

Nigeria: Highlights of *Finance Act* 2020

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Executive summary

Nigeria's President Muhammadu Buhari, on 31 December 2020, signed the Finance Bill 2020 (the *Finance Act* or the Act) into law with an effective date of 1 January 2021.

The *Finance Act* introduced over 80 amendments to the existing tax and regulatory legislations in Nigeria, including the *Capital Gains Tax Act*, *Companies Income Tax Act*, *Personal Income Tax Act*, *Value Added Tax Act*, *Nigeria Export Processing Zone Act*, *Oil and Gas Export Free Zone Act*, *Federal Inland Revenue Service (Establishment) Act*, and *Customs and Excise Duties Act*, among others.

The aforementioned amendments were primarily aimed at addressing ambiguities and providing clarity to certain provisions in the laws, and also providing certain incentives to companies to mitigate the impact of COVID-19.

Additionally, the Act established "the Crisis Intervention Fund and the Unclaimed Funds Trust Fund." The Funds were setup in response to the COVID-19 pandemic and its impact on the government budget during the 2020 fiscal year, as well as to address all crisis-related expenditure/exigencies, going forward.

This Alert summarizes the revisions to the tax laws and regulatory legislations, as well as the Act's applicability to the various sectors.

Detailed discussion

Companies Income Tax Act (CITA) amendments

- ▶ Section 11 (2) of the CITA was amended by replacing “agricultural trade or business” with “primary agricultural production.”

The amended term “primary agricultural production” defines what constitutes primary agricultural production as being production of crops, livestock, forestry and fishing, and excludes production at the intermediate/by-products or derivatives levels.

The amendment narrows the application of the tax exemption on bank loan interest for loans granted to “primary agricultural production,” unlike the broad exemption that was previously applicable to bank loans to mostly all agricultural businesses.

The above change is aimed at promoting core agricultural production in Nigeria.

- ▶ Section 11 (2) of the CITA was further amended by reducing the minimum moratorium period from 18 months to 12 months, with regards to the tax exemption on bank loans for companies involved in “primary agricultural production” and other local businesses.

The reduction of the moratorium to period by six months further demonstrates the Government’s commitment to support local businesses in Nigeria.

- ▶ Section 13(2)(e) was amended by correcting the listing error made in the *Finance Act 2019*.

The former provision had erroneously included sub-paragraph “e,” (i.e., the provision of management, consultancy, technical and professional services) as part of services to which withholding tax (WHT) was not the final tax.

The amendment has now corrected the over listing error. Thus, WHT remains the final tax for these categories of services.

- ▶ Section 14 of the CITA has been amended to clarify that revenue earned from leasing, containers, non-freight operation or any other incidental income should be subject to tax under section 9 of the CITA.

This provision creates a distinction between revenue from core shipping/freight operations and air activities that should be subject to tax under section 14 of the CITA, and revenue from other incidental activities that should be subject to the general corporate income tax rate of 30%.

This amendment resolves the issue with respect to the taxation of ancillary income of nonresident airlines and shipping companies.

- ▶ Section 16(12) of the CITA was amended by reducing the minimum tax rate from 0.5% to 0.25%, with respect to tax returns prepared and filed for any year of assessment falling between 1 January 2020 and 31 December 2021 (both dates inclusive) for insurance businesses.

The amended minimum tax rate is in response to the impact of the COVID-19 pandemic on insurance companies. It is also intended to ensure alignment of tax treatment for all companies in this regard.

A new sub-paragraph (sub-paragraph 13) was introduced to section 16, for the purpose of defining “gross premium” and “gross Income” for minimum tax purposes, with regards to insurance businesses.

The amendment provides further clarity on relevant deductions that should be recognized in determining premiums and income subject to tax for insurance companies.

- ▶ Section 23 (1) of the CITA was amended by aligning the conditions for exemption of dividend and rental income received by real estate investment trust (REIT) companies from taxes as provided in section 23 (1) (B)(c), with the proviso in 23 (1) (S).

