KPMG

Finance Act, 2020

Impact Analysis

February 2021

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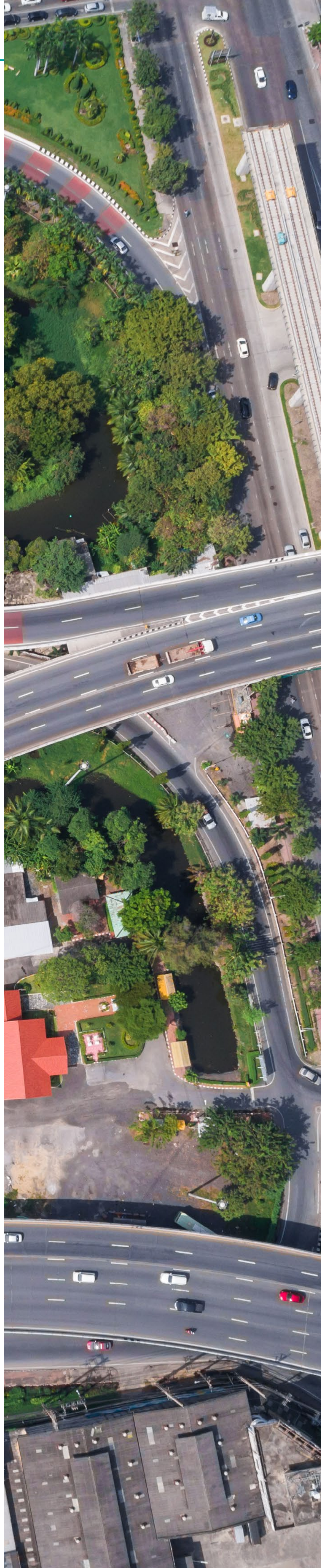
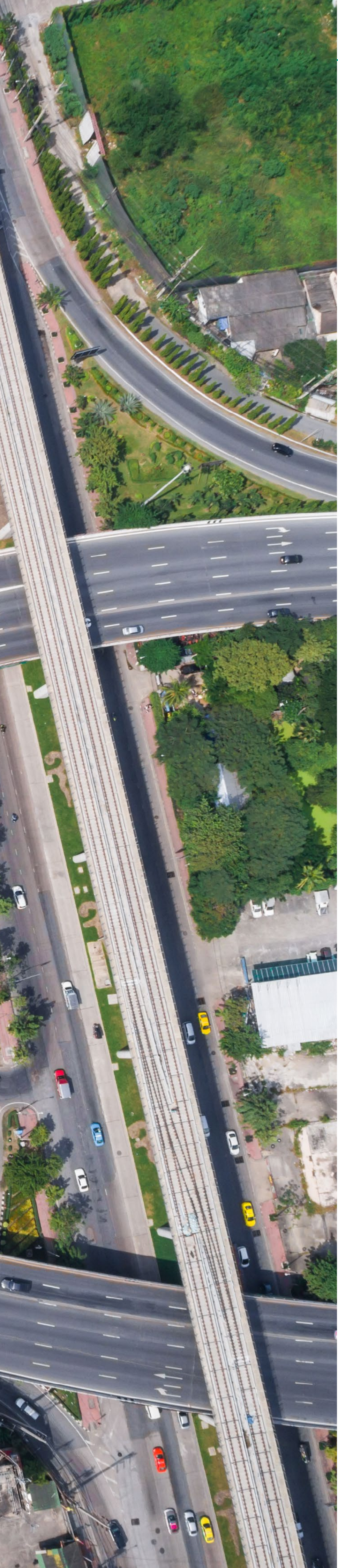




Glossary

AE – Approved Enterprise
CAMA – Companies and Allied Matters Act
CETA – Customs, Excise Tariff, etc. (Consolidation) Act
CGT – Capital Gains Tax
CIF – Crisis Intervention Fund
CIT – Companies Income Tax
CRA – Consolidated Relief Allowance
CRF – Consolidated Revenue Fund
CRS – Common Reporting Standards
ED – Excise Duty
EMT – Electronic Money Transfer
EODB – Ease of Doing Business
ETR – Effective Tax Rate
FA – Finance Act
FG – Federal Government
FIRS – Federal Inland Revenue Service
FRA – Fiscal Responsibility Act
FTZ – Free Trade Zone
FY – Financial Year
GDP – Gross Domestic Product
HMoFBNP - Honorable Minister of Finance, Budget and National Planning
IDA – Industrial Development (Income Tax Relief) Act
ISAC – International Shipping and Airline Companies
JV – Joint Venture
LFN – Laws of the Federation of Nigeria
NBS – National Bureau of Statistics
NEPZA – Nigeria Export Processing Zones Authority Act
NRC – Non-Resident Company
OECD – Organization for Economic Cooperation and Development
OGFZ – Oil and Gas Export Free Zone
PIT – Personal Income Tax
PPA – Public Procurement Act
PRA – Pension Reform Act
QCE – Qualifying Capital Expenditure
RTA – Relevant Tax Authority
SDA – Stamp Duties Act
SEP – Significant Economic Presence
TAT – Tax Appeal Tribunal
UDTF – Unclaimed Dividend Trust Fund
VAT – Value Added Tax
WHT – Withholding Tax

Wole Obayomi

Preface

On 31 December 2020, His Excellency, President Muhammadu Buhari, GCFR, signed the Finance Bill, 2020 into law.

The Finance Bill, 2020 which was an Executive Bill prepared by the Honourable Minister for Finance, Budget and National Planning, was approved by His Excellency, President Muhammadu Buhari and presented together with the 2021 Budget proposals to the National Assembly of Nigeria. The Bill was subsequently reviewed and passed by the Senate on Tuesday, 15 December 2020 and the House of Representatives on Thursday 17 December 2020, respectively, prior to assent by the President to culminate into Finance Act, 2020 (hereinafter referred to as "Finance Act", "FA 2020" or "the Act").

