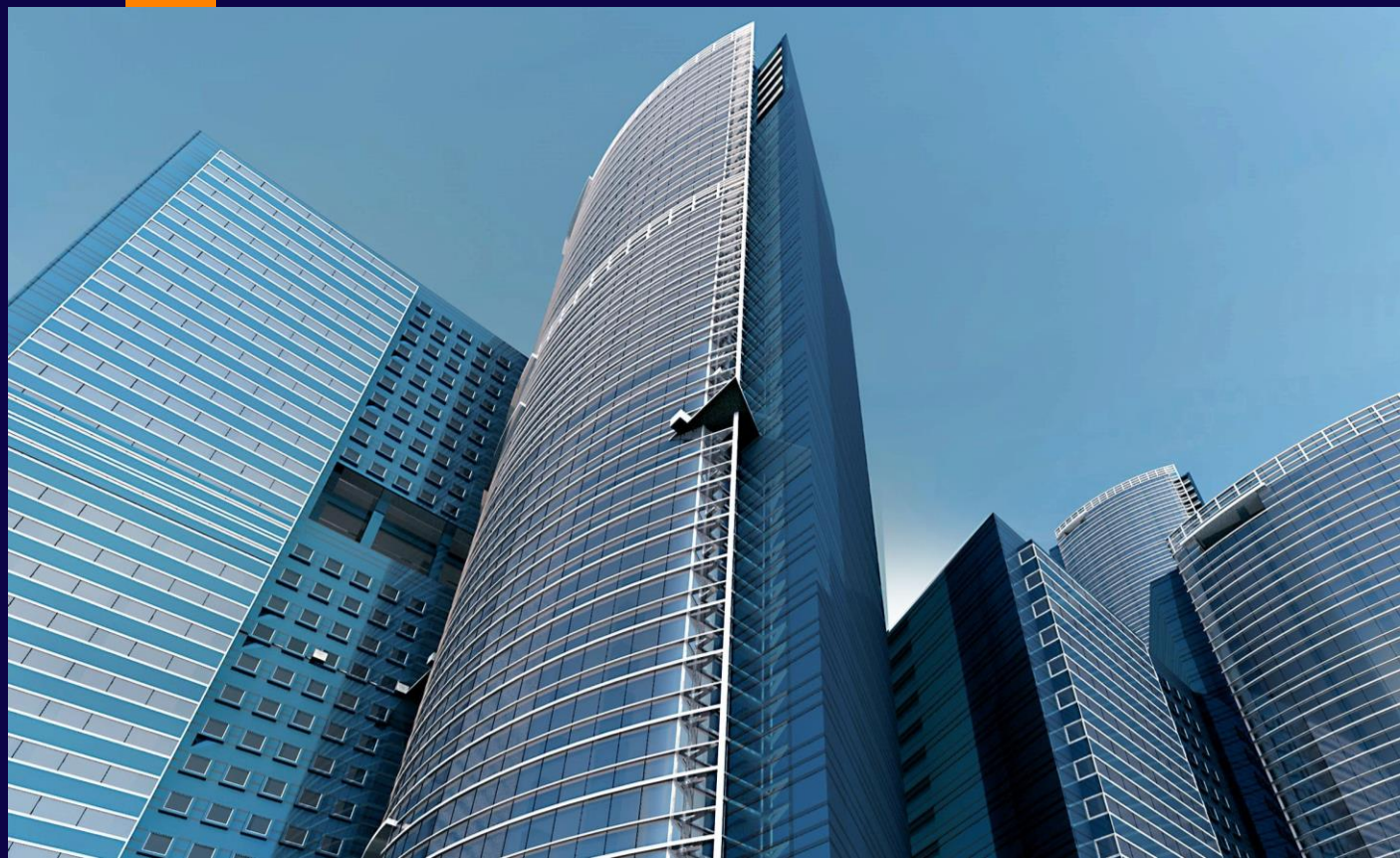


FINANCE ACT 2021: WHAT TAX PROFESSIONALS SHOULD KNOW



Introduction

Background

The Finance Act 2021 (“the Act”) was signed to law on 31 December 2021 by the President of the Federal Republic of Nigeria. This makes it the third Finance Act since its re-introduction in 2019 to accompany the annual budgets. The Act is effective from 1 January 2022.

