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Finance Act, 2023

Impact Analysis

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Preface

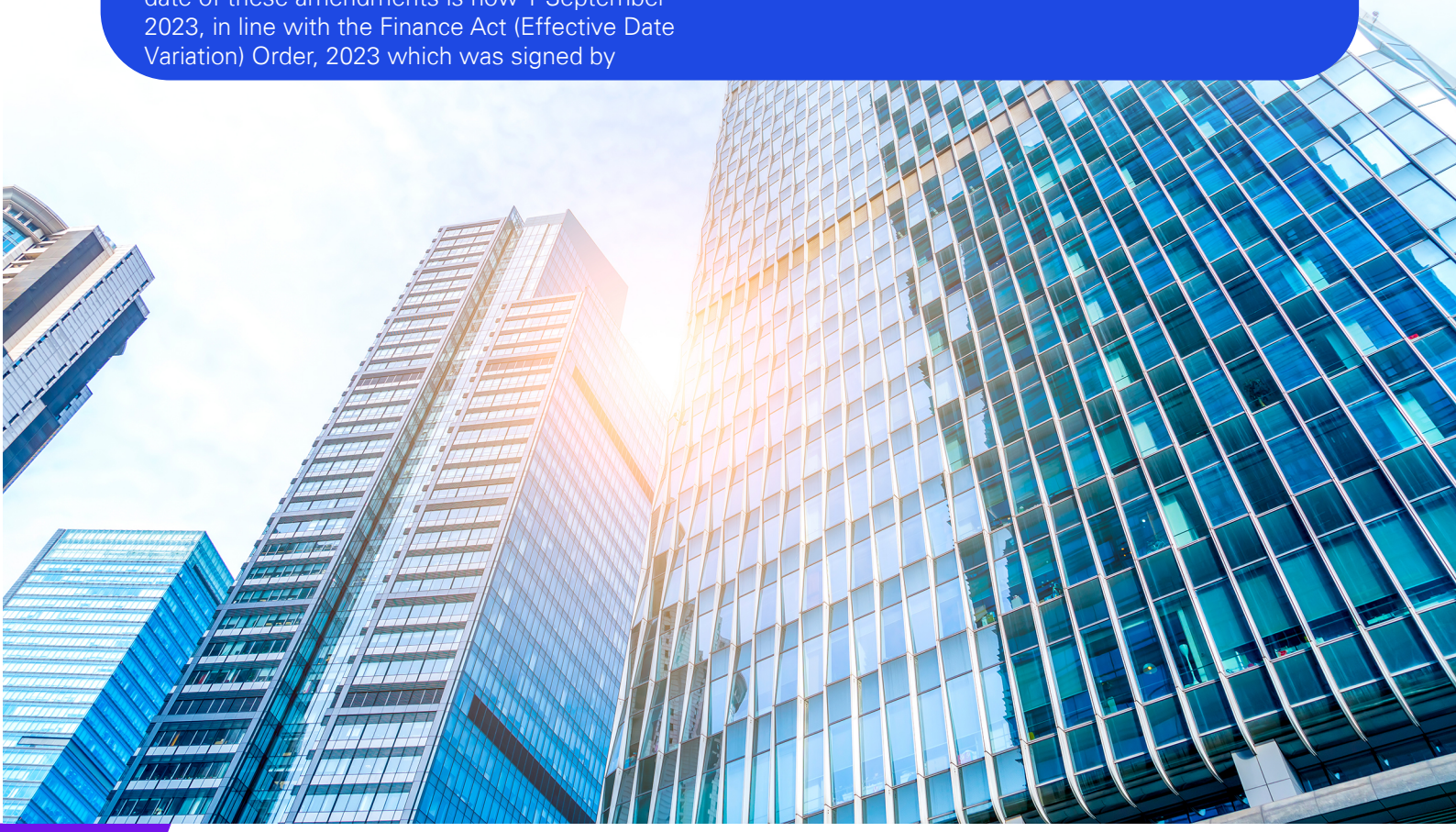
On 28 May 2023, His Excellency, former President Muhammadu Buhari, GCFR, signed the Finance Bill,2023 into law as Finance Act, 2023.

The Finance Bill, 2023 was an Executive Bill prepared by the then Honourable Minister for Finance, Budget and National Planning, and presented by His Excellency, President Muhammadu Buhari, together with the 2023 Budget proposals to the National Assembly. Following several reviews and updates by both the Executive and National Assembly, the Finance Bill, 2023 was signed by the former President as Finance Act, 2023 (hereinafter referred to as "Finance Act", "FA 2023" or "the Act").

The Act introduces changes to the Capital Gains Tax (CGT) Act, Companies Income Tax (CIT) Act, Personal Income Tax (PIT) Act, Customs and Excise Tariff Etc. (Consolidation) Act (CETA), Value Added Tax (VAT) Act, Petroleum Profits Tax (PPT) Act, Stamp Duties Act (SDA), Corrupt Practices and other Related Offences (CPORO) Act, Tertiary Education Trust Fund (Establishment) Act, Public Procurement Act (PPA) and the Ministry of Finance (Incorporated) {MoFI} Act. The commencement date of these amendments is now 1 September 2023, in line with the Finance Act (Effective Date Variation) Order, 2023 which was signed by His Excellency, President Bola Ahmed Tinubu, GCFR on 6 July 2023. The Act also made slight modifications to its predecessors, Finance Acts 2019, 2020 and 2021, to clarify some of the changes introduced by these Acts and align them more with the government's fiscal plans and current economic realities.

Finance Act, 2023 is the fourth in the series of legislative amendments to be enacted by the Federal Government (FG) on an annual timeframe. The passage of the Act reinforces FG's commitment to making incremental changes to Nigeria's fiscal framework that continues to be pivotal in achieving Nigeria's economic growth and sustainable development imperatives. The changes introduced by the Act are intended to improve tax revenue, align changes in the prior Acts to ensure tax equity and consistency, reform Nigeria' tax incentives regime for companies, and improve tax administration.

This publication contains the analysis of the amendments introduced by the Act and the potential impact of these changes on tax administration, government agencies and taxpayers operating in the various sectors of the economy.



1.0 General Implications of Finance Act, 2023 on the Nigerian economy

1.1. 2022 Economic Performance

Despite the many challenges faced in 2022, Nigeria maintained a steady economic recovery during the year with an overall real Gross Domestic Product (GDP) growth of 3.1%. This is following the country's recovery from a pandemic-induced recession in 2020 with a GDP growth of 3.4% in 2021. However, based on the economic indices, the growth recorded in 2022 was not broad-based. The country's economic expansion was mainly driven by the non-oil sector, which contributed 94.33% to the nation's real GDP and grew by roughly 5%.

The oil sector continued to underperform in 2022, as it contributed only 5.67% to real GDP during the period and contracted by almost 20%. The sector's dismal performance, despite the surge in crude oil prices in 2022, was largely due to the high incidence of crude oil theft and pipeline vandalism in the country during the year. These issues resulted in the country recording an average crude oil production of 1.2 million barrels per day (mbpd), 25% lower than the budgeted crude oil production target of 1.6 mbpd.

At the same time, Nigeria's headline inflation rate hit 21.47%[1] in November 2022. This was 6.07% points higher compared to the rate recorded in November 2021. Inflation is projected to remain elevated throughout 2023, fuelled mainly by rising cost of food, diesel, and gas prices and persistent supply disruptions amplified by the new policies implemented by the new administration.

Notwithstanding, the Nigerian non-oil sector is expected to continue to drive economic growth in 2023 and beyond following its contribution to the country's GDP in 2022 financial year.

[1] Source Link

1.2. How Finance Act, 2023 seeks to achieve economic stability and sufficiency

Since the beginning of 2022, there has been a deliberate effort by the (FG) to enact legislation that will help to improve the contributions of the non-oil sector to Nigeria's economic development and growth. For example, the Nigeria Start-up Act, Excise Duty (Non-Alcoholic, Carbonated and Sweetened Beverages) Regulations, and the Non-Interest Finance (Taxation) Regulations were all enacted in 2022 with the aim of maintaining economic growth and stability in Nigeria.

Similarly, Finance Act, 2023 has been enacted to stimulate inclusive, diversified and sustained economic growth while ensuring macroeconomic stability. The Act introduces amendments to eleven (11) laws in Nigeria. These amendments are focused mainly on revenue generation, economic growth, promotion of tax equity and ensuring clarity in the tax laws and administration.

