

## THE NIGERIA FINANCE ACT 2019: SIGNIFICANT CHANGES AND IMPLICATIONS.



### 1. INTRODUCTION

The Finance Bill 2019, was signed into law on the 13th of January 2020 by President, Muhammadu Buhari. The **Finance Act, 2019**(the Act) introduces modifications to the Nigerian tax regime by amending the Corporate Income Tax (CIT) Act, Personal Income Tax (PIT) Act, Petroleum Profit Tax (PPT) Act, Capital Gains Tax (CGT) Act, Value Added Tax (VAT) Act, Customs Duties and Stamp Duties Act, to include tax concessions, limitations and variances intended to create a more efficient tax regime in Nigeria

This report provides an analysis of the key amendments contained in the Act and the expected impact of these changes on various sectors of the economy.

### 2. KEY SECTIONS OF THE ACT AND CHANGES TO THE NIGERIAN TAX LANDSCAPE

#### 2.1 COMPANIES INCOME TAX ACT (CITA)

The CITA has undergone perhaps the most extensive of changes by the implementation of the new Act, this includes changes to the taxation rules of dividends from Nigerian Companies, the modification of the excess tax rules, revision of taxes on foreign companies in Nigeria and concessions for the tax burden experienced by small and medium size companies in Nigeria.



**a. Relief from double taxation and investment incentives.**

The amendment in Section 9 of the CITA, seeks to encourage local investments and support businesses by the elimination of instances of double taxation, the section excludes profits already taxable under other tax regimes including the CGT Act, PPT Act and PIT Act from the tax net.

To promote investment in securities and stimulate Nigerian capital market activity, subsection (b) further provides that where securities or shares are traded in a regulated securities lending transaction, they will be exempt from tax.

Also, Section 7 of the Act amends Section 19 of the CITA to the effect that profits of companies that are already subject to tax under other tax laws will no longer be taxable under the CITA. Thus, the list of income exempt from additional CIT has been expanded to apply to; dividends paid out of retained earnings, already subject to tax under another tax regime; dividends paid out of a Company profits that are exempted from Income Tax; profits of a company that are regarded as investment income; and distributions made by a real estate investment company to its shareholders.

Specifically, as it relates to the real estate sector, dividend and rental income received by REICs are

to be exempted from CIT provided it satisfies certain conditions. This will remove income distributions from dividends and rent, to Real Estates Investment companies from the tax net and potentially encourage real estate investments in Nigeria. However, dividend distribution by the REIC to its own shareholders shall be subject to tax at source, but no further tax shall be levied on Excess Dividend.

These amendments could encourage investors (domestic and foreign) to reinvest profits into their businesses without fear of double taxation upon eventual repatriation of such previously taxed or exempt income, and particularly be a boost for the real estate sector.

However, the tax exemption on interest on foreign loans has been updated to close possible tax exemption loopholes and increase revenue prospects.

**b. Taxation of non-resident Companies**

The Finance Act recognizes the global trend of virtual businesses. Prior to the Act, foreign companies could carry out digital services and related transactions in Nigeria without paying any taxes, in so far as they had no 'physical presence' in Nigeria, but the Act has expanded tax revenue sources by including 'economic presence' in Nigeria in the current company income tax rules.

The Act broadens the triggers for domestic taxation of income earned by non-resident Companies in Nigeria by the insertion of a new subsections (c) and (f) to **Section 13** of the CITA. Taxable Income derived by foreign companies now includes income from digital services to the extent that such foreign companies have a '*significant economic presence*' in Nigeria and profit can be attributed to such activities. In addition, profits arising from consultancy or professional services, rendered by a person outside Nigeria to a resident in Nigeria have also been identified as taxable.

However, the Act does not define what constitutes 'significant economic presence' but gives the Minister of Finance the prerogative to determine this by an Executive Order. This creates some form of uncertainty around this provision and it will be noteworthy to see how broadly the Minister will define it and what the attitudes of FIRS and other regulatory authorities will be towards it.

#### **c. Small and Medium Enterprises (SMEs) tax relief**

The following amendments to the CITA are intended to provide tax relief to small and medium sized companies (SMEs).

