TAX BULLETIN ON FINANCE ACT 2019

Introduction

The Finance Bill, 2019, which was passed by the National Assembly late 2019 was signed into law by the President, Muhammadu Buhari, GCFR, on 13 January 2020.

The Finance Act, 2019 ('the Act') introduces measures aimed at promoting fiscal equity, introducing new tax incentives, supporting small businesses and raising revenues for government, by increase in the rate of VAT from 5% to 7.5%, and widening of tax net through proper taxation of profit on income generated within Nigerian territory from services rendered outside the country. In order to support rapid growth of the Small and Medium Scale Enterprises (SMEs), small companies would now be exempted from tax while medium-sized companies would be taxed at a reduced rate of 20%. The Act also contains provisions for tax waivers and incentives aimed at encouraging mergers and acquisition, investment in Real Estate Sector and capital market operations. Some of the existing tax provisions were either modified or deleted to align Nigerian tax systems with global best practices.

The Act contains amendments to the following existing Acts.

- Companies income Tax Act
- Value Added Tax Act
- Capital Gains Tax Act
- Personal Income Tax Act
- Petroleum Profit Tax Act
- Stamp Duties Act
- Customs and Excise Tariff Etc.(Consolidated) Act

Highlights of some of the provisions in the Act are listed below:

- Categorization of companies into small, medium and large.
- Taxation of digital transactions by Non-resident Companies that have significant economic presence in Nigeria
- Reintroduction of tax bonus of 1% and 2% to be claimed by medium and large companies respectively in the following year upon early payment of income tax
- Introduction of 5 years tax holiday for agricultural business which is renewable for another 3 years.
- Removal of commencement and cessation rules under CITA to avoid excess tax on commencement and cessation of business.
- Introduction of minimum tax flat rate of 0.5% of turnover for any company with no income tax payable or if income tax payable is less than 0.5% of its turnover.
- Introduction of thin capitalization rule on interest on foreign debt obtained from a related party.
- Penalty for late filing of corporate tax return has been increased to N50,000 for the 1st month and N25,000 for every subsequent month the failure to file the return continues.
- Expenses incurred on income that are exempted from tax under CITA will not allowed for income tax purposes
- Any expense incurred within or outside Nigeria involving related parties that is not in compliance with the Transfer Pricing Regulations would not be allowed for tax purposes.
- Review of tax incentives on exemption of interest on foreign loan, loan for gas utilization and removal of investment allowance for replacement of obsolete plant.
- Insurance companies can now carry forward tax losses indefinitely and different basis of computing minimum tax for insurance companies has been abolished
- Waiver of WHT on dividend received by Real Estate Investment Company and
- Regulated Securities Lending Transactions.
- Reduction of WHT on road, bridge, building and power plant contract from 5% to 2.5%
- Excess dividend tax rules will not apply to dividend declared from retained earnings that have been taxed and dividends declared from profits that are exempted from income tax.
- Introduction of 10% WHT on Dividend declared by companies taxable under the Petroleum Profit Tax Act
- Increase of VAT rate from 5% to 7.5% wef 1 February 2020
- VAT remittance is now to be cash based
- A taxable person shall register with the FIRS upon commencement of business for VAT purposes.
- Introduction of additional VAT exempt goods and services
- Detailed definition of basic food items that are exempted from VAT
- Tax Identification Number (TIN) must be displayed on every document, return, AFS filed with the FIRS and MDAs. It also a pre-requisite for corporate bodies and individuals to operate existing and new bank accounts used for business operations
- Capital Gains Tax (CGT) on compensation for loss of employment shall be chargeable on an amount that is more than N10,000,000.
- Exemption of CGT and VAT on sale of assets employed on business sold or transferred to a Nigerian Company for better organization.
- Introduction of N50 stamp duty on electronic transactions of N10,000.000 and above
- Email correspondences are recognized for communicating with tax authorities

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COMPANIES INCOME TAX ACT

Categorization Of Companies For Tax Purposes

The importance of company categorization is for the sustenance and growth of small and medium-sized companies because they are the backbone of any developing economy. Against this background, any company with annual turnover of N25m or less would be exempted from corporate tax and filing of VAT return. In addition, dividend received from small companies in the manufacturing sector in the first 5 will be exempted from tax (WHT).