Revenue generation continues to be critical for Nigeria's growth as the country struggles with huge debt, increase in fuel price, rising cost of living and poor infrastructure. The Appropriation Act, 2023 budgets expenditure of ₦21.83 trillion against an expected revenue of ₦10.49 trillion, resulting in a budgeted fiscal deficit of ₦11.34 trillion, which would likely be exceeded. It is, therefore, imperative for the FG to diversify and increase its revenue sources to fund critical development expenditure in the country.

Consequently, the Act has amended and/ or introduced new provisions to the CGT Act, CIT Act, VAT Act, and other relevant pieces of legislation to increase tax revenue. The Act also contains provisions which clarify existing laws to ensure tax equity.

In general, it is expected that the changes introduced by Finance Act, 2023 will improve the country's fortunes, boost investors' confidence, and continue to lead the country on the path of consolidation and sustainable growth.

1.3. Applicable taxable period

The effective date of Finance Act, 2023 is 1 September 2023. One issue that will agitate the minds of taxpayers is which transactions will the provisions of the Act apply to. The revised National Tax Policy (NTP), 2017 states that tax policies and laws shall not be retroactive. In other words, the application should be for the future only and should not change the law from what it was before the effective date. The Federal High Court has reinforced this position in its decision in the case between *Accugas Limited and Federal Inland Revenue Service (FIRS)* to the extent that transactions that had occurred between the effective date of the Finance Act, 2019 would not be subject to the new law. The implication of this ruling is that all transactions that occurred prior to 1 September 2023 would not be affected by Finance Act 2023. However, events happening thereafter would be subject to its provisions. This will result in apportionment of profits between pre and post 1 September for income tax purposes.

One of the guiding principles enunciated in the NTP is that tax laws and administrative processes should be simple, clear and easy to understand. Consequently, we suggest that future Finance Acts should clearly state that the provisions would affect accounting period starting from the effective date to ensure clarity.

It is also important that government ensures a reasonable transition period before implementation of a new tax law. The NTP specifies a period of between three (3) to six (6) months as reasonable.

2.0 Direct Taxes

Finance Act, 2023 amends various provisions of the Nigerian tax legislation relating to direct taxes. These changes are discussed under the relevant tax laws as follows:

2.1. Capital Gains Tax Act (CGTA), Cap C1, Laws of the Federation of Nigeria (LFN), 2004 (as amended)

The amendments to the CGTA, Cap C1, Laws of the Federation of Nigeria (LFN), 2004 (as amended) are as follows:

2.1.1. Imposition of Capital Gains Tax on digital assets

Finance Act, 2023 amended Section 3(a) of the CGTA to include digital assets as part of chargeable assets for CGT purposes. The implication is that effective from the date of commencement of the FA 2023, proceeds derived from disposal of digital assets such as cryptocurrency will now be liable to 10% CGT. While it is laudable that Nigeria is aligning with emerging markets on taxation of digital assets, it is interesting to note that the Central Bank of Nigeria (CBN) had previously issued restrictions on trading of cryptocurrencies in February 2021, which resulted in the closure of accounts of persons or entities involved in cryptocurrency transactions by all deposit money banks, non-bank financial institutions and other financial institutions in Nigeria.

Notwithstanding the restriction, Nigeria has continued to issue legislation to regulate the trading in digital assets. For example, in May 2022, Nigeria's capital market regulator, the Securities and Exchange Commission (SEC), issued an updated regulatory guideline for digital currencies and crypto-based businesses for start-ups. The guidelines provided procedures for the licensing of companies interested in commencing business along this sector, thus providing some comfort for investors in this arena.

While the amendment in the Act shows the FG's interest in the emerging digital currency market; however, there is a conflict in policy direction given that the directive from the CBN on digital currency market is yet to be reversed. It is, therefore, important that regulatory bodies be well aligned in policy formation to ensure consistent strategic output.

Furthermore, there is an urgent need to define and clarify what digital assets would entail. The SEC guideline defines digital assets as *"a digital token that represents assets such as a debt or equity claim on the issuer".* However, this definition is in the context of issuance of securities, which would not sufficiently address the tax objectives of the provision introduced. This is because for the purpose of taxation, tax treatment is derived from the accounting classification or recognition of an item.

For example, digital assets may be held not only as a security but also as inventory or intangible assets. Given the complex and broad nature of digital assets, it is necessary to understand their form and substance, and the rights and obligations of the holders to determine the appropriate tax treatment in each case.

Therefore, it is important to have a robust tax framework for taxation of digital assets in line with the relevant accounting treatment or general accepted accounting principles (GAAP).

2.1.2. Exclusion of capital losses

Prior to the enactment of the FA 2023, losses on disposal of any chargeable asset were not tax deductible in computing the chargeable gains. The Act introduces an amendment to Section 5 of the CGTA to allow capital losses to be set-off against capital gains.

In computing chargeable gains, losses on disposal of any chargeable asset are now tax deductible. However, certain criteria have been included to the tax deductibility of such losses. For losses on disposal of a chargeable asset to be tax-deductible against capital gains, such losses shall be attributable to the same asset or assets within the same class in a taxable year. Further, unabsorbed losses may also be carried forward, to be set-off from gains realised from the same class of asset for a maximum of 5 years immediately following the year the loss was incurred.

This is a welcome development in ensuring equity and fairness in taxation of chargeable gains. Finance Act, 2021 had introduced the taxation of gains from disposal of shares, which caused a stir amongst investors in the equity market. This is especially as shares were exempt from tax for over 20 years prior to the amendment. However, the new amendment will provide relief to investors, demonstrating government's commitment to promoting the principles of equity and fairness in taxation, despite the drive for revenue generation.

Other technical issues include clarification on the relevant cost methodology (such as Last in-First out (LIFO), First in-First out (FIFO) or weighted average) to be adopted in determining the historical cost for the purpose of computing capital gains on disposal of shares.

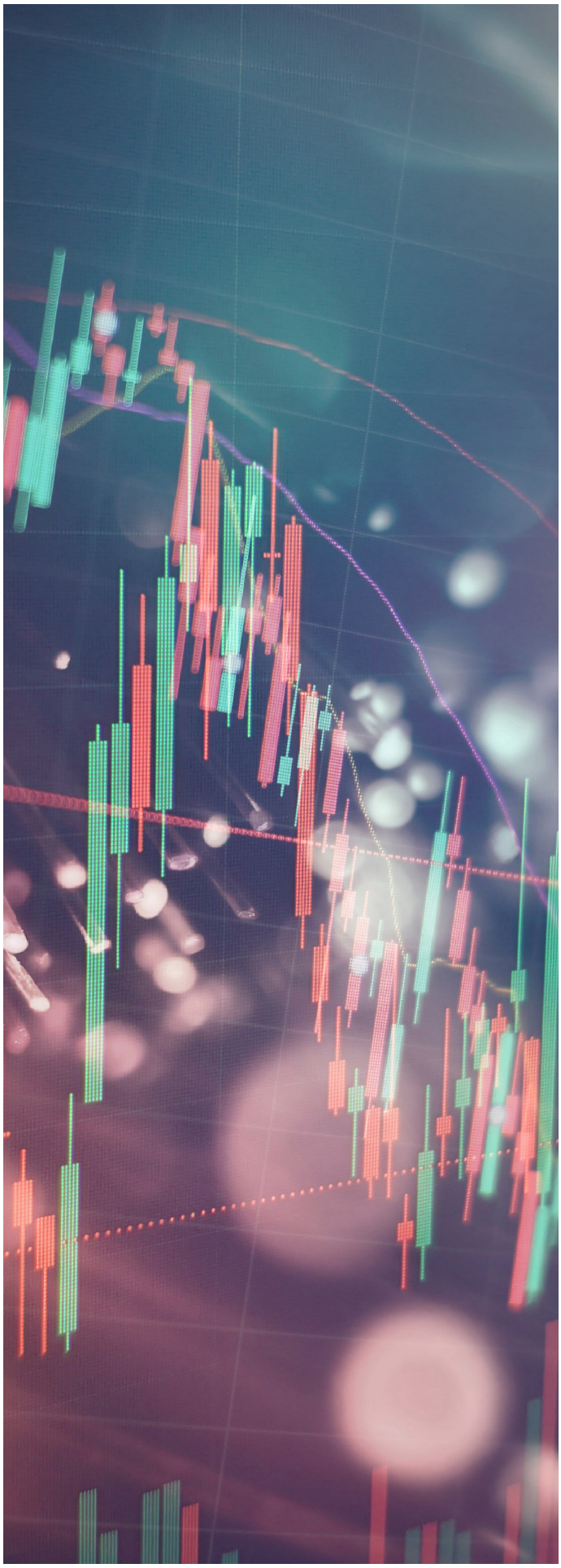
2.1.3. Inclusion on shares and stocks for rollover relief

The FA 2023 now includes shares as a class of asset that qualifies for roll-over relief. Finance Act, 2021 had introduced an amendment on taxation of gains arising from share disposals where the aggregate proceeds from such disposal exceed ₦100million in any 12 consecutive months. The amendment also provided a proportionate waiver from CGT where the whole or part of the disposal proceeds are reinvested within the same year of assessment (YOA) in acquiring shares in the same or other Nigerian companies.