- The amendment of **Section 33(2)** of the CITA, set the percentage of minimum tax at a universal rate of 0.5% of a company's turnover, and companies with a turnover of less than N25,000,000 in a year of assessment will be exempted from the minimum tax.
- Companies with no more than 25% imported equity capital have been removed from the exemption list; and will now pay minimum tax.
- Small businesses with a turnover less than Twenty-Five Million (N25,000,000) are to be exempted from Companies Income Tax, but will still need to comply with tax registration and filing requirements.
- The inclusion of a bonus of 2% on the amount of tax paid for medium-sized entities as an incentive for early payment of CIT up to 90 days before the due date.

#### **d. Bank and Tax Database Harmonization**

The financial services sector currently plays a significant role of identification and compliance in the tax revenue generation agenda of the FGN. The FIRS continuously seeks to ensure participation in the sector by partnering with financial services providers to identify potential taxpayers. Banks are mandated to request the Tax Identification Number of companies opening a new account and those with already existing accounts. This is aimed at harmonizing both bank and tax databases to enhance tax administration and compliance.

#### **e. Effects on Commencement and Cessation Rules.**

The commencement and cessation rules for computing the income tax payable by new and liquidating businesses respectively, have been modified to incorporate actual year basis of taxation. Commencement of a business will now be calculated from the 'first accounting year' for taxation purposes to remove the overlap created in commencement and cessation rules. As is the case with many of the proposed changes in the CITA provisions, this change should reduce the risk of double taxation

#### **f. Taxation of the Oil, Gas and Energy Sector.**

Nigeria has experienced a shift from dependency on the oil and gas sector and as a result, tax incentives in this sector have been minimized. In line with the amendment of **Section 39** of the CITA, the Pioneer status benefit of post pioneer accelerated capital allowances would no longer apply. Companies that enjoy Gas Utilization (downstream Operations) incentives such as the accelerated capital allowances after the pioneer tax free period, have been limited to the Tax Written down Value (TWDV) of the assets utilized during the pioneer period.

The Act repeals **Section 60** of the Petroleum Profits Tax Act and effectively introduces Withholding Tax of 10% on dividends paid out of the profits of companies engaged in petroleum operations in Nigeria. By this measure, the Act seeks to remove the tax exemption granted under

the PPTA in respect of such income or dividends. This potentially, could reduce companies' interest in the pioneer status incentive, depending on the comparative impact on their business.

## **PETROLEUM PROFITS TAX(PPT) ACT**

A key amendment by the Act to the PPTA is the removal of the tax exemption granted under the PPTA in respect of income and/or dividends. The Act repeals **Section 60** of the PPTA and introduces Withholding Tax (“WHT”) of 10% on dividends paid out of the profits of companies engaged in petroleum operations in Nigeria.

## **CAPITAL GAINS TAX (CGT) ACT**

By the amendment of **Section 32** of the CGTA, a tax exemption is introduced for related party companies undergoing reorganizations or change of control, provided there are no disposals of assets from such reorganization within a 365-day period, this on the one hand prevents double taxation while also avoiding the possibility of tax evasion by related party organizations.

Section 36 has been amended to the effect that capital gains tax is only chargeable on payments of loss of employment compensations where the amount is exceeding Ten Million Naira (N10,000,000). This serves as a benefit to lower income earners, in the event of their employment termination.

## **STAMP DUTIES ACT**

The Act has repealed and replaced the existing **Section 84** of the Stamp Duties Act, expanding the definition of a 'receipt' to include every written document including electronic documents or electronic inscriptions by which any money is acknowledged to have been discharged or signifies any such acknowledgment. This amendment emphatically extends the scope of the Stamp Duties Act to include transactions that are concluded or executed electronically and to some extent, should generate further revenue for the Government.

It partially addresses the controversies around the monetary policy circular of January 2016 issued by the Central Bank of Nigeria (CBN). The Policy directed all Deposit Banks and other financial institutions to charge N50 per eligible transaction for receipts given by the bank or other financial institution in acknowledgment of electronic transfer and teller deposits from N1,000 and above. The Act addresses this by increasing the amount threshold on which the stamp duty would apply (from N1,000 per the CBN circular to N10,000.) and excluding transfers between banking accounts of the same owner, provided that the banking accounts are maintained in the same bank. Finally, in its schedule, the Act exempts share transfers and payments made in a Regulated Securities Lending transaction from the payment of stamp duty.