The categorization of companies and their applicable corporate tax rate are as follows:

Category	Annual Turnover	Tax Rate
Small Company	N25m or less	0%
Medium-sized company	More than N25m less than N100m	20%
Large Company	N100m and above	30%

Despite the fact that every small company is exempted from income tax, the company should file annual income tax return as and when due.

Identification Of a Company

For proper identification, it is mandatory for every company to display its TIN for business transactions with other companies. In particular, it is required to display its TIN on every document, return, AFS and correspondence with FIRS and MDAs.

In addition, Banks shall require all companies to provide their TIN as a pre-condition for opening new bank accounts and within 3 months from the passage of the Finance Act for operating existing bank accounts.

Taxation of Insurance Companies

Insurance Companies can now heave a sigh of relief because of the amendments to Section 16 of the Companies Income Tax Act, (CITA) on taxation of insurance business (life and general). The subsections that hitherto subjected insurance companies to excessive taxes are either now replaced or deleted. Other amendments in the Act relating to Insurance businesses are:

- Life Assurance Businesses

  Investment income taxable on life assurance businesses will be based on income derived from Shareholders Fund. For this purpose, it is necessary for the Insurance Companies to properly document investment income from Shareholders' Fund.

- Non-life Assurance Businesses

  The cap on reserve for unexpired risks and claims and outgoings has been relaxed. Henceforth, reserve for unexpired risks will be calculated on a time basis of the risks accepted during the year.

  With respect to outstanding claims and other outgoings, an estimated amount of all outstanding claims and outgoings will be allowed except that those not utilized for the settlement of claims and outgoings shall be added back to total profit.

The basis of calculating minimum tax of insurance companies is also stated in the Act as follows:

(a) 0.5% of gross premium for non-life insurance businesses
(b) 0.5% of gross income for life assurance businesses.

Adjusted Losses of insurance companies can now be carried forward indefinitely like any other company.

Profits Exempted From Tax

In order to encourage agricultural business, attract investors to the Real Estate Sector and encourage growth in the Nigerian Capital Market and exports, the profits of the underlisted businesses shall be exempted from corporate tax:

(a) Agricultural Business

Companies engaged in agricultural production will enjoy a 5 year tax holiday and, upon satisfactory performance of agricultural production, the holiday will be renewed for an additional maximum period of 3 years. However, the company shall not be granted similar incentive under any Act, like pioneer status under the Industrial Development (Income Tax Relief) Act. The holiday will encourage more entrants into the agricultural sector.

(b) Real Estate Investment Company

In line with government objective to bridge the gap in housing needs of its citizenry, a new tax Incentive is introduced to investors in Real Estate Sector. A Real Estate Investment Company will enjoy exemption of tax (WHT) from dividend and rental income received by it provided 75% of the dividend and rental income is distributed within 12 months after the end of the financial year. However, WHT shall be deducted from the final dividend distributed to the shareholders of the investment company.

(c) Regulated Security Lending Transactions

In support of the introduction of new asset category in the Nigerian Capital Market, compensating payments which qualify as dividend or interest received by an approved agent from a lender or borrower in a Regulated Security Lending Transaction (RSLT), and compensating payment which qualiify as dividends received by a lender from its approved agent or borrower as defined in Section 9(1) (c) of CITA, would also be exempted from tax.

Digital Transactions And Services Rendered By Non-Resident Companies

Two new paragraphs (c) and (f) have been added to Subsection (1) Section 13 of CITA on profit on transactions of non-Nigerian companies that would be deemed to have been derived in Nigeria, i.e.

(a) Profit on digital transactions, as defined in Subsection 1(c) of Section 16 of CITA, that has significant economic presence in Nigeria shall be deemed to have been derived from Nigeria and shall be taxable in Nigeria.

(b) Fees earned on transactions such as technical, management, consultancy or professional services rendered from abroad to a person in Nigeria to the extent that the Company has significant economic presence in Nigeria shall be taxable in Nigeria

The extent of significant economic presence would be defined by an Order of the Finance Minister. In any case, the WHT deducted from the above transactions shall be the final tax on the transaction.