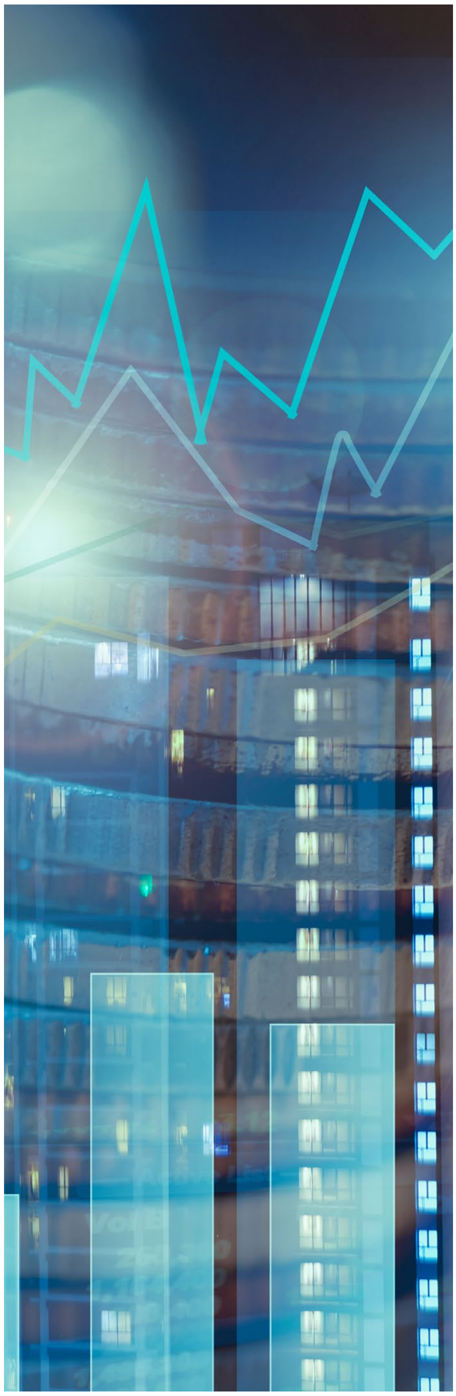
Finance Act, 2020 introduces changes to the Capital Gains Tax Act, Companies Income Tax Act, Industrial Development (Income Tax Relief) Act, Personal Income Tax Act, Tertiary Education Trust Fund (Establishment, etc.) Act, Customs, Excise Tariff, etc. (Consolidation) Act, Value Added Tax Act, Stamp Duties Act, Federal Inland Revenue Service (Establishment) Act, Nigeria Export Processing Zones Authority Act, Oil and Gas Export Free Zone Act, Companies and Allied Matter Act, Fiscal Responsibility Act and the Public Procurement Act. These changes became effective on 1 January 2021. It is important to note that Finance Act, 2020 did not repeal Finance Act, 2019, although it modified some of the amendments introduced by the latter to provide clarity and make it consistent with the government's fiscal plans and current economic realities.

The passage of the Act reinforces the Federal Government's commitment to making incremental changes to Nigeria's fiscal framework, such that Nigeria has a fiscal framework that enables the achievement of the country's economic growth and development imperatives.

The amendments made by the Act are intended to provide counter-cyclical fiscal policy measures that will aid economic recovery and growth given the devasting effect the COVID-19 pandemic has had on the Nigerian economy. The amendments are staged across five broad thematic areas with a view to:

a. enacting counter-cyclical measures and crisis intervention initiatives
b. providing fiscal relief for mass transit
c. implementing key procurement reforms
d. institutionalizing ease of doing business (EODB) reforms
e. ensuring fiscal responsibility

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



1

General Implications of Finance Act, 2020 on the Nigerian Economy

Ajibola Olomola
Partner

1.1 2020 Economic Performance

The COVID-19 pandemic and drop in oil prices caused significant reduction in Government revenues and income of citizens in 2020. Specifically, the enforcement of a lockdown occasioned a loss of livelihood for many Nigerians who depended on daily commercial activities, events and physical movement to earn a living. Also, the significant fall in oil prices in the first half of 2020 led the Federal Government (FG) to amend the benchmark oil price in the 2020 budget from $57 per barrel to $20 per barrel.

A report from the National Bureau of Statistics (NBS) shows that Nigeria reported a growth rate of 1.87% in the first quarter of 2020 compared to a growth rate of 2.55% in fourth quarter of 2019. However, Nigeria experienced negative growth of -6.1% and -3.62% in the second and third quarters of 2020, respectively. This led the country into its second recession in four years.

According to the World Bank's Nigeria Development Update report, about 11 million more Nigerians are expected to fall into poverty as a result of the COVID-19 pandemic and the economic recession. By implication, the total number of persons categorized as *'poor'* will increase from 90 million to 100 million (about half of the nation's population) by 2022.

Overall, the economy performed poorly in 2020. This performance has necessitated the formulation of an immediate recovery plan by the Government, which includes cushioning the effect of the pandemic on the citizenry, tightening government expenditure and improving revenue collection.

1.2 How Finance Act seeks to cushion the impact of COVID-19

In light of the well-documented implications of the pandemic on the Nigerian economy, it became mandatory that the Nigerian government respond with a series of counter-cyclical fiscal policy measures necessary to enable industries and businesses to continue functioning in a COVID-19 constrained world. General fiscal measures were required in recognition of the continued depletion in gross domestic production levels and attendant impact on the income-generating capacity of businesses and individuals. Ideally, a combined retool of reduced taxes (leaving taxpayers with much more disposable income and cash levels for spending and investment activities) followed by increased government spending should provide the necessary backdrop for sustained economic growth. However, such response may have proven difficult to implement in light of the current financial position of the nation particularly in relation to budgetary commitment versus expected earnings.

