



AN APPRISAL OF THE AMENDMENTS BY THE FINANCE ACT 2020

The Finance Act 2020 amends some provisions of fourteen (14) legislations, however, the focus of this article shall be a brief discourse on the key amendments contained in the Finance Act 2020 of the following Acts:

- Companies Income Tax Act;
- Personal Income Tax Act;
- Value Added Tax Act;
- Capital Gains Tax Act;
- Companies and Allied Matters Act;
- Industrial Development (Income Tax Relief) Act;
- Stamp Duties Act;
- Tertiary Education Trust Fund (Establishment) Act.
- Nigeria Export Processing Zones Act.
- Customs and Excise Tariff ETC. (Consolidation) Act.

COMPANIES INCOME TAX ACT (CITA)¹

1. **Minimum tax²:** the applicable minimum tax for companies which was specified as 0.5% of the gross turnover less franked investment income by the Finance Act 2019, has been reduced to 0.25% for tax returns filed between January 1, 2020 and December 31, 2021.

¹ Companies Income Tax Act 2007.

² Section 33 of CITA. This is a time-bound amendment probably initiated by the adverse effects of the pandemic on businesses, and is applicable only within the stipulated time frame. It is envisaged that the Government might revert to the 0.5% rate after December 31, 2021.

- 2. Tax deductions³:** cost of in kind donations made by companies to any fund set up by the Federal or State Government in respect of a pandemic, natural disaster or any exigency shall be considered allowable deductions for tax purposes provided the relevant documentations are presented to the relevant tax authority, and the WREN⁴ principles are demonstrated.
- 3. Interests on agricultural loans⁵:** tax exemptions on interests on agricultural loans now limited to companies engaged in primary agricultural production provided the moratorium period is not less than 12 months and the interest is not more than the base lending rate at the time the loan was granted, refinanced or restructured.
Primary agricultural production includes the production of raw crops of all kinds, production of live animals and their direct produce, production of timber and other forestry products of all kinds, and the production of fish of all kinds excluding the intermediate or final processed products and any other manufactured or derivative of all of the products.
- 4. Real estate investment companies⁶:** dividends and rental income of real estate investment companies are only exempted from tax if a minimum of 75% of the dividend and rental income is distributed, and such distribution is done within 12 months of the financial year in which such income was earned.
- 5. Foreign companies:** foreign companies determined to have derived income from Nigeria by virtue of having fixed base, an independent agent, performing turnkey contracts, artificial transactions or digital services with SEP in Nigeria are required to file audited accounts, tax computations, statement of profits, and company income tax self-assessment forms⁷.

³ Section 25 of CITA.

⁴ The WREN principle is to the effect that expenses made by companies may be deducted from their income for tax purposes as long as such expenses are wholly, exclusively, necessarily and reasonably incurred.

⁵ Section 11 of CITA. Primary agricultural production is defined by the Act as primary crop production, livestock, forestry and fishery production, excluding any intermediate or final processing and other associated manufactured or derivative products.

⁶ Section 23(1) of CITA as amended by the Finance Act 2019.

⁷ Section 55 of CITA. Note that this provision is not applicable to companies providing technical management, consultancy or professional services even if they have established significant economic presence as Withholding tax is the final applicable to them.

6. Notice of Assessment⁸: in addition to direct service, notice of assessments may now also be sent through courier, email or other electronic means.

7. Limitation of Computation of Derived Profits of Foreign Company Engaging In Shipping or Air Transport

Computation of derived profits of foreign companies in the business of shipping or air transport is limited to carriage of passengers, mails, livestock or goods. Incomes derived from leasing, containers, non-freight operations and other incidental income liable to tax under section 9 of CITA is exempted from the computation of profits of foreign companies carrying on the business of shipping or air transport.

8. Submission of Returns by Foreign Companies Deriving Profit From Nigeria.

Foreign Companies taxable in Nigeria under CITA are required to submit returns in the prescribed form attested by an independent qualified or certified accountant in Nigeria. Provided that foreign companies whose final tax on its income is withholding tax shall not be required to file returns for the year of assessment.

9. Minimum 6 Years Maintenance of Company Books of Account.

All companies shall maintain in English, books or records of account in the prescribed form containing sufficient data on all transactions for a minimum period of 6 years after the year of assessment on which the income relates on penalty of the payment of N100, 000:00k for the first month in which failure occurs and N50, 000:00k for subsequent months in which failure continues.

10. Development Or Acquisition of Software

Capital expenditure incurred in the development or acquisition of software or other such capital outlays on electronic applications are now included as a qualifying expenditure allowable under the CITA.

PERSONAL INCOME TAX ACT (PITA)⁹

⁸ Section 68 of CITA.

⁹ Personal Income Tax Act 2011 (as amended).

1. **Minimum tax**¹⁰: individuals who earn the National Minimum Wage¹¹ or less from their employment are now exempted from paying personal income tax.
2. **Non-resident Individuals**¹²: tax liability for non-resident individuals, including Trustees and Executors has been further extended to include services, to a person resident in Nigeria, of a technical, management, professional or consultancy nature, particularly where significant economic presence¹³ has been established. Withholding tax is however, the final tax in this instance.
3. **Assessable income for new trades**¹⁴: assessable income of new business will be calculated on actual year basis. That is, for the first 3 years of commencement of business, the income generated from the start of the business to the end of the accounting period of the relevant year will be considered for tax purposes.

VALUE ADDED TAX ACT (VATA)¹⁵

1. **Taxable supplies**: The Finance Act 2020 has further reinforced the FIRS' clarifications through a Circular released April 29, 2020 on the scope of VATable goods and services. Therefore, VAT is chargeable on intangible and immoveable properties. Furthermore, VAT is applicable to services provided to and consumed by a person in Nigeria, irrespective of whether it was rendered or legally required to be rendered in Nigeria. Also, incorporeal rights in tangible and immoveable properties are VATable where exploitation of the right is made by a person in Nigeria or the right is registered, assigned to, acquired by a person in Nigeria.
2. **Meaning of goods and service**¹⁶: goods are now defined to mean both moveable and immoveable properties except land and building, money

¹⁰ Section 37 of PITA.

¹¹ The minimum wage is pegged at N30, 000 monthly by the National Minimum Wage Act, 2019.

¹² Section 6 of PITA. Under this section, foreign individuals doing business in Nigeria are liable to pay tax on the aspect of their operations carried out in Nigeria.

¹³ It is not certain if the definition of significant economic presence in CITA will be applicable in this regard. Perhaps we should expect an Order from Minister of Finance containing an explanation of what will constitute significant economic presence for non-resident individuals.

¹⁴ Section 24. This was previously done on a preceding year basis, after a repeal of the commencement rule by the Finance Act 2019.

¹⁵ Value Added Tax Amendment Act 2007. Further amended by the Finance Act, 2019.

¹⁶ Section 46 of VATA.

or securities, while services are now specifically defined as rights over intangible or incorporeal properties excluding interest in land or building, money or securities.

- 3. VAT exemption¹⁷:** commercial aircrafts, airline transportation tickets sold by commercial airlines, rental and lease of agricultural equipment are now exempted from VAT.

STAMP DUTIES ACT¹⁸

Levy on electronic money transfer¹⁹: stamp duties on electronic money transfer of sum from Ten Thousand Naira (N10, 000) above is now replaced with Electronic Money Transfer Levy. The levy is a one-off fee at Fifty Naira (N50), and the modalities for its collection and remittance will be prescribed by the Minister of Finance at a later date²⁰.

CAPITAL GAINS TAX ACT (CGTA)²¹

Compensation for loss of employment²²: compensations paid to an employee for loss of employment is now taxable if the sum exceeds Ten Million Naira (N10, 000, 000). This tax is to be deducted at source by the employer according to the PAYE regulations and remitted to the relevant State Internal Revenue Service.²³

INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT (IDITRA)²⁴

¹⁷ First Schedule to the VATA.

¹⁸ Stamp Duties Tax Act, LFN 2004.

¹⁹ Section 89 of the Stamp Duties Act.

²⁰ This levy will be shared between the Federal Government and State Government at 15% and 85% respectively.

²¹ Capital Gains Tax Act, LFN 2004.

²² Section 36 of the CGTA.

²³ The applicable CGT rate is 10% on the excess of the threshold (N10, 000, 000).

²⁴ IDITRA, LFN 2004.

Pioneer status for primary agricultural production²⁵: small and medium sized companies involved in primary agricultural production may now enjoy pioneer for the first 4 years of operation and an additional 2 years upon application.

Small companies in this regard means companies whose gross turnover is Twenty-Five Million Naira (N25, 000, 000) or less, while medium sized companies are those whose gross turnover is greater than Twenty-Five Million Naira (N25, 000, 000) but less than One Hundred Million Naira (N100, 000, 000)²⁶.

TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT ETC.) ACT²⁷

Exemption from education tax²⁸: small companies are now exempted from education tax²⁹.

COMPANIES AND ALLIED MATTERS ACT (CAMA)³⁰

Unclaimed Dividends of public companies³¹: in addition to the provisions of CAMA relating to dividends which remain unclaimed for a period of 12 years³², the Finance Act now specifically provides that the unclaimed dividends of a public company quoted on the NSE³³ for a period of 6 years shall be transferred to an Unclaimed Funds Trust Fund. This fund is held in trust by the Federal Government as a special debt owed to the shareholders, and may be claimed by the shareholder at any time.

²⁵ Section 1 of IDITRA.

²⁶ Primary agricultural production is defined by the Act as primary crop production, livestock, forestry and fishery production, excluding any intermediate or final processing and other associated manufactured or derivative products.

²⁷ LFN 2004.

²⁸ Section 1 of the Tertiary Education Trust Fund (Establishment Etc.) Act.

²⁹ Small company is as defined by CITA, that is, Small companies in this regard means companies whose gross turnover is Twenty-Five Million Naira (N25, 000, 000) or less.

³⁰ Companies and Allied Matters Act, 2020.

³¹ Section 432 of CAMA.

³² CAMA provides that such dividends should be included in the profits to be distributed to other shareholders of the company.

³³ Nigerian Stock Exchange.

NIGERIA EXPORT PROCESSING ZONES ACT (NEPZA)³⁴

Filing of returns³⁵: companies doing business in the free trade zones are now required to file self-assessment returns to the Federal Inland Revenue Service or face punitive sanctions for non-compliance.

CUSTOMS AND EXCISE TARIFF ETC. (CONSOLIDATION) ACT³⁶

Excise duties on telecommunication services³⁷: telecommunication services provided in Nigeria will now attract excise duties at the rate prescribed by the President³⁸.

CONCLUSION

As much as the efforts of the Nigerian government to provide a comprehensive update of the applicable tax laws and related legislations through the Finance Act 2020 is applaudable, one cannot deny that there is an apparent need for a timeous follow-up on some of these provisions with the relevant Orders to ensure that the essence of the amendments is not lost. A vivid example of this is the definition of “Significant Economic Presence” applicable to non-resident individuals for profits derived from Nigeria.

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³⁴ LFN, 2004.

³⁵ Section 18(1) of NEPZA.

³⁶ LFN, 2004.

³⁷ Section 21 of the Customs and Excise Tariff Etc. (Consolidation) Act.

³⁸ This suggests that an Order prescribing the applicable excise duty may be released by the President at a later date.