



THE FINANCE ACT WHAT BUSINESSES IN NIGERIA SHOULD KNOW

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1. INTRODUCTION

In this first series, we would be discussing the changes and innovations on a Sector basis as introduced by the Finance Act of 2020 (**'the Act'**), which was signed into law on 31 December 2020 and came into effect on 1 January 2021.

The provisions of the Act had amendments to the Capital Gains Tax Act; Companies Income Tax Act; Industrial Development (Income Tax Relief) Act; Personal Income Tax Act; Tertiary Education Trust Fund (Establishment Etc) Act; Customs and Excise, Tariffs, etc. (Consolidation) Act; Value Added Tax (VAT) Act; Stamp Duties Act; Federal Inland Revenue Service (Establishment) Act; Nigerian Export Processing Zone Act; Oil and Gas Export Free Zone Act; Companies and Allied Matters Act; Fiscal Responsibility Act and Public Procurement Act (PPA).

The Act also established the Crisis Intervention Fund and Unclaimed Fund Trust Fund to respond to the Covid-19 pandemic. The Fund would be initially funded by an appropriation by the National Assembly in the sum of N500 Billion. The Fund shall be used to alleviate crises such as the Covid 19 pandemic and any other emergencies that could arise from time to time.

2. GENERAL IMPLICATIONS OF THE ACT

- 50% reduction in the minimum tax rate to be paid by companies from 0.5% to 0.25% of turnover. This is especially important for companies that recorded a loss in the past year because of the impact of the pandemic.
- Deduction for Covid-19 donations so that companies who give out incentives in combating the disease enjoy tax relief.
- Improvement of the process for claiming tax refunds under the law. The Accountant General, by law, is required to create accounts for different tax types, such that a budget is made appropriated to cover refunds of the various tax types.

3. AGRICULTURE

- Rationalization of incentives for broader sectors, to limit the tax incentives to companies or businesses involved in primary agricultural production, as defined in the Act. “Primary agricultural production” has been defined as primary crop production comprising raw and semi-processed crops of all kinds excluding intermediate or final processing of crops, primary livestock production consisting of the production of live animals and their direct produce, primary forestry production, and primary fishing production. Thus, companies involved in the agricultural sector but not in primary agricultural production are not eligible for the applicable incentives.
- Introduction of VAT exemption on animal feeds and lease of equipment for agricultural purposes. It formerly only covered the purchase of agricultural equipment.
- The import duty on the importation of tractors has been reduced from 35% to 5%.

4. BANKING & CAPITAL MARKETS

- Companies in these sectors have increased tax compliance obligations under the Act, based on amendments to various laws. An example is the Common Reporting Standards (CRS), where Banks are required to share specific data of their customers with the Government, and the Government will, in turn, share this information with the rest of the world, who also share information with Nigeria.
- Unclaimed Funds Trust Fund: This affects both unclaimed dividends for listed entities over six years and unutilised deposits in dormant bank accounts that are unutilised for over six years. Such unclaimed dividends and unutilised deposits will be treated as a special debt owed by the federal government. They will be available to be claimed by the rightful shareholders and account holders at any time from the Fund. There are compliance requirements for companies in this sector; banks, for example, must provide statements, reports and can be penalized for not doing this. All public listed companies on the Nigerian Stock Exchange and deposit money banks are required to render returns to the Debt Management Office accordingly.

5. CONSTRUCTION & REAL ESTATE

- Time of supply rule for construction contracts: The Act has now amended the VAT Act to define the time of supply and has defined it to show at what point supply has been made, and the VAT rate applied will be the rate as of that date. This is particularly important where there is a change in the VAT rate, and parties do not know what rate to apply in cases where payments are to be made in milestones, e.g., under the 2019 Finance Act where the VAT rate was changed from 5% to 7.5%.
- Exemption of Land and Buildings: Purchase of Lands, Houses, and Buildings have been exempted from VAT. Rent is also exempted as it is not a taxable supply and thus should not be liable to VAT.
- Real Estate Investment Companies (REICs) who have met the minimum distribution requirement will be exempted from Companies Income Tax (CIT) on their dividend or rental income if at least 75% is distributed within 12 months after the year-end in which the income was earned. Under the Finance Act 2019, the minimum distribution requirement was provided for the exemption of dividend and rental income earned by a REIC from CIT, provided that a minimum of 75% of the dividend or rental income is distributed within 12 months of the end of the financial year in which the income was earned, and whatever is not distributed is then liable to tax. The issue that arose here was that such a company was still being taxed when it had met the minimum requirement. The Finance Act 2020 has cured this anomaly, and once such minimum requirement has been met, it will not pay tax, and now, the investors will be the ones to pay the taxes when they receive the income if such income is liable to tax. This will also affect the Capital Markets for REICs listed.

6. CONSUMER & INDUSTRIAL PRODUCTS

- Excise duties are now applicable to imported goods and raw materials, whether the item is being produced in Nigeria or not, to the extent that it is liable to excise duties.
- Reduction of import tariff on vehicles, including those used for transportation of goods, from 35% to 10%.
- 'Software' has now been recognised as a Qualifying Capital Expenditure (QCE). It is now recognised as a capital asset for tax purposes, and capital allowances can be claimed on the cost.
- Time and place of supply and periodic payment rules for VAT have been defined as the earlier when payment is made or when an invoice is issued or when credit is received by the supplier. Payment for VAT remains on cash basis; therefore the time to pay VAT to the tax authority is when the cash payment was received or paid, for input and output date.

7. ENERGY & UTILITY SECTOR

- Entities in the Oil & Gas Free Zone are now required to file tax returns with the FIRS. This is not a requirement for them to pay taxes, but simply to file returns, whether they have tax liabilities or not. This way, the FIRS will have visibility to determine the scope of operations of such companies.
- Gas utilization incentives have been rationalized so that such companies cannot claim the incentives twice under any law.

8. INSURANCE INDUSTRY

- The definition of gross income for life businesses and gross premium for non-life businesses is now included in the Act. This will allow insurance companies to not be taxed on what does not make up their income.
- Premiums paid on life policies and contracts of annuities are now tax-deductible.
- Insurance companies are required to report under the Common Reporting Standards (CRS), like what banks are required to do.

9. NON-RESIDENT MULTINATIONALS AND DIGITAL ECONOMY

- Tax compliance obligations (VAT & significant economic presence rules concerning Companies Income Tax) have been expanded for non-resident companies doing business with Nigerians. Foreign persons earning business profits from Nigeria are taxed under Section 6 of PITA once a fixed base/taxable presence is created subject to existing treaties, and they do not have to be situated in Nigeria to be caught by the Act. Non-resident multinationals can also appoint fiscal representatives.
- Introduction of significant economic presence rules under the Personal Income Tax Act for individuals. Before this Act, these rules applied only to companies.

10. PUBLIC SECTOR

- Introduction of rules around fiscal responsibility to ensure transparency in the public sector and it includes: fiscal discipline, the ratio of cost to revenue for MDAs is now capped at 50%, which means all the monies generated cannot be spent, and provisions for quarterly reconciliation and reporting.
- The scope of the Public Procurement Act has now been extended to include all arms of government, not only the executive arm. All arms of government are now required to comply with the provisions of the Public Procurement Act.
- Establishment of the Crisis Intervention Fund, which will be funded from the Consolidation Revenue Fund.

11. TRANSPORTATION

- Commercial airline flight tickets are exempted from VAT.
- Commercial aircraft enjoy a duty waiver, along with the parts and components of the aircraft.
- Import levy for new cars alone has been reduced from 35% to 5%. Import duty on new and used vehicles is retained at 35%.
- Tax rules for foreign airlines and shipping companies have been rationalised and clarified to exclude non-freight income (i.e., income from leases, containers, non-freight operations, or any other incidental income) from the provisions of section 14 of CITA. Such income will be taxable under Section 9 of CITA.

12. MSMEs

- Small businesses have been exempted from preparing audited accounts based on guidelines issued by the FIRS. This is to align provisions of CITA with CAMA 2020, which exempts small businesses from preparing audited accounts.
- Small companies are also exempted from Education Tax.

13. INDIVIDUALS & EMPLOYERS OF LABOUR

- Minimum wage earners are now exempted from payment of tax under PAYE and PIT.
- Consolidated Relief Allowance (CRA) has been redefined to exclude anything exempted from tax. Tax-exempt items should now be deducted from gross emolument before computing the CRA. This means for persons who do not earn minimum wage or less; there will be a slight increase in the PAYE amount and a decrease in disposable income.

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