Finance Act, 2020 bravely continues in the same direction as Finance Act, 2019 to increase the wallet share of taxpayers by reducing the tax burden on the most vulnerable sectors of the economy. These would include loss-making companies or companies with lower profitability ratios that might otherwise have fallen into the minimum tax threshold and would have had to source for money with which to pay tax. Furthermore, reducing the excise duties and levies payable on motor vehicles and tractors imported into Nigeria should help offset the impact of withdrawal of petroleum subsidies and allow some relief to operators in the transport sector. Other examples abound as will be discussed in subsequent pages of this publication in our sectoral analysis of the impact of Finance Act, 2020.

Beyond providing palliatives to individuals and businesses, recognition must be given to the changing face of the Nigerian industrial experience with significant migrations recorded from wholly brick and mortar activities to predominantly digital based exchanges. Admittedly, this transformation, positive as may seem, has been forced by current economic realities. Consequently, large scale legislative reviews and amendments are required to ensure Nigeria keeps pace with the ever-changing face of global and domestic business and more importantly, align the tax and other such legislation with these realities. Finance Act, 2020 signals a direction towards harnessing the noted drive towards digitization by empowering the Federal Inland Revenue Service (FIRS) to deploy technology for tax administration.

The Act also expands the framework for official interaction and data exchange with the tax authority, including the tax dispute resolution body, the Tax Appeal Tribunal, by electronic means. It is expected that these changes would enhance the EODB in today's clime and ease interaction between taxpayer and tax authorities.

Another such change directed at promoting ease of doing business is introduction of less stringent filing protocols for small businesses and removal of the mandatory requirement for such businesses to file their income tax returns using financial statements which have been certified by an auditor.

It is expected that these changes will lead to an improvement in the nation's ranking in the World Bank's Ease of Doing Business report. Nigeria ranked 131 out of 190 countries assessed by the World Bank as the last report issued in 2020, which was a 13-point improvement on its prior position of 146. While there are significant issues that still need to be resolved with respect to tax collection and administration in Nigeria, it goes without saying that by passing Finance Act, 2020, Nigeria has taken another significant step towards modernising its tax framework and positioning itself as a choice destination for the investing community.

2

Direct Taxes

Wole Obayomi
Partner

Finance Act, 2020 amends various pieces of Nigerian income tax legislation that affect 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)

2.1.1 Requirement to submit capital gains tax (CGT) returns:

The Act imposes an obligation on persons who dispose of a chargeable asset to self-assess, pay and file a return on the chargeable gain by 30 June and 31 December of the same year. The obligation to file returns, in our view, applies regardless of whether the chargeable asset qualifies for roll over relief.

The self-assessment requirement is not exactly new – taxpayers were always obligated to do so. However, the timeline of the submission of the CGT returns relied on the timeline for submitting Companies Income Tax (CIT) and Personal Income Tax (PIT) returns. This new requirement may signal a first attempt to breathe life into the antiquated CGT framework and separate its administration from that of the Income Tax Acts. We expect that future legislative attention will soon be brought to bear on CGT.

2.1.2 Restriction of the amount exempt from CGT for compensation for loss of office

Finance Act, 2020 has amended Section 36(2) of the CGTA to clarify the application of CGT on compensation for loss of office. Finance Act, 2019 had increased the amount exempted from CGT for compensation for loss of office from ₦10,000 to ₦10 million and deleted the phrase *"in any year of assessment".* With the wording of the new Section 36(2) introduced by Finance Act, 2020, the alleged inconsistency regarding the intention of lawmakers and the application of the section has been effectively resolved. Therefore, only amounts in excess of ₦10 million received as compensation for loss of office will be liable to CGT under the Act.

2.1.3 Deduction and timeline for payment of CGT on compensation for loss of office

Finance Act, 2020 requires any person making payment to an individual for loss of office to deduct and remit the CGT thereon to the relevant tax authority (RTA) within the timeline stipulated under the Pay-As-You-Earn Regulations pursuant to the Personal Income Tax Act, Cap. P8, LFN, 2011 (as amended). Consequently, CGT payable on compensation for loss of office should be remitted to the RTA not later than the tenth day of the month following the deduction. This amendment effectively clarifies the party responsible for the deduction and subsequent payment of CGT on compensation for loss of office and the timeline for remitting the tax.

It is not entirely clear how this reporting framework will be harmonised with the twice annual reporting framework now introduced to CGT administration by Section 2 of Finance Act, 2020.

However, based on a strict interpretation of the Act, there is the likelihood that individuals that receive compensation for loss of office would still be required to file CGT returns by 30 June or 31 December of the relevant year, albeit with no CGT payment obligation on the gain.

We have discussed other industry specific changes to the CGT Act in the sectoral analysis section of this e-book.

2.2 Companies Income Tax Act (CITA), Cap C4., LFN, 2004 (as amended)

2.2.1 Response to the Impact of COVID-19 Pandemic

(i) 50% reduction of the minimum tax rate

The Act introduces a 50% temporary reduction of the 0.5% minimum tax rate for companies liable to minimum tax for the years of assessment falling due on any date between 1 January 2020 to 31 December 2021.

(ii) Inclusion of donations made to the government during a pandemic, natural disaster or other exigency as allowable deductions for CIT purposes

The Act provides for the treatment of cash or in-kind donations made to any fund set up by the following establishments in respect of any pandemic, natural disaster or other exigency as tax-deductible expenses:

- Federal or State Governments, or
- agencies designated by the Federal Government,
- similar funds set up in consultation with any Ministry, Department, or Agency of the Federal Government.

Deductible costs include the cost of in-kind donations made to the Government or any of its designated agencies, cost of procurement or manufacture of items contributed, and cost of purchase, manufacture or supply of such in-kind contributions. This is, however, subject to proving with adequate documentation that such costs were incurred *wholly, reasonably, exclusively and necessarily* in relation to the procurement or manufacture of such in-kind contributions.

Moreover, the amount to be allowed as deductible donations will be limited to 10% of the company's assessable profit after deduction of other allowable donations.

For ease of understanding, we have demonstrated in the illustration below, a practical application of this provision.