While the above exemption in Section 30 of the CGT Act was like a roll-over relief on shares, the FA 2023 has now clarified and appropriately included shares as one of the classes of assets qualified for roll-over relief.

Prior to this amendment, there were four classes of chargeable assets that qualified for the roll over relief. These are building and plant or machinery, ship, aircraft, and goodwill. Shares and stocks have now been included as the fifth class of asset to qualify for the exemption by the FA 2023.

We note that the specific condition of the period for reinvesting proceeds from share disposal (i.e., reinvestment being within the same YOA as the share disposal) was retained in the amendment. Therefore, it may be safe to assume that shares are excluded from the general precondition of sub-section 3 (i.e., acquisition or unconditional contract of the new asset should be entered into, twelve months



before or after the disposal of the old asset), to qualify for the roll-over relief. The condition will, however, continue to apply to other classes of assets.

In view of the above, the new amendment does not materially impact the existing provision on taxation of share disposal introduced by the Finance Act, 2021. However, the amendment would appear to provide clarity to the status of shares and stock as a class of asset under the roll over relief provisions.

2.2. Companies Income Tax Act (CITA), Cap C21, LFN, 2004 (as amended)

The most notable general amendment to the CITA is the cancellation of the ten percent (i.e., 10%) investment allowance on plant and equipment purchased by any company, and claimable in the year that such qualifying asset was first used for the business of the company. This allowance was taken as capital cost uplift.

Thus, any plant and equipment that is acquired and first used by a company for its trade or business after the effective date of the FA 2023 (i.e., 1 September 2023) can no longer enjoy the 10% investment allowance stipulated in Section 32 of the CITA. Section 32 of the CITA was originally introduced to incentivise companies that lost assets during the Nigerian civil war and replaced them subsequently, and companies engaged in agricultural production. This incentive was subsequently expanded to all companies. It appears that the FG considers the incentive as redundant, hence its deletion. In other words, it has no impact on the decision of taxpayers to invest in items of plant and machinery.

Also, the Finance Act cancels the rural investment allowance provided in Section 34 of CITA. The rural investment allowance is a graduated capital cost uplift (from 15% to 100% uplift) granted to any company that builds specific facilities such as tarred roads, electricity or water for the purpose of its trade or business. The key qualifier is that the trade/business should be located at least 20km from any such facilities provided by Government.

Only few companies typically qualify for the rural investment allowance annually, for example, companies engaged in manufacturing or mining of solid minerals in remote locations requiring the provision of captive electricity and construction of industrial water plants. Therefore, the impact

of the removal of this incentive on the affected companies would need to be evaluated individually. The decision to withdraw this investment may also be due to the intervention program with respect to Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme launched in 2019.

The other amendments to the CITA are analysed on an industry basis as follows:

2.2.1. Shipping and air transport companies

Finance Act, 2020 had amended the requirements for filing CIT by non-resident companies (NRCs) to include fully audited financial statements of the NRCs' operations in Nigeria duly attested by an independent and qualified/ certified accountant in Nigeria. In consideration for the peculiarities of the shipping and air transport industries, FA 2023 has introduced an alternative requirement for international shipping and air transport companies that fail to provide audited financial statements when filing their CIT. These companies will be required to submit a comprehensive gross revenue statement of their Nigerian operations for the specified period, endorsed by a director of the company and an external auditor and supported with all invoices issued to relevant customers.

FA 2023 also introduced a new Section 14(6) to the CIT Act. This section mandates regulatory agencies to request evidence of income tax filing and tax clearance certificates from shipping and air transport companies before processing and granting business approvals and permits or allowing them to continue to carry on business in Nigeria. The objective of the amendment is to ensure that shipping and air transport companies fulfil their tax obligations by filing income tax returns and obtaining tax clearance certificates. These requirements will help to promote tax compliance within these sectors.

2.2.2. Taxation of tourist income received by Hotellers

Foreign currency income earned by hotels from tourists would no longer be exempted from income tax. Previously, twenty-five percent (25%) of such foreign currency income was exempted from tax if the amount was set aside in a dedicated/ reserve fund and used for expansion of the physical infrastructure of the business within five (5) years.

The implication of the above is that any balance in such dedicated/ reserve fund currently held by any hotel must be fully utilised within the next 5 years. Otherwise, such balance would be subject to income tax at the appropriate rate.

2.2.3. Unrestricted capital allowance claim by companies in the Oil and Gas sector

Previously, the CITA only permitted agricultural and manufacturing companies to claim all available capital allowances against their assessable profits. However, the Finance Act, 2023 has introduced an amendment to this provision. The amendment now allows companies involved in upstream and midstream gas operations to fully offset their capital allowances against their assessable profits in view of the provisions of the Petroleum Industry Act (PIA) 2021. This change aims to provide parity and equal treatment for companies engaged in any process by which a commodity is produced, recognizing the importance of the sector and its contribution to the Nigerian economy.

2.3. Personal Income Tax Act (PITA), Cap P8 Laws of the Federation (LFN), 2004 (as amended)

Finance Act, 2021 sought to prevent abuse of life insurance premiums by amending Section 33(3) of the PITA to disallow tax deduction of premiums paid or payable on contract for deferred annuity taken up by an individual. However, following this amendment, the contract for deferred annuity became unattractive and negatively impacted interest in such contracts.

Consequently, FA 2023 has reintroduced the previously repealed provision, thereby allowing as deduction for tax, the premiums paid or payable on contract for deferred annuities. However, the tax-deductible premiums are restricted to premiums with a minimum of five (5) year holding period. This implies that any portion of the deferred annuity that is withdrawn before the end of the five (5) year holding period shall be subject to tax at the point of withdrawal. This provision is similar to the provisions applicable to voluntary contributions under the Pension Reform Act (PRA).

2.4. Petroleum Profits Tax Act (PPTA) Cap C4. LFN, 2004 (as mended)

The Finance Act provides the following modifications to the PPT Act:

a. Treatment of decommissioning and abandonment contribution by an upstream company to a fund, scheme or arrangement approved by the Nigerian Upstream Petroleum Regulatory Commission as allowable deduction for PPT purposes subject to the provision of a Statement of Account of the fund.

b. Revision of the basis for determination of the chargeable crude oil price under the PPT Act to the fiscal oil price per barrel. Where there is no fiscal price for a crude stream, Nigerian Upstream Petroleum Regulatory Commission (NUPRC) shall establish a fiscal price based on a fair and reasonable relationship to the established fiscal oil price of Nigerian crude oil streams of comparable quality and specific gravity; or where there is no Nigerian crude oil streams of comparable quality and specific gravity, a fair and reasonable relationship to the official selling prices at main international trading centres for crude oil of comparable quality and gravity.

c. Requirement for companies that are in pre-production phase to submit tax returns within 18 months from the date of incorporation for a new company, and 5 months after the year-end in other cases. This is to ensure uniform application of the tax laws with respect to submission of income tax returns to all sectors of the economy.

d. Revision of the late filing penalty to ₦10 million for the first day of default and ₦2 million for each day that the default continues.

e. Introduction of administrative penalty of ₦10 million in the first month of default for non-compliance with the provisions of the PPT Act where no specific penalty is provided and a further ₦2 million, or such sum as may be approved by the Minister of Finance, for each day the continues.

2.5. Tertiary Education Trust Fund (Establishment, etc.) Act

2.5.1. Increase in the rate of Tertiary Education Tax (TET)

Finance Act, 2021 increased the TET rate for companies, excluding small companies, from 2% to 2.5%. Finance Act, 2023 has further increased the rate to 3%. The increased TET rate will be applicable to the assessable profits of any company registered in Nigeria, except for small companies as defined in the CITA.

The hope is the additional tax from the increment will be used to provide the necessary funding required by Nigerian tertiary institutions to compete with their global counterparts.