## 2.5 PERSONAL INCOME TAX ACT

The Act amends **Section 49** of the PIT Act to provide that all individuals are required to produce their Tax Identification Numbers (“TINs”) before they can operate new or existing bank accounts in Nigeria. The intention of this provision is to include a wider proportion of the population in the tax arena and to aid ease of tax remittance and compliance.

In addition, the Act amended **Section 33** of the PIT Act by removing personal income tax reliefs, currently being enjoyed by individuals in respect of their children and dependent adults; and **Section 58** of the PIT Act now recognizes electronic mails and courier services as valid means of transmitting objections against tax assessments, to the relevant tax authorities.

## 2.6 CUSTOMS AND EXCISE DUTIES ACT

The Act has included, goods imported to Nigeria in its taxable goods, and made them subject to excise duties at the rates specified under the duty column in the fifth schedule of the Customs and Excise Duties Act. This is a clear indication that the FGN seeks to promote local content and production and discourage importation.

## 2.7 VALUE ADDED TAX (VAT) ACT

The general consensus is that the Nigerian VAT rate is quite low in comparison to other jurisdictions within Africa and in line with global best practices, the Act aims to improve the efficiency of the Nigerian VAT system by simplifying the VAT landscape and expanding VAT coverage by addressing critical issues such as VAT registration thresholds and intangibles.

With the enactment of the Finance Act 2019, the VAT rate has increased from 5 to 7.5% and sections 2, 4, 10, 15, 46, and the First Schedule of the VAT Act have been amended to include the following:

- An expansion of the list of products that are exempt from VAT and amending the definition of the VAT Act to include 'goods' and services'
- A broad definition of the term, 'goods' Under the VAT Act to now include all forms of tangible properties that are movable at the point of

supply and any intangible product, asset or property over which a person has ownership or rights, or from which he derives benefits.

- A threshold for companies of at least N25,000,000 of turnover in a calendar as a requirement for VAT registration. This is consistent with the CIT exemptions for SMEs, in line with the FGN's objective to reduce the tax burden on SMEs to help stimulate their growth.
- Exemptions for certain locally manufactured goods such as nursery, primary, secondary, and tertiary education tuition levies; locally produced sanitary pads, towels and tampons in addition to the removal of VAT charges on the sale or transfer of business, assets and management of related parties.
- Introduction of the “reverse charge rule” requiring recipients of goods and services supplied in Nigeria to self-account for VAT on goods purchased for nonresidents.
- Services are deemed to have been provided in Nigeria, and therefore subject to VAT, where the recipient is in Nigeria, regardless of whether the services were rendered within or outside Nigeria. However, where the recipient of a service is outside Nigeria, such service shall be deemed “exported service” and hence not chargeable to VAT.
- Services rendered to the fixed base or permanent establishments of non-resident persons no longer qualify as exported service and are therefore subject to VAT. The definition of “exported service” in the Act states that the service provided must flow directly from the Nigerian resident to the person resident outside Nigeria. This means that exported service, as contemplated by the Act, will not include a transaction where the service in question flows from a Nigerian resident to another Nigerian resident on behalf of or for the benefit of nonresident persons in Nigeria.
- Profits arising from consultancy or professional Services, including technical and management services in relation to offshore services, rendered by a person outside Nigeria to a resident in Nigeria have also been identified as

taxable; to the extent that the company has significant economic presence in Nigeria and profit can be imputed to such activity. Such Services will be subject to VAT, regardless of whether the services were rendered within or outside Nigeria, and where the recipient of a service is outside Nigeria, such service shall be deemed 'exported service' and not chargeable to VAT.

### 3. **CONCLUSION**

The Finance Act seeks to improve the tax landscape of Nigeria with provisions that expand the reach of the tax net to non-resident companies and aim to generate revenue to facilitate Nigeria's 2020 budget. The changes, for the most part, demonstrate the FGN's intention to promote economic growth, on the one hand by creating incentives for small/medium scale enterprises and direct foreign investment in Nigeria.

Nonetheless the implementation of the Act may undesirably impact the consumer goods sector as

the Act relies heavily on the trend of seeking to increase revenues from indirect taxation on goods and services. In addition to a possibility of the over burdening of low-income persons and companies

Consequently, the Act would have a broad range of effects on the Nigerian tax landscape, and we accordingly anticipate the FIRS and related regulatory agencies' implementation of the Act and any issues that may arise therefrom.

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