

# NOTABLE CHANGES INTRODUCED BY THE FINANCE ACT 2021



The Finance Act 2021 which was signed by President Muhammadu Buhari on the 31st of December 2021 (the “Finance Act 2021”) introduces key reforms to amend relevant tax, excise and duty statutes in accordance with macroeconomics policy reforms of the Federal Government of Nigeria, in a bid to support the implementation of the 2022 Federal Budget of Economic Growth and Sustainability.

We have highlighted the key changes to the existing tax laws introduced by the Finance Act 2021.

## Highlights of the Key Changes

### 1. Expansion of the Scope of “Dividends”

The Finance Act 2021 provides that Dividends will now include compensating payments received by a lender from its approved agent or borrower in a Regulated Securities Lending Transaction.



### 2. Capital Gains Tax (CGT) and Disposal of Shares

Capital gains from the disposal of shares in a Nigerian company where the proceeds from the disposal of the shares is in aggregate over the sum of N100,000,000 over a 12-month period, will be liable to CGT if the proceeds from the disposal are not reinvested within the same period of assessment. This provision does not apply to shares that are transferred between an approved Borrower and Lender in a regulated Securities Lending Transaction.



### 3. Significant Economic Presence and Digital Companies

Companies providing digital goods and services to Nigerian customers and liable to tax under the Significant Economic Principle (SEP) Rule may now be assessed on a fair and reasonable percentage of their profit, where there is no assessable profit, or the assessable profit is less than what it is to be expected from that type of trade or business or the assessable profit cannot be ascertained.

#### 4. Taxation of Insurance Companies

Section 16 of Companies Income Tax Act (as amended) (CITA) is to be repealed and replaced with a new section 16 which provides that the profits on which tax may be imposed for an insurance business shall be in line with Section 13 of CITA. This essentially harnesses the amendments made in the Finance Acts of 2019 and 2020 such that the principles of taxation that now apply to resident and non-resident companies that derive profits from Nigeria under Section 13 of CITA will now apply to insurance businesses alike.

#### 5. Dividends Distributed by Unit Trusts

Dividends distributed by Unit Trusts are now exempted from tax – withholding tax. The tax when received shall be the final tax due from the Unit Trust.

#### 6. New Minimum Tax Rate

The Finance Act 2021 provides that the minimum tax to be levied and paid shall be 0.5% of gross turnover of the company less franked investment income. Provided, that the applicable minimum tax is reduced to 0.25% for tax returns prepared and filed for any two accounting periods ending on any date between 1 January 2019 and 31 December 2021, both days inclusive.

#### 7. New Definition for Real Estate Investment Company

Section 105 of the CITA is amended by substituting for the definition of Real Estate Investment Company, a new definition as follows "Real Estate Investment Company" means for the purpose of this Act, a Company (including a Real Estate Unit Trust) duly approved by the Securities and Exchange Commission as a Real Estate Investment Scheme in Nigeria."



#### 8. Capital Allowance on Qualifying Capital Expenditure

The deduction to be allowed as capital allowance in accordance with the Second Schedule of the CITA shall be the amount relating to the qualifying capital expenditure incurred in generating the assessable profits.

Also, capital allowances accruing in respect of qualifying capital expenditure employed for both taxable and tax-exempt income shall be pro-rated where the tax-exempt income constitutes more than 20% of the total income of the company. Capital allowance on qualifying capital expenditure incurred by small companies is deemed utilised during the periods such companies are also tax exempt.

#### 9. Federal Inland Revenue Service (FIRS) and Deployment of Technology

The FIRS may deploy proprietary or third-party technology to automate the tax administration process including tax assessment and information gathering provided it gives 30 days' notice to the taxpayer. Any person who fails to grant access to the Service after 30 days of receipt of the notice or the extension granted, is liable to an administrative penalty of N50,000 and N25,000 for each day that it fails to grant access.

#### 10. Jurisdiction of FIRS to Collect Taxes

The FIRS shall be the primary agency of the Federal Government of Nigeria responsible for the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federation and the Federal Government or any of its agencies, except as may be authorised by the Minister responsible for Finance by regulation.

#### 11. Reporting Non- Compliance to FIRS

Any person or agency of the Federal Government that becomes aware of any incidence requiring tax investigation, enforcement or compliance, in the course of the performance of its functions, is to refer same to the FIRS. Failure to do so may lead to imprisonment for a term not exceeding 5 years or to a fine of N10,000,000 or to both such imprisonment and fine.



#### 12. Premium on Life Annuity Deducted from Personal Income Tax (PIT) Computation

The Finance Act 2021 amends the Personal Income Tax Act (PITA) such that the annual amount of any premium paid by an individual during the year preceding the year of assessment to an insurance company in respect of insurance on his life or the life of his spouse is to be deducted from PIT computation.

#### 13. Electronic Money Transfer Levies

The Minister of Finance is to make regulations for the imposition, administration, collection and remittance of Electronic Money Transfer Levies, including regulations relating to the auditing, accounting, allocation and distribution of arrears of the relevant stamp duties and Electronic Money Transfer Levies collected between 2015 and 2019 fiscal years.

#### 14. Tertiary Education Tax (TET)

The education tax payable by Nigerian companies has been increased from 2% to 2.5% of assessable profits. The time to pay TET has been amended from 60 days to 30 days.

#### 15. Petroleum Upstream Companies

Companies engaged in upstream petroleum operations regardless of turnover will not enjoy the exemption from VAT registration and compliance obligation applicable to small companies with annual turnover less than N25,000,000.



## 16. Value Added Tax (VAT) Provisions

a). 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.

b). The VAT withholding obligation on Nigerian recipients is to be limited to where the non-resident or its appointed agent fails to collect the VAT.

## Conclusion

As was the case with the Finance Act of 2020, it is expected that it will support the implementation of the 2022 Federal Budget of Economic Growth and Sustainability. It is also important to note the introduction of new tax liabilities under the Finance Act 2021.

Therefore, taxpayers are advised to seek professional guidance in order to understand how the Finance Act 2021 will affect their businesses operations going forward. It is also important to understand the compliance obligations to be discharged and incentives to be enjoyed under the Finance Act 2021.

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