Contemporary Issues In Nigeria Tax System:

Finance Act 2019 – 2023

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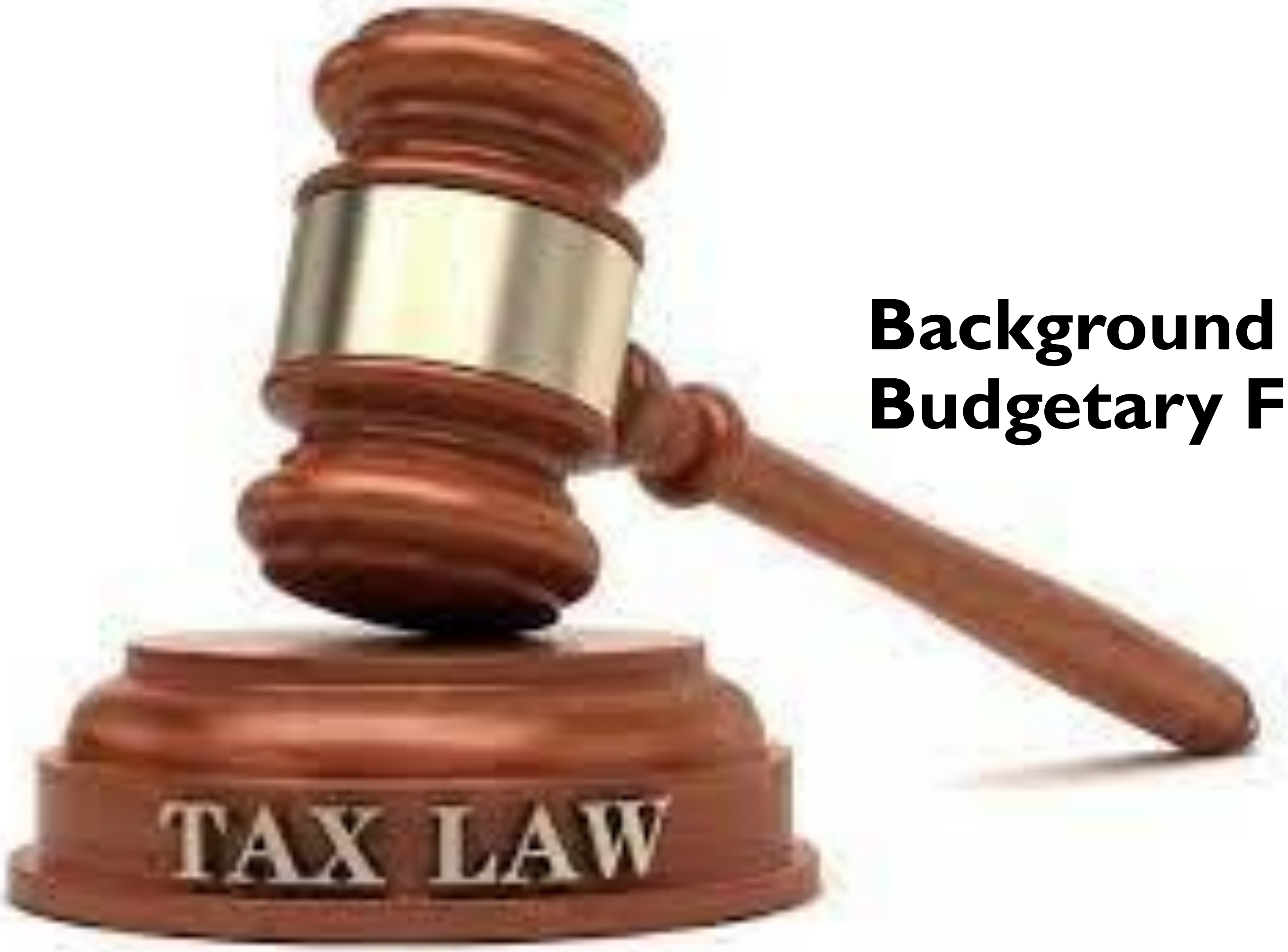
Contents

