The Chartered Institute of Taxation of Nigeria Workshop

Policy Implications of Finance Act, 2020 –Towards Tax Policy Reforms and Economic Recovery

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Introduction

The Finance Act 2020 was Signed into law by the President of the Federal Republic of Nigeria on the 31st December, 2020

Introduction Continued

- The Following Extant tax laws were affected:
- Personal Income Tax Act
- Industrial Development(Income Tax Relief) Act
- Capital Gains Tax Act
- Companies Income Tax Act

Introduction Continued

- Tertiary Education Trust Fund (Establishment)
- Stamp Duties Act
- FIRS (Establishment) Act
- Companies and Allied Matters Act

Introduction Continued

- Customs and Exercise Tariff, Act
- Value Added Tax Act
- Nigeria Export Processing Zones Act

Introduction Continued

- Oil and Gas Free Zone Act
- Fiscal Responsibility Act
- Public Procurement Act

Introduction Continued

There were key introductions by the Act:

- 1. the establishment of the Crisis Intervention Fund to enable Government carry the burden of crisis that may come up from time to time
- 2. Unclaimed Dividend Trust Fund

Objectives of the Finance Act 2020

- Amend relevant sections of the tax laws
- Implement procurement reforms
- Support the transportation sector, via the fiscal measures
- Put in place measures for crisis management
- Implement Fiscal Responsibility
- Encourage ease of doing business

Personal Income Tax – Observed Changes continued

- A new Section (6A) was introduced in PITA. It deals with Significant Economic Presence in Nigeria as was introduced in CITA in 2019.

Personal Income Tax
Observed Changes Continued

- Individuals, executors or trustees outside Nigeria that carries on business in Nigeria such as technical, management, consultancy or professional services and makes income from it shall pay withholding tax, which shall be the final tax

Personal Income Tax
Observed Changes Continued

- The Minister for finance may by order, determine what constitutes significant economic presence.

Personal Income Tax – Observed Changes continued

- The implication of the above is that
- Foreign Persons earning profits from Nigeria are taxed under Section 6 of PITA once a fixed base/taxable presence is created, subject to existing treaties.

Personal Income Tax – Observed Changes

- Section 6A introduced withholding tax of 5% (for individuals) as final tax for profits that previously escaped a fixed base.
- If a relief is not available in the country of residence, it means there's going to be double taxation.

Personal Income Tax
Observed Changes Continued

- Section 24 of the Act has been substituted with a new section.
- Overlapping periods in the commencement rule in the previous law has been eliminated.

Personal Income Tax
Observed Changes Continued

- The implication of the new Act 24 is that the assessment of a new business for the first year starts from the day the business commenced to the end of the first accounting year.

Personal Income Tax
Observed Changes Continued

- Second year starts from the beginning of the second accounting year to the end while the third year starts from the beginning of the third accounting year to the end. No more overlapping.
- Double taxation in cessation rule has been removed.

Personal Income Tax
Observed Changes Continued

- The cessation tax is calculated from the beginning of the accounting period to the date the business ceased operations, which must be paid within 3 months from the date of cessation.

Personal Income Tax
Observed Changes Continued

- Section 33 of the act has been amended to define Gross Income as income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items(NHF; NHIS; Life Assurance Premium; National Pension Scheme) and all allowable business expenses and capital allowance.

Personal Income Tax
Observed Changes Continued

- The Implication of the definition of Gross Income as amended is that it will affect the computation of Consolidated Relief Allowance (CRA) which will affect the total relief, chargeable income, tax payable and net pay of individuals. Ie Deduction of NHF;NHIS;LAP;NPS from Gross emolument before arriving at the Gross Income.

*NHF = Natoinal Housing Fund; NHIS = National Health Insurance Scheme; LAP = Life Assurance Policy; NPS = National Pension Scheme.

Personal Income Tax Observed Changes Continued

- This means that employees will no longer enjoy additional 20% relief previously claimable on the portion of their income that relates to NHF;NHIS;LAP;NPS, and the resultant effect shall be increase in chargeable income.