In the prior amendment to the CITA (i.e., the *Finance Act 2019*), there were two provisions (section 1(b)(c) and section 1(s)), stipulating varying conditions for exempting dividends and rental income earned by REITs from taxes.

However, the same has been clarified. Thus, dividend and rental income received by a REIT should only be tax exempt where such REIT distributes a minimum of 75% of such dividend/rental income within 12 months of earning the income.

- ▶ Section 23 (1) (C) of the CITA was expunged, thereby rescinding the tax-free period incentive granted companies engaged in agricultural production, introduced by the *Finance Act of 2019*.

The repeal of the tax exemption to agricultural companies for a period of up to eight years, appears to address the duplication of income tax incentives granted to agricultural businesses in Nigeria.

- ▶ Section 25 of the CITA was amended by introducing two new sub-paragraphs (i.e., “paragraphs 8 and 9”).

Under sub-paragraph 8, donations made to any Fund set up by the Federal Government or any State Government, or to any agency designated by the Federal Government or to any similar Fund or purpose in consultation with any Ministry, Department or Agency of the Federal Government, in respect of any pandemic, natural disaster or other exigency are deductible for tax purposes.

Under sub-paragraph 9, such deductions should not exceed 10% of the company’s assessable profits.

This is an incentive to companies for the provision of COVID-19 pandemic (or other future exigencies) donations to the Government; such donations are now allowable deductions for tax purposes, subject to providing the requisite documentation evidencing same.

- ▶ Section 27(k) of the CITA was amended to expand the scope of non-deductible penalties or fines for income tax purpose.

This amendment alters the provision of section 27 (k) to include penalties or fines pursuant to legislations enacted by the State House of Assembly, as opposed to the former section which provided for only those legislated by the National Assembly.

- ▶ Section 33 of the CITA was amended by reducing the minimum tax rate from 0.5% to 0.25% of gross turnover less franked investment income, for tax returns prepared and filed for any year of assessment falling between 1 January 2020 and 31 December 2021 (both dates inclusive).

This provision is a response to the impact of the COVID-19 pandemic on businesses.

Furthermore, based on the timeline provided for the reduced minimum tax, it would appear that affected companies can file amended returns for the period already past to claim a refund or at the least establish a credit to be utilized for future tax obligations in respect of minimum tax already paid for the year.

- ▶ Section 39 of the CITA was amended, providing that companies engaging in a trade or business of gas utilization in downstream operations cannot claim the tax-free period incentive provided under section 39 of the CITA, where such companies have already claimed any other incentives under any law in Nigeria, with respect to the trade or business of gas utilization in the downstream sector.

This amendment provides a limitation as to incentives that may be claimed by companies engaging in gas utilization businesses, downstream operation.

- ▶ Section 53 of the CITA was amended by substituting the former provision. The amended provision introduces penalties and interest for deliberate filing of incorrect tax returns.

Under the existing CITA, penalties were not provided for incorrect tax returns submitted.

This amendment raises the question of how to distinguish a deliberate act of non-compliance from an indeliberate act. Further clarity will be required.

Irrespective, companies should ensure that the information contained in tax returns filed is correct and in compliance with the relevant tax provisions, to avoid being deemed by the tax authority as “deliberately filing incorrect returns” and subjected to penalties and interests.

- ▶ Section 55 of the CITA was amended, making specific provisions regarding filing requirements for Nonresident Companies (NRCs) that have a taxable presence in Nigeria.

Clarification has been provided regarding the tax return requirements for NRCs with taxable presence in Nigeria.

Thus, based on the amendment (under section 55 of the CITA), such NRCs are now required to file income tax returns, along with their global audited financial statements, and audited financial statements for their Nigerian operations.

However, NRCs earning income from Nigeria, which is only subject to WHT (e.g., NRCs earning passive income or providing technical/professional management/technical services remotely) are exempted from the filing obligation.

- ▶ Section 55 of the CITA was further amended, providing that the Tax Authority (FIRS) may require small and medium companies to file income tax returns using a form of account that FIRS may specify, other than audited financial statements.