The Act amends 13 different laws viz:

1. Capital Gains Tax Act
2. Companies Income Tax Act
3. Federal Inland Revenue Service Establishment Act
4. Personal Income Tax Act
5. Stamp Duties Act
6. Tertiary Education Trust Fund (Establishment) Act
7. Value Added Tax Act
8. Nigerian Police trust Fund (Establishment) Act
9. Customs, Excise Tariffs, Etc, (Consolidation) Act
10. Insurance Act
11. National Agency for Science and Engineering Infrastructure Act
12. Finance (Control and Management) Act
13. Fiscal Responsibility Act

Introduction

Objectives for the Act



The Government's objectives for the Act are to:

- Support the implementation of the 2022 Federal Government Budget; and
- To introduce significant changes to a few tax and non-tax laws in response to the continuing negative impact of the Covid-19 pandemic on the economy.

**Capital Gains Tax re-introduced
on disposal of shares**

**Reduced minimum tax rate
of 0.25% streamlined**

Highlights of the Finance Act 2021

**Non-resident companies (NRCs) engaged in
digital businesses in Nigeria could be taxed
on turnover basis**

**FIRS is now emphasized as the only agent of
Government for tax administration,
assessment and collection in Nigeria**

Education tax rate now 2.5%

Highlights of the Finance Act 2021

FIRS empowered to deploy third-party technology for tax administration.

Filing of new customer returns now quarterly, with new penalty regime of N1m per return not filed

Introduction of excise duty on carbonated, non-alcoholic and sweetened beverages

NRCs to now account for VAT on their supplies. B to C and even B to B

Erstwhile redundant NASENI Act tax now revived

Highlights of the Finance Act 2021



**FIRS to administer Nigerian Police
Trust Fund Levy**

**Minister of Finance now empowered to
issue regulations for the administration
of EMT Levy**

Capital Gains Tax Act

Amendments of Existing Provision

Disposal of Shares and Securities – Section 30

Section 30 of the CGTA is amended as follow:

Gains on disposal of shares in any Nigerian Company to attract CGT at 10%, provided the gross disposal proceeds is at least ₦100m in any twelve consecutive months. The person making the disposal is mandated to render appropriate returns to the Service on annual basis.

Where the proceeds of disposal are reinvested in the acquisition of shares within the same year of assessment, no CGT would apply. However, gains on the portion not reinvested shall be chargeable to CGT immediately.

CGT is to apply proportionately on any portion of the proceeds not reinvested.

Transfer of shares between a borrower and a lender in a Regulated Securities Lending Transaction shall not be liable to CGT.

Gains on disposal of Nigerian government securities to be exempted from CGT.

Nigerian government securities include:

1. Nigerian treasury bonds
2. savings certificates
3. premium bonds
4. other long-term securities issued by Nigerian government

Individuals to pay the applicable CGT to IRS of relevant states while companies are to remit the CGT to FIRS

Capital Gains Tax Act

Amendments of Existing Provision

Disposal of Shares and Securities

Significant issues to be addressed:

The law seems to request persons with gross aggregate disposal proceeds less than N100m to file annual returns. However, it is more appropriate to expect those caught by the law to file the annual returns and pay the CGT to the relevant tax authority.

For foreign portfolio investors, the nominees or custodians of the investor may be required to file the CGT returns on their behalf.

There should be no distinction in treatment of gains based on duration of holding the shares. Therefore, an investor who purchased in the evening and sell the following morning should be chargeable to CGT, if the threshold is triggered.

For unquoted shares, especially where the transaction is between related parties, the market value would need to be determined and the valuation cost should be deductible.

For Nigerian Companies, the threshold can easily be verified by reviewing the details of securities acquisitions and disposals as disclosed on the cashflow statements of the company

For resident individuals and even companies, the stockbroker, the registrar of the company, the CSCS would be able to provide the details of the investors acquisition and disposal during a particular period. With trading now automated through the CSCS, global search can be done to ascertain the information of an investor's sale and purchase of quoted shares.

Capital Gains Tax Act

Amendments of Existing Provision

Disposal of Shares and Securities

Significant issues to be addressed:

It should be noted that the disposal of foreign shares by Nigerian resident individuals and companies are not exempted from CGT in Nigeria, but double taxation relief is available in respect of any foreign tax paid. However, a non-resident will only be liable to CGT on foreign shares disposed in Nigeria, if the proceeds are received in or brought into Nigeria.