3.0 Indirect Taxes

Finance Act, 2023 amends various Nigerian tax laws that impact the existing framework for indirect tax in Nigeria. We have analysed these amendments as well as their implications for taxpayers below:

3.1. Value Added Tax Act (VATA), Cap V1, LFN 2007

3.1.1. Power to adjust artificial/ fictitious transactions

The FA 2023 has included a provision in the VATA that gives the FIRS (or "the Service") powers to disregard transactions that are, in its opinion, artificial or fictitious or generally not carried out at arm's length in the case of related party transactions. There are similar provisions in the CITA, PITA, CGTA and PPTA.

Before now, there was no clarity in the VATA on the powers of the FIRS to adjust VATable transactions which it considered fictitious/ artificial. This amendment now clarifies the powers of the tax authority in this regard. Hence, the current practice (especially during audit exercises) where the FIRS adjusts certain transactions which it considers artificial and then subjects whatever profit/ revenue differential realized from such adjustments to VAT (in addition to CIT and WHT) is now properly encoded into the tax law.

This amendment is important because it not only brings clarity to tax administration in Nigeria, but also empowers the FIRS to appropriately discharge its duties as a tax administrator.

Notwithstanding the apparent benefit of this amendment, a major concern for taxpayers is the extent to which the FIRS may utilize this power. Could there be a risk of abuse? To ensure that this risk is greatly reduced, the Act gives taxpayers the right to object to any adjustments made by the FIRS where in the opinion of the taxpayer, such adjustment is unreasonable. Thus, the law appropriately addresses the concern of abuse of power in the amendment. Further, it is important that taxpayers must maintain proper documentation to substantiate their transactions especially with related parties to avoid the risk of such adjustments by the FIRS.

3.1.2. Remittance of VAT withheld by appointed taxpayers

The Finance Act, 2021 amended section 14(3) of the VATA to grant the FIRS powers to appoint any person as tax agents for VAT collection purposes in Nigeria. Such agents were required to withhold or collect the tax charged and remit same to the FIRS before the 21st day of the following month.

However, FA 2023, further amends this section of the VAT Act as follows:

"The Service may appoint any person to withhold or collect the tax, and the person so appointed shall, on or before the 14th day of the following month, remit the tax so withheld or collected to the Service in the currency of the transaction"

This amendment, therefore, inadvertently creates two categories of taxpayers for VAT compliance purposes:

1. Taxpayers specifically appointed as agents of the FIRS for VAT collection purposes

2. Other taxpayers obligated by the VAT Act to collect VAT and remit same to the FIRS.

The first category of taxpayers currently includes companies in the oil and gas sector, deposit money banks, MTN Nigeria, Airtel Plc and companies required to withhold VAT on transactions with non-resident companies. Such companies will now have two VAT remittance timelines:

- the 14th of every month for VAT withheld at source from payments to suppliers/ contractors, and

- the 21st of every month for VAT collected from customers.

This, therefore, creates an additional compliance obligation for these companies (in addition to withholding tax, CIT, and other tax compliance obligations). It is likely that taxpayers in this category may choose to make both VAT remittances (VAT withheld on supplier payments and VAT collected from customers) on the 14th of every month to ease the VAT compliance burden.

For the second category of taxpayers (that is, taxpayers obligated by the VAT Act to collect VAT from payments received from customers) they will simply continue to remit and file VAT returns at the FIRS on or before the 21st of every month.

One issue of concern is whether this revised timeline gives taxpayers ample time to compute and pay the necessary VAT on the prior month's transactions? Some taxpayers undertake millions of transactions on a monthly basis. They will typically lreview these transactions and calculate the VAT due and then pay over any VAT collected (less all owable input VAT paid to suppliers) to the FIRS. Revising this timeline (to an earlier date) may increase the administrative burden for taxpayers and disincentivize voluntary compliance amongst taxpayers.

This amendment may, therefore, need to be revisited, perhaps in future Finance Acts to ensure that taxpayers are not unduly overburdened by acting as agent of the government for VAT collection. It is important that the intent of the amendment be evaluated vis-à-vis the ease of tax compliance obligation in Nigeria.

3.1.3. Collection Tax

Before now, goods purchased via online marketplaces operated by non-resident vendors could be subject to VAT twice. This double VAT would typically arise because the non-resident vendor collects VAT on such purchases at the point of receiving payment from the Nigerian customer and remit same to the FIRS. This is in the instance that such non-resident vendor is appointed as a VAT collection agent by the FIRS. Also, at the point of importing the goods into Nigeria, the Nigeria Customs Service (NCS) would collect VAT on such goods. This led to increased cost for the purchaser of such goods and therefore, disincentivized foreign online purchases.

FA 2023, in a bid to ease the business climate in Nigeria with respect to international online purchases, has introduced provisions that seek to eliminate this risk of double charge of VAT. Based on the amendment, where a Nigerian customer purchases goods from an online electronic or digital platform operated by a non-resident supplier that has been appointed as agent of the Service for the collection of VAT, the Nigerian customer/ importer does not need to pay additional VAT at the port as long as the importer at the point of clearing the goods, presents proof of registration or appointment of the non-resident supplier by the FIRS as an agent of VAT collection and such other documents as may be required by the Service. This amendment is good for the business climate in Nigeria as a Nigerian

customer, who transacts with foreign vendors online (who have been appointed as VAT collection agents by the FIRS), may no longer need to worry about the risk of additional VAT on their purchases.

However, it is important that the FIRS and NCS properly align on the implementation of this provision. This is because, while this provision addresses a critical business need, it can be marred with bureaucratic inefficiencies and the mechanical approach of the respective officials if the NCS and FIRS do not agree on the modalities for its implementation.

3.1.4. Re-definition of building

VAT is applicable on the supply of goods and services in Nigeria, other than those specifically listed as exempt or zero rated in the First Schedule to the Act.

Currently, VAT is not applicable on the sale/ transfer of buildings or interest in buildings. This is because "buildings" are not deemed "goods" or "services" in Nigeria.

Prior to FA 2023, the definition of buildings in the VAT Act included items (such as vehicle etc) which were not consistent with legally and internationally accepted definition of buildings. This meant that the VAT exemption applicable to buildings would also extend to some items that were ordinarily not listed as 'VAT exempt'. This led to disputes between taxpayers and FIRS.

FA 2023, in a bid to align the VATA with global standards and provide the much-needed clarity on the taxation of buildings, has amended the definition of building as follows:

"Building means any structure permanently affixed to land for all or most of the useful life of that structure and shall include, without limiting the generality of the foregoing, a house, garage, dwelling apartment, hospital and institutional building, factory, warehouse, theatre, cinema, store, mill building and similarly fixed structure affording protection and shelter, but excludes any fixtures or structures that can easily be removed from such land, such as radio and television masts, transmission lines, cell towers, vehicles, mobile homes, caravans and trailers".

With this amendment, a building means any structure with some degree of permanence. Therefore, any structure affixed to land that can be easily detachable/ decommissioned before the end of its useful life will not qualify as a building. Also, FA 2023 has clarified that radio and television masts, transmission lines, cell towers, vehicles, mobile homes, caravans, and trailers will also not qualify as a building. This, therefore, means that companies, which before now enjoyed VAT exemptions on the purchase or rental of radio and television masts, cell towers etc, will no longer enjoy such exemptions. Companies must, therefore, begin to analyse the additional cost (mainly VAT) of executing contracts involving the sale and/ or rental of radio and television masts, cell towers, etc as these costs can be material.

3.2. Customs, Excise Tariffs etc (Consolidation) Act (CETA)

3.2.1. Imposition of excise duty on goods imported from outside Africa

Section 15 of FA 2023 amends Section 13 of the CETA by imposing excise duty at 0.5% on all eligible goods imported into Nigeria from outside Africa. This is intended to finance capital contributions, subscriptions and other financial obligations to the Africa Union, African Development Bank, Africa Export – Import Bank, ECOWAS Bank for Investment and Development, Islamic development Bank, United Nations and other multilateral institutions as may be specified in regulation issued by the Minister responsible for Finance.

This provision is particularly important given Nigeria's huge debt obligations. According to a report released by the Debt Management Office (DMO), Nigeria owes approximately ₦19.643trillion in external debt as at 31 March 2023. The government has also indicated an intention to borrow more money to partly finance the current Federal Government budget deficit of ₦11.34trillion. Therefore, this amendment serves as a creative way of using fiscal measures to finance the huge external debt. We also expect that the amendment would also facilitate the provisions of the

Africa Continental Free Trade Agreement (AFCTA) and encourage trade within Africa

However, it must be noted that this amendment will largely increase the cost of goods imported from outside Africa as the additional excise duty will be passed to the final consumer of the product. This may further impoverish the final consumer, who is currently struggling with double figure inflation.