Objectives of the Session

The objective of the session is:

- To expose participants to the concept of Budgetary Fiscal Legislation (Finance Act);
- Discourse the contemporary developments in the Nigerian tax system occasioned by the recent Finance Acts (Finance Acts 2019 – 2023); and
- Explain how Finance Act Legislation impacts tax administration and compliance, including taxpayer registration, tax assessments, enforcement of tax laws, tax audit and investigation by examining the changes to the following tax laws:
    - Companies Income Tax Act,
    - Capital Gains Tax Act, and
    - Value Added Tax Act



Background to
Budgetary Fiscal Legislation in Nigeria

Background to Budgetary Fiscal Legislation in Nigeria

- The passage of the Finance Act 2019 was a significant turning point for the Nigerian fiscal landscape and the economy in general.
- It marked a return to an era of active fiscal supervision and regular review of the macro economic environment so as to stimulate the economic space on an annual basis by means of the Finance Act.
- Finance Act or fiscal legislation is not new in Nigeria as past military regimes had, during budget pronouncements, amended various tax laws.
- However, it is worthy of note that prior to the Finance Act 2019, the last time Nigeria had utilised a budgetary fiscal legislation as a tool in moderating the tax environment for business was in the year 1999 through the "Finance (Miscellaneous Provisions) Act No.30 of 1999".

Budgetary Fiscal Legislation & Its Objectives

Budgetary Fiscal Legislation, or The Finance Act, as it is popularly called, is a piece of omnibus legislation that warehouses various laws for quick and focused amendments in order to facilitate an effective and efficient operation of the budget.

It is generally aimed at curing the deficiencies of major primary tax legislation by amending obsolete and contentious provisions.

The specific objectives of the Finance Acts in Nigeria are to:

1) Adopt appropriate counter cyclical fiscal policies to respond to the economic and revenue challenges
2) Ensuring coordination of fiscal, monetary and trade policies;
3) promote fiscal equity by mitigating instances of regressive taxation
4) reform domestic tax law to align with global best practice
5) introduce tax incentives for investment in infrastructure and capital markets
6) support small businesses in line with the ease of doing business reforms
7) raise revenue for government, by various fiscal measures; and
8) Provide fiscal relief for taxpayers

Finance Act Legislative Process in Nigeria

The Finance Acts are birthed by an Executive Bill prepared by the Honourable Minister for Finance, and approved by the President, who will thereafter present the Bill together with the annual budget proposals to the National Assembly.

The Bill will then be reviewed and passed into an Act by the National Assembly.

Since returning to the era of Budgetary fiscal legislation in 2020, Nigeria has since passed 4 Finance bills into law viz:

- Finance Act 2019, signed into law on 13th January 2020;
- Finance Act 2020, signed into law on 31st December 2020;
- Finance Act 2021, signed into law on 31st December 2021; and
- Finance Act 2023, signed into law on 28th May 2023

Legislations Amended by Finance Act 2019

Tax laws

Capital Gains Tax Act, Cap. C1, LFN, 2004

Companies Income Tax Act, Cap. C21, LFN, 2004

Petroleum Profit Tax Act, Cap. 13 LFN, 2004

Personal Income Tax Act, Cap. P8, LFN, 2004

Stamp Duties Act, Cap. S8, LFN, 2004,

Value Added Tax Act, Cap. V1, LFN, 2004

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Tax Related laws

Customs and Excise Tariff, Etc. (Consolidated) Act, Cap. C49, LFN, 2004

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Legislations Amended by Finance Act 2020