Expense Incurred In Deriving Tax-Exempt Income

Any expense incurred in deriving tax-exempt income shall not be allowed for income tax purposes. In view of this, expenses of this nature should be segregated from other expenses so that the FIRS would not use its discretion to determine the expenses that would not be allowed for tax purposes.

Additional expenses that would not be allowed for tax purposes are:

- Penalty prescribed by the Act of National Assembly for violation of any statue
- Tax or penalty paid on behalf of another person

Expense Involving Related Parties

Any expense incurred within or outside Nigeria involving related parties that is not in compliance with the Transfer Pricing Regulations would not be allowed for tax purposes. A taxable person should ensure that every expense involving related parties meets arm's length principles in order not to be exposed to avoidable tax.

Tax Bonus

In order to encourage early payment of corporate tax, the Finance Act reintroduced tax bonus which was abolished in the 2007 amendments to CITA. The rates are as follows:

Medium Sized-company	2% of the tax due
Large company	1% of the tax due

The bonus shall be available as a credit to be utilized against future tax provided the tax due is remitted within 3 months after the Company's accounting year end. For instance, a company with December accounting year end would enjoy the tax bonus if the tax due is paid on or before 31 March of the following year.

Commencement and Cessation of Business Rules

In order to eliminate the excess tax charged because of overlapping periods on commencement and cessation of business, the basis periods of assessment in the 1st three years of commencement of business have been replaced with a new provision. Also replaced is the rule on cessation of business.

(a) Commencement of Business

Year of Assessment	Basis Period
1st year of assessment	From the date of commencement to the end of first accounting period
2nd year of assessment	From the beginning to the end of the second financial year
3rd year of assessment	From the beginning to the end of the third financial year

For example, if a company commences business in April 2020 and prepares Audited Financial Statements (AFS) to December, 2020, its first year of assessment shall be 2021 which would be based on its AFS for the period to 31 December 2020. Its 2022 and 2023 years of assessment would be based on its AFS for the years ended 31 December 2021 and 2022 respectively.

(b) Cessation of Business

In the year of cessation of business the profit to be assessed to tax shall be the profit from the beginning of the last accounting period to the last date of cessation. The tax computed shall be remitted not later than 6 months from the date of cessation.

For example, if a company with December year end ceases operation in April, the profit to be assessed to tax shall be for the period 1st January to 30 April and shall be remitted to FIRS not later than 31st October of the same year.

Minimum Tax

In accordance with the provisions of the Finance Act, minimum tax is pegged at a flat rate of 0.5% of turnover which would be applicable to companies with no total profit or whose computed tax is less than the minimum tax. For the purpose of minimum tax computation, franked investment income shall be excluded.

Another amendment to the minimum tax rule is that a company with imported equity of at least 25% of its paid up capital would no longer enjoy the exemption.

Small company with turnover of less than N25 million, company carrying on agricultural trade or business, and a company that has been in business for less than four calendar years would be exempted from minimum tax.

The new provision on minimum tax would increase the tax collectible from companies apart from simplifying minimum tax calculation.

Pre-operation Levy Abolished

Pre-operation levy of N25,000 in the first year and N20,000 in subsequent years before issuance of TCC to companies who are yet to commence operation has been abolished.

Such companies can now walk to the FIRS and demand for TCC at no cost to them.

Thin Capitalization

In order to curb loss of taxes due to base erosion and profit shifting (BEPS), Seventh Schedule to the CITA on deductible interest has been introduced. Henceforth, Interest incurred by a Nigerian Company (excluding a company engaged in the business of banking and insurance) in respect of debt (as defined in paragraph 6b of the newly introduced Seventh Schedule to the Act) issued by a foreign connected person that would be allowed for tax purposes shall be limited to 30% of earnings before interest, tax, depreciation and amortization (EBITDA). The excess interest shall be carried forward to the following year subject to a maximum of 5 years. Any company that violates this provision will be liable to penalty of 10% and interest at MRR + spread to be determined by the Minister on the excess interest charged in the year.

