



## HIGHLIGHTS OF THE NEW FINANCE ACT 2020: KEY CHANGES AND IMPLICATIONS

### Introduction

On 31st December, 2020, President Muhammadu Buhari signed the Finance Bill, 2020 (now Finance Act) into law. The Finance Act 2020 (the Act), which has a commencement date of 1st January 2021, was signed into law alongside the 2021 Appropriation Bill (now Appropriation Act).

The Finance Act, 2020 amends Sections 2, 24, 36, and schedule to the Capital Gains Tax Act; Sections 11, 13, 14, 16, 23, 25, 27, 33, 39, 53, 55, 63, 68, 69, 77, 105 and Second Schedule to the Companies Income Tax Act; Section 1 and Second Schedule to the Industrial Development (Income Tax Relief) Act; Sections 20, 23, 33, 37, 48, 73, 86, 93, 106A, 108 and Third Schedule to the Personal Income Tax Act; Sections 1, 10, and 11 of Tertiary Education Trust Fund (Establishment, ETC) Act; First and Second Schedule to the Customs & Excise Tariff (Consolidation) Act.

The Act further amends Section 46 and Parts I-II of the schedule to the Value Added Tax Act. It introduces Section 2A and further substitutes Section 10 of the Value Added Tax Act. It amends Sections 2 and 89 of Stamp Duties Act while Sections 23, 25, 26, 39, 50, 69, and Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act were amended. It amends Section 18 of Nigerian Export Processing Zones Act; Section 18 of Oil and Gas Export Free Zone Act, and Section 12 of Fiscal Responsibility Act. The Act further amends Sections 22, 24, 25, 27, 30, 35, 58, 60 and further substitutes Sections 15, 17, 20 and 36 of Public Procurement Act. The Act also amends Section 432 of the new Companies and Allied Matters Act, 2020.

In a nutshell, the Act introduces over 80 amendments to 14 different existing laws in Nigeria. The main thrust of the Act is to increase revenue of the Federal Government and to curb avenues for evading of tax.

This article gives an overview of the Act, analyses the key provisions vis-a-vis the

changes to the primary legislation and highlights the potential tax implications for stakeholders and tax payers.

## KEY PROVISIONS OF THE FINANCE ACT 2020

### Compensation for Loss of Office

Under Section 4 the Act, any person who pays compensation above 10 million (Ten Million Naira Only) for loss of office to an individual is to deduct and remit the tax due to the relevant authority at the point of payment of such compensation. The tax so deducted shall be remitted within the time specified under the PAYE regulations issued pursuant to the Personal Income Tax Act.

### Minimum Tax for Companies

The Act has reduced the payment of minimum tax by companies in respect of returns for years of assessments due between 1st January 2020 and 31st December 2021 from 0.5 percent to 0.25 percent of gross turnover of the company less franked investment. See Section 13 of the Act.

### Donation to the Federal Government in respect of any Pandemic or Natural Disaster

Section 11 of the Act provides that any donation made by a company in cash or kind to any fund set up by the Federal Government or any State Government to

any similar fund in respect of any pandemic, natural disaster or other exigency shall be allowed as tax deductions subject to maximum of 10 percent of assessable profit.

### Service of Notice

Sections 18 and 19 of the Act provide that service of notice of assessment and objections under Companies Income Tax Act may be done via courier service, email, or other electronic means as may be directed by the Federal Inland Revenue Service in a notice.

### Unclaimed Dividends and Un-utilized Funds

Section 60 of the Act provides that unclaimed dividends in a listed company and un-utilized amounts in a dormant bank account outstanding for 6 years or more shall be transferred to the Unclaimed Funds Trust Fund as a special debt to the Federal Government to be managed by the Debt Management Office. The Act further provides that such dividends or amounts shall be available to the shareholder or account holder at any time together with the yield thereon.

### Establishment of a Crisis Intervention Fund, Its Sub-Fund, Unclaimed Funds Trust Fund

Under Section 75 of the Act, Fifty Billion Naira Crisis Trust Fund was created out of the Consolidated

Revenue Fund and Special Accounts to fund crisis-related expenditures and other exigencies.

The Act further provides that any un-utilized amount in a dormant bank account maintained in or by a deposit money bank (DMB), which have remained unclaimed for a period of 6 years from the date of domiciling the funds in a bank are to be transferred to Unclaimed Funds Trust Fund (UFTF), which shall be managed by the Debt Management Office.

