made; or

d) The trade or business of the non-resident individual involves a single contract for surveys, deliveries, installations or construction (turnkey contract); or

e) If the non-resident individual is involved in artificial or fictitious transactions with related person; or

f) If the trade or business of the non-resident individual, executor or trustee comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the non-resident has significant economic presence in Nigeria. Provided that the withholding tax deducted from the income of the non-resident under this paragraph will be the final tax on the income of the non-resident recipient unless he/she is caught up by any other provisions of (a)-(e) above in which case the withholding tax shall not be the final tax.

Trading/Business Income – Non-Resident Individuals Resident in DTA Countries:

Business income of non-resident companies from a DTA country is only taxable in Nigeria where the companies carry on business through a Permanent Establishment (PE) in Nigeria and only to so much of the profit that is attributable to the PE - **Article 7 of DTA.**

Article 5 of Nigeria's DTA with Netherlands (which is similar to the provisions of the other DTAs to which Nigeria is a party) defines PE to mean a fixed place of business through which the business of an enterprise is wholly/partly carried on. This includes:

a) a place of management, a branch, an office, a factory, a workshop, a mine/oil or gas well/quarry or any other place of extraction of natural resources;

b) a building site, a construction or assembly or installation project, supervisory activities for the aforementioned activities and consultancy services through employees or other personnel where these activities continue for a period of more than three (3) months;

c) installation activities incidental to the sale of machinery by a company shall constitute a PE where it lasts for more than six (6) months;

d) sales outlet;

e) where an agent of dependent status is acting in Nigeria on behalf of a non-resident enterprise, that enterprise shall be deemed to have a permanent establishment in Nigeria in respect of any activities which that agent undertakes for the enterprise, if such a person:

i. has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

ii. habitually secures orders for the sale of goods or merchandise in the first-mentioned state exclusively or almost exclusively on behalf of the enterprise itself or on behalf of the enterprise and other enterprises controlled by it or which have a controlling interest in it.

Employment Income – Non-Resident Individuals Resident in DTA Countries:

Based on **Article 15 of the DTA**, the remuneration derived by a non-resident individual in respect of an employment exercised in Nigeria shall not be taxable in Nigeria if the following **joint conditions** are established:

a) the employee/expatriate is present in Nigeria for a period or periods not exceeding in the aggregate 183 days in a year of assessment (UK DTA); and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of Nigeria; and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in Nigeria.

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Employment Income – Non-Resident Individuals Resident in Non-DTA Countries:

Based on **Section 10(1) of PITA**, the income of an expatriate employee shall be liable to tax in Nigeria where the expatriate is unable to satisfy the following **joint conditions:**

a)the duties are performed on behalf of an employer in another country and the remuneration is not borne by a fixed base of the employer in Nigeria; and

b)the employee is not in Nigeria for a period amounting to an aggregate of 183 days (inclusive of annual leave or temporary period of absence) or more in any twelve-month period commencing in a calendar year and ending either within that same year or the following year; and

c)the remuneration of the employee is liable to tax in another country that has a double taxation treaty with Nigeria.

Key Differences between the PITA and DTA Rule

S/N	PITA	DTA
1	All expatriate employees from non-DTA countries will be liable to Nigerian PIT without further ado because they will be unable to satisfy the condition in section 10(1)(a)(iii) that requires them to pay their PIT in a DTA country.	Expatriate employees from DTA countries will only be liable to tax where they fail to meet the 3 joint conditions in Article 15(2) of the DTA.
2	The 183 days threshold is calculated to include the periods of leave or absence of the expatriate in Nigeria.	The 183 days threshold is calculated only on the basis of actual physical presence of the expatriate personnel in Nigeria, without consideration of the periods of leave or absence.