To further simplify the tax administration requirements of small and medium companies, the FIRS may, by a notice, specify a different form of account to be included in tax returns of small and medium companies, other than audited financial statements.

- ▶ Section 63 of the CITA was amended by substituting the former section. The new section provides that failure to provide books of account on request by the FIRS, attracts a penalty of NGN100,00 in the first month, and NGN50,000 for each subsequent month.

Furthermore, such books of account should be written in English or translated on request of the FIRS.

The former section of the CITA; on keeping of accounting records, applied to “companies chargeable” to tax under the CITA.

However, the Act has amended this section and now requires all companies (including those exempted from incorporation and/or exempted from tax), are required to maintain books of accounts in English.

- ▶ Section 68 of the CITA was amended by introducing courier services and electronic means as valid means of correspondence between the FIRS and taxpayers.

In line with international best practices, and in response to restrictions on physical interactions imposed by the COVID-19 pandemic, the FIRS may now correspond with companies and taxpayers via courier services, email or other electronic means for corresponding with taxpayers in respect of provisions of the CITA.

- ▶ Section 77 (2) of the CITA was amended to reduce the timeline for payment of tax liabilities (not being the subject of an appeal) from 60 days to 30 days.

Companies should take note of the reduced timeline for payment of undisputed tax liabilities to avoid the imposition of penalties and interest on the principal amount.

- ▶ An amendment was made to section 105 by redefining “gross turnover” and “Nigerian company”; and also, the inclusion of the definition of “public character.”

The existing definition of **gross turnover** included all economic benefits arising from operating activities. However, the amended definition of “**gross turnover**” now provides that such economic benefits should result in an increase in equity, other than a capital injection from shareholders.

Nigerian company has been re-defined as any company formed or incorporated under any law in Nigeria.

Under section 23 (1) (c) of the CITA, the profits of any company engaged in ecclesiastical or educational activities of a **public character** are exempt from profit, subject to fulfilment of other conditions.

However, the CITA did not define what constitutes a “public character.” This has resulted in controversies and public debates and even disputes in courts in the past.

Thus, by virtue of this amendment, clarity has now been provided as to what constitutes **public character** and thus companies and taxpayers that should qualify for the tax exemption under the provisions of section 23 (1) (c) of the CITA.

- ▶ Amendment of sub-paragraph (1) (j) of the second schedule to the CITA, to provide that capital expenditure on the development and acquisition of software or other such capital outlays on electronic applications is now a qualifying capital expenditure for capital allowance purposes.

Prior to this amendment, the CITA did not provide for tax treatment with respect to costs of intangibles. However, in practice, companies mostly amortized such costs (in line with a circular issued by the tax authorities in this regard).

Although this amendment is a step in the right direction, it is unclear as to what the useful life of this intangible asset should be for tax purposes (i.e., the initial and annual allowance rates to be applied is not specifically provided for in the second schedule).

Capital Gains Tax (CGT) Act amendments

- ▶ Section 2 of the *CGT Act* was amended by including a new sub-section, which provides for a filing period (30 June and 31 December) for CGT remittance.

Prior to this amendment, the due date for filing CGT returns and payment of the applicable tax was aligned to the provisions of the CITA.

However, in order to foster better accountability and uniformity of CGT filings, CGT returns are now required to be filed not later than 30 June and 31 December of the year, in which the chargeable asset was disposed, and the applicable tax paid within the requisite timelines.

- ▶ Section 24 (f) of the Act was amended to include the phrase “used in international traffic.”

Following the amendment to section 24(f), in determining the location of ships and aircrafts for CGT purposes, only ships and aircrafts used in international traffic should be considered.

The above amendment limits the prior CGT provision, which provided a general application to all ships and aircrafts.

- ▶ Section 36(2) of the *CGT Act* was amended to provide that CGT should only be applicable to compensation for loss of office in excess of NGN10 million.

Prior to this amendment, the *CGT Act* was interpreted as being applicable to compensation for loss of office, where such compensation exceeded NGN10 million (i.e., the entire compensation was subject to CGT as long the amount exceeded the N10 million exemption benchmark).