Since the 10-year exemption for bonds is over, interest earned from corporate bonds are now liable to tax under CITA. Similarly, gains arising from disposal of such securities will be liable to CGT, except for Nigerian government Securities which are exempted from CGT.

For other chargeable assets, roll over relief can be enjoyed on the disposal even where the acquisition of similar assets occurs either 12 months before or 12 months after the disposal, while for disposal of shares, relief will only be enjoyed where the proceeds of disposal are reinvested in acquisition of similar shares within the same year of assessment.

The relevant tax authorities may have to appoint agents such as stockbrokers, CSCS, registrars and Custodians for efficiency in the collection and administration of law on disposal of shares, as provided in the schedule to the Capital gains Tax Act

With respect to roll over relief, this amendment provides a different rule distinct from the treatment of other chargeable assets.

Companies Income Tax Act

Insurance Companies – Section 16

- Minimum tax provisions under Section 33 are now to apply to insurance companies, such that ‘gross turnover’ is to mean ‘gross premium and other income’ for non-life business, and ‘gross income’ for life business.

The following definitions have also been updated:

- i. Gross Premium – total premium written, received and receivable, excluding unearned premium and premiums returned to the insured.
- ii. Gross Income – total income earned by a life insurance business including all investment income (other than franked investment income), fees, commission and income from other assets but excluding premiums received and claims paid by re-insurers.
- iii. Other Income – all the income of a non-life business other than gross premium (excluding franked investment income).

This amendment confirmed that insurance companies are subject to the minimum tax provisions in section 33. There has been different views as to the exemption of insurance companies from minimum tax provisions in the first four years of business, as available for other companies.

The controversy as to the applicability of other provisions of CITA to insurance companies based on the words “notwithstanding anything to the contrary contained in this Act” has now been resolved with this amendment.

Companies Income Tax Act

Amendment of Insurance Act

The Insurance Act has been amended in Sections 9,10 & 102 mainly to redefine what constitutes 'Capital Requirement'. By this amendment, the capital requirement of an insurance company will be determined based on the consideration of the following:

- The excess of admissible assets over liabilities
- Subordinated liabilities
- Other financial instruments

The above is subject to review by the National Insurance Commission from time to time.

Profits Exempted – Section 23

- Section 23(1)(c) of CITA has been amended to exclude the profits of companies engaged in educational activities, notwithstanding public character. Thus, these profits are no longer deemed as exempt for the purpose of CIT.
 - i. The implication of this amendment is that all educational institutions incorporated as a limited liability company shall continue to be liable to tax on their profits.
 - ii. Profits of educational institutions which are registered as companies limited by guarantee will no longer enjoy automatic tax exemption under this section.
 - iii. However, where the educational institution is set up through a trust deed and run by trustees who do not take benefit by way of distribution from the institution, tax may not apply to the institution, either by State IRS or FIRS
- Paragraph (q) has been amended to ensure that petroleum companies do not benefit from the tax exemption granted to companies for goods exported out of Nigeria.

Companies Income Tax Act

Minimum Tax – Section 33

- Section 33 of CITA is further amended in view of the reduced rate of 0.25% introduced via Finance Act 2020. Taxpayers may now choose to apply the reduced rate in respect of tax returns filed for any two consecutive accounting periods ending on any date between 1 January 2019 to 31 December 2021. That is, either for 1 January 2019 to 31 December 2020 or for 1 January 2020 to 31 December 2021.
- However, companies that failed to file tax returns within the time stipulated by law but opted for the reduced rate shall be liable to a penalty equal to the 0.25% minimum tax relief/reduction claimed by the company. But companies that filed returns promptly can enjoyed the two years relief as considered beneficial.

Gas Utilization (Downstream Operations) – Section 39

The following clarifications have been made in respect of claim of GUI by companies operating in the downstream sector:

- i. The same company cannot claim the incentive more than once
- ii. Where a new company is formed, following a reorganisation or restructuring, out of a company which has already enjoyed this incentive, such new company shall not be entitled to claim the incentive.
- iii. A company which has previously claimed an incentive for its gas utilization business under any law in Nigeria including PPTA and IDITRA, is not entitled to claim the incentive.

Definitions – Section 105

The definition of 'Real Estate Investment Company' expanded to include real estate unit trusts duly approved by SEC as a real estate investment scheme in Nigeria.