Illustration 1:

Company XY, a Nigerian company with a year end of 31 December, donated ₦10 million in cash to the FG's COVID-19 pandemic fund in 2020 Financial Year (FY). The Company recorded a profit before tax of ₦70 million after deducting its allowable donations of ₦500,000 and all expenses incurred during the year. The net tax adjustments (non-taxable income and non-allowable deductions) for the year amounted to ₦12.5 million - to be added back. How much tax relief is Company XY entitled to in 2020 FY?

	₦
Profit Before Tax *(a)*	70,000,000
Add: Net Tax Adjustments *(b)*	12,500,000
Assessable Profit *(c) = (a) + (b)*	**82,500,000**
10% of Assessable Profit *(deductible donation)*	(8,250,000)
Taxable Assessable Profit	**74,250,000**

Based on the above illustration, Company XY has an allowable deductible COVID-19 donation of ₦8,250,000 out of the ₦10 million total donation it made in 2020 FY.

The treatment of part of the cost of donations made by companies in times of pandemic, natural disaster or other exigency as tax deductible expenses for CIT purposes is in response to the assistance provided by companies to the Government during the COVID-19 pandemic. It is hoped that this incentive will encourage companies to make cash and in-kind donations in the future where there is a crisis of a similar nature.

2.2.2 Introduction of new regulations for record-keeping

Finance Act, 2020 provides that all companies, including those exempted from incorporation and paying tax, must maintain accounting records in English language for a minimum period of six years. Non-compliance with the above attracts a penalty of ₦100,000 in the first month in which the failure occurs, and ₦50,000 for each subsequent month in which the failure continues. The Act further empowers the FIRS to request companies to translate accounting records initially stated in a foreign language to English language which will be certified by a sworn translator at the company's cost. However, taxpayers will have an opportunity to contest the FIRS' directives through objection

and/or appeal, similar to the case of an assessment.

2.2.3 Changes to the timeline for settlement of undisputed tax assessments

Finance Act, 2020 has reduced the timeline required by companies to settle any undisputed tax assessment raised by the FIRS, from 2 months to 30 days from the date of service of the assessment. Therefore, where an assessment becomes final and conclusive, due to the failure of the taxpayer to file a formal objection within the statutory 30-day period, or the assessment has been agreed by the taxpayer or determined on objection or appeal, the additional liability must be settled within 30 days of the service of the relevant assessment by the FIRS.

2.2.4 Introduction of penalties for filing incorrect CIT returns

Finance Act, 2020 has introduced sanctions for a deliberate filing of incorrect CIT returns by companies. These sanctions include payment of the outstanding tax assessed by the FIRS and penalty and interest accruing on the outstanding amount from the date the incorrect return was filed.

There might be practical challenges with the application of this provision as it may be difficult for the tax authority to determine when a taxpayer dishonestly files a return or when an incorrect tax return was filed by reason of an innocent mistake. This issue may, therefore need to be clarified in future Finance Acts.

2.2.5 Introduction of the definition of "public character"

Finance Act, 2020 introduced the definition of the term *"public character"* to mean an organisation or institution that is registered in accordance with the relevant law in Nigeria and does not distribute or share its profit in any manner to its members or promoters. This definition clarifies the longstanding debate on what constitutes *"public character"* for the purpose of determining the profits of an educational institution.

That said, it may be useful to consider a further revision to the definition to align it with the globally accepted definition of the public character.

2.2.6 Other noteworthy changes to the CITA

i. Correction of the ambiguity in Section 4(b) of Finance Act, 2019 ("FA 2019"), thus, clarifying that WHT will be the final tax on the income derived by a non-resident company (NRC) from technical, management, consultancy, or professional services provided to persons resident in Nigeria, where the NRC does not have a fixed base or engages in other trade or business as defined under Sections 13(2)(a)-(d) of the CITA.

ii. The Act provides for the documents to be submitted by an NRC deemed to be carrying on a trade or business in Nigeria when filing its CIT returns. The documents include full audited financial statements of the NRC as well as the financial statements of its Nigerian operations duly attested by an independent qualified/ certified accountant in Nigeria, tax computation schedules of the profits from its Nigerian operations, duly completed self-assessment forms, and a statement in writing containing its profits from every source in Nigeria. However, an NRC that only earns an income on which WHT is the final tax, is exempted from the above documentation requirements.

iii. Recognition of courier service, emails and other electronic means as approved channels for the issuance of notices of assessment by the FIRS and submission of notices of objection by taxpayers.

iv. Assigning power to the FIRS to determine the form of accounts to be included in the tax returns of small and medium companies in place of audited accounts.

v. Recognition of costs incurred on software acquisition and development and capital outlays on electronic applications as qualifying capital expenditure for capital allowance purposes.

vi. Clarification on the criteria for tax exemption of dividend and rental income earned by a real estate investment company.

vii. Clarification that payment of any penalties prescribed by any Act of the National Assembly or State House of Assembly by a company will not qualify as a deductible expense for CIT purposes. This provision effectively puts to rest the perennial dispute between tax authorities and taxpayers on the eligibility of penalty as a tax-deductible expense.

2.3 Industrial Development (Income Tax Relief) Act (IDA) Cap I7, LFN 2004

Finance Act, 2020 provides the following modifications to the IDA:

i. Grant of tax holiday to small and medium sized companies engaged in primary agricultural production, upon an application to the President through the Minister of Finance, for an initial period of four years which can be extended for another two years, subject to satisfactory performance of the business.

   It will be recalled that a similar tax holiday was initially introduced in the CITA by Finance Act, 2019. However, this has been deleted from the CITA and effectively transferred to the IDA.

ii. Definition of small and medium companies and primary agricultural production to align with the provisions of the CITA.

2.4 Tertiary Education Trust Fund (Establishment, etc) Act, (TETFA) 2011

Finance Act, 2019 granted income tax exemption to small companies that earn gross turnover of less than ₦25 million. The FIRS had clarified via its Information Circular No. 2020/04 that the exemption also applied to tertiary education tax (TET) as small companies would not have assessable profits.