Personal Income Tax
Observed Changes Continued

- Section 37 of the Act has been amended to include “Provided that minimum tax under this section or as provided for under the Sixth Schedule to this Act shall not apply to a person in any year of assessment where such person earns the National Minimum Wage or less from an employment”.

Personal Income Tax
Observed Changes Continued

- The implication is that those that earn minimum wage of N360,000 per annum or less will not pay tax or liable to deduction of PAYE.

Personal Income Tax
Observed Changes Continued

- Section 33(3) provides that Life assurance premium paid during the preceding year of assessment will now be claimed as relief with respect to life insurance on tax payer or spouse in the preceding year to the year of assessment.

Personal Income Tax
Observed Changes Continued

- Implication: This provision was in existence and was deleted by the amendment of Finance Act 2019, but now reinstated. Individuals can now continue to claim tax reliefs on premium payments on their life assurance or that of their spouse. This means that any such premium paid in 2020 is claimable in 2021 as a relief to the tax payer.

Personal Income Tax
Observed Changes Continued

- Section 20(g) has been further amended to allow such deductions as provident fund or other retirement benefits funds, society or scheme recognized under the Pension Reform Act. The implication here is that employers must ensure that schemes that such contributions are made are recognized by the Pensions Reform Act.

Capital Gains Tax – Observed Changes

- Section 2 of the Act was amended to insert subsection 4 which states "Subject to the provisions of Section 31 of this Act, every person having disposed a chargeable asset shall, not later than 30 June and 31 December of that year, compute the capital gains tax, file self-assessment return, and pay the tax computed in respect of the chargeable assets disposed in the periods.

Capital Gains Tax – Observed Changes

- Section36(2) has been amended as follows: "Sums obtained by way of compensation for loss of office, up to a maximum of N10,000,000.00, shall not be chargeable gains and subject to tax under this Act. Provided that any sum in excess of N10,000,000.00 shall not be so exempt but the excess amount shall be chargeable gains and subject to tax accordingly."

Capital Gains Tax – Observed Changes

- The Implication of this is that employers paying an employee for loss of employment, any amount above N10,000,000 (Ten Million Naira only) must deduct CGT. It means that any amount that N10,000,000 and below is not taxable. The time for the remittance shall be due on the 10^{th} day of the succeeding month.

Capital Gains Tax – Observed Changes

- Section 24(f) of the Act is amended by inserting after the word, "aircraft", in line 1, the words, "used in international traffic".

Capital Gains Tax – Observed Changes

- The implication of this is that where a ship or aircraft is owned by a Nigerian-resident and used for international traffic, it is deemed situated in Nigeria for CGT purposes. This puts an end to the controversy of ship or aircraft used for International traffic and local traffic. It might not necessarily be owned by a Nigerian to be deemed situated in Nigeria.

Companies Income Tax Act (CITA) – Observed Changes

- Section 11 of the Act was amended to exclude the processing and manufacturing of all different agricultural products from primary agricultural products.
- Similarly subsection(2) of Section 11 reduced the moratorium period for extension of tax on interest to 12 months from 18 months earlier stated in the law.

Companies Income Tax Act (CITA) – Observed Changes

- Section 16(12) of the Act has been amended to reduce minimum tax rate from 0.5% to 0.25% of gross turnover less franked investment income. This applies equally to Insurance business, as the base for non-life is gross premium while that of life business is gross income.

Companies Income Tax Act (CITA) – Observed Changes

- Section 16(13) Clarifies the taxation of Insurance business thus: “gross premium means the total premiums written, received and receivable excluding unearned premium and premiums returned to the insured”

Companies Income Tax Act (CITA) – Observed Changes continued

"Gross income" means total income earned by a life insurance business including all investment income (excluding franked investment income), fees, commission and income from other assets but excluding premiums received and claims paid by re-insurers."

Companies Income Tax Act (CITA) – Observed Changes continued

- Section 25 (8) was inserted in the act and it exempts donations made in favor of any fund set up by Federal or State Government in respect of any pandemic, natural disaster or any of such from tax. It means that all of them are tax deductible. (9) However, all the amounts are limited to 10% of assessable profit

Companies Income Tax Act (CITA) – Observed Changes continued

- Section 25 (9) States that Notwithstanding the provisions of subsections (2) and (3), amounts allowable for deduction, in respect of subsection (8), in any year of assessment shall be limited to 10% of assessable profit.