Companies Income Tax Act

Introduction of New Provisions

Section 30 of CITA has been amended to include non-resident companies that have significant economic presence in Nigeria, who are involved in electronic commerce, online payment etc in Nigeria.

Such companies could be assessed to tax on turnover basis, if the conditions specified in the law are met.

It must be stated that Nigeria has not adopted digital service tax (DST) which involved assessing digital companies to income tax on a specified percentage of turnover.

The provision allows the FIRS to assess such company to tax on a fair and reasonable percentage on the turnover of the company as it considered appropriate in the circumstance.

FIRS currently assumes a 20% profit on turnover taxed at 30%, thus giving 6% as the fair and reasonable percentage of tax on turnover.

Total Profits from All Sources – Section 31

- The Act has amended Section 31 such that qualifying capital expenditure (QCE) incurred in generating tax exempt income would no longer be considered for tax purposes.
- This provision can be applied by restricting the capital allowance claimable by a company to exclude the portion used in generating the tax exempt income. The restriction will only be applicable if the percentage of exempt income to total income is at least 20%.
- Therefore, effective from 2022 year of assessment, where the exempt income restriction on capital allowance is triggered, the total capital allowance computed (excluding unutilized brought forward), will be reduced by the exempt income before absorbing the balance (subject to restriction to 2/3 of assessable profit, where applicable) from the assessable profit for the year.
- Small companies are also required to compute and claim their capital allowances based on the available assessable profit irrespective of the fact that no tax is payable on the total profit. This is to ensure qualifying capital expenditure used in generating the exempt income are not available for utilization when the company exit the small company threshold.

Companies Income Tax Act

Introduction of New Provisions

Total Profits from All Sources – Section 31

- While section 27 CITA deals with treatment of expenses which relate to exempt income, this amended provision deals with assets used by the company in generating income, i.e., asset used for taxable and non-taxable income.
- This amendment restricts claimable capital allowance to the portion of assets used in generating taxable income. However, capital allowance brought forward can still be utilized in total.
- Where new assets are bought for use in generating both taxable and non-taxable incomes, the initial, annual, and investment allowances are to be computed in full before proration can be applied.
- Small companies are expected to claim capital allowance (CA) in any year they make profits, even though no tax is payable.

Income Tax Computations for 2022 YOA

	₦'000	₦'000
Assessable Profit		XXX
Less: Capital Allowances		
Capital Allowance b/f	XXX	
Capital Allowances for the year	XX	
Total Capital Allowances	XXX	
Less: Capital Allowance on Exempt Incomes	(X)	
Total Capital Allowance Claimable	XX	
Claim for the year(Restricted to $66\frac{2}{3}$ of Assessable Profit	(X)	(X)
Unabsorbed Capital Allowances C/F	X	

Companies Income Tax Act

Capital Allowances on Tax Exempt Income is calculated as:

$$\frac{\text{Total Tax-Exempt Income}}{\text{Total Income}} \times \text{Total Capital Allowance for the year}$$

A major challenge with this formula would arise where the company has some qualifying capital expenditure that are wholly used for the purpose of generating taxable incomes only.

In applying this method in computing the capital allowances on tax exempt income, there will be a need to review the company's assets on case-by-case basis. Only those assets that were used in generating the tax-exempt incomes will be prorated.



Companies Income Tax Act

Returns and Provisional Accounts – Section 55(8)

Where a company files its tax returns late and claims the minimum tax relief, penalty equivalent to the relief sought becomes payable by such company.

It is important to note that the provision mentioned above is specific to companies which pay minimum tax and will supersede the penalties stipulated in section 55.

Illustration

AXZ Ltd has a financial year end of 30th December. The company made a late return on 31st July and paid the appropriate minimum tax of N5m on the same date.

By virtue of section 55(8), AXZ Ltd will be assessed to an administrative penalty of N5m (equivalent to the relief enjoyed) as opposed to N25,000 and N5,000 stipulated in 55(3). In addition to this, the company will be assessed to interest and penalty (levied on the tax) for late payment.

Companies Income Tax Act

Deduction of Tax from Interest – Section 78

Subsection (4) amended.

Withholding tax on interest deducted from a Unit Trust recipient now constitutes the final tax in respect of such interest.

Deduction of Tax at Source – Section 81

Subsection (7) amended.

FIRS to refund excess tax payment arising from compliance with WHT obligations within 90 days with an option for the taxpayer to set off the excess against future taxes.