3.2.2. Expansion of scope of excise duty

FA 2023 has expanded the scope of excise duties to include *"all services, including but not limited to telecommunication services provided in Nigeria".*

This amendment raises several questions:

i. What rate of excise will be applicable on the services rendered?

   Currently, excise rate in Nigeria ranges from 0% to 20%. Therefore, it is likely that the President, through an Order, may impose excise on services at a rate that falls between 0 to 20%.

ii. What will be the definition of "services" for the purpose of the CETA?

   The CETA or the Finance Act does not currently define "services". This may, therefore, create ambiguity in application of this provision. For example, will loans issued by banks qualify as "services" under the CETA? How about lease of rental apartment etc? Clarity, therefore, needs to be provided in this regard to enable ease of administration of this provision.

iii. What will be the timeline for remittance of excise on qualifying services?

Another important factor in the implementation of this provision is the timeline for remittance of the excise duty. The Minister of Finance, Budget and National Planning recently released a regulation on the implementation of the excise duty on non-alcoholic, carbonated and sweetened beverages. According to this regulation, the relevant excise duty should be remitted on or before the 21st of the month following the taxable event. We envisage that the government may implement a similar timeline when it releases an Order pursuant to this amendment.

It is very important that the questions raised above be carefully considered and addressed by way of a Presidential Order, a regulation or in future Finance Acts. This amendment, though important for revenue generation in the country, especially as Nigeria grapples to finance its budget, must ensure taxpayers are not unduly overburdened. It is also important that the applicable excise rate and the definition of "services" be extensively discussed and agreed with critical stakeholders.

However, President Bola Tinubu has suspended indefinitely the application of excise duties to telecommunication services. It is assumed that the suspension will also apply to all services.

3.2.3. Expansion of the powers of the Minister charged with finance

Section 17 of FA 2023 has amended Section 22 of the CETA by charging the Minister responsible for Finance with the responsibility for the supervision of the Tariff Review Board. The Tariff Review Board is the Board responsible for the review of customs and excise tariffs under CETA.

3.3. Stamp Duties Act (SDA), Cap. S8, LFN, 2004 (as amended)

3.3.1. Allocation of collected Electronic Money Transfer (EMT) levy

Finance Act, 2020 introduced the EMT levy to the SDA, alongside a sharing formula allocating 15% of the revenue from the EMT levy to the Federal Government and 85% to State Governments. Section 21 of FA 2023 has further amended Section 89A (4) of the SDA to update the formula for allocating collected EMT levy to include the Local Governments.

The new sharing formula now allocates 15% of EMT levy revenue to Federal, 55% to States and 35% to Local Government.

Given that there has been some friction historically among the various arms of Government with respect to revenue allocation, the clear inclusion of the Local Governments is commendable. It is hoped that this clarity will minimize any conflict among the three arms with respect to sharing the revenue generated from the EMT levy. We also hope that this will help to further reduce any instances of marginalization of the Local Government arm and promote equity.

On a related note, there are still some unresolved issues concerning the EMT levy. The key issue is the dispute between the Federal and State Governments over stamp duty on electronic transfers collected between 2015 to 2020. The case is currently at the Supreme court and is yet to be heard. Consequently, we await the resolution of this dispute, as it will help to resolve the longstanding controversy that had generated a lot of attention and threatened the peace of Nigerian banking industry.

4.0 Other Non-Tax Fiscal Impact

4.1. Public Procurement Act, 2007 (PPA)

Fundamental principles for procurement

The Public Procurement Act, 2007 (PRA) was enacted to provide for prudent management of the nation's resources, ensure best practices, probity, and accountability in public procurement. The PRA also establishes the Bureau of Public Procurement to harmonize government's procurement policies and give effect to the provisions of the Act, in line with the nation's economic objectives.

Section 28 of Finance Act, 2023 has amended section 16(1)(b) of the PRA by expanding the criteria for public procurement in Nigeria. Based on this amendment, public procurement shall be carried out based only on procurement plans supported by prior budgetary appropriations. Therefore, no procurement proceedings shall be formalized until procuring party has ensured that there is an approved procurement plan, subject to the threshold in the regulations made by the Bureau as well as guidelines issued by the Minister of Finance. A certificate of no objection to contract award from the Bureau will also be required.

The Finance Act also removes the cash limitation that was in the PRA, which hindered accelerated procurement for capital, social or other projects. Due to this limitation, the implementation of certain procurement contracts had been stalled or delayed. This amendment helps address this issue and ensures that public procurement projects are timeously executed.

This amendment further strengthens accountability and effective management of public resources.

4.2. Corrupt Practices and other Related Offences (CPORO) Act

Finance Act, 2023 has amended section 22(4) of the CPORO Act by deleting the requirement for a public officer to be cash backed prior to signing any procurement contract. The amendment further reiterates the need for administrative approvals and procurement plans to be obtained before awarding or signing any contract. Any officer guilty of this will be liable upon conviction to 3 years imprisonment and a fine of ₦10million naira.

This amendment seeks to further enforce prudent management of public resources and improve accountability by public officers.

4.3. Ministry of Finance (incorporated) (MoFI) Act

Finance Act, 2023 has amended section 3 of the MoFI Act by introducing new subsections that provide for the establishment of a Governing Council, an Executive Board and a Management Team to provide good governance, strategic direction, manage and administer the day-to-day activities of the corporation. The establishment of a management structure for the MoFI aligns with the FG's mandate to ensure effective and efficient operation of government enterprises and is expected to promote transparency and accountability of the corporation.

5.0 Consumer Markets Industry and Infrastructure Industry Impact Analysis

Nigeria is a mono-cultural economy to the extent of its dependence largely on crude oil export for over 90% of its foreign exchange earnings, though oil contributes less than 10% to its Gross Domestic Product (GDP). According to the National Bureau of Statistics (NBS), contribution from the oil sector declined from 5.66% in Q3 to 4.34% in Q4 2022, while non-oil contribution rose from 94.34% in Q3 to 95.66% in Q4, 2022. The non-oil sector largely constitutes the Consumer Markets and Infrastructure Industry comprising the Construction, Agriculture, Manufacturing, Transportation and Storage, Tourism and Hospitality, Information and Communication, and Education sectors.

The Finance Act contains additional fiscal measures through which the Federal Government seeks to stimulate the Consumer Markets and Infrastructure Industry. We have reviewed the amendments in the Act and their implications for companies operating within the Consumer Markets and Infrastructure Industry.

5.1. Transportation and Storage Sector

Section 14 of CIT Act, which prescribes the basis for the taxation of foreign shipping and air transport businesses has been amended to include a new subsection on income tax filing requirements. Accordingly, NRCs operating in the shipping and air transport sector that do not provide separate financial statements for their Nigerian operations are now required to submit the following for the purpose of filing their CIT returns:

- A comprehensive gross revenue statement of the Nigerian operations for the specified period, endorsed by a director of the company and an external auditor
- All invoices issued to customers to support the gross revenue statement

Section 14 was further amended by the inclusion of new subsection 6, which mandates regulatory agencies of shipping, air transport and other relevant sectors to request the following from the applicable NRCs before granting permits or relevant approvals or allowing them to continue to carry on its business in Nigeria:

(i) evidence of income tax filing for the preceding tax year

(ii) Tax clearance certificates (TCC), showing income taxes paid for the three preceding tax years.

The amendment brings more clarity and certainty to the taxation of NRCs operating in the sector, as it resolves some historic challenges, specifically on ascertaining and reporting the revenue generated from Nigeria. Certainly, the endorsed revenue

statement would enhance transparency and credibility in the financial reporting and tax audit process.

NRCs in the sector must ensure that appropriate records of invoices to customers be maintained to avoid unnecessary disputes with the tax authorities. This will also be necessary given the amendment to Section 14 of the FA 2020, which excludes non-freight income from the special tax regime and protocols prescribed in that Section.

Furthermore, the requirement for NRC operators to provide income tax returns and TCC could improve the tax compliance status of the operators in Nigeria. However, it is imperative that NRCs can seamlessly file foreign denominated tax computations on the Tax Promax Platform (TPM), prior to implementation, as the platform is currently not enabled to file foreign denominated tax computations. It is, therefore, important that the ongoing upgrade to TPM be accelerated to include the capabilities for the seamless filing of NRCs income tax computations.