Tax Exemption **Section 19 and Third Schedule of PITA**	Exempt taxable income includes: a) interest on any loan granted by a bank to a person engaged in agricultural trade or business and the fabrication of any local plant and machinery; b) pension granted to any person pursuant to any enactment or law for the time being in force; c) the income of a Local Government or Government institution; and d) the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution etc.
Allowable Deductions **Section 20**	All expenses that satisfy the WREN test (i.e. expenses that are wholly, reasonably, exclusively and necessarily incurred in the production of the income of the business) are allowable deductions unless they are specifically exempted. Such allowable deductions include the following: a)interest on money borrowed and employed as capital in acquiring the income; b)interest on loans for developing an owner-occupied residential house; and c)rent payable in respect of land or buildings occupied for the purpose of acquiring the income etc.

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Minimum Tax and Rate **Section 37 and Paragraph 3 of the Sixth Schedule to PITA**	Minimum tax under PITA is applicable where the tax payable as a percentage of gross income is less than 1%. Minimum tax is payable at the rate of 1% of the gross income of a taxable person. Provided that minimum tax will not apply to a person in any year of assessment where such person earns the National Minimum Wage or less from an employment.
Filing Requirements and Due Dates **Section 41 PITA** **Regulation 10(1) of Operation of Pay-As-You-Earn Regulation, 2002**	A taxable person is required to file a return of income in the prescribed form in each year of assessment with the tax authority of the State in which the taxable person is deemed to be a resident, together with a true and correct statement in writing containing: a) the amount of income from every source of the year preceding the year of assessment; and b) such particulars as by the return may be required for the purpose of PITA and rules or regulations made there under. Tax returns are to be filed by individuals within 90 days from the commencement of every year of assessment (i.e. not later than 31st March of every year in respect of the preceding year activities). Under the Pay-As-You-Earn regime, employers are to file the following documents: a) Employers' Declaration Form (Form H1) which will show the income of the employees, taxes deducted and remitted in the preceding year. This return is due by 31 January of every year; b) Employers' Remittance Card (Form G): showing the monthly remittances and reference number on the receipt. Copies of the receipt are to accompany the Form G; and c) Declaration of estimated income and application for tax reliefs (Form A).
Due Dates for Payment **Section 41(3) PITA Regulation 7(1) of Operation of Pay as You Earn Regulation, 2002**	PAYE tax must be remitted within ten (10) days of the end of every month. For individuals liable to direct assessment (i.e. non-employees), payment must be made along with returns within ninety (90) days from the commencement of every year of assessment i.e. not later than 31st March.
Penalties for late filing **Sections 76 and 77 PITA**	Penalty of 10% per annum of the unpaid tax plus interest on annual basis at the prevailing bank lending rate.

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

1.3 PETROLEUM PROFIT TAX ACT

Taxable Persons

Section 8 PPTA

Petroleum Profit Tax (PPT) is levied on the income of companies engaged in petroleum operations. This is essentially companies that are engaged in the upstream sector of the oil sector.

Taxable Income
Section 8 PPTA

Taxable income are profits derived from petroleum operations.

Royalties

Petroleum (Drilling and Production) Regulations 1969 (as amended by the Amendment Regulations 2006) – Regulation 61(a) and (b)

Deep Offshore and Inland Basin Production Sharing Contracts Act (as amended)

Marginal Field Operations (Fiscal Regime) Regulations S.I. No. 8 2006 paragraph 2

Royalties are sums of money payable by companies operating in the upstream oil and gas industry on the quantity of petroleum produced.

Rate of royalty payable under the Production Sharing Contracts regime are categorised as follows:

a) Fixed Water Depth Royalty Regime: This is calculated on a field-by-field basis. Under this regime, the royalty payable will be a percentage of the chargeable volume of the crude oil and condensates produced from the relevant area in the relevant period at the following rates:

Area	Rate (%)
Frontier/inland basins	7.5
Offshore areas greater than 200 meters water depth	10

b) Royalty by Price: This framework has been introduced to allow for royalty flexibility, based on changing prices of crude oil, condensates and natural gas. This royalty is paid in addition to the Fixed Water Depth Royalty. The royalty rate will be identical for the various water depths in the deep offshore (beyond 200 meters water depth), including frontier acreages for crude oil and condensates. The "Royalty by Price" regime is based on increase in prices/increase in value of crude oil and condensates over the sum of $20 per barrel.