Federal Inland Revenue Service (Establishment) Act

Amendments of Existing Provisions

Administration of Tax Laws – Section 25



Subsection (4) has been amended to authorize FIRS to deploy third-party technology for the automation of the tax administration process

The taxpayer must however be given at least 30 days' notice prior to deploying such technology.

This notice period may be extended upon the taxpayer's written request and show of good cause.

Failure to grant FIRS access after the expiration of the notice period attract ₦25,000 for each day the failure continues

Federal Inland Revenue Service (Establishment) Act

Amendments of Existing Provisions

Information to be Delivered by Bankers – Section 28

- Banks are now expected to file quarterly returns in respect of new customers, as opposed to the erstwhile monthly filing requirement.
- Failure to file or filing incorrect returns now attracts a stiffer penalty of ₦1m.
- The penalty is in respect of each quarterly return not filed rather than on each branch or each customer of the Bank.



Federal Inland Revenue Service (Establishment) Act

Amendments of Existing Provisions

Relevance of other Laws – Section 68



Stamp Duties Act

Enactment Of New Subsections

Introduction of a new Section 89A(3)

Minister of Finance, subject to the approval of the National Assembly is to make...

- regulations for the imposition, administration, collection and remittance of the EMT Levy.
- regulations relating to the auditing, accounting, allocation and distribution of arrears of the relevant stamp duties and Electronic Money Transfer Levies collected between 2015 and 2019 fiscal years, within 30 days of commencement of the Finance Act 2021.

EMT Levies subsequently collected are to be distributed within 30 days following the month of collection.

Value Added Tax Act

Enactment Of New Subsections

Registration by Non-Resident Companies – Section 10

New subsection (4) included:

- Where the person appointed by FIRS to withhold or collect VAT makes a taxable supply to a taxable person in Nigeria, the person to whom the supply is made has no obligation to withhold VAT unless the agent has not collected the tax.
- FIRS may recover VAT on imported supplies either from the non-resident entities or directly from the Nigerian customers where the agent fails to collect VAT.
- FIRS circulars to be the operating documents in respect of charging, filing and remittance of VAT for non-resident companies in relation to taxable transactions in Nigeria.

Collection of Tax by Taxable person – Section 14

A new subsection (3) introduced to the effect that any agent appointed to withhold or collect tax is to remit same in the currency of transaction before the 21st day of the following month.

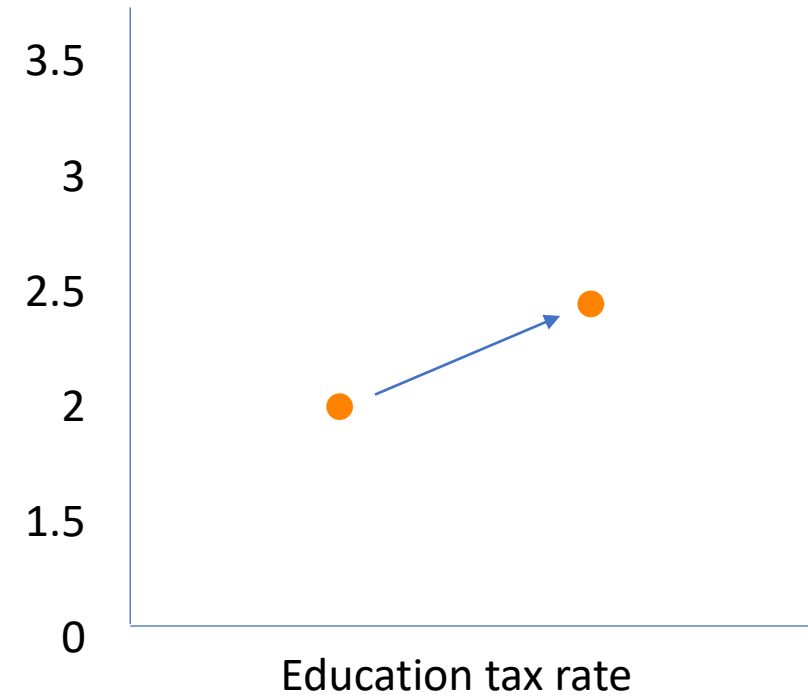
The exemption granted to companies within the ₦25m threshold shall not apply to companies engaged in upstream petroleum operations.

Other Major Changes

Section 1 (2) of Tertiary Education

Trust Fund Act

Education tax rate increased from 2% to 2.5% on a company's (other than a small company per CITA) assessable profits.