However, per the clarity provided in the *Finance Act*, CGT should be applicable on only the amounts in excess of NGN10 million (i.e., irrespective of the amount of the compensation for loss of office, sums up to NGN10 million are exempted from CGT and CGT can only apply on sums in excess of NGN10 million).

- ▶ Further amendments were made to section 36 of the Act, by including two new subsections (subsections 3 and 4), which provides for the appointment of the relevant persons who pay the compensation for loss of office, as the collection agents.

Furthermore, the timeline for remitting the CGT so deducted, is now tied to the provisions of the Pay-As-You-Earn (PAYE) Regulations i.e., the 10th day of the month following the month of deduction.

The existing *CGT Act* was silent on who had the obligation to deduct and remit CGT on compensation for the loss of office.

Although, in practice, several companies had acted as self-appointed collection agents on behalf of the Government to ensure proper remittance, however, it was not a statutory obligation until this amendment.

Thus, the *Finance Act* has clarified that the responsibility to deduct and remit CGT on such qualifying payment for compensation for loss of office lies with the paying party and remittance in line with the PAYE Regulation.

- ▶ The CGT schedule was amended by deleting Part IX (returns) and Part X (assessment) which made reference to the applicability of the CITA for the purpose of assessment and filing of CGT returns.

The reliance on the CITA provision, as to assessment and filing of CGT, should no longer be applicable.

The amendment of the *CGT Act* to include its own unique filling period had rendered the reliance on the deleted CIT provisions redundant, hence its removal.

Value Added Tax (VAT) Act amendments

- ▶ Section 2 of the Act was amended to include an incorporeal right as a taxable supply of service.

Based on the amendment under the *Finance Act 2019*, incorporeal properties were classified as “goods,” which created several controversies on the VAT treatment of incorporeal properties in Nigeria.

However, this has been addressed such that incorporeal properties are now classified as “services” for VAT purposes.

Consequently, where an incorporeal right is registered, assigned to, or acquired by, or exploited by a person in Nigeria, regardless of whether the payment for its exploitation is made within or outside Nigeria, such transaction would be regarded as a taxable supply of service.

- ▶ Further amendments were made to section 2 of the Act, by providing a definition of time of supply.

The definition of the time of supply for VAT purposes, provides clarity as to when VAT should become due and payable.

- ▶ Section 10 is amended to include a tax registration obligation for NRCs that supply taxable goods and services to Nigeria.

The former provision appeared to be applicable to only taxable services. Thus, the amendment under the *Finance Act 2020* clearly states that both taxable goods and services provided by NRCs should be subject to the provisions of section 10 of the *VAT Act*.

This amendment should potentially increase the administrative burden of NRCs, which are subject to VAT in Nigeria. Although the amendment also provides that the affected NRCs may appoint a representative to assist in fulfilling their tax obligation, and thus lessen such administrative burden.

The amendment also provides that the FIRS may issue further guidelines to give effect to the provisions of section 10 of the *VAT Act*.

- ▶ Section 46 of the Act was amended to include immovable properties in the definition of goods and expressly exclude buildings.

The definition of goods (per the previous amendment under the *Finance Act 2019*) resulted in challenges, particularly as it relates to buildings; as the FIRS had issued a circular following the aforementioned amendment that buildings should qualify as a “good” for VAT purposes.

Thus, the *Finance Act 2020* has now expressly clarified that goods for VAT purpose, should not include land and buildings. Thus, not VATable.

- ▶ Amendment of the first schedule to the *VAT Act* to expand the list of VAT-exempt goods and services to include the following:
 - Commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts
 - Airline transportation tickets issued and sold by commercial airlines registered in Nigeria
 - Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes

The expanded list of exempt goods under the *VAT Act* in favor of airline and agricultural businesses is expected to reduce the cost of air transportation and further encourage investment in agricultural in Nigeria.

Personal Income Tax Act (PITA) amendments

- ▶ Section 6 of the PITA was amended to provide that nonresident individuals, executors or trustees providing technical/management /consultancy/ professional services are subject to tax in Nigeria to the extent that such individual, executor or trustee has a significant economic presence in Nigeria.