This is a positive development to checkmate loss of tax due to thin capitalization. However, the reason why the provision is targeted at interest on foreign loan only is unexplained. The implication of the provision is that the restriction shall not be applicable to interest on loans sourced from unconnected persons abroad and loans obtained internally. In order to ensure a level playing ground the provision ought to be applicable to all excess interest no matter how and where the loan is sourced.

Tax Incentives

The amendments in the Finance Act introduced new incentives, modified existing ones while some have been withdrawn. Apart from the new incentives for Real Estate Sector and Regulated Securities Lending Transaction (RSLT) the following incentives were modified:

- **Interest on Foreign Debt**

  Table I, Third Schedule to the CITA has been replaced. The maximum exemption from tax of interest on foreign debt with repayment period and moratorium period of not less than 7 years shall be reduced from 100% to 70%. The moratorium should not be less than 2 years and moratorium is the period at the beginning of the loan term during which the borrower is not expected to make any payment.

- **Gas Utilization**

  Section 39(1) (e) of CITA has been deleted. Henceforth approval of the Minister of loan for gas project will no longer be required.

  The deletion is necessary to remove the bureaucracy in obtaining the approval and also fast track processing of the loan.

  A new subsection 2 was introduced to Section 39 of CITA "Gas Utililization (downstream operation)" to the effect that the provisions of Section 39 shall not apply to a company that has claimed or intends to claim the incentives under the Industrial Development (Income Tax Relief) Act in respect of the same qualifying capital expenditure.

  Also abolished is the 15% investment allowance for the replacement of obsolete plant and machinery.

Reduction of WHT Rate on Construction

WHT rate on road, bridge, building and power plant contract has been reduced from 5% to 2.5%. This is a positive development because it would ease the cash flow problem faced by contractors whose effective tax rate on turnover is less than 5%.

VALUE ADDED TAX ACT

As part of an effort to increase VAT revenue accruing to all tiers of government, the VAT rate has been increased from 5% to 7.5%. According to the Finance Minister the new rate will take effect from 1 February 2020. In addition, the following amendments were made to the VAT Act.

VAT Threshold

- VAT threshold has been introduced in the Finance Act in favour of small businesses. As a palliative measure for the effect of the increase in VAT rate on the larger population, companies with turnover of less than N25 million are exempt from charging VAT on their goods and services and rendering of VAT return. For this purpose, the turnover shall not include supply of capital assets of the person or supply made solely as a consequence of the person selling the whole or part of its business or that permanently ceases operation.

  However, a taxable person who has made taxable supplies or expects to make taxable supplies of up to N25 million in a calendar year shall file VAT return on the 21st day of every month the threshold is achieved.

VAT To Be Cash-based

- VAT remittance would now be 'cash based' as against 'invoice based'. VAT to be remitted would be excess of output VAT collected over input VAT paid. If input VAT paid exceeds output VAT collected, the excess credit would be carried forward to offset VAT due in subsequent month(s). However, the taxable person would be entitled to a refund of the excess tax unutilized upon provision of such documents as may be required by the FIRS.

- *This new development would ease the cash flow burden of taxpayers who can now request for a refund of the excess tax. It is hoped that the FIRS would treat the refund expeditiously and not tie it down to tax audit exercise.*

- ### Additional VAT Exempt Goods and Services

  The following additions were made to the VAT exempt items under First Schedule to VAT Act to cushion the effect of increase in VAT rate:
  (a) Locally manufactured sanitary towel, pads and tampons
  (b) Services rendered by Microfinance banks (formerly community banks)
  (c) Tuition fees relating to nursery, primary, secondary and tertiary education

- ### VAT On Services

  The Finance Act contains a clear definition of services that are subject to VAT. Henceforth all services whether rendered within or outside Nigeria, excluding services provided under contract of employment and other services which are specifically exempted from VAT in the First Schedule to the VAT Act, are subject to VAT regardless of where they are rendered. The provision lends credence to the application of 'Destination Principe' in our VAT system.

- ### Reverse VAT Charge

  The Finance Act introduced a new provision to the effect that any taxpayer that receives services from non-resident persons (legal or natural) who did not add VAT to the invoice, shall self-account for the VAT and remit same to the FIRS in the currency of the transaction. The provision has clarified conflicting court judgements on imported services.