Finance Act, 2020 has now made small companies' exemption from TET explicit. This is in line with the policy directive of the government to enable small businesses to thrive in Nigeria through tax concessions.

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

2.5.1. Taxation of non-residents individuals - Introduction of Significant Economic Presence

Finance Act, 2020 has introduced a new section 6A to the PITA which provides that income earned by non-resident individuals, executors and trustees from technical, management, consultancy or professional services provided to a person resident in Nigeria shall be subject to a final 10% WHT in Nigeria, if the non-resident individual has a significant economic presence (SEP) in Nigeria.

The Act does not specify what constitutes a SEP but empowers the Honorable Minister of Finance, Budget and National Planning (HMoFBNP) to define it through an Order.

2.5.2. Clarification on tax deductibility of pension or retirement contributions

The Act amended Section 20 (1)(g) of the PITA to clarify that only contributions to pension, provident or other retirement benefits fund recognized by the Pension Reform Act (PRA) will qualify as tax-deductible expenses for PIT purpose.

Consequently, all individuals, partnerships, corporation sole trustees/ organisations will need to ensure that their retirement benefits funds comply with the provisions of the PRA in order to take the tax benefit of the contributions.

We have provided in the illustration below, a practical application of this provision.

Illustration 2:

Company X makes pension remittances on behalf of its staff, Mr Y, to a private pension firm, ABC Pensions – a pension firm not recognized under the PRA. The pension remitted by Company X is ₦1 million – assume this amount represents Mr. Y's contribution to the pension fund. Mr. Y's total income and consolidated relief allowance (CRA) are ₦13 million and ₦2.8 million respectively. What is the impact of the FA 2020 on Mr. Y's tax payable? Assume an effective tax rate of 15%.

	Pre-FA 2020	FA 2020
	₦	₦
Total Income Earned	13,000,000	13,000,000
Less:		
CRA	(2,800,000)	(2,800,000)
Pension	(1,000,000)	(0)
Taxable Income	**9,200,000**	**10,200,000**
Tax Payable @ 15%	1,380,000	1,530,000

Based on the provisions of the FA 2020, the pension remittance of ₦1 million to the unrecognised pension firm (ABC Pensions) will no longer be allowed as a tax deduction. Therefore, Mr. Y will pay additional tax of ₦150,000 (15% *₦1 million or ₦1,530,000 - ₦1,380,000).

This implies that Mr. Y will earn ₦150,000 less due to the fact that his pension was remitted to a pension company that is not approved or recognized by the PRA.

2.5.3. Simplification of commencement and cessation rules and elimination of double taxation risks associated with their application

The PITA hitherto provided special rules for determining the assessable income of individuals from a trade, business, vocation or profession in the first three years of business and in the last two years of business. These rules, which were referred to as the *"Commencement"* and *"Cessation"* rules, respectively, had often resulted in double taxation of profits earned in one or more financial years by the individual during these periods. Finance Act, 2020 modifies the commencement and cessation rules such that individuals will henceforth pay taxes based on their accounting periods. The implication of this modification is that individuals will now be allowed to prepare and file their income tax returns in their first, second and third years of assessment based on their first, second and third sets of financial statements.

Further, for individuals ceasing business operations, the assessable income for the year of cessation will be based on the profits made from the beginning of that accounting period to the date of cessation. This is to eliminate the double tax risk associated with the application of the erstwhile cessation rules.

This amendment is similar to the provisions introduced by Finance Act, 2019 to modify the same rules in the CITA for companies and ensures uniformity in the taxation of companies and individuals regarding new trades and cessation of trades.

2.5.4. Definition of gross income

Gross income was not defined under the erstwhile provision of PITA. Rather, it only defined gross emolument in relation to individuals in paid employment. This resulted in a lack of clarity in determining what constitutes the base for calculating CRA. Accordingly, tax authorities asserted that, taxpayers leveraged this loophole to significantly reduce their tax base.

Finance Act, 2020 has now addressed this by effectively defining gross income as income from all sources less non-taxable income, franked investment income, National Housing Fund contribution, National Health Insurance Scheme contribution, life assurance premium, National Pension Scheme contribution, gratuities, allowable business expenses and capital allowances.

The above definition has streamlined the base for calculating CRA and would potentially increase the tax payable by taxpayers and tax revenue that would accrue to the government.

We have provided in the illustration below, a practical application of this provision.

Illustration 3:

Mr. B's annual PAYE computation	Pre-FA 2020	FA 2020
Income earned:	**₦**	**₦**
Basic Salary	8,000,000.00	8,000,000.00
Housing Allowance	1,600,000.00	1,600,000.00
Transport Allowance	1,000,000.00	1,000,000.00
Gratuity	3,500,000.00	3,500,000.00
Medical	900,000.00	900,000.00
Utility	600,000.00	600,000.00
Entertainment	700,000.00	700,000.00
Total income	**16,300,000.00**	**16,300,000.00**
Less: non-taxable income & tax-exempt item		
NHF deduction (2.5% of Basic Salary)	0	200,000.00
Pension (8% of the sum of Basic, Housing, Transport)	0	848,000.00
Gratuity	0	3,500,000.00
Gross income (for CRA purposes)	**16,300,000.00**	**11,752,000.00**
Less: Reliefs		
Fixed Consolidated Relief Allowance	200,000.00	200,000.00
Variable Consolidated Relief Allowance (20% of Gross Income)	3,260,000.00	2,350,400.00
Employee pension	848,000.00	848,000.00
NHF deduction	200,000.00	200,000.00
Gratuity	3,500,000.00	3,500,000.00
Total reliefs	**8,008,000.00**	**7,098,400.00**
Chargeable income (Total income less Total reliefs)	**8,292,000.00**	**9,201,600.00**
PAYE Tax payable	**1,782,080.00**	**2,000,384.00**
Deductions:		
PAYE Tax Paid	1,782,080.00	2,000,384.00
Employee pension contribution	848,000.00	848,000.00
NHF	200,000.00	200,000.00
Total deduction	**2,830,080.00**	**3,048,384.00**
Net pay (Total income less Total deduction)	**13,469,920.00**	**13,251.616.00**

This implies that Mr. B will earn ₦218,304 less than his earning prior to the enactment of the Act.