Other Major Changes

Section 4 of Nigerian Police Trust Fund (Establishment) Act

FIRS now expressly charged with the responsibility to assess, collect, account and enforce the payment of the Police Trust Fund Levy.

FIRS Establishment Act to also apply to the administration, assessment, collection, accounting, returns and enforcement of the Levy.

Section 20 of National Agency for Science and Engineering Infrastructure Act

Companies and firms with a turnover of ₦100m and above and engaged in banking, telecommunications, ICT, aviation, maritime, and oil and gas activities to pay 0.25% of profit before tax into a Fund set up by the Agency. The levy is to be collected by FIRS.

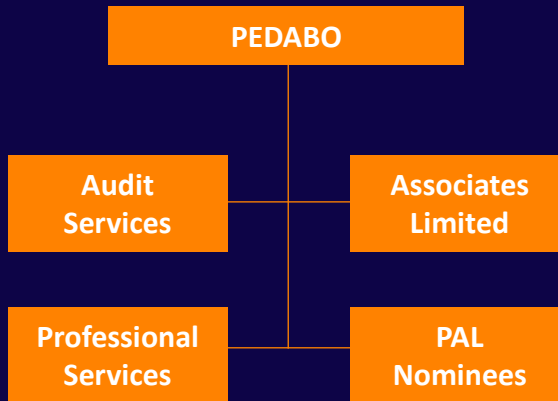
Section 21 Customs & Excise Duties Act

Non-alcoholic, carbonated and sweetened beverages to now attract excise duty at ₦10 per litre.

About Us – Who We Are

Pedabo is an independent member firm of Morison Global providing Audit, Assurance, Tax Consulting and Advisory services to all sectors of the Nigerian economy. We offer various professional services aimed at meeting our clients' business objectives and performance expectations.

Pedabo has in its over twenty years of existence evolved into four separate and distinct entities, namely:
Pedabo Associates Limited;
Pedabo Audit Services;
Pedabo Professional Services; and
PAL Nominees



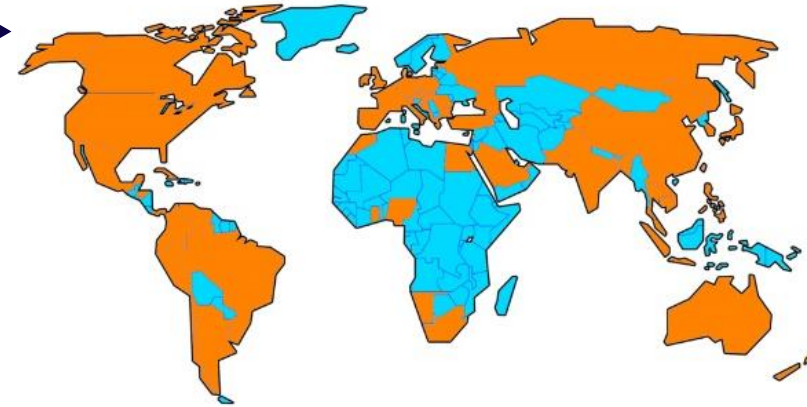
Morison Global's Footprint

Morison Global, a network of firms established to meet the cross-border accounting, auditing, tax and business consulting needs of clients.

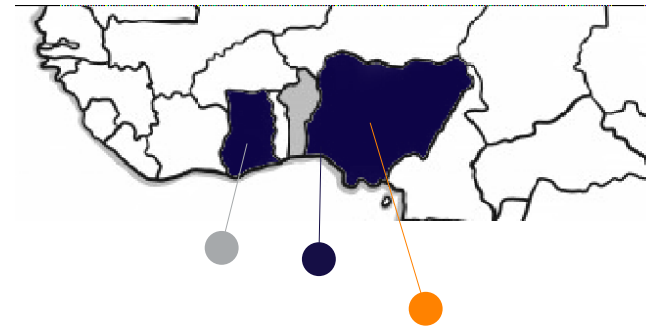
Our access to the support Morison Global creates more opportunities for our clients than they would get from a single discipline association.

Over the years, we have executed several projects jointly with Morison Global member firms. Our partnership has given us both the technical capacity and resources to execute larger projects across jurisdictions.

79 countries; 157 member firms; 10,300 professional staff; 375 offices; 1,200 partners; 1,002 turnover, \$billions (US).

