

POLICY IMPLEMENTATION OF THE FINANCE ACT 2020: TOWARDS TAX POLICY REFORM AND ECONOMIC RECOVERY



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**BEING A WELCOME ADDRESS PRESENTATION AT THE FINANCE ACT WORKSHOP ORGANISED BY THE CHARTERED
INSTITUTE OF TAXATION OF NIGERIA ON WEDNESDAY, 7TH JULY 2021**

OVERVIEW

- ✓ **The Finance Act 2020 became effective from 1 January 2021. It amended the provisions of 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 Tariff Etc. (Consolidation) Act, Value Added Tax Act, Stamp Duties Act, Federal Inland Revenue Service (Establishment) Act, Nigeria Export Processing Zones Act, Oil and Gas Export Free Zone Act, Companies and Allied Matters Act, Fiscal Responsibility Act and Public Procurement Act. It also established the Crisis Intervention Fund and Unclaimed Funds Trust Fund.**
- ✓ **The covid-19 pandemic threw up unique challenges for tax payers as well as the economy in 2020 and one of the objectives of the Finance Act aside from funding the 2021 budget was to ameliorate the hardship occasioned by the pandemic. It is in line with this objective that the Act exempts compensation for loss of office of up to N10,000,000 (ten million Naira) from the payment of capital gains tax. Similarly, the Act introduced an income tax exemption for employees whose gross income equals the minimum wage or below as defined in the National Minimum Wage Act.**
- ✓ **Furthermore, 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 of companies for tax returns prepared and filed for any year of assessment falling between 1 January 2020 and 31 December 2021 (both dates inclusive). This is in response to the impact of the COVID-19 pandemic on companies**

OVERVIEW/2

- ✓ **The Act also contains provisions aimed at increasing government revenues and removing loopholes that will prevent the achievement of this purpose. It contrasts revenue from core shipping/freight operations and air activities that should be subject to tax under section 9 of the CITA from revenue from other incidental activities that should be subject to the general companies' income tax rate of 30%.**
- ✓ **In like manner, the Act limits the use of the duty exception on bank advance revenue to advances allowed for primary agricultural production. This change is aimed at promoting core agricultural production in Nigeria. Equally of note is the reduction of 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 tax holiday granted to agricultural companies for a period of up to eight years has been removed by the Act. This addresses the duplication of income tax incentives granted to agricultural businesses in Nigeria.**
- ✓ **Likewise, penalties or fines pursuant to laws made by States Houses of Assembly are non-deductible for income tax purposes alongside those pursuant to legislation enacted by the National Assembly.**

OVERVIEW/3

- ✓ **The Act further provides 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.**
- ✓ **Non-resident companies that derive profit from or are taxable in Nigeria are to file annual tax returns along with full audited financial statements and the financial statements of its Nigerian operations, tax computation schedules, true statement of its profits and completed companies income tax self-assessment form; however, these do not apply to an NRC whose income is that for which withholding tax is its final tax.**
- ✓ **In a much-welcomed amendment, the Act removed the burden to file audited accounts for small and medium companies. The FIRS is to specify a different form of account to be included in tax returns of small and medium companies.**
- ✓ **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.**

OVERVIEW/4

- ✓ **Meanwhile, an incorporeal right has been included as a taxable supply of service for the purpose of payment of Value Added Tax (VAT) under the Finance Act 2020 while non-resident companies that supply taxable goods and services to Nigeria are mandated to register for VAT purposes. The Act expressly exempts land and buildings from the payment of VAT. The list of VAT-exempt goods and services was expanded 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 Act amended section 6 of the Personal Income Tax Act (PITA) to provide that non-resident 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.**
- ✓ **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.**

OVERVIEW/5

- ✓ Under the FA 2020, 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.
- ✓ It also provides that 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.
- ✓ It grants a tax incentive to 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.

OVERVIEW/6

- ✓ **The Act establishes the Unclaimed Funds Trust Fund into which dividends of a public company quoted on the Nigeria Stock Exchange which remain unclaimed for a period of six years or more as well as monies in dormant bank accounts are to be transferred.**
- ✓ **They are to 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 Funds are to be used by the Government in financing its budget.**
- ✓ **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.**

IMPLEMENTATION OF THE ACT

IMPLEMENTATION

- ✓ The period of 2 years commencing from 1 January 2020 to 31 December 2021 provided to enjoy the reduced minimum tax payable presupposes that 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.
- ✓ The Act stipulates penalties for deliberately filing incorrect returns.
- ✓ This brings up the question of how to differentiate a deliberate act of filing incorrect returns from an unintentional act.
- ✓ In practice, making this distinction may be quite difficult; therefore, corporate entities are advised to ensure that utmost diligence is put into ensuring that the tax returns filed are correct.
- ✓ Companies are to note the reduction of the timeline for payment of tax liabilities that are not subject of appeal from 60 days to 30 days in order to avoid the imposition of penalties and interest on the principal amount.

IMPLEMENTATION OF THE ACT/2

IMPLEMENTATION

- ✓ 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.
- ✓ It should be noted that the timeline for remitting capital gains tax deducted from compensation for loss of office above N10,000,000 has been tied to the provisions of the Pay-As-You-Earn (PAYE) Regulations and now have to be filed on the 10th day of the month following the month of deduction. The existing CGT Act was silent on whose obligation it is to deduct and remit CGT on compensation for the loss of office.
- ✓ However, companies had acted as self-appointed collection agents on behalf of tax authorities for the purpose of proper remittance despite the fact that they were not statutorily obligated to do so before the amendment by the FA 2020. Thus, the Finance Act has clarified that the responsibility to deduct and remit capital gains tax on taxable gains for compensation for loss of office lies with the paying party and remittance is in line with the PAYE Regulation.

CONCLUSION AND RECOMMENDATION

CONCLUSION

- ✓ The Institute in her continued efforts to chart the course of tax development and growth has put together these changes introduced by the amendments in the Act into our Monograph which is been presented to members and our general stakeholders today.
- ✓ Though the suggestions are not conclusive, it is envisaged to provide a guide to every tax practitioner in dealing with the changes in applicable tax laws as amended.
- ✓ We look forward to harvesting more of your opinions and concerns which will continue to form the basis of our future engagements with the authorities.

RECOMMENDATIONS

- ✓ In spite of the laudable provisions of the Finance Act 2020, the following are recommendations for improvement:
- ✓ Provisions should be made to stipulate the process for withdrawal of dividends by shareholders from the Unclaimed Funds Trust Fund.
- ✓ The Act empowers the Minister of Finance to make an order defining activities that constitute significant economic presence under the amended PITA.
- ✓ This order is awaited to provide much-needed guidance with respect to the taxation of non-resident individuals that earn income in Nigeria.

Thank You