The applicability of this provision is yet to be clear as the Minister, according to the Act, may by an Order, determine what constitutes significant economic presence of a nonresident individual, executor or trustee.”

This amendment corrects the oversight of the *Finance Act 2019* and aligns the relevant SEP provision of the CITA with the PITA. As such, just like companies, individuals providing technical/management/consultancy/professional services would also be subject to WHT at 5% as the final tax.

- ▶ Section 20 of the PITA was amended by substituting paragraph g. Per the amended paragraph, contributions to a pension, provident or other retirement benefit fund, society or scheme recognized under the *Pension Reform Act* are allowable reliefs for personal income tax purposes.

This amendment limits the former *Finance Act* provision by limiting the same to only a pension, provident or retirement benefit fund, society or scheme recognized under the *Pension Reform Act (PRA)*.

- ▶ Section 24 and 25 of the PITA was amended to provide that the commencement and cessation rules for computing income tax payable by a new and liquidating business respectively, should reflect the business’s actual accounting period and date of cessation.

The *Finance Act 2020* aligns the provisions of the PITA with the current CITA provisions (as introduced by the *Finance Act 2019*). It simplifies the commencement and cessation rules for new and cessation businesses. Thus, eliminating the risk of double taxation for commencement and cessation of businesses.

Entities ceasing business are required to remit the tax liabilities due not later than three months from its date of cessation.

- ▶ Section 33 of the PITA was amended to redefine gross income for the purposes of determining the Consolidated Relief Allowance (CRA).

Based on the amended section 33, gross income has been redefined to be income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the Sixth Schedule and all allowable business expenses and capital allowance.

This amendment has clarified what constitutes “gross income” for the purpose of computing CRA.

Following the amendment, CRA is no longer calculated on non-taxable income, income on which no further tax is payable and tax-exempt items listed in paragraph (2) of the Sixth Schedule to the PITA and all allowable business expenses and capital allowance.

This amendment could result in an increase in tax payable by individuals.

- ▶ Further amendments were made to section 33 of the PITA, to provide that premium and deferred annuity paid by an individual in respect of his life or the life of his spouse to an insurance company during the year preceding the year of assessment is an allowable deduction for tax purposes.

This amendment reinstates treatment of life insurance premium as an allowable deduction. This was previously eliminated by the *Finance Act 2019*.

- ▶ Amendment of section 37 of the PITA, to introduce a tax exemption for persons whose gross income is less or equal to the National Minimum Wage, as defined in the *National Minimum Wage Act*.

Individuals earning the National Minimum Wage or less from employment are exempt from income tax payment or any requirement to pay minimum tax.

This is a welcomed development to cushion the impact of taxation on low-income earners.

- ▶ Section 108 of the PITA was amended to include the definition of “Board” under section 86 of PITA as the “Joint Tax Board” and not the FIRS and “National Minimum Wage” as the existing National Minimum Wage pursuant to the *National Minimum Wage Act*.

Substituting for the word “Service” the word “Board” wherever it appears in sections 23, 48, 73, 86, 89, 93 and 106A of the PITA.

This represents a correction of the drafting error in the *Finance Act 2019*.

Stamp Duties Act (SDA) amendments

- ▶ Section 2 of the SDA was amended to provide for the use of the adhesive stamps, produced by the Nigerian Postal Service (NIPOST)) by the FIRS.

This is a clarification regarding the approved “Stamp” to be utilized by the FIRS, for the purpose of administering the SDA.

This should generate more revenue for the NIPOST and clearly define its responsibilities as the body responsible for “stamping” in Nigeria.

- ▶ Section 89 of the SDA was amended, deleting the use of electronic inscription or any acknowledgement of duty charged as modes of denoting duty on electronic transaction.

This should further enhance the use of the NIPOST stamps.

- ▶ Further amendments were made to section 89, expunging the payment of Stamp duty on the electronic receipt/ transfer of money and replacing the same with the Electronic Money Transfer Levy (EMTL).