Prices per Barrel (US$)	Royalty Rate per Barrel (%)
US$0 to US$20	0
US$20 and up to US$60	2.5
US$60 and up to US$100	4
US$100 and up to US$150	8

Rate of royalty payable by companies under the Joint Venture contractual regime with Nigerian National Petroleum Corporation ('NNPC'):

Area	Rate (%)
Onshore Production	20
Offshore Production up to 100 metres water depth	18.50
Offshore Production beyond 100 metres water depth	16.65

Rate of royalty payable under the marginal field contractual regime:

Prices per Barrel (US$)	Royalty Rate per Barrel (%)
Production below 5,000 bpd	2.5
Production between 5,000 and 10,000 bpd	7.5
Production between 10,000 and 15,000 bpd	12.5
Production between 15,000 and 25,000 bpd	18.5

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Rate of royalty for gas is as follows:

Area	Rate (%)
Onshore Production	7.5
Offshore Production	5

Allowable Deductions

Section 10 PPTA

All expenses that satisfy the WREN test (i.e. expenses that are wholly, exclusively and necessarily incurred in the production of the income of the business) are allowable deductions unless they are specifically exempted.

Such allowable deductions include the following:

a) rents incurred by the company for that period in respect of land or buildings occupied under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance;

b) all non-productive rents, the liability for which was incurred by the company during that period; and

c) all royalties the liability for which was incurred by the company during that period in respect of crude oil or of casinghead petroleum spirit won in Nigeria etc.

Tax Rate

Section 21 PPTA
Section 3 of Deep Offshore and Inland Basin Production Sharing Contracts Act as amended

For companies in Joint Venture arrangements with NNPC, 65.75% of chargeable profits for the first 5 years of operation (when the company is yet to fully recover its capitalized pre-production cost), and 85% thereafter.

For companies in Production Sharing Contract arrangement with NNPC, 50% of chargeable profits.

Filing Requirements

Section 30(1) PPTA

Every upstream company shall, for each accounting period of the company, make up accounts of its profits or losses, arising from those operations, of that period and shall prepare the following particulars:

a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;

b) in connection with capital allowance a schedule showing:

i. the residues/Tax Written Down Value at the end of that period in respect of its assets;

ii. all qualifying petroleum expenditure incurred by it in that period;

iii. the values of any of its assets disposed of in that period; and

iv. the capital allowances due to it for that period;

c) a computation of its estimated chargeable profits of that period;

d) a statement of other sums, deductible under section 22 of this Act, the liability for which were incurred during that period;

e) a statement of all amounts repaid, refunded, waived or released to it, as referred to in subsection (5) of section 20 of this Act, during that period; and

f) a computation of its estimated tax for that period.

Filing Due Dates

Sections 30(2) and 33 PPTA

Companies engaged in petroleum operations file estimated tax returns and actual tax returns for every accounting period as follows:

a) Estimated tax returns must be filed not later than two months after the commencement of each accounting period of any company engaged in petroleum operations; and

b) Actual tax returns must be filed within five months after the end of the company's accounting period.

Penalties for Late Filing

Section 51 PPTA

Late submission of returns: Initial penalty of ₦10,000

₦2,000 for each day such failure continues

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

1.4 WITHHOLDING TAX

Background

Withholding Tax ("WHT") is an anti-tax avoidance mechanism that was introduced into the Nigerian tax law in 1977. It is an advance payment of income tax. In other words, it is not a different type of tax but forms part of income tax legislation (i.e. CITA, PITA, PPTA). WHT is deducted at source/in advance from the monies due to the taxable persons by their contracting counterparties and then remitted to the tax authorities. The tax authorities, in return, will issue WHT credit notes in favour of these taxable persons that suffered the tax deductions which they will utilise against their CIT/PIT liabilities at the end of the relevant period.