As the sector plays a critical role in economic activities, disruptions to NRCs operations could have far reaching consequences and a rippling effect on the economy. Therefore, TCCs should be processed timely and without recourse to the status of tax audits.

5.2. Consumer Markets

5.2.1. Deletion of reconstruction investment allowance on plant and equipment

Section 32 of CIT Act and Paragraphs 18(3) and 18(7) of the Second Schedule to CIT Act have been deleted to repeal the 10% investment allowance on capital expenditure incurred on plant and equipment, as it is deemed to be redundant.

However, expenditure on plant and equipment incurred on or before the effective date of FA 2023 will qualify for the allowance and can be claimed fully, until utilized.

Following the issuance of the Finance Act (Effective Date Variation) Order, 2023 ("the Order"), the FIRS' position in its Public Notice on the Enactment of the Finance Act, 2023 that the incentive would no longer be applicable to companies with accounting period ending on or after 1 July 2023 is now a moot point.

Notwithstanding, it is important to note that the Public Notice, although no longer relevant, was inconsistent with the provisions of FA 2023 as the interpretation therein gave a retroactive application of the amendment.

Judicial precedent has, on various occasions, decided against the retroactive application of the provisions of tax laws as noted in the Federal High Court judgment between *Accugas Limited and the FIRS* where the court ruled against the application of FA 2019 to periods that occurred before the effective date of the Act.

Based on the above, it is expected that the FIRS will issue a revised Public Notice that will align with the provisions of FA 2023 and the Order.

5.2.2. Deletion of rural investment allowance

The FA 2023 also repealed the rural investment allowance provided in Section 34 of CIT Act. The rural investment allowance is a graduated capital cost uplift (from 15% to 100%) granted to any company that provides specific facilities such as tarred roads, electricity or water which should be located at least 20km away from facilities provided by the government.

Only few companies typically qualify for the rural investment allowance annually, for example, companies engaged in manufacturing activities in remote locations that provide captive electricity and construction of industrial water plants. Therefore, the impact of the removal of this incentive on the affected companies should be evaluated individually.

Nevertheless, eligible companies that incurred qualifying expenditure on or before 1 September 2023, can claim the allowance until it is fully utilized. Like the comments in section 5.2.1 above on the effective implementation date, it is expected that the FIRS will issue a revised position that aligns with the FA 2023 and the Order.

5.3. Tourism and Hospitality Sector

The FA 2023 has repealed the partial income tax exemption on foreign currency income earned by hotels from tourists. Thus, foreign currency income earned by hotels from tourists is no longer exempt from income tax. Previously, 25% of such foreign currency income was exempted from tax if the amount was set aside in a dedicated/reserve fund and used for the expansion of the physical infrastructure of the business within five (5) years.

However, companies that have set aside reserved funds before 1 September 2023 will continue to enjoy the exemption until the funds are fully utilised or within five (5) years of the effective date of the Act, whichever occurs first.

The implication of the above is that the balance in such dedicated/ reserve fund currently held by any hotel must be fully utilised within the next 5 years. Otherwise, such balance would be liable to income tax. Our comments on the need for FIRS need to align its position on the effective date of the commencement of the repeal also apply.

Globally, the hospitality sector has a compelling multiplier effect on the economy and is recognised as a key creator of value, contributing up to 10% of the world's GDP. Nigeria's tourism and hospitality sector has the potential to catalyse economic growth and can serve as a source of foreign exchange earnings. The accommodation and food services sector real growth rate in Q1 of 2023 stood at 3.59%, from 1.93% recorded in the previous year.

Therefore, the government must continue to create enabling policies and laws to stimulate the growth of the sector. The government is accelerating efforts to diversify the source of foreign exchange earnings, thus the deletion of the incentive at this time may be controversial. Nevertheless, an impact analysis will be beneficial in assessing the historic impact of the incentive.

The deletion of this incentive and the other incentives highlighted signals the government's transition plans to eliminate perceived antiquated and redundant tax incentives. The Federal Government has however indicated plans to introduce incentives that reward performance and that can be measured.

6.0 Financial Services Industry Impact Analysis

The Financial Services Industry ("FSI" or "the industry") is a dynamic and diverse sector that plays a crucial role in the Nigerian economy. The industry is constantly evolving, driven by technological advancements, regulatory changes, and market trends, all aimed at meeting the ever-changing financial needs of individuals and businesses. The industry is one of the fastest growing sectors in Nigeria, with a growth rate of 22.58% (year-on-year) in 2022[2].

The Finance Act, 2023 has introduced some amendments to the extant legislation, and which will impact the FSI space and further shape the business landscape.

It is expected that these amendments would create more equity in tax treatment and contribute to a friendly business environment and overall growth of the industry. We have summarized below, the impact of these amendments as they relate to the financial services industry in Nigeria:

6.1. Insurance Sector

6.1.1. Amendment to section 33 of PIT Act: Tax relief on premium paid on contract for deferred annuity

Prior to the implementation of the Finance Act 2021, individuals could claim a tax relief on the premium paid on deferred annuity contract. However, due to the abuse of this provision, the Finance Act, 2021 expunged the provisions of claim of relief on deferred annuity enjoyed by individuals.

Finance Act, 2023 has now amended Section 33 of the PIT Act by re-introducing the tax deductibility of any premium paid by an individual to an insurance company (during the year preceding the year of assessment) in respect of insurance or a contract for deferred annuity on the individual's life or the life of their spouse, subject to Section 17(1) of the PIT Act. However, to prevent abuse of the provision, the Section further provides that any portion of the deferred annuity withdrawn within 5 years will be subject to tax at the point of withdrawal.

The re-introduction of this relief is a key win for the insurance sector as it is expected that the reinstatement will encourage individuals to purchase deferred annuity contracts as taxpayers will be able to deduct the premium

[2] Source: Nigerian Bureau of Statistics - Nigerian GDP Report Q1 2023

paid on such products in determining their tax liability.

It is envisaged that this amendment will translate into growth in the insurance sector, and subsequent repositioning of the sector for sustainable growth.

6.2. Banks and Other Financial Institutions

6.2.1. Amendment of section 14 of the VAT Act - Revised filing date for VAT withholding/ collection agents

Finance Act, 2023 has a,mended Section 14 of the VAT Act that empowers the FIRS to appoint any person to withhold or collect VAT. This Section of the VAT Act now provides that such a person appointed is obligated to remit to the FIRS the VAT withheld or collected on or before the 14th day of the following month and in the currency of the transaction.

Following the introduction of Finance Act, 2021, which granted the FIRS power to appoint any person as an agent to withhold or collect VAT, the FIRS appointed all deposit money banks and select telecommunication companies as VAT collection agents of the FIRS. However, the filing of the withheld VAT was to be remitted on or before the 21st of the following month. This created an administrative gap for taxpayers as the FIRS required the agents to remit the VAT withheld before it could be reflected as paid by the suppliers. Suppliers, therefore, ran the risk of incurring late payment interest on their own VAT filings also due by the 21st, where the agents were yet to remit the withheld VAT by the filing due date.

Thus, following the passage of Finance Act, 2023, deposit money banks are now required to remit to the FIRS the VAT withheld or collected on or before the 14th day of the following month to give sufficient time for the withheld VAT to be reflected for the suppliers before such suppliers file their VAT returns on or before the 21st.

In addition to the above, deposit money banks are still required to charge VAT on VATable transactions with its customers and remit same on or before the 21st day of the following month.

Although this creates an additional compliance obligation for appointed agents, it is expected that the appointment will enable the FIRS to better leverage the resources, technology and reach of these agents to improve VAT collection and reduce the incidence of unremitted VAT and cost of collection.

6.2.2. Amendment of section 89A (4) of the stamp duty act: Allocation formula for EMT levy

FA 2023 has also amended Section 89A(4) of the SDA, introducing Local Governments as participants in the revised sharing formula for the revenue derived from EMT Levy. Based on the revised allocation, 15% of the revenue will be allocated to the Federal Government and the Federal Capital Territory, 50% to State Governments and 35% to Local Governments.

These amendments indicate the Federal Government's increased attention to stamp duty as a source of revenue for all tiers of government. This increased scrutiny is, therefore, likely to also lead to a higher drive of stamp duty compliance and more innovative approaches to increase collection. Taxpayers can expect to have stamp duty audits more frequently in the same manner that corporate taxes are currently being audited. Thus, the Deposit Money Banks that commenced stamp duty audit exercises about 2 years ago covering 2016 -2020 financial years could expect another audit exercise covering the subsequent years, shortly after the audit of the initial period is concluded.