Tax laws

Capital Gains Tax Act, Cap. C1, LFN, 2004

Companies Income Tax Act, Cap. C21, LFN, 2004

Personal Income Tax Act, Cap. P8, LFN, 2004

Stamp Duties Act, Cap. S8, LFN, 2004

Value Added Tax Act, Cap. V1, LFN, 2004

Federal Inland Revenue Service (Establishment) Act, No. 13, 2007,

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Tax Related laws

Tertiary Education Trust Fund (Establishment) Act, No. 16, 2011,

Nigeria Export Processing Zones Act, Cap. N107, LFN, 2004

Oil and Gas Export Free Zone Act, Cap. O5, LFN, 2004

Industrial Development (Income Tax Relief) Act, Cap. I17, LFN, 2004

Customs and Excise Tariff, Etc. (Consolidated) Act, Cap. C49, LFN, 2004

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Other laws

Fiscal Responsibility Act, No. 31, 2007

Public Procurement Act, No. 14, 2007; and

Companies and Allied Matters Act, No. 3, 2020.

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Legislations Amended by Finance Act 2021

Tax laws

Capital Gains Tax Act, Cap. C1, LFN, 2004

Companies Income Tax Act, Cap. C21, LFN, 2004

Personal Income Tax Act, Cap. P8, LFN, 2004

Stamp Duties Act, Cap. S8, LFN, 2004

Value Added Tax Act, Cap. V1, LFN 2004

Federal Inland Revenue Service (Establishment) Act, No. 13, 2007,

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Tax Related laws

Tertiary Education Trust Fund (Establishment) Act, No. 16, 2011,

Customs and Excise Tariff, Etc. (Consolidated) Act, Cap. C49, LFN 2004

Nigerian Police Trust Fund (Establishment) Act, 2019

National Agency for Science and Engineering Infrastructure Act, Cap. N3

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Other laws

Finance (Control and Management) Act, Cap. F26, LFN, 2004

Fiscal Responsibility Act, No. 31, 2007; and

Insurance Act, Cap. I17.

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Legislations Amended by Finance Act 2023

Tax laws

Capital Gains Tax Act, Cap. C1, LFN, 2004

Companies Income Tax Act, Cap. C21, LFN, 2004

Petroleum Profit Tax Act, Cap. 13 LFN, 2004

Personal Income Tax Act, Cap. P8, LFN, 2004

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Tax Related laws

Tertiary Education Trust Fund (Establishment) Act, No. 16, 2011,

Customs and Excise Tariff, Etc. (Consolidated) Act, Cap. C49, LFN, 2004

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Other laws

Corrupt Practices and Other Related Offences Act, No. 5, 2000.

Public Procurement Act, No. 14, 2007;