WHT Rate

Sections 69, 70, 71, 72 PITA

Sections 78, 79 and 80 CITA

The Schedule to the Companies Income Tax (Rates, Etc., of Tax Deducted at Source (Withholding Tax)) Regulations;

The Schedule to the Personal Income Tax (Rates, Etc., of Tax Deducted at Source (Withholding Tax)) Regulations;

The table below sets out the rate of WHT in Nigeria:

Payment	Companies	Individuals
Commission, consultancy, technical and management fees, legal fees, audit fees, and other professional fees	10%	5%
Rent, interest and dividend	10%	10%
Construction contracts for roads, building, power plant and bridges	2.5%	N/A
All aspects of building, construction and related activities not covered above	5%	5%
All types of contracts and agency arrangements, other than sales in the ordinary course of business	5%	5%
Directors' fees	N/A	5%
Royalty	10%	5%

Filing Due Dates

Section 82 CITA
Section 74 PITA

The due date for filing companies income tax WHT returns is within twenty-one (21) days of the WHT deduction or the time the duty to deduct WHT arose.

The due date for filing personal income tax WHT returns applicable to individuals, unincorporated JVs etc. is within thirty (30) days of the WHT deduction or the time the duty to deduct WHT arose.

Penalties for Late Payment

Section 82 CITA

Under CITA, a penalty of 100% per annum of the tax withheld or unremitted as the case may be.

Section 74 PITA

Under PITA, a fine of N5000 or 10% of the amount of tax due (whichever is higher) plus the amount of tax deductible plus interest at the prevailing MPR rate of the Central Bank of Nigeria upon conviction.

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

1.5 EDUCATION TAX

Background	This tax is chargeable on the assessable profit of all companies incorporated in Nigeria pursuant to the provision of the Tertiary Education Trust Fund (Establishment etc.) Act, 2011 ("Education Tax Act").
Education Tax Rate **Section 1(2) Education Tax Act**	2% of the assessable profit of a company registered in Nigeria other than a small company as defined under the Companies Income Tax Act.
Education Tax Exemption **Section 1(2) Education Tax Act**	Foreign companies, small companies and unincorporated entities are exempted from Education Tax.
Filing Requirement	The law is silent on filing requirements. However, the FIRS has developed Form 4D-EDT which is completed on a self-assessment basis by the taxable entity and filed together with CIT or PPT returns.
Filing Due Dates **Section 2(2) Education Tax Act**	The tax is due and payable within sixty (60) days after the FIRS has served notice of assessment on the Nigerian company. However, we note that this tax is paid in practice in line with CITA requirement (i.e. 6 months after the accounting year end date).
Penalties for Late Payment **Sections 10 and 11 Education Tax Act**	A demand notice for the unpaid tax will be issued by the FIRS plus 5% of the unpaid tax for failure to pay after two (2) months of service of demand notice. Furthermore, first offenders under the law are liable on conviction to a fine of N1,000,000 or imprisonment for a term of six (6) months or both while second or subsequent offenders are liable on conviction to a fine N2,000,000 or imprisonment for a term of twelve (12) months or both.

1.6 CAPITAL GAINS TAX

Capital Gains Tax ("CGT") is a tax that is imposed on the profit obtained from the disposal or exchange of certain kinds of assets otherwise called "Chargeable Assets".

Taxable Persons **Section 1 PITA**	CGT is payable by "any person" (i.e. natural person or corporate entity) disposing a Chargeable Assets.
Chargeable Assets **Section 3 CGT Act**	Chargeable Assets are all forms of property whether situated in Nigeria or not, including the following: a) options, debts and incorporeal property generally; b) any currency other than Nigerian currency; and c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired,
Tax Rate **Section 2(1) CGT Act**	The rate of CGT is 10%
Basis for Determination of Chargeable Gains **Section 11 CGT Act**	The gain chargeable to CGT is determined as follows:

Sale Proceeds/Consideration	xx
Less: Allowance Expenditure/Deductions	(x)
Capital Gain	xxx