Companies Income Tax Act (CITA) – Observed Changes continued

- Section 39(1-3) grants tax free period incentive to companies in the business of Gas Utilization. Any such company shall not be titled to such incentive if it has benefited from such incentive under the Petroleum Profit Tax

Companies Income Tax Act (CITA) – Observed Changes continued

- Section 53 of the act, has made it incumbent on companies to declare their profits correctly and compute their tax payable in their returns. Such company must present evidence of payment of such tax alongside their tax returns, failure which penalty and interest will accrue on the outstanding liability from the date of the incorrect returns.

Companies Income Tax Act (CITA) – Observed Changes continued

- There is an insertion of Section 55(1A), where a company other than a Nigerian company derives profit in Nigeria is mandated to submit their returns for the relevant year of assessment together with:

(a) the company's full audited statement and financial statement of the operations of the Nigerian company

Companies Income Tax Act (CITA) – Observed Changes continued

(b) tax computation schedules based on the profits attributed to the Nigerian operations

(c) True and correct statement containing profits from each and every source in Nigeria

(d) duly completed Companies Income Tax assessment forms.

Companies Income Tax Act (CITA) – Observed Changes continued

- Section 63 of the Act has been substituted with a new one which makes it compulsory for all companies whether liable to tax or not to maintain books or records of accounts which must contain enough information of all transactions and must be in English Language. Failure to do this attracts a penalty of N100,000 for the first month and N50,000 for each subsequent month.

Companies Income Tax Act (CITA) – Observed Changes continued

- Section 68 of the act has been amended to introduce the use of courier service, email or any other electronic means of service of correspondences.
- Section 77(2) has replaced two months with 30 days as due date for tax payments.

Companies Income Tax Act (CITA) – Observed Changes continued

- The Part II paragraph 1 to the second schedule brought in expenditure on development or acquisition of software or other capital outlays on electronic applications, as a qualifying capital expenditure.

Industrial Development (Income Tax Relief) Act

- Section 1(7) of the act has been amended to give pioneer status to SMEs engaged in primary agricultural production. The act equally adopted the definition of SMEs in relation to gross turnover per annum.

Tertiary Education Trust Fund(Establishment) Act

- Section 1(2) of the act has exempted small companies (Companies that earn gross turnover of N25m or less per annum) from Tertiary Education Tax.

Customs and Excise Tariff, ETC (Consolidation Act)

- New Section 21 (1) of this act introduces payment of excise duties on imported goods and those manufactured in Nigeria, of which before this time goods imported and raw materials were not subject to this tax. The rate shall be the one specified in the fifth schedule.

Customs and Excise Tariff, ETC (Consolidation Act) continued

- Section 21(2) introduces telecommunication services excise duties at the rate specified under the duty column in the schedule as President may by order prescribe.

Customs and Excise Tariff, ETC (Consolidation Act) continued

- The first schedule to this Act reduced duty payable on tractor and motor vehicles for transport of persons and goods from 35/30% to 5/10%
- The second schedule exempted aircrafts, engines, spare parts and components being imported by registered airlines from excise duty

Value Added Tax Act (VATA)

- Section 2 was introduced and interpreted as follows:
- Supply of goods must have taken place when the supplier issues receipt or invoice, or when the payment of consideration is due or received by supplier; which ever comes first.

Value Added Tax Act (VATA) continued

- Section 4 of the act states that the commencement date of February 1 2020 was the effective date of Vat rate increase from 5 to 7.5%.
- Section 10 requires non-resident persons that makes taxable supply of goods and services to Nigeria to register for tax with FIRS and obtain TIN. They are required to include tax on its invoice for taxable supply of goods and services made and are equally empowered to appoint a representative.

Value Added Tax Act (VATA) continued

- Section 46(b) defines goods as all forms of tangible properties, movable or immovable, but does not include land and building, money or securities. Services on the other hand is defined by the act as anything other than goods or services provided under a contract of employment and includes any intangible or incorporeal (product, asset or property) over which a person has ownership or rights,

Value Added Tax Act (VATA) continued

or form which he derives benefits and which can be transferred from one person to another. This implies that Land and building, money or securities are clearly excluded from the above definition of goods and services which means that sale of interest in land and building, securities and money is not under the purview of VAT.