6.3. Financial Technology/Digital Economy

6.3.1. Amendment to Section 3(a) of CGT Act: Imposition of CGT on digital assets

Based on the amended Section 3(a) of the CGT Act, digital assets will now constitute chargeable assets for capital gains purposes.

While there remains uncertainty regarding the regulation of digital assets in Nigeria, this amendment is a positive step towards the much needed clarity for Nigeria's emerging FinTech industry. It is, therefore, anticipated that the existing uncertainty will continue to reduce as multiple regulatory authorities collaborate to synchronize their objectives. This clarity in regulation should strengthen investors' confidence and stimulate growth in the industry.

7.0 Oil and Gas Industry Impact Analysis

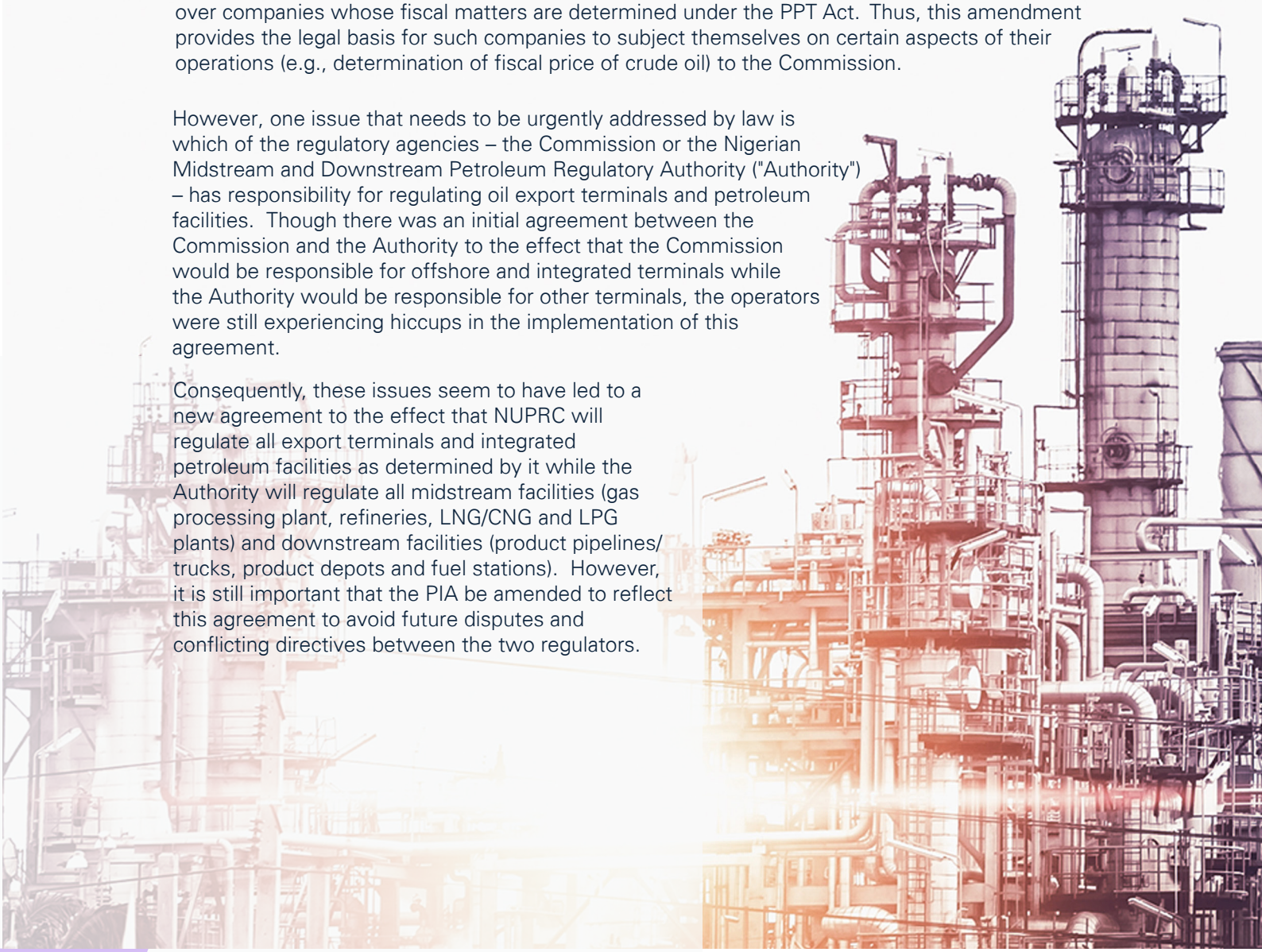
Finance Act, 2023 seeks to further harmonize and align the relevant provisions of the PPT Act with the Petroleum Industry Act 2021 (PIA) and best practices in the Petroleum industry. We have highlighted below, the key amendments affecting companies operating in the oil and gas sector.

7.1. Recognition of the Nigerian Upstream Petroleum Regulatory Commission ("Commission")

Based on the PIA, the NURPC is empowered to regulate the activities of companies operating in the upstream oil and gas subsector of the Nigerian petroleum industry. Consistent with this new requirement, the PPT Act has been amended to recognize the Commission as a regulatory body over companies whose fiscal matters are determined under the PPT Act. Thus, this amendment provides the legal basis for such companies to subject themselves on certain aspects of their operations (e.g., determination of fiscal price of crude oil) to the Commission.

However, one issue that needs to be urgently addressed by law is which of the regulatory agencies – the Commission or the Nigerian Midstream and Downstream Petroleum Regulatory Authority ("Authority") – has responsibility for regulating oil export terminals and petroleum facilities. Though there was an initial agreement between the Commission and the Authority to the effect that the Commission would be responsible for offshore and integrated terminals while the Authority would be responsible for other terminals, the operators were still experiencing hiccups in the implementation of this agreement.

Consequently, these issues seem to have led to a new agreement to the effect that NUPRC will regulate all export terminals and integrated petroleum facilities as determined by it while the Authority will regulate all midstream facilities (gas processing plant, refineries, LNG/CNG and LPG plants) and downstream facilities (product pipelines/ trucks, product depots and fuel stations). However, it is still important that the PIA be amended to reflect this agreement to avoid future disputes and conflicting directives between the two regulators.



7.2. Treatment of the decommissioning and abandonment contribution

The FA 2023 amended the PPTA to align it with the PIA on the tax treatment of contribution to decommissioning and abandonment fund. Before the amendment, there were controversies as to whether it was the "provision" for decommissioning and abandonment expense or the "cash-backed" expense that should be allowed as tax-deductible for an upstream company's PPT purpose.

This controversy largely stemmed from the fact that one of the operative words in determining the tax-deductibility of an expense for PPT purpose is whether such expense was wholly, exclusively and necessarily ***"incurred"*** in generating the income of the company. One possible interpretation strictly construed the meaning in line with the explanation proffered by the Black Laws' legal dictionaries to mean *"to become subject to and become liable for", rather than "paid for"* as generally construed and interpreted by the Nigerian tax authority (the FIRS). Therefore, according to the former interpretation, if there is a binding legal obligation to pay the decommissioning and abandonment cost, such costs were regarded as incurred, and thus, tax-deductible, a position vehemently opposed by the FIRS.

In other to resolve the seeming controversy in the past, the Minister of Finance, Budget and National Planning had issued draft Regulations on Decommissioning in 2018 which aligned with the FIRS' view as articulated above. This position was finally sealed by the provision of section 263(1)(e) of the PIA, which categorically requires exploration and production company to take tax deduction only in respect of "contribution" to such fund as approved by the Commission. It is, therefore, not surprising that for consistency with the PIA, FA 2023 has amended this section of the PPT Act.

The implication of the above amendment is that any upstream company that wishes to continue to be assessed to tax under the PPT Act will also be required not only to have a decommissioning and abandonment fund in place, but to have such fund approved by the Commission, and must make "contribution" to the fund (not just "provision"), for the said amount to be tax-deductible for its PPT purpose. In other words, the provision must be cash- backed. The Commission, in its draft Decommissioning and Abandonment Regulations, has also stated that the escrow account for this purpose must be maintained with Nigerian Banks. This will go a long way in enhancing the ability of those banks to provide the desired loans for bankable oil and gas projects. However, such banks must meet the minimum credit rating of 'A' or its equivalent.

Any surplus or residue of the fund after decommissioning and abandonment of the field shall be assessed to tax accordingly under the PPT Act.