Additionally, matters regarding the imposition, administration, collection and remittance of the Levy shall be by Regulation issued by the Minister of Finance, subject to the approval of the National Assembly.

The applicability of stamp duty has been expunged on the electronic receipt and transfer of money.

This appears as an attempt to address the controversy as to the collecting agency i.e., FIRS or State Inland Revenue Service (SIRS) of the relevant States, being that such transactions are usually between individuals and should ordinarily be under the purview of the relevant SIRS.

However, for best practice purposes, being that the EMTL is a distinct levy from the stamp duty, it should be more appropriate for the same to be expunged from the *Stamp Duty Act*, and a new regulation or legislation enacted for the collection of the EMTL.

- ▶ Section 89 of the SDA was also amended to introduce a distribution formula, with regards to revenue generated from the EMTL as follows:
 - 15% to the Federal Government and Federal Capital Territory, Abuja., while 85% should be remitted to the State Governments.

This is an attempt at centralizing the collection of the levy and also to address any controversy that could result between the FIRS and the relevant SIRS as to the collecting agent for EMTL purposes.

Tertiary Education Trust Fund (Establishment, etc.) Act (TETFA)

- ▶ Section 2 was amended to exempt small companies (as defined under the *Companies Income Tax Act*), from Education tax.

The exemption of small companies from Tertiary Education further affirms the Federal Government’s commitment to promote the growth of small businesses in Nigeria.

- ▶ Deletion of sections 10 and 11(3), i.e., the provisions governing offenses and penalties.

This deletion now restricts the penalties imposed for the contravention of provisions of the Act to those contemplated under the provision of section 11 of the TETFA.

Industrial Development (Income Tax Relief) Act (IDITRA)

- ▶ Amendment of section 1 of the IDITRA to include small or medium sized companies engaged in primary agricultural production, under the list of pioneer industry.

The tax incentive is for an initial tax-free period of four years and an extension, subject to a satisfactory performance by the business of a maximum of two years.

It however restricts such companies from claiming any similar tax holiday or incentive in Nigeria thereby curbing possible duplication of tax incentives claim.

The inclusion of small and medium agricultural companies, under the IDITRA further shows the efforts of the Government in encouraging agricultural production in Nigeria and the role of small and medium sized firms.

- ▶ Section 25 was amended to Include definition of small and medium sized companies under the IDITRA, as defined under the CITA.

For clarity, the definition of small and medium sized companies under the CITA, has been replicated in the IDITRA for tax incentive purposes.

- ▶ Further amendment was made to section 25 to provide clarity as to the scope of agricultural companies that are eligible for the tax holiday incentive.

Only primary agricultural companies, as defined under the CITA are eligible for the tax holiday incentive.

Customs and Excise Tariff, etc. (Consolidation) Act amendments

- ▶ Section 21 was amended by rescinding the excise tax exemption granted to imported goods (specified in the fifth schedule of the *Customs Act*), not locally produced in Nigeria or raw materials not locally available in Nigeria.

This addresses the issues generated by the former provision of *Finance Act 2019*, which excluded imported goods that were not locally produced and raw materials not readily available in Nigeria from excise duties.

Consequently, imported goods which are specified in the Fifth Schedule of the *Customs and Excise Tariff etc. (Consolidation) Act* would be subject to excise duties at the same rates as locally manufactured goods irrespective of whether they can be locally produced, or the raw materials are readily available in Nigeria.

The above should further encourage local production in Nigeria.

- ▶ Further amendment was made to section 21 to provide that excise duties should be applicable on telecommunication services provided in Nigeria at a rate that should be specified in an Order by the President.

Excise duties are generally charged on harmful or luxurious products. As such, there are concerns as to the scope of telecommunication services that should be subject to excise duties and the practicability of administering such duties.

- ▶ Amendment of the First Schedule to reduce the import duties payable on motor vehicles and tractors, among others as outlined below:
 - a. Duty on tractors from 35% to 5%
 - b. Duty on motor vehicles for transportation of more than 10 persons and motor vehicles for the transport of goods from 35% to 10%
 - c. Levy on motor vehicles for the transport of persons (cars) from 30% to 5%

The reduction of the import duties on tractors and motor vehicles should further encourage agricultural production and car importation through the appropriate channels as opposed to smuggling, which results in loss of revenue to the Government.