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Allowable Expenditure/ Deductions **Section 13 CGT Act**	Allowable deductions includes: a) expenditures that are wholly, exclusively and necessarily incurred for the acquisition of the asset, together with the incidental costs to the taxable person of the acquisition or, if the asset was not acquired by him, any expenditure wholly, exclusively and necessarily incurred by the taxable person in providing the asset; b) expenditures that are wholly, exclusively and necessarily incurred on the chargeable asset by the taxable person or on the taxable person's behalf for the purposes of enhancing the value of the asset being expenditure reflected in the state or nature of the asset at the time of the disposal; c) expenditures that are wholly, exclusively and necessarily incurred on the asset by the taxable person or on the taxable person's behalf in establishing, preserving or defending his title to, or a right over, the asset; and d) the incidental costs to the taxable person for making the disposal.
CGT Exemption **Sections 26, 27, 28, 29, 30, 32, 33, 34, 36, 37, 38, 40 CGT Act**	Income exempted from CGT includes: a) gains accruing to an ecclesiastical, charitable or educational institution of a public character; any statutory or registered friendly society; registered co-operative society or trade union provided is not derived from any disposal of any assets acquired in connection with any trade or business carried on by them and the gain is applied purely for the purpose of the institution or society, as the case may be; b) gains accruing to any person on the disposal of a dwelling house or part of a dwelling house that is his only or main residence or land which he has for his own occupation and enjoyment with that residence up to an area of one (1) acre or such larger area as the FIRS may in any particular case determine; c) gains accruing to any local government council; any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria subject to exception d) gains accruing to any person on the disposal of a decoration, awarded for valour or gallant conduct which he acquires otherwise than for consideration in money or money's worth. e) gains accruing to any person on the disposal of government securities, stocks and shares; f) gains accruing to any person on the disposal of an approved investment held by the person as part of any superannuation fund; g) gains accruing to any person on the disposal of an investment held by the person as part of any national provident fund or other retirement benefits schemes established under the provisions of any Act or enactment for employees throughout Nigeria; h) sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person in his profession or vocation including wrong or injury for libel, slander or enticement; etc.
Penalties for Late Filing **The Schedule to CGT Act** **Section 92 CITA**	The specific provision of section 55(3) of CITA that provides for the penalty of late filing of CIT and CGT has been deleted by section 5 of the Finance Act, 2020. As such, the general provision of section 92 of CITA on offences and penalties incorporated into the CGT Act by the provision of the Schedule to CGT Act will apply here. Accordingly, late filing of returns will attract a fine of N20,000.00 upon conviction of the corporate entity For individuals, the CGT Act does not incorporate relevant provisions of the PITA that impose penalties for late filing of tax returns.
Due Date for Tax Payment **Section 2(4) of CGT Act**	The CGT must be computed and paid not later than 30th June and 31st December of the year of the disposal of the chargeable asset

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

2. INDIRECT TAXES

2.1 VALUE ADDED TAX

Background **Section 2, 3 and 46 VAT Act**	VAT is a consumption tax that is imposed under the VAT Act (as amended) and it is levied on the "supply of all goods and services" that are backed by consideration other than those goods and services that are specifically exempted under the VAT Act. In this regard, a taxable supply is deemed to take place in Nigeria if: a) in respect of goods: i. the goods are physically present in Nigeria at the time of supply, imported into Nigeria for use by a person, assembled in Nigeria, or installed in Nigeria; or ii. the beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right is situated, registered or exercisable in Nigeria. b) in respect of services: i. the services are rendered in Nigeria by a person physically present in Nigeria at the time of service-provision; or ii. the services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria. iii. the service is provided to and consumed by a person in Nigeria, regardless of whether the service is rendered within or outside Nigeria or whether or not the legal or contractual obligation to render such service rests on person within or outside Nigeria, or iv. the service is connected with existing immovable property (including the services of agents, experts, engineers, architects, valuers, etc.), where the property is located in Nigeria; c)in respect of an incorporeal: i.the exploitation of the right is made by a person in Nigeria, ii.the right is registered in Nigeria, assigned to or acquired by, a person in Nigeria, regardless of whether the payment for its exploitation is made within or outside Nigeria, or iii.the incorporeal is connected with a tangible or immovable asset located in Nigeria.
Taxable Persons	Consumers of non-exempted goods and services.
Persons Exempted from VAT **Section 15 VAT Act**	A person who in the course of a business, has not made taxable supplies or does not expect to make taxable supplies valued at N25,000,000 or more either singularly or cumulatively in any calendar year, is exempted from the following VAT obligations: a) Requirement to register for VAT with the FIRS; b) Requirement to issue a tax invoice to its contracting counterpart and the attendant penalty for failure to issue a tax invoice; c) Requirement to collect VAT (where applicable); and d) Filing of monthly VAT returns. In determining whether a person meets the exemption threshold, the value of the following taxable supplies shall be excluded: a) a taxable supply of a capital asset of the person; and b) a taxable supply made solely as a consequence of the person selling the whole or a part of its business or permanently ceasing to carry on business.
Tax Rate **Section 4 VAT Act**	7.5%

