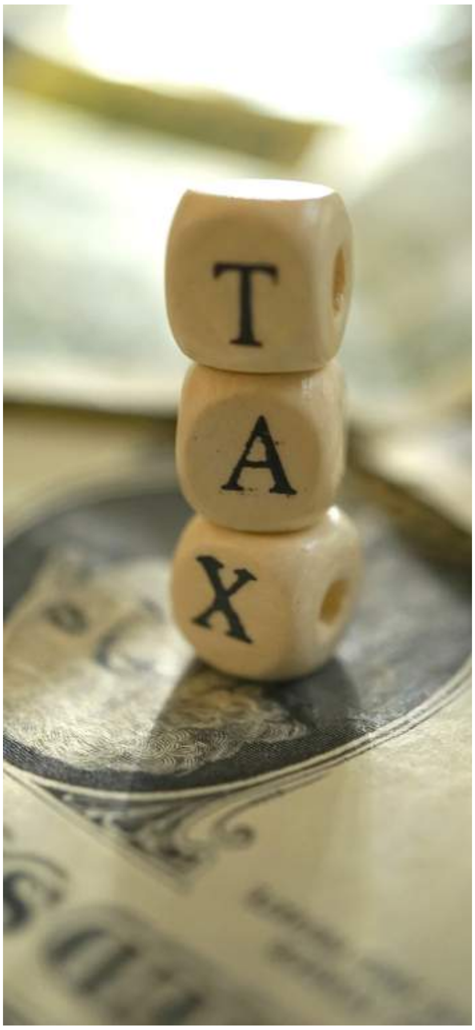
DETAIL Newsletter Series

COMPANIES INCOME TAX (EXEMPTION OF BONDS AND SHORT-TERM GOVERNMENT SECURITIES ORDER) 2011 COMES TO AN END AFTER TEN YEARS – THE IMPLICATIONS

In a bid to encourage increased investment in Nigeria and drive upward activity in the domestic bonds market, in 2011, the Federal Government of Nigeria ("**FGN**"), issued the Companies Income Tax (Exemption Order Bonds and Short-Term Government Securities Order) 2011 (the "**CITEO**"). The CITEO was gazetted in 2012 with a commencement date of 2nd January 2012 and expressly exempts the following from taxes imposed under the Companies Income Tax Act: [1]

a) short term FG securities [such as treasury bills ("**T-bills**") and promissory notes];
b) bonds issued by FG, State and Local Governments, their agencies, corporate bodies; and
c) interest earned from such short-term securities and bonds.



The tax exemption granted by the CITEO was for a fixed duration of 10 years with an exception for bonds issued by the FGN, which continues to enjoy the exemption with no expiry period.[2] It is, however, important to note that with respect to bonds issued by state and local governments, corporate bodies and interests earned from short term securities and bonds, the exemption period granted by the CITEO elapsed by effluxion of time on 1st January 2022 and consequently ceases to apply.

As a result, going forward, incomes accruing to companies/bond holders on bonds issued by corporate and supra-national bodies, state governments, local governments and their agencies shall be liable to Companies Income Tax ("**CIT**") in the form of withholding tax ("**WHT**"). In the case of a non-resident company, the WHT payable will be the final tax due.[3]

It is noteworthy that the Order has two dates: the Commencement date of 2nd January 2012, and the issuance date of 9th December 2011.

1. Section 1 Companies Income Tax (Exemption Order Bonds and Short-Term Government Securities Order) 2011
2. Section 1(2) Companies Income Tax (Exemption Order Bonds and Short-Term Government Securities Order) 2011
3. Section 78 of the Companies Income Tax Act

As a result, the expiration date may be unclear as between 8th December 2021 and 1st January 2022. This ambiguity may create uncertainty and disputes which may have to be resolved by the Tax Appeal Tribunal and the courts in the event the tax authority and taxpayers differ in their opinions on the exact date the tax exemption ends.