- ▶ The Second Schedule was amended to exempt import duty on engines, spare parts and components whether purchased or leased, with regard to airlines registered in Nigeria.

Prior to the *Finance Act 2020* amendment, the import duty exemption for airlines was solely on the aircraft. Thus, airlines were required to pay duty on imported spare parts and components.

As such, this amendment reduces the tax burden on airline businesses.

Federal Inland Revenue Service (FIRS) Establishment Act amendments

- ▶ Section 8(1) was amended to include that the FIRS is responsible for providing assistance in the collection of revenue on agreements and arrangements between Nigeria and a foreign government/other persons/bodies.

The expansion of the FIRS functions to include revenue collection from foreign governments and persons should further encourage transparency in that regard.

- ▶ Section 23 was amended for the purpose of establishing dedicated accounts for settling tax refunds.

This should further improve the tax refund administration in Nigeria.

- ▶ Section 25 was amended to introduce the use of technology for tax administration purposes.

This is in line with international best practices and standards and further reduces tax administrative burdens.

- ▶ Section 26 was amended to provide an extended period of at least 30 days, for the provision of taxpayer information required upon a notice by the FIRS.

This provides ample time for companies to provide adequate information to the FIRS.

- ▶ Amendment to section 39 of the Act by introducing penalties for breach of confidentiality of data by tax officials.

This aligns with international standards and best practices on data protection.

- ▶ Section 28 of the Act was amended to provide for information exchange between financial institutions and the FIRS.

Furthermore, per the amendment, failure to provide such information in due time results in an administrative penalty of NGN25,000 for the first month of failure, and NGN10,000 for every month in which the failure occurs.

This should assist in curbing tax evasion and avoidance. The information received can also aid the FIRS during tax audits.

Nigeria Export Processing Zone Act (NEPZA) and Oil and Gas Export Free Zone Act (OGEFZA) amendments

- ▶ Section 18 (1) of the NEPZA and the OGEFZA were amended to provide that companies in the aforementioned Free Trade Zones (FTZs) should file their returns in compliance with section 55 of the CITA.

Also, penalties as prescribed in the *CITA* and the *FIRS (Establishment) Act* should be applicable for non-compliance with the provisions of section 55.

This should further ensure transparency in activities being performed by companies in an FTZ.

However, clarity should be provided as to the requisite returns to be filed by such companies, especially with regards to transfer pricing requirements.

Companies and Allied Matters Act (CAMA) amendments

- ▶ Section 432 of the CAMA was amended to provide for the treatment of unclaimed dividends in Nigeria.

Based on the amended CAMA 2020, unclaimed dividends of all companies were required to be added back to the such company's profits for distribution to the other shareholders of the company if they remain unclaimed after 12 years.

However, pursuant to the *Finance Act 2020* amendment, where dividends of a public company quoted on the Nigeria Stock Exchange remain unclaimed for a period of six years or more, the unclaimed dividends should be immediately transferred to the Unclaimed Funds Trust Fund of the Government and remain a debt owed by the Federal Government to the shareholders and be available for a claim by the shareholder(s) at any time.

The Unclaimed Funds Trust Fund is to be used by the Government in financing its budget. The practicability and public acceptance of this provision is still uncertain.

There is also uncertainty as to the process for making the claim by a shareholder(s) from the Fund.

Crisis Intervention Fund and Unclaimed Funds Trust Fund Act amendments

- ▶ The *Finance Act 2020* established a *Crisis Intervention Act* and *Unclaimed Fund Act*.

The amendment provides for the establishment of the Fund from the Consolidated Revenue Fund and special accounts in sum of NGN500 billion or any other sum as may be approved by the National Assembly.

- ▶ The Fund was set-up for national crisis related expenditure or exigencies.