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

VAT Exempted Goods and Services

Part I and II of the First Schedule to the VAT Act

Value Added Tax Act (Modification Order), 2011 (the "2011 VAT Order")

Value Added Tax Act (Modification Order), 2020 (the "VAT Order")

Goods exempt

i. All medical and pharmaceutical products as specifically defined in the VAT Order;

ii. Basic food items as specifically defined in the Finance Act and the VAT Order;

iii. Books and educational materials as specifically defined in the VAT Order;

iv. Baby products;

v. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment;

vi. All exports;

vii. Plant, machinery and goods imported for use in the export processing zone or free trade zone: Provided that 100 percent production of such company is for export otherwise tax shall accrue proportionately on the profits of the company;

viii. Plant, machinery and equipment purchased for utilisation of gas in down-stream petroleum operations;

ix. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes; and

x. Commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts.

Services exempt

i. Medical services;

ii. Services rendered by Microfinance Banks, People's Bank and mortgage Institutions;

iii. Plays and performances conducted by educational institutions as part of learning;

iv. All exported services;

v. Airline transportation tickets issued and sold by commercial airlines registered in Nigeria;

vi. Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes;

vii. The 2011 VAT Order grants VAT exemptions on the following capital market transactions until 8th December, 2021 save for bonds issued by the Federal Government, which shall continue to enjoy tax exemption as provided under the VAT Act;

viii. Proceeds from the disposal of short-term Federal Government of Nigeria securities and bonds; and

ix. Proceeds from the disposal of short-term State, Local Government and corporate bonds including supra-national bonds.

The following further exemptions are granted by the VAT Order amongst others:

i. Plant, machinery and equipment purchased for utilisation of gas in downstream petroleum;

ii. Petroleum products as specifically defined in the VAT Order;

iii. Fertilizer, locally produced agricultural and veterinary medicine, farming and machinery;

iv. Renewable energy equipment such as wind powered and solar powered generator; Solar cells whether or not in modules or made up into panels; other photosensitive semiconductor devices etc.;

v. Lease and Rental of residential accommodation; and

vi. Shared passenger Road-Transport Service amongst others.

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Zero Rated Goods and Services

Part III of the First Schedule to the VAT Act

These are goods and services that are liable to VAT at the rate of 0%. The implication of this is that where such zero-rated goods are sold or services provided, the input VAT incurred in producing that zero-rated good is passed on to any purchases that relate to those sales. The zero-rated items in the VAT Act are:

a) Non-oil exports;

b) Goods and services purchased by diplomats; and

c) Goods purchased for use in humanitarian donor funded projects. "Humanitarian donor funded projects" includes projects undertaken by Non-Governmental Organisations and religious and social clubs or societies recognised by law whose activity is not for profit and in the public interest.

Allowable Deductions/Adjustments

Sections 16 and 17 VAT Act

Tax payers in filing VAT returns are allowed:

i. to recover their input VAT (i.e. VAT paid on their purchases) from their output VAT (i.e. VAT collected on goods sold); and

ii. then remit only the difference between the output VAT and input VAT to FIRS where the output VAT exceeds the input VAT.

On the other hand, where after the above adjustment, the input VAT is greater than the output VAT, the tax payer will be entitled to utilise the excess input VAT as a credit against subsequent months VAT remittance. This is on the condition that the taxable person would be entitled to a refund, from FIRS, of excess tax not utilised as a credit, upon provision of such documents as the FIRS may require.