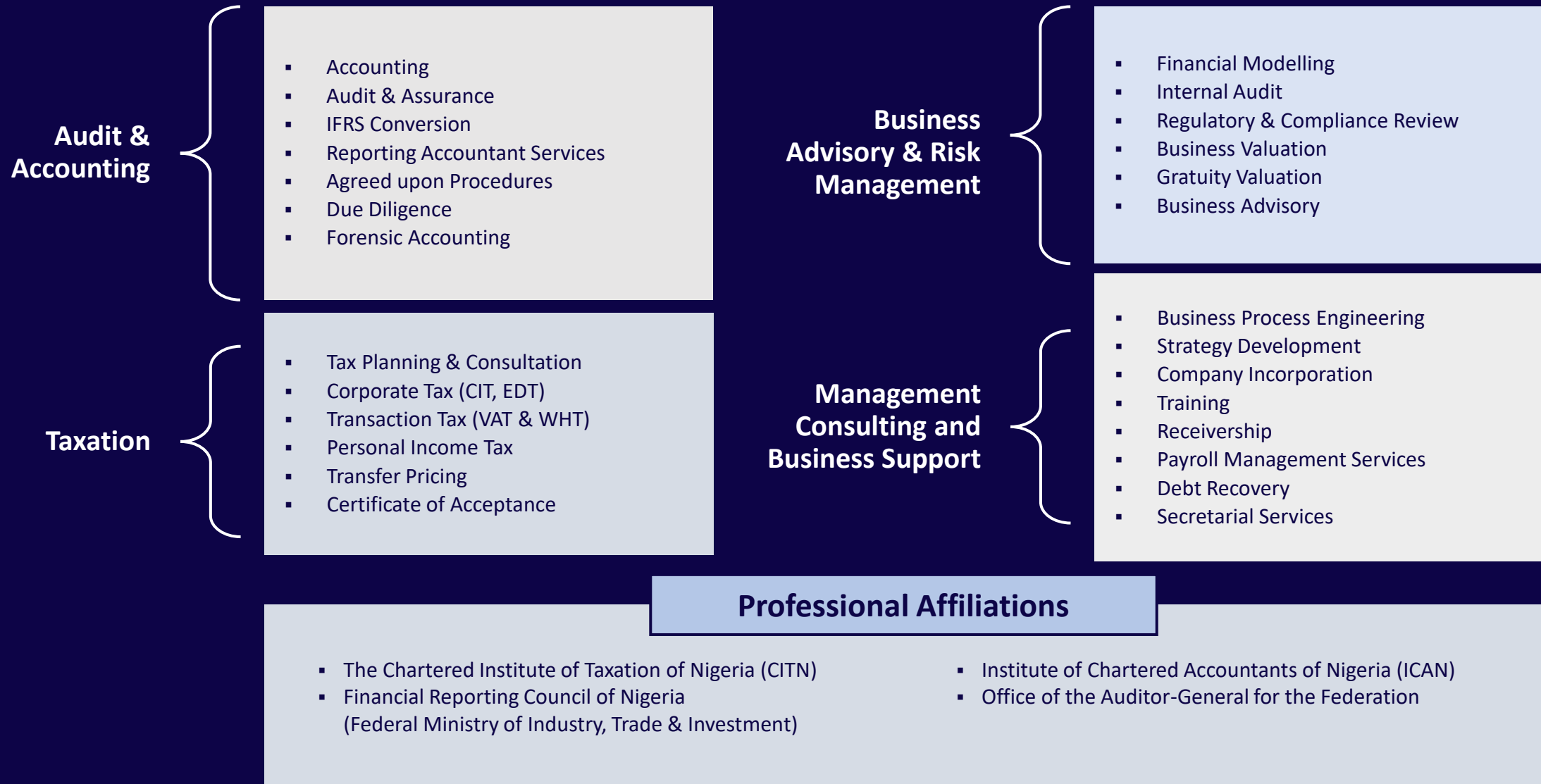


With a combined experience of over 100 years of professional practice, our partners have been active participants in recent developments of the practice of taxation in Nigeria, working closely with regulatory authorities. Our work for clients and with the tax authorities has contributed to the shaping of the tax regulatory framework in Nigeria. Our automated audit approach and methodology is robust, scalable and enables us to deliver high quality, efficient and value-added audit services to our numerous clients.



KEY:

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