- ### Mergers and Acquisition

  In order to encourage mergers and acquisitions, there will be VAT exemption on proceeds of merger or acquisition provided the assets acquired are not disposed of within succeeding 365 days prior to date of reorganization, failing which the concession would be withdrawn.

- ### Cessation of Business

  A taxable person that permanently ceases to carry on business in Nigeria shall notify the FIRS of its intension to deregister for tax purposes within 90 days of such cessation of trade or business.

- ### Upward Review of Penalty and Interest for Offences Committed Under the VAT Act.

  To serve as a deterrent for non-compliant by taxpayers, penalty and interest for various offences committed under the VAT Act have been reviewed upward as follows:

	1st Month	Every subsequent Month
Failure to Register for VAT return	N50,000	N25,000
Failure to notify the FIRS of change of address, or cessation of trade or business	N50,000	N25,000
Failure to submit VAT returns	N50,000	N25,000

Failure to remit VAT would attract 10% penalty and interest at MRR rate + a commercial rate spread to be determined by the Finance Minister

- **Basic Food Items Exempted From VAT**

  Basic food items exempted from VAT have been properly defined in the Finance Act, 2019.

  The definition has now removed any ambiguity on basic food items exempted from VAT.

CAPITAL GAINS TAX ACT

The Finance Act exempts the following transactions from Capital Gains Tax (CGT)

- **Loss of Employment**

  Recognizing the need for an employee to have adequate fund to start a new lease of life after loss of employment, CGT will now be charged on an amount in excess of N10,000,000 as against N10,000 in the old Section 36(2) of the CGT Act.

- **Merger And Acquisition**

  In furtherance of government intention to encourage merger and acquisition, there will be no CGT on the sale or transfer of assets in a merger arrangement for better organization of business if the sale does not take place within 365 days prior to the of reorganization.

  If the acquiring company makes subsequent disposal within 365 days after the date of the transaction the CGT exemption shall be withdrawn.

PERSONAL INCOME TAX ACT

TIN for Banking Transaction

- The Finance Act provides that Tax Identification Number (TIN) is now a pre-requisite for an individual to open a new bank account or maintain an existing bank account for the purpose of his business operation.

- *The new provision would afford the tax authority an opportunity to bring more individuals using his/her bank account for business operation into the tax net.*

Deletion of Redundant Provisions

- Some redundant provisions would be expunged from Personal Income Tax Act (PITA) because they are no longer relevant. The provisions to be deleted are on Personal Relief, Children Allowance, and Dependent Relative Allowance in view of the Consolidated Relief Allowance (CRA) introduced in the 2011 Amendments to PITA. In addition, the approval of JTB not longer required for contributions to pension, provident or other retirement benefit fund, society or scheme to be treated as tax deductible.

PETROLEUM PROFIT TAX ACT

WHT on Dividend

- The provision of the PPT Act that exempts deduction of WHT from dividend declared by companies that are assessed to tax under the Act has been deleted. In order to ensure a level playing field for all investors, dividends declared by such companies would be subject to WHT deduction at the appropriate rate and remitted to the relevant tax authorities.

STAMP DUTIES ACT

- A new section was introduced to the Stamp Duties Act. Electronic receipts or transfers above N10,000 will attract a one-off stamp duty of N50. However, the duty will not be applicable to transfers or payments into accounts owned by the same person within the same bank. The provision has cleared the controversy on the threshold and transactions that should attract stamp duties.

- The Stamp Duties Act was also amended to exempt transactions on Regulated Securities Lending Transactions (RSTL) which are exempted from stamp duties. The transactions are listed as additions in the Schedule to the Stamp Duties Act.

CUSTOMS AND EXCISE TARRIF ETC (CONSOLIDATED) ACT

Excise duties will now apply to goods imported into and those manufactured in Nigeria at the rates specified under the duty column in the Schedule to the Act. However, the duties shall not apply to goods that are not locally produced in Nigeria and raw materials that are not locally available in Nigeria.

The new measure will encourage local production and industrial growth of the economy.

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