The above amendment is a welcome development as it puts to rest the controversies and uncertainty that have trailed the absence of clear provision regarding the tax treatment of "provision for decommissioning and abandonment expense" under the erstwhile PPT Act. However, one area that the Commission needs to clarify is how existing upstream companies would implement the amendment. Would they be required to set aside the fund for the expired years of the relevant lease immediately? In other words, once the decommissioning cost is determined, would such cost be spread over the remaining years left on the lease? This would place a significant cash burden on the operators.

7.3. Revision of the basis for determination of the chargeable tax.

Prior to the amendment, the value of chargeable oil was largely hinged upon the posted price (PP) applicable to the crude oil stream - which is essentially, the *"price F.O.B. at the Nigerian port of export for crude oil of the gravity and quality.."* This price was usually established by an oil exploration company after agreement with the Government of Nigeria.

Given that posted prices are based on agreement, there have always been disputes between the Government and oil companies. Often, both parties cannot agree on the underlying assumptions used in the determination of the price. Consequently, government has often sought to apply its own price in determining the fiscal value. With the amendment of the PPTA, the fiscal price will be determined by the Commission based on the information independently obtained and that supplied by the operators. It thus seems that the fiscal price will approximate to an official selling price, which is used to price crude oil sales to long-term customers. Currently, government publishes the official selling price one month in advance. The publishing day is on the 20th of the month. For example, the price for August delivery will be published on the 20th of July.

The above changes should help in minimizing the disputes relating to the price to adopt. However, it is hoped that there would be transparency in the process to ensure that all stakeholders are fully on board.

7.4. Requirement for a Company that is yet to commence petroleum operations to submit tax returns

The FA 2023 has now resolved the seeming controversy between the FIRS and upstream companies that are yet to commence petroleum operations (in pre-production phase) on submission of tax returns.

The PPT Act specifically directed companies that were engaged in "petroleum operations" to submit their PPT returns for any accounting period in which they have operated. Unfortunately, companies in their pre-production phase (i.e., which are yet to commence "petroleum operation" as defined under the PPT Act) do not have first accounting period, and by extension, are deemed not required to submit tax returns. Prior to the amendment now introduced by FA 23, the FIRS had made several attempts to compel companies in their "preproduction phase" to submit tax returns based on the provision of section 55 of the CIT Act, which was a different piece of legislation to the PPT Act under which such oil companies were assessed to tax. The FIRS' action drew condemnation by such companies, as there was no legal basis for the action in the PPT Act. Whilst it was obvious that there were gaps in the PPT Act, it was difficult for the FIRS to rely on CIT Act to continue to insist on their position in this regard.

Given the amendment to section 30 of the PPT Act via FA 2023, the seeming controversy has now been resolved. All petroleum companies, as defined by PPT Act, are now required to render their annual PPT returns to the FIRS. The timeline for submitting the return is either 18 months from the date of incorporation (for a new company) or five months after 31 December for other Companies.

7.5. Full utilization of capital allowances by companies engaged in upstream and midstream gas operations.

The FA 2023 has clarified that companies engaged in upstream and midstream gas operations are entitled to claim their capital allowances without any restriction. This is not unexpected given that those companies are involved in production or manufacturing activity. This amendment will help to resolve any lingering doubt or controversy as to whether gas producing companies are involved in manufacturing activities.

7.6. Revision of applicable penalties

The FA 2023 has made changes to the penalties under the PPT Act in Sections 51, 52 and 53. The Act has amended the penalty for the various offences to align with the provisions of the PIA. This has resulted in the increase of fines/penalties from as low as ₦10,000 with an additional ₦2,000 per day to ₦10 million with an added penalty of ₦2 million for each day that the offence continues. Where such a person is convicted, the penalty could be as high as ₦15 million/₦20 million and an additional 1% of the amount of the taxes not declared/undercharged.

Given the above penalties, petroleum companies are advised to exercise a great duty of care and diligence to ensure that they are not exposed to avoidable penalties for non-compliance.

The changes introduced into the PPT Act by FA 2023 are expected as they seek to resolve some erstwhile controversial provisions and achieve alignment of the PPT Act with the PIA.

8.0 Digital Economy Impact Analysis

Nigeria has witnessed a remarkable increase in internet penetration in recent years. With a large population and a growing number of internet users, the digital economy has gained momentum, offering opportunities for businesses and individuals to connect, engage, and transact online. In particular, the e-commerce sector in Nigeria has seen rapid growth, driven by the emergence of online marketplaces, increased consumer trust in online transactions, and improved logistics infrastructure. FinTech start-ups and companies have also flourished over the years, with the introduction of digital payment solutions, mobile banking, peer-to-peer lending, and other fintech innovations, attracting investments and driving innovation in the financial services industry.

The Nigerian government has demonstrated its dedication to fostering the growth of the digital economy by implementing various initiatives. One notable effort is the Nigeria Startup Act 2022, which seeks to establish a legal and institutional framework to support the development and functioning of startups in the country. In this regard, we have examined the effects brought about by the amendments introduced in the Finance Act, 2023 on the digital economy.

8.1. *Inclusion of digital assets as chargeable assets for capital gains purposes*

In a bid to align with current market realities, FA 2023 has amended Section 3(a) of the CGT Act by subjecting income from disposal of digital assets to CGT at 10%. The amendment implies that individuals and businesses involved in the digital economy will need to comply with the tax obligations provided in the CGT Act when carrying out the sale, exchange, or disposal of these assets. They will also be required to keep accurate records of their digital asset transactions, calculate the CGT liability and file returns with the FIRS accordingly.

The amendment demonstrates a change in the FG's position on digital assets, especially cryptocurrencies. This is pertinent considering the previous position of the FG such as barring bank accounts of traders engaging in such digital assets. With a projected worldwide revenue base of US$56 billion in 2023, taxing digital assets will expand the tax base for the Nigerian government, allowing the government to capture tax revenue from the growing digital economy and the increasing popularity of cryptocurrencies and tokenized assets.

Nevertheless, the implementation of CGT on digital assets may pose challenges and additional complexities for some players in the digital economy. Although the amendment clarifies the tax treatment of digital assets for CGT purposes, there may still be areas of regulatory uncertainty. The evolving nature of the digital asset ecosystem, including new forms of digital assets and decentralized finance (DeFi) platforms, could pose challenges for both taxpayers and tax authorities in determining the accurate valuation of digital assets, interpreting and enforcing tax regulations.

Given the dynamic nature of the digital economy, it is essential for the government and tax authorities to adapt their strategies and frameworks accordingly through continuous monitoring, collaboration and stakeholders engagement and collaboration with international bodies on developments in the digital assets space, etc.

Conclusion

Finance Act, 2023 has introduced several amendments across various pieces of tax legislation, aiming to enhance tax administration, stimulate economic growth, and address evolving challenges. Key changes include the inclusion of digital assets as chargeable assets for CGT purposes, the expansion of qualifying assets for roll-over relief, the revision of investment allowances and other incentives for companies, and the requirement for shipping and air transport companies to provide audited financial statements and tax clearance certificates. Furthermore, the Act increases the TET rate, reintroduces the tax deductibility of insurance premiums for individuals, revises provisions related to petroleum profit tax, and introduces new measures under the VAT and Customs Acts.

These amendments reflect the government's efforts to streamline taxation, promote tax compliance, and adapt to the changing digital landscape and economic priorities. It is crucial for businesses and taxpayers to understand and comply with these amendments, while the government should ensure effective implementation and communication of the changes to foster a transparent and supportive tax environment.

Government has recognised the need to strengthen and increase the effectiveness of the Nigerian tax system and the elimination of redundant tax incentives to achieve sustainable development. Currently, domestic resource mobilisation presents a challenge to the country. Nigeria is not able to generate sufficient revenue to provide basic services such as road infrastructure, power, healthcare, education and public safety. Available research indicates that at least 15% of GDP in revenue would be required to finance these basic services. As of 2021, Nigeria had a tax to GDP ratio of 10.86%. This is expected to increase significantly in 2023 given the policy posture of the current administration.

Undoubtedly, taxes are the most stable and reliable source of state revenue. They also provide the necessary funding and promote more sustainable growth. However, Nigeria has continued to rely on borrowings and this strategy has proved to be unsustainable. If the country must achieve sustainable growth through taxation, it needs a comprehensive approach that incorporates transparent tax administration, effective tax policies, deployment of technology to promote voluntary compliance and, most importantly, public trust. There is ample evidence to show that there is strong positive correlation between taxation and good governance. In other words, governance must improve before Nigeria can achieve sustainable growth through taxation.

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