### **Requirement for Companies in the Free Trade Zones to file Returns with the FIRS**

Under Section 58 of the Act, companies operating in the free trade zones are exempted from taxes subject to compliance with tax filing and returns obligation to the Federal Inland Revenue Service under Section 55(1) of the Companies Income Tax Act

### **Levy on Electronic Money Transfer**

Under Section 48 of the Act, any electronic transfer of money in the sum of Ten Thousand Naira or more deposited on any account in any bank or financial institution shall attract N50 levy. The Act further provides that the accrued revenue shall be shared based on derivation between Federal Government and FCT (15 percent), and States (85 percent).

The provision replaces stamp duty on electronic receipts or electronic transfer for money deposits.

### **Exemption of Commercial Airline Ticket and Lease of Agricultural Equipment for Agricultural purposes from VAT**

Under Section 45 of the Act, every airline transportation ticket issued and sold by commercial airlines registered in Nigeria as well as lease of tractors, ploughs and other agricultural equipment for agricultural purposes are exempted from VAT.

### **Registration by Non-Resident Persons**

Under Section 43 of the Act, a non-resident person that makes a taxable supply of goods and services to Nigeria is now required to register for tax, obtain Tax Identification Number, and include VAT on its invoices. The Act further provides that said foreigner can appoint a representative in Nigeria to carry out the tax obligations

### **Taxable Supply with respect to Goods and Services**

Sections 40 and 41 of the Act define taxable supply with respect to goods to include where the beneficial owner



of the right in or over the goods is a taxable person in Nigeria or the goods or right is situated, registered or exercisable in Nigeria.

The Act further defines Services to include those consumed by a person in Nigeria whether rendered within or outside Nigeria excluding employment; and in respect of incorporeal, includes exploitation of a right, acquisition of or assignment of rights by a person in Nigeria and incorporeal connected with tangible or immovable asset located in Nigeria.

### **Exclusion of Land and Buildings, Money and Securities from Definition of Goods and Services for VAT purposes**

Section 41 of the Act excludes land, buildings, money and securities from definition of goods and services for VAT purposes.

### **Reduction of import duties for Tractors and Motor Vehicles**

Section 38 of the Act has reduced import duty imposed on Tractors from 35 percent to 5 percent, Mass transit vehicles for transport of more than 10 persons and Motor vehicles for the Transport of Goods from 35 percent to 10 percent.

### **Duty-Free Importation of Aircrafts and its Parts for Commercial Airlines**

Section 39 of the Act exempts Airlines registered in Nigeria and providing commercial air transport services

from import duties on importation of aircrafts, engines, spare parts and components whether leased or purchased.

### **Introduction of Excise Duties on Telecommunication Charges**

Section 37 of the Act introduces payment of Excise Duty on telecommunication charges at a rate to be prescribed by the President.

### **Exemption from Excise Duties**

Under Section 37 of the Act, previous exemption from excise duty on imported goods that are not locally produced in Nigeria, and raw materials that are not locally available in Nigeria, will no longer apply.

### **Exemption of Low-Income earners from Personal Income Tax payment**

Sections 31 and 32 of the Act exempt low-income earners earning minimum wage or less from personal income tax

### **Introduction of the concept of Significant Economic Presence (SEP) to Personal Income Tax**

Section 27 of the Act introduces Significant Economic Presence (SEP) rules to the taxation of certain categories of non-resident individuals, executors or trustees.

This means non-residents subject to tax in Nigeria under this provision may have to pay tax twice on the same income. Firstly in Nigeria and secondly in the country of residence. However, persons subject to juridical double taxation by virtue of this provision may be able to seek relief under the Mutual Agreement Procedure, where a double tax avoidance treaty exists between Nigeria and the person's home country.

### **Operation of Surplus and General Reverse Fund**

Under Section 62 of the Act, the balance of operating surplus of a corporation shall be paid to the Consolidated Revenue Fund of the Federation on a quarterly basis.

The Act also provides that the Minister of Finance may effect a direct deduction from Treasury Single Account or other accounts of a corporation to enforce compliance.