Ministry of Finance (Incorporated) Act, Cap. M15

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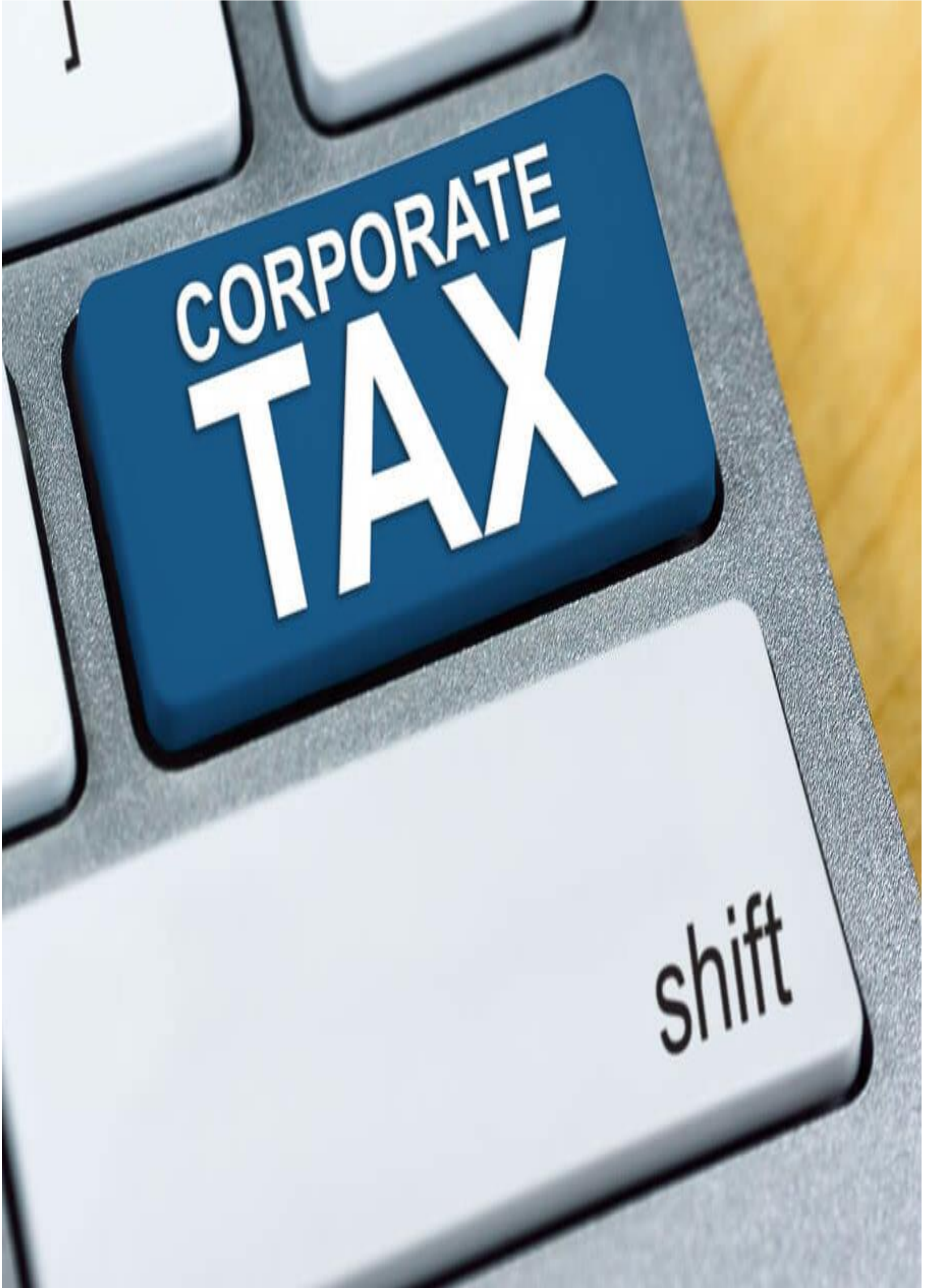

Finance Act Changes to Companies Income Tax Act

Changes to Companies Income Tax Act

1. Tax on dividend distribution (excess dividend tax)

Until the enactment of Finance Act 2019, companies are charged to tax at 30% on their dividend distributions where such dividends exceed the taxable profits for the year notwithstanding that profits being distributed may have been taxed in prior years, exempt from tax, or taxed under a different tax law.

The Finance Act limits the application of the tax only to untaxed profits that are not exempt from tax.

2. Tax on interim dividend

Until the enactment of Finance Act 2019, companies that declare and pay interim dividends are required to remit income tax at 30% on such dividends to FIRS.

The Finance Act has repealed this provision and also specifies that WHT should not apply on dividends that are not paid in money. This is to address the intended exemption of advance tax on interim dividend.

Changes to Companies Income Tax Act (Cont'd)

3. Commencement and cessation rules

The Act has amended the contentious commencement and cessation rules in CITA.

The rules prior to amendment was to the effect that companies suffer tax twice on profits of at least 12 months, when they commence business. Conversely, on cessation of business, a period of up to 12 months escapes tax.

4. Tax Relieve for Small businesses

The Act provides that Small businesses with turnover less than N25m be exempted from Companies Income Tax (CIT).