However, the input VAT recoverable as a deduction from output VAT is limited to

I. the VAT on goods purchased or imported directly for resale; and

ii. goods which form the stock-in-trade used for the direct production of any new product on which the output VAT is charged.

Input VAT will not be allowed as a deduction from output tax in the following instances:

i. on any overhead, service, and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); and

ii. on any capital item and asset which is to be capitalized along with cost of the capital item and asset.

Penalties for Non Registration

Section 8(2) VAT Act

A taxable person who fails or refuses to register with the FIRS within the specified time is liable to pay penalty as follows:

(a) N50,000 for the first month in which the failure occurs; and

(b) N25,000 for each subsequent month in which the failure continues.

Deregistration Requirement

Section 8(3) VAT Act

A taxable person that permanently ceases to carry on a trade or business in Nigeria shall notify the FIRS of its intention to deregister for tax purposes within ninety (90) days of such cessation of the trade or business.

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

Registration Requirement

Sections 8(1) and 46 VAT Act

A taxable person must upon commencement of business, register with the FIRS for the purpose of VAT. Business is deemed to commence in Nigeria on the date that an entity carries out its first transaction which shall be the earliest of the date it:

a)begins to market or first advertises its products or services for sale;
b)obtains an operating licence from a regulatory authority in Nigeria;
c)first sale or purchase;
d)executes its first trading contract after incorporation;
e)issues or receives its first invoice;
f)delivers or receives its first consignment of goods; or
g)first renders services to its customers.

Penalties for Failure to give Notice of Cessation of Business

Section 28 VAT Act

A taxable person that fails to give the FIRS notice of permanent cessation of business within the specified time is liable to pay as follows:

(a) N50,000 for the first month in which the failure occurs; and
(b) N25,000 for each subsequent month in which the failure continues.

Filing of VAT Returns and Payment

VAT returns are due on 21st day of the month following the month of transaction.

Payments are also due on filing VAT returns.

Penalties for Late Filing and Payment

Sections 18, 19 and 35 VAT Act

Where a taxable person fails to render VAT returns or renders incomplete or inaccurate returns, the FIRS shall assess the taxable person to VAT based on its best of judgement. In addition, the taxable person that fails to submit returns to the FIRS is liable on conviction to the following fines:

(a) N50,000 for the first month of default; and

(b) N25,000 for each subsequent month in which the default continues.

Failure to remit VAT attracts, a sum equal to 10% of the tax not remitted and interest at the prevailing CBN minimum re-discount rate (now MPR) shall be added to the tax not remitted. Also, the FIRS will notify the taxable person the tax due together with the penalty and interest and if payment is not made within thirty (30) days.

2.2 STAMP DUTIES ACT

Background

Section 3 Stamp Duties Act

Stamp duty is a tax that is imposed pursuant to the Stamp Duties Act on instruments/documents relating to an act to be performed in Nigeria. The instruments that attract stamp duties are specified in the Schedule to the Stamp Duties Act while the exempted instruments are also specified in the Stamp Duties Act in the same Schedule.

Persons Liable to Pay Stamp Duty

Section 23(3)(c) Stamp Duties Act

Whether a person is liable to pay stamp duties on transactions is dependent on the nature of transaction. The transactions for which stamp duties are to be paid are as follows:

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

S/N	NATURE OF TRANSACTION	PERSONS LIABLE
1	Bond, covenant, or instrument of any kind whatsoever	The obligee, covenantee or other person taking the security
2	Conveyance on sale	The vendee or transferee
3	Conveyances or transfers operating as voluntary dispositions *inter vivos*	The grantor or transferor
4	Lease	The lessee
5	Mortgage bond, debenture, covenant, and warrant of attorney to confess and enter judgment	The mortgagee or obligee, in the case of a transfer or reconveyance, the transferee, assignee or disponee or the person redeeming the security
6	Settlement	The settler

Persons Not Liable to Pay Stamp Duty

Several laws, regulations and orders grant stamp duty exemption to certain persons on the transactions. Some of such persons include:

S/N	EXEMPTED PERSONS	RELEVANT LAW
1	African Export Import Bank	Diplomatic Immunities and Privileges (Afreximbank) Order 2015
2	World Health Organisation	Diplomatic Privileges (World Health Organisation) Order
3	Nigeria Sovereign Investment Authority	Nigeria Sovereign Investment Authority (Establishment etc.) Act, 2011
4	International Labour Organisation	Diplomatic Privileges (International Labour Organisation) Order
5	Universal Postal Union	Diplomatic Privileges (Universal Postal Union) Order,1956

Tax Rate

Section 3 and the Schedule to the Stamp Duties Act

The rates of stamp duties are specified in the Schedule to the Stamp Duties Act. The stamp duty rates can be any of the following:

a) Nominal rate of N500; or

b) ad valorem rate (i.e. a percentage of the transaction/instrument value) as specifically specified in the Schedule to the Stamp Duties Act.

Tax Exemption

Schedule to Stamp Duties Act

General Exemptions

a) All documents relating to the transfer of stocks and shares.

b) Transfer of shares in the Government or legislative stocks or funds of Nigeria.

c) Instruments for the sale, transfer or other disposition, either absolutely, or by way of mortgage, of otherwise, of any ship or vessel or any part, interest, share or property of or in any ship or vessel.

d) All instruments on which the duty would be payable by Government.

e) All instruments on which the duty would be payable locally by Government in Nigeria or any of the departments thereof.

f) Agreements made with the Nigerian Railway Corporation relating to the receipt and carriage of passengers, goods or animals.

g) Indemnity bonds given to the Nigerian Railway Corporation by consignees (when the railway receipt is not produced) in respect of the delivery of consignments of fresh fish, fruit and vegetables, and other perishable articles.

h) An instrument of apprenticeship to which the Government is a party.

SUMMARY OF THE MAJOR TAX LAWS IN NIGERIA

I) Bond given by a public officer for the execution of his duties.

j) All instruments in which the duty would be payable by any consular officer arising out of his official functions where the foreign government he represents grants the like exemption to Nigerian consular officers.

k) Instruments relating to the alienation of land or any interest therein which are approved by local authorities of the Southern States of Nigeria in accordance with rules made by them under the Local Government Laws.

l) All instruments relating to the alienation of land or any interests therein which are approved by any local government council under any by-law made under either the Eastern States Local Government Laws or the Western States Local Government Laws, 1953.

m) All instruments regarding which the Government of the Federation is competent to make laws executed by or on behalf of any co-operative society registered under any Act or law or by any officer or member of such a society relating to the business of such society.

Due date to Stamp an Instrument

Sections 23(1) and 23(3)(a) Stamp Duties Act

Instruments attracting ad valorem duty must be stamped within thirty (30) days after they are first executed, or after they have been first received in Nigeria if they were first executed at any place outside Nigeria.

Other types of instruments are to be stamped within forty (40) days after they are first executed, or after they have been first received in Nigeria if they were first executed at any place outside Nigeria.

Penalties for Failure to Stamp an Instrument

Sections 22(4) and 23 Stamp Duties Act

a) **Admissibility in Evidence:** Failure to stamp a dutiable instrument renders the said document inadmissible in evidence in civil proceedings until such a time as the instrument is duly stamped in accordance with the Stamp Duties Act.

b) **Payment of Penalty:** Failure to stamp an instrument (not being an instrument liable to ad valorem duty) within the prescribed timeline attracts the following penalty:

i. Penalty of Twenty Naira (N20);

ii. interest of 10% per annum on the duty payable from the execution date to the time when the amount of interest is equal to the unpaid duty;

In the case of stamped ad valorem documents, failure to stamp same within time constitutes an offence and attracts the following penalty in addition to (i) and (ii) above:

i. fine of Twenty Naira (N20) upon conviction; and

ii. further penalty equivalent to the unpaid duty unless a reasonable excuse for the delay in stamping or the omission to stamp, or insufficiency of stamp, is afforded to the satisfaction of the Commissioner or of the court, before whom it is produced.

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