2.5.5. Other notable amendments to the PITA

i. *Inclusion of life assurance premium as a relief claimed in writing*

The Act introduces a new subsection 33(3) in the PITA which allows for the claim of the annual premium paid by an individual in respect of insurance or a contract of deferred annuity on his life, or the life of his spouse, as an allowable deduction for PIT purposes. Finance Act, 2019 had deleted a related section which resulted in overstretching of the provision of Paragraph (2) of the Sixth Schedule of PITA. The inclusion of the new subsection has effectively resolved the controversies surrounding the claim of life assurance premium as tax deduction post-Finance Act, 2019.

ii. *Exemption of individuals earning minimum wage and below from income tax*

Under the erstwhile PITA framework, every individual earning income was mandated to pay income tax based on the tax table provided in PITA, subject to a minimum tax of 1% of gross income, except where such an income was expressly exempted from income tax.

The Act has now modified the framework to exempt the income earned by individuals with minimum wage or less from the payment of PIT. However, these categories of individuals are still required to submit their income tax returns, except where they earn an annual income of not more than N30,000 in line with Section 43 of the PITA.

3

Indirect taxes

Ajibola Olomola
Partner

Finance Act, 2020 contains the following amendments to the various pieces of Nigerian legislation that directly impact the indirect tax regime in Nigeria:

3.1 Value Added Tax Act (VATA), Cap V1, LFN, 2004 (as amended)

3.1.1. Place of supply rules

Finance Act, 2020 expands the place of supply rules introduced by Finance Act, 2019. According to the Act, VATable services are deemed to be supplied in Nigeria where *"... the service is provided to and consumed by a person in Nigeria, regardless of whether the service is rendered within or outside Nigeria or whether or not the legal or contractual obligation to render such service rests on person within or outside Nigeria..."*

FA 2020 also introduces provisions relating to place of supply rules for services rendered with respect to immovable properties located in Nigeria as well as incorporeal property.
For services, the Act provides that a service shall be deemed to take place in Nigeria if "the service is rendered in Nigeria by a person physically present in Nigeria at the time of providing the service, the service is provided to and consumed by a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria or whether or not the legal or contractual obligation to render such service rests on persons within or outside Nigeria, or the service is connected with existing immovable property (including the services of agents, experts, engineers architects, valuers etc.), where the property is located in Nigeria".

The Act further expands this definition by introducing provisions relating to place of supply rules for services rendered with respect to immovable properties located in Nigeria as well as incorporeal property.

For services, the Act provides that a service shall be deemed to take place in Nigeria if *"the service is rendered in Nigeria by a person physically present in Nigeria at the time of providing the service, the service is provided to and consumed by a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria or whether or not the legal or contractual obligation to render such service rests on persons within or outside Nigeria, or the service is connected with existing immovable property (including the services of agents, experts, engineers architects, valuers etc.), where the property is located in Nigeria".*

For incorporeal property, the Act provides that a supply is deemed to be made in Nigeria where the "exploitation of the right is made by a person in Nigeria; the right is registered in Nigeria, assigned to or acquired by a person in Nigeria, regardless of whether the payment for its exploitation is made within or outside Nigeria, or the incorporeal is connected with a tangible or immovable asset located in Nigeria".

Prior to the FA 2020, the Federal High Court had in the case between *CNOOC Exploration and Production Nigeria Ltd V. Attorney General of the Federation & Ors* ruled that interest in concessions are incorporeal property, and are, thus, outside the jurisdiction of the VAT Act. The definition of a supply of incorporeal property as described in the Act, may well bring the transfer of interest in concession and rights to oil lease or licenses under the jurisdiction of the VAT Act. However, the definition of services in the Act as *"…any intangible or incorporeal (product, asset or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security"* may imply that a disposal of a mining right in an immovable property is excluded from VAT while the disposal of an intangible property which does not include interest in land and building, money or securities will fall under the purview of Nigerian VAT.

Further, these additions clarify the ambiguities relating to the place of supply rules introduced in Finance Act, 2019 (particularly with respect to incorporeal property) and align the country's tax regime with global best practices.

3.1.2 Time of supply rules

Finance Act, 2020 introduced time of supply rules into the Nigerian VAT landscape. The need for time of supply rules was necessitated by the change in VAT rate introduced in Finance Act, 2019 which became effective on the 1st February 2020 (or "commencement date") as directed by an Order of the HMoFBNP. Implementation of the revised rate revealed certain ambiguities in terms of the appropriate rate of VAT to apply for certain types of transactions, such as those contracts executed before the commencement date but completed and paid for after the commencement date.

To clarify this ambiguity, the Act provides that a supply shall be deemed to take place at the earlier of the time an invoice or receipt is issued by the supplier, or payment of consideration is due to, or received by the supplier in respect of that supply.

However, where the transaction is between related parties and an invoice is not issued, the time of supply of goods is deemed to be the time the goods are moved to the recipient (for goods which are to be removed) or at the time the goods are available to the recipient (for goods that are not to be removed). For services, the time of supply of such service is the time the service is rendered to the recipient; and for incorporeal property, the time the incorporeal property is available for the use of the recipient.

The Act further provides for situations where goods are supplied under a rental agreement, or where services are rendered under an agreement or law that requires periodic payments, that each successive supply shall be deemed to occur at the earlier of when payment becomes due or is received, or an invoice relating to only that payment is issued.

For goods supplied under a credit agreement, the time of supply shall be deemed to be the time the goods are delivered or the time any payment of consideration is received by the supplier in respect of the supply, whichever occurs first.

The time of supply rules will help resolve the debate on when a transaction is deemed to have occurred for VAT purposes and the applicable rates to charge on such transaction.

The change represents another significant step in standardizing the Nigerian VAT Act and aligning same with global best practice.