Also, a lower CIT rate of 20% is to apply to medium-sized companies with turnover between N25m and N100m.

Changes to Companies Income Tax Act (Cont'd)

5. Anti-avoidance provisions for business reorganisation

CITA empowers the FIRS to grant certain exemptions on group reorganisations, where certain criteria are fulfilled. Some of the criteria include that:

i) The companies involved should be part of a "recognised group of companies", and

ii) The transaction should be for the purpose of the "better organisation of that trade or business".

The Finance Act provides that to obtain the exemption, the entities involved should be part of a recognised group of companies 365 days before the transaction, and the relevant assets should not be disposed earlier than 365 days after the transaction.

The Act defines "recognised group of companies" as "...a group of companies as prescribed under accounting standards".

Changes to Companies Income Tax Act (Cont'd)

6. Non-deductibility of expense incurred in generating tax-exempt income

Companies Income Tax Act (CITA) grants deductions for expenses wholly, reasonably, exclusively and necessarily (WREN) incurred in generating profits.

In 2011, the Federal Government introduced the Companies Income Tax Exemption Order (the Order) which exempted interest income on corporate and government securities from taxes for 10 years. Consequently, financial institutions earn significant amounts of exempt income and often claim full deduction for their expenses without excluding any portion relating to tax-exempt income.

The Act introduced amendments stating that expenses must be WREN incurred for generating profits that are 'chargeable to tax'. It also states that expenses would be disallowed if they are '… incurred in deriving tax-exempt income, losses of a capital nature and any expense allowable as a deduction under the Capital Gains Tax Act...'

Changes to Companies Income Tax Act (Cont'd)

7. Introduction of 'thin capitalisation' rules

Prior to the Finance Act 2019 there were no thin capitalisation rules in Nigeria. The Act has now introduced a specific benchmark of thirty percent (30%) of earnings before interest, taxes, depreciation and amortization (EBITDA) as the limit for interest deduction on loans by a foreign 'connected person'. Any excess interest expense can only be carried forward for 5 subsequent years. The Act exempts Nigerian subsidiaries of foreign companies engaged in banking and insurance from this rule.

8. Tax losses for life and non-life Insurance businesses

Section 16(7) of the CITA limits the period of carrying forward tax losses for life and general insurance businesses to four (4) years of assessment.

With the Finance Act 2019, there is no limit the term of tax losses being carried forward. This provides fiscal equity by aligning the treatment of tax losses in the Insurance sector with the treatment in other sectors of the economy.

Changes to Companies Income Tax Act (Cont'd)

9. Charge of Tax on Non-Freight Income of Companies Engaged in Shipping & Air Transport

FA 2020 introduced Section 14(5) to clarify that income from non-freight activities earned in Nigeria is subject to tax under the general rule i.e. Section 9 of CITA.

Non-freight income includes income from leasing of containers, warehousing and storage of goods, etc.

10. Tax Deductible Donation to Crisis Intervention Fund of States and Approved MDAs

With FA 2020, donations made to the government during a pandemic, natural disaster or other exigency, either in cash or in-kind, is now tax deductible. However, the allowable donation is limited to 10% of assessable profit of a company after deduction of other allowable donations in an assessment year.

Changes to Companies Income Tax Act (Cont'd)

11. Non-Deductibility of Penalty or Fine (FA 2020)

Payment of any penalties prescribed by any Act of the National or State House of Assembly by a company does not qualify as a tax-deductible expense for CIT purposes. This provision thus puts to rest the arguments between FIRS and taxpayers on the tax deductibility of penalties and fines

12. Mode of Service of Notice (FA 2020)

The amendments introduced by FA 2020 to Section 68 of CITA expands the mode of transmitting a notice of assessment and notice of objection to include email, courier and other electronic means

13. Time Within Which Payment of Undisputed Assessment is Due (FA 2020)

FA 2020 Reduced the time for payment of undisputed assessment from 60 to 30 days.