Similar to the above, the *Finance Act 2020* also established the Unclaimed Funds Trust Fund to be funded by unclaimed dividends and the unutilized amount in dormant bank accounts.

Pursuant to the amendment, unclaimed dividends of a public company quoted on the Nigerian Stock Exchange and the unutilized amount in a dormant bank account maintained by a deposit money bank, which has remained unclaimed for not less than six years from the date of declaration or deposit should be transferred to the unclaimed funds trust fund.

Such unclaimed funds transferred by a listed company and deposit money bank shall be a special debt to the Federal Government to be managed by the Debt Management Office.

Failure to transfer the funds may attract a fine of not less than five times the value of the unclaimed dividends and unutilized funds in a dormant bank account plus accumulated interest on the amount not transferred at the Central Bank of Nigeria's Monetary Policy Rate.

The amendment provides for the establishment of the Fund from the Consolidated Revenue Fund and special accounts in sum of NGN500 billion or any other sum as may be approved by the National Assembly.

Sectorial key changes

i. Agricultural sector

In recent years, the agricultural sector has been a major focus area of the Government for improvement. The amendment to the tax laws provides for reduced tax burdens for companies in the sector and reflects the commitment of the Federal Government to encourage large scale agricultural production in Nigeria. Below are specific changes introduced in the Act:

- ▶ Substitution of "agricultural trade or business" for "primary agricultural production." This emphasizes the Government's focus on agricultural businesses that are engaged in the primary production of livestock, forestry and fishing.
- ▶ Exemption of interest on loan for companies engaged in primary agricultural production; provided the moratorium is not less than 12 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted, refinanced or otherwise restructured.
- ▶ Inclusion of small or medium sized companies engaged in the primary agricultural production in the list of pioneer industries. Eligible businesses, subject to the approval of the NIPC, would be granted a tax-free period for up to six years.
- ▶ Exemption of hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes from VAT.

ii. Financial services

- ▶ Following the establishment of the Unclaimed Funds Trust Fund Legislation, Deposit Money Banks shall remit the funds in dormant bank accounts of over six years into designated bank accounts as may be directed by the Debt Management Office.
- ▶ Banks are now required to charge EMTL of NGN50 on electronic receipts and transfers of money on NGN10,000 and above, as opposed to stamp duty.

iii. Small companies

- ▶ Exemption of small companies from Tertiary Education Tax.

iv. Shipping and air transport

- ▶ VAT exemption on airline tickets issued and sold by commercial airlines registered in Nigeria.
- ▶ VAT exemption on commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts.
- ▶ Exemption of import duty on importation of aircrafts, engines, spare parts and components whether purchased or leased by airlines registered in Nigeria and providing commercial air transport services.
- ▶ Income from leasing, containers, non-freight operations or any other incidental income earned by foreign companies deriving shipping or air transport income from Nigeria, would be subject to tax, under section 9 of CITA and not section 14.
- ▶ For CGT purposes, only ships and aircrafts used in international traffic would fall within the scope of CGT in Nigeria, in line with 24(f) of the CGT.

v. Oil, gas and energy sector

- ▶ The tax holiday incentive applicable to downstream gas utilization would not apply to any company that has claimed an incentive for trade or business of gas utilization under any law in Nigeria, including the *Petroleum Profits Tax Act* or the incentives under the *Industrial Development (Income Tax Relief) Act* in respect of the same qualifying capital expenditure.

vi. Oil and gas free trade zone entities

- ▶ Companies registered and operating within the Zone are now required to file income tax returns in the manner prescribed under the CITA.

vii. Telecommunications, media and technology

- ▶ Telecommunication services provided in Nigeria has been included in the list of excisable items. However, the extent of telecommunication services that would be subjected to excise duty and the rate at which such duty should be charged is yet to be specified.

Next Steps

Following the enactment of the *Finance Act*, all companies (including, foreign companies that have a taxable presence in Nigeria) should analyze the provisions of the Act to understand its impact on their businesses' and take advantage of the relevant tax incentives and reduced tax burdens.

In addition, companies should be aware of their tax obligations to avoid penalties for non-compliance.

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