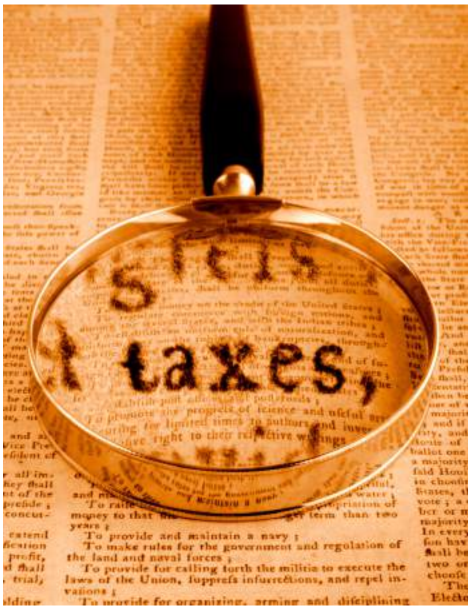
Other Tax Considerations on Securities

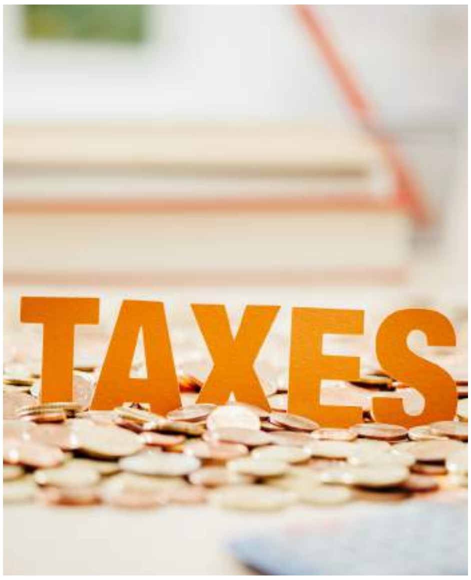
1. Personal Income Tax: Personal Income Tax ("**PIT**") payable pursuant to the Personal Income Tax (Amendment) Act 2011 ("**PITA**") does not apply to any bond issued by Federal, State, Local Governments and their agencies or bonds issued by corporate bodies including supra-nationals. In the same vein, the interests earned by the bond holders are exempted from Personal Income Tax. As such, withholding tax will not apply to this exempted income.[4] This provision under PITA does not have an expiry period hence individuals will continue to enjoy PIT exemption on incomes from government, corporate and supra-national securities.

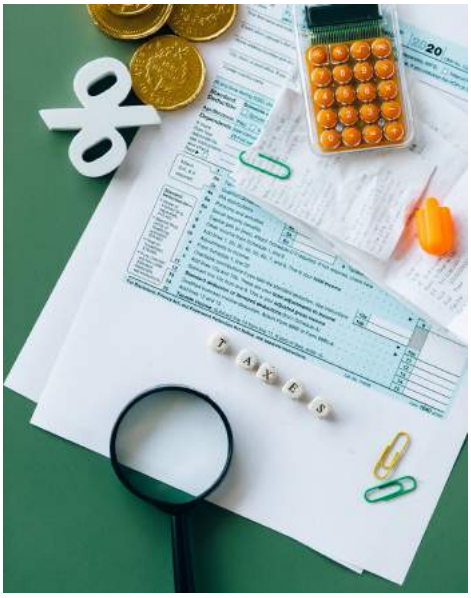
2. Capital Gains Tax: Under the Capital Gains Tax Act (as amended by the Finance Act 2021), gains accruing to a person from disposal of Nigerian government securities (which includes Nigerian treasury bonds, savings certificates, premium bonds issued under the Savings Bonds and Certificates Act) or any other long term-security issued by the Nigerian government, are exempted from capital gains tax.[5] In line with the principle of statutory interpretation "t*he express mention of one thing excludes others not mentioned*,"[6] capital gains tax is generally applicable on corporate securities, save for shares which capital gains treatment is discussed below.

Under the Finance Act 2021, capital gains tax at the rate of 10% will not be applicable on disposal of shares in a Nigerian company where the following conditions are satisfied:

i) the proceeds of such disposal must be reinvested within the same year of assessment in the acquisition of shares in the same or other Nigerian companies;
ii) disposal proceeds must be N100 million or less in any 12 consecutive months; or
iii) such shares are transferred between an approved borrower and lender in a regulated Securities Lending Transaction.[7]







4. Item 31A, Third Schedule Personal Income Tax Act
5. Section 30 of the Capital Gains Tax Act
6. Ojukwu v. Yar'dua, [2008] 4 NWLR (Pt. 1078), 435 at 461.
7. Section 30 of the Capital Gains Tax Act (as amended by the Finance Act 2021)

3. Value Added Tax Act: Value Added Tax will not apply on disposal of securities as it is expressly excluded from the definition of goods under the Value Added Tax Act (As Amended).[8]

4. Penalties: The Federal Inland Revenue Service Act ("**FIRS Act**") provides that any person who being obliged to deduct any tax under the FIRS Act or other tax laws, but fails to deduct, or having deducted, fails to pay to the FIRS within thirty (30) days from the date the amount was deducted or the time the duty to deduct arose, commits an offence and shall, upon conviction, be liable to pay: (a) the amount that it ought to have remitted; (b) penalty at 10% per annum for non-deduction and remittance; and (c) interest at prevailing CBN minimum rediscount rate. Such defaulting taxpayer may also face imprisonment for a period up to 3 (three) years.[9]

Conclusion

Over the ten-year period, the Nigerian Capital Market has experienced significant boost and has garnered a significant pool of corporate investors. It is, therefore, important for players in the domestic bond market to consider the business implications of investing in these securities and seek legal tax advice in that regard. This is important because a taxpayer who fails to comply with the mandatory deduction and remittance provisions in respect to securities could be exposed to penalties which may have significant financial implications for businesses.

8. Section 46 of the Value Added Tax Act (as amended by the Finance Act 2020)
9. Section 40 of the Federal Inland Revenue Service Establishment Act

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