This aligns the due date of payment with the period of objection.

Finance Act Changes to Capital Gains Tax Act

Changes to Capital Gains Tax Act

1. Introduction of Filing Regime for CGTA (FA 2020)

Taxpayers who dispose chargeable assets will no longer have to wait till when filing their Income tax returns; but to file CGT returns by 30th June and 31st December following the date of disposal.

2. Gains from the disposal of shares in Nigerian Companies now chargeable gains under CGT

FA 2021 has now made gains accruing from the disposal of shares and stocks in Nigerian companies chargeable to capital gains tax in situations where the aggregate of the disposal proceeds in any 12 consecutive months are more than N100 million.

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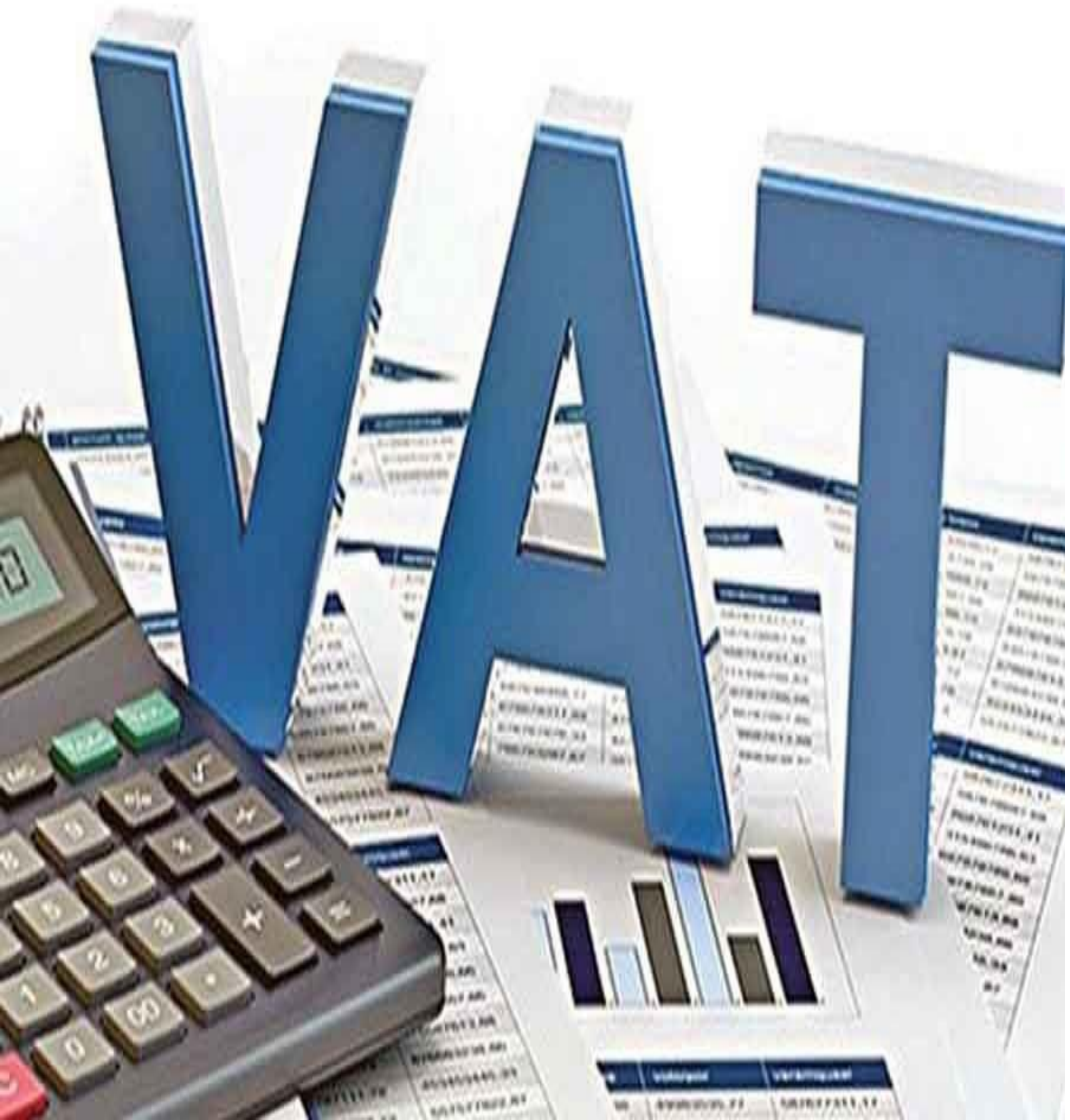
Changes to Capital Gains Tax Act (Cont'd)