### **Pioneer Status For Small and Medium-Sized Companies engaged in Primary Agricultural Production**

Section 39 of the Act exempts small and medium-sized companies engaged in primary agricultural production from paying tax for an initial period of 4 (four) years which may be extended for an additional maximum period of 2 (two) years subject to the satisfactory performance of such primary agricultural production.

### **Opening of Accounts for payment of Tax Refund**

Under Section 50 of the Act, the Accountant General for the Federation shall open dedicated accounts for each tax type for the payment of tax refunds to be administered by the Federal Inland Revenue Service and funded based on annual budgets for tax refund for each tax-type as may be approved by the National Assembly.

### **Introduction of Virtual Proceedings**

Section 57 of the Act empowers Tax Appeal Tribunal to conduct proceedings remotely via virtual means, using such technology or application as may be necessary to ensure fair hearing.

### **Location of Ship and Aircraft**

Under Section 3 of the Act, Ship and aircraft used in international traffic, and owned by a Nigerian resident, are deemed situated in Nigeria for Capital Gains Tax.

### **Provisions for 30 days Compulsory Notice to Tax Payers**

Section 52 of the Act provides for 30 days compulsory notice period (unlike the previous 7 days' notice) to be given to Tax payers from the Federal Inland Revenue Service in respect of call for returns, books and other information.

### **Incidental Income for International Shipping/Air Transport Companies**

Under Section 8 of the Act, the specialized approach of calculating income tax for international shipping/air transport companies under Section 14 of the Companies Income Tax Act shall apply only to shipping or transport or freight income. Non-freight income, leasing, containers and other incidental income will be taxed under Section 9 of Companies Income Tax Act, as non-specialized income

This means that Demurrage income, which is incidental to the primary shipping income of international shipping companies on their cargoes within Nigeria, may now be subjects to income tax.

### **Pension Contributions**

Under Section 26 of the Act, pension contributions, provident or other retirement benefits fund eligible for deductions under the Personal Income Tax are those recognized and allowable under the Pension Reform Act.

### **Exemption of small companies with less than 25 million Turnover from payment of Tertiary Education Tax**

Under Section 34 of the Act, Small Companies with less than 25 million turnover are exempted from payment of Tertiary Education Tax.

This gives legal backing to the current practice of exempting small companies from Tertiary Education Tax.

### **Form of Accounts for Small and Medium Companies**

Under Section 16 of the Act, the Federal Inland Revenue Service may prescribe the form of accounts other than audited financial statements for small and medium companies as defined under Companies Income Tax Act.

### **Scope of Application of Public Procurement Act**

Under Section 63 of the Act, the Public Procurement Act applies to all three arms of government – Executive, Legislative and Judiciary – including national defence/security agencies, government ministries, parastatals, institutions, departments and agencies.

### **Tax Incentives for Companies in the Downstream Gas**

Section 14 of the Act provides that tax incentives for companies in the downstream gas utilization businesses under the Companies Income Tax Act, shall not apply where such have been received under the Petroleum Profits Tax Act or under the Industrial Development (Income Tax Relief) Act.

## Public Character for the purpose of Tax Exemption

Under Section 21 of the Act, Public character for the purpose of tax exemption requires an organization or institution to be registered in accordance with relevant laws in Nigeria. The Act further provides that such organization or institution shall not distribute or share its profits in any manner to members or promoters.

## Tech Companies

Under Section 22 of the Act, Tech companies can claim capital allowances for capital expenditures incurred in the acquisition and development of software or other such capital outlays on electronic application.

## International Tax Assistance and Revenue Matters

Section 49 of the Act empowers the Federal Inland Revenue Service to provide or receive assistance from the government of another country or any other persons or bodies, concerning tax matters and revenue claims .

## New Definition of Stamp

Section 46 of the Act amends definition of stamp to include the utilization of adhesive stamp produced by the Nigeria Postal Service.

## Definition of Gross Premium and Gross Income Insurance Business

Under Section 9 of the Act, Gross Premium is defines as the total premiums written, received and receivable excluding unearned premium and premiums reinsured to the insured.

It defines Gross income as the 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.

The introduction of the above definitions removes the existing ambiguities and eliminates the risk of not paying the right amount of taxes. It also removes the need for uncertain tax disclosures in financial statements.

### **DISCLAIMER:**

*This article is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and our Law Firm or serve as legal advice. We are available to provide specialist legal advice on the reader's specific circumstances when they arise.*





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