3.1.3 Definition of "Goods" and "Services"

Finance Act, 2020 introduced new definitions for goods and services. One of the reasons for this amendment is to resolve the controversy that had ensued in the past with regard to the VAT status of rental payments made on commercial buildings. Recently, two contrasting decisions were reached by the Tax Appeal Tribunals (TATs) Benin and Lagos zones, on the VATability of rental payments on commercial buildings.

The first TAT sitting in Benin, on the September 9, 2020, ruled in *Chief J.W. Ellah, Sons & Co. Limited vs the FIRS* that rent on commercial buildings is liable to VAT. A day later, a TAT sitting in Lagos ruled in the case between *Ess-Ay Holdings Limited vs the FIRS* that VAT is not applicable on rental payments made on the lease of commercial buildings.

Given the opposing judgements and the need to provide clarity to taxpayers on the tax status of rental payments made on the lease of commercial buildings as well further clarify the definitions of goods and services, the Act introduced a new definition of goods and services. According to the Act, *"goods"* is defined as *"all forms of tangible properties, movable or immovable, but does not include, land and building, money or securities."* It defines *"services"* as *"anything, other than goods, or services provided under a contract of employment, and includes any intangible or incorporeal (product, asset or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security"*

These definitions now clearly put to rest the debate on the VATability of rental payments on commercial properties. It also further streamlines the definition of goods as only tangible properties whether movable or not, excluding land and building, money or securities.

3.1.4 Other noteworthy amendments

a. Finance Act, 2020 also codifies the commencement date for charging VAT at 7.5%, as 1st February 2020 in line with the announcement made by the HMoFBNP after the enactment of Finance Act, 2019.

b. FA 2020 also clarified the basis for registration of VAT in Nigeria for non-residents, that supply goods or services to customers in Nigeria. In the past, the trigger for non-residents to register for VAT in Nigeria was that the non-resident must carry on business in Nigeria. The term *"carrying on business in Nigeria"* was ambiguous and proved difficult to interpret definitively. The Act has clarified this ambiguity by changing the trigger for non-resident's VAT registration to the making of "*taxable supply of goods or services to Nigeria*". Such non-resident vendors are required to obtain a tax identification number (TIN) from the FIRS upon registration. Also, non-residents who make taxable supply of goods and services in Nigeria may now appoint a representative for the purpose of fulfilling their VAT obligation in Nigeria.

The relevance of the requirement for non-residents to register for VAT in Nigeria has been questioned over the years. This is because the VATA currently requires a Nigerian customer to withhold and remit the VAT on its transactions with non-resident persons, as a result of which most non-resident vendors essentially file NIL VAT returns with the FIRS.

Accordingly, the implication of the widening of the basis for VAT registration is that many non-resident persons without any physical business activity in Nigeria or any other tax obligations in the country, would now be statutorily obligated to register for VAT purposes. Therefore, further legislative review will be required in subsequent Finance Acts to address the unnecessary additional administrative burden imposed on such non-resident persons by the provision.

Meanwhile, non-resident taxpayers would be well-advised to comply with the current provisions of the VATA to avoid applicable sanctions."

c. Finance Act, 2020 has further widened the scope of VAT-exempt goods to include commercial aircraft, commercial aircraft engines and commercial aircraft spare parts. Also, the scope of VAT-exempt services was expanded to include airline transportation tickets issued and sold by commercial airlines registered in Nigeria and the hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.

3.2 Customs, Excise Tariff etc. (Consolidated) Act (CETA), Cap C49, Laws of the Federation of Nigeria 2004

3.2.1 Revision of exemption from excise duties

Finance Act, 2019 expanded the framework for charge of excise duties to include imported goods which would ordinarily qualify as excisable if manufactured locally. However, it exempted imported goods and raw materials which are not locally manufactured or available in Nigeria from excise duties. This exemption paved the way for certain luxury items (such as imported alcoholic beverages) to be imported into Nigeria without the applicable excise duties.

Finance Act 2020 seeks to plug this loophole by subjecting all imported and locally manufactured goods to excise duties, as long as such goods are captured in the Fifth Schedule to the CETA.

3.2.2 Excise duty on telecommunication services

Finance Act, 2020 subjects telecommunication services provided in Nigeria to excise duty at a rate which the President may by order prescribe. The charge of excise duties on telecommunication services is consistent with the practice in other countries, such as Rwanda and Uganda, and is expected to serve as an alternative revenue source for the FG in light of increased telecommunication activities due to the COVID-19 pandemic.

3.2.3 Reduction of duties and levies on certain items

The recent increase in the pump price of fuel coupled with impact of the COVID-19 pandemic has seen the price of transportation services increase across the country. For this reason, and to incentivise the mass transit operators as well as promote the use of the mass transit system in Nigeria, FA 2020 has reduced the duties and levy on motor vehicles. The same dispensation applies to tractors.

3.2.4 Exemption from duty for airlines registered in Nigeria

FA 2020 exempts airlines registered in Nigeria and providing commercial air transport services, from duty on the importation of their aircraft, engines, spare parts and components, whether they are purchased or leased.

This incentive is timely given the current economic climate and expresses the FG's commitment to easing the challenges faced by businesses operating in Nigeria.

3.3 Stamp Duties Act (SDA) S8, LFN 2007

3.3.1 Removal of stamp duties on electronic receipts

Finance Act, 2019 introduced a stamp duty of ₦50 on electronic receipts or electronic money transfer valued at ₦10,000 or above which is deposited into a bank. Finance Act, 2020 deleted this provision and replaced it with the Electronic Money Transfer (EMT) Levy. The EMT levy replaces the stamp duties on electronic transfers and its administration is subject to the regulations made by the HMoFBNP as approved by the National Assembly.

The Act also provides a sharing formula for the revenue derived from EMT Levy; 15% of the revenue is allocated to the FG and Federal Capital Territory, and the remaining 85% shared amongst the State Governments.