3. Roll-over Relief on Stocks and Shares

FA 2023 made stocks and shares the 5th class of asset that qualifies for rollover relief provided the disposal proceeds are reinvested in the acquisition of shares in the same company or other Nigerian companies within the same year of assessment.

4. Capital losses to be deductible in computing CGT

Prior to FA 2023, losses incurred on the disposal of chargeable asset are not considered in the computation of Capital Gains Tax. However, FA 2023 has now provided for the deductibility of capital losses incurred when computing the Capital Gains Tax due on assets of the same type. Moreso, where such losses are not fully deductible in a year because the gains from same asset type are less than the losses, the law now allow such capital loses to be carried forward for up to 5 years.



Finance Act Changes to Value Added Tax Act

Changes to Value Added Tax Act

1. VAT registration threshold

Only businesses that have annual turnover of NGN 25 million and above are required to register for VAT, charge and collect VAT on their sales. This enhances competitiveness of small businesses, and avoids the burden of administering VAT on such small businesses by the FIRS.

2. Increase in VAT rate

The Act increased the VAT rate from 5% to 7.5% to help reduce budget deficits, fund the new minimum wage and provide social services.

Changes to Value Added Tax Act (Cont'd)

3. Definition of "Goods" and "Services"

Prior to the Finance Act, the supply of incorporeal and intangible property is considered outside the scope of the VAT Act. However, the Act aimed to capture these transactions be redefining Goods and Services for VAT Act purposes.

The finance Act 2020 defines "goods" as "all forms of tangible properties, movable or immovable, but does not include, land and building, money or securities."

It defines "services" 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, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security"

These definitions now clearly streamlined what constitutes goods and services and put to rest the debate on the VATability of rent.

Changes to Value Added Tax Act (Cont'd)

4. Requirement for Self-charge

FA 2019 introduced a requirement to self-charge VAT where a person receives taxable supplies and no VAT was charged on the invoice. This is to prevent a situation where taxable supplies are not charged to VAT because of the introduction of the 25 million Naira registration threshold.

5. Introduction of Time and Place of Supply rules

FA 2020 introduced a well-defined time and place of supply rules into the Nigerian VAT Act in line with global best practice. The rules specified time and place of supply for goods, services; and incorporeal.

Conclusion

Taxation is not only a means of raising revenue for the government, it is an instrument of fiscal policy for regulating the economy to achieve defined macro-economic objectives in order to improve the overall performance of the economy. Some of the macro-economic objectives include:

- Achieving economic growth and development;
- Reducing inflationary pressure;
- Pursuing a low unemployment situation; and
- A stable exchange rate and balance of payment.

Taxation will only be able to serve its function as an instrument of fiscal policy where the tax system is flexible enough as to be able to respond to changes in technology and the economy in general.

As tax practitioners, we must brace up not only to follow the changes in the tax system, but to also be proponents and champions of changes in our fiscal system.

We must accept the reality that the era of a rigid tax system is gone for good, and embrace the flexibility that budgetary fiscal legislation (Finance Act) provides as the modern taxation system.

Thank you for Listening