Stamp Duties Act (SDA)

- Section 2 of the Act defines stamp as an impressed pattern or mark by means of an engraved or inked die, an adhesive stamp, an electronic stamp or an electronic acknowledgement for denoting any duty or fee, provided that the service shall utilize adhesive stamp produced by the Nigerian Postal Service pursuant to its enabling Act. It means that NIPOST stamps will now be used to stamp duty documents.

Stamp Duties Act (SDA)

- Section 89(A) introduced a N50 on electronic receipts or electronic transfer of money deposited in deposit money bank imposed on any transfer of N10,000 and above. The MOF has been empowered to make regulations for the administration of the levy. The fund is to be shared 15:85 to FG and SG

Federal Inland Revenue Service (Enabling) Act

- Section 8 of the act requires FIRS to provide assistance in the collection of revenue claims or any administrative assistance in tax matters with respect to any agreement or arrangement made between the Government of Nigeria and Government of any country.

Federal Inland Revenue Service (Enabling) Act

- Section 23 of the act mandates the Accountant-General of the Federation to open a dedicated account for each tax type for the purposes of settling tax refunds. An annual budget is required to be approved by the National Assembly for this purpose.

Federal Inland Revenue Service (Enabling) Act

- Section 25 of the Act has been amended to deploy digital platform for the purposes of tax administration, collection and remittance. This can be deployed in tax information gathering provided 30 days notice is given to those concerned.

Federal Inland Revenue Service (Enabling) Act

- Section 28 mandates banks, insurance, stock broking and any other financial institutions to submit returns on transactions that are related to international tax treaty and other exchange of information obligations, failure which will attract penalty of N25,000 for the first month and N10,000 for every month in default.

Federal Inland Revenue Service (Enabling) Act

- Section 39 was introduced for confidentiality of taxpayers' information and a penalty of N1,000,000 placed on any officer or former officer or whosoever divulges tax payer information to a third party, or maximum of 3 years imprisonment or both.

Nigeria Export Processing Zones Act (NEPZA), Oil and Gas Export Free Zone Act (OGFZA)

- Section 18 (1) of the Act still retains the exemption granted to approved enterprises from payment of taxes, levies, duties, and foreign exchange regulations subject to provisions of BOFIA 2020. Approved enterprises are however, required to file their annual returns in accordance with Section 35 of CITA.

Companies and Allied Matters Act (CITA)

- Section 432(3),(4) that was introduced states that Any dividend not claimed after 6 years and above, will be transferred to Unclaimed Funds Trust Funds. Such transfers becomes a debt owed by the Federal Government and the owner can claim it at any time.

Fiscal Responsibility Act (FRA)

- Section 12 of the act declares conditions were the President may exceed the aggregate expenditure ceiling has been expanded to include wars, pandemic, natural disaster, breakdown of public order or any other threat to the existence of Nigeria.

Public Procurement Act

- A substitute Section 15 now indicates that the act shall cover the executive, judiciary, legislature and all government MDAs including entities that derive at least 35% of their funds appropriated from the Federal share of the consolidated reserve fund.

Public Procurement Act continued

- The deadline for bid submission has been reduced to 4 weeks from 6 weeks.
- Membership of each tenders board is now stated.
- Parastatal tenders board now has power to approve procurement to be confirmed by the political head so long as the political head is not the Chairman of the tenders board.

Public Procurement Act continued

- Electronic bidding is now allowed by law.
- Mobilization fee has now been increased from 15 to 30%

Establishment of Crisis Intervention Fund

- Part XV of the Finance Act 2020 established a crisis intervention fund of N500billion which will come from the Consolidated reserve Fund and Special Accounts for meeting any crisis related expenditure or other exigencies.

Conclusion

- The introduction of Finance Act strategy annually is a welcome development. This will make our tax laws which hitherto has been obsolete to be in tune with current realities. The implication of this is that both government and tax authorities should be ready to amend their policies to be in line with the Finance Act amendments on a yearly basis.

The End

Thanks for listening