3.3.2 Recognition of Adhesive stamps printed by the Nigerian Postal Service

Finance Act, 2020 has amended the definition of *"stamp"* in Section 2 of the SDA to include adhesive stamps produced by the Nigerian Postal Service. This effectively resolves the long-standing dispute between the Nigerian Postal Service and FIRS on the competent authority to print adhesive stamps used for stamping of dutiable instruments.

3.3.3 Duty upon receipt

The Act has further deleted the phrases *"electronic inscription"* and *"or any acknowledgment of duty charged on an electronic transaction"* in Sections 89(1) and 89(2) of the SDA, respectively, and also deleted Section 89(3). The intent of this amendment is to make clear that duty on electronic receipts has now been replaced with the EMT Levy.

4

Other Non-tax Fiscal Impact

Ajibola Olomola
Partner

Finance Act, 2020 contains amendments to some pieces of non-tax legislation, which are discussed under the relevant Acts as follows:

4.1 Companies and Allied Matters Act (CAMA), 2020

Section 432(2) of the CAMA, 2020 provides that dividends that are unclaimed after 12 years should be included in the profits that should be distributed to the other shareholders of the company. This provision is, however, in contrast with the intent of Section 44 of the Constitution of the Federal Republic of Nigeria, 1999 ("the Constitution") that frowns against the compulsory acquisition of the property of any individual.

FA 2020 amends this provision of the CAMA by providing that dividends of a public limited liability company quoted on the Nigerian Stock Exchange shall be available for claim in perpetuity. Also, FA 2020 provides that where the dividend remains unclaimed for six (6) years or more from the date of declaration, such dividend shall immediately be transferred to the Unclaimed Funds Trust Fund.

4.2 Crisis Intervention Fund and Unclaimed Dividend Trust Fund

FA 2020 establishes the Crisis Intervention Fund (CIF) and the Unclaimed Dividend Trust Fund (UDTF). The CIF is a ₦500 billion (or other such sum as approved by the National Assembly) fund created out of the Consolidated Revenue Fund (CRF) and Special Accounts to fund crisis-related expenditures and other exigencies pursuant to Section 12 of the Fiscal Responsibility Act and Section 306 of the Constitution.

The FA 2020 also created a sub-fund to the CIF called the UDTF, which shall be funded by any unclaimed dividend of a public limited liability company quoted on the Nigerian Stock Exchange and any unutilized amounts in a dormant bank account maintained in or by a deposit money bank which has remained unclaimed or unutilised for a period of not less than six years from the date of declaring the dividend or domiciling the funds in a bank account. It is worthy of note that the official bank accounts owned or belonging to any tier of government and their MDAs are exempted from this provision.

The funds in the UDTF shall be a special debt owed by the FG to the shareholders and dormant bank account holders and shall be available for claim, together with the yield thereon, at any time such shareholder or bank account holder makes a legitimate claim. Where a public company or a bank required to make such transfer of unclaimed dividend or unclaimed bank balances defaults in making such transfer, a penalty of five times the value of the unclaimed dividend or unclaimed bank balance plus accumulated interest on the amount will be payable by the public company or bank.

The FA 2020 also provides for the administration of the UDTF. Accordingly, the fund shall be supervised by the Debt Management Office (DMO) and co-chaired by the HMoFBNP and a qualified person of irreproachable integrity from the private sector.

4.3 Fiscal Responsibility Act, 2007

The Fiscal Responsibility Act, 2007 (FRA) was enacted to provide for prudent management of the nation's resources, ensure long-term macro-economic stability of the national economy, secure greater accountability and transparency in fiscal operations within a medium-term fiscal policy framework, and establish the Fiscal Responsibility Commission to ensure the promotion and enforcement of the nation's economic objectives.

4.3.1 Aggregate spending ceiling

Section 12 of the FRA provides that the aggregate expenditure and the aggregate amount appropriated by the National Assembly for each financial year shall not be more than the estimated aggregate revenue, plus a deficit not exceeding three per cent (3%) of the estimated Gross Domestic Product or any sustainable percentage as may be determined by the National Assembly for each financial year. This aggregate spending ceiling may, however, be exceeded if in the opinion of the President, there is a present threat to national security or sovereignty of Nigeria.

FA 2020 further expands the instance where the aggregate expenditure may be exceeded, to include: when the Federation is at war; the Federation is in imminent danger of invasion or involvement in a state of war; there is clear and present danger of or an actual breakdown of public order and public safety in the Federation or any part thereof, to such extent as to require extraordinary measures to restore peace and security; there is an occurrence or imminent danger, or the occurrence of any pandemic or disaster or such other natural calamity, affecting the community or a section of the community in the Federation; or there is any other public danger which clearly constitutes a threat to the existence of the Federation.

4.3.2 Operation surplus and general reserve fund

Section 22 of the FRA provides that every statutory corporation must allocate one-fifth of its operating surplus to a general reserve fund created by the corporation and any balance must be paid to the CRF not later than one month following the statutory deadline for publishing each corporation's accounts.

FA 2020 provides for a spending limit for each corporation by limiting the cost to revenue ratio of each corporation to 50% or such other ratio as the Minister may direct subject to approval by the National Assembly. Also, FA 2020 changes the timeline of payment of surplus funds into the CRF from one month to every quarter in accordance with the financial guidelines or regulations that the Minister in consultation with the National Assembly may issue.

The Act also empowers the HMoFBNP to enforce compliance of the remittance of the surplus funds to the CRF. The Minister in carrying out this mandate may make a direct deduction from the Treasury Single Account. Also, the Minister shall direct all corporations to conduct a reconciliation of the quarterly direct deductions and the aggregate annual deductions of operating surplus. This reconciliation is to be concluded not later than three months following the statutory deadline for publishing each corporation's account.

4.4 Public Procurement Act, 2007

The Public Procurement Act, 2007 (PPA) establishes the National Council on Public Procurement and the Bureau of Public Procurement ("the Bureau") as the regulatory authorities responsible for the monitoring and oversight of public procurement in Nigeria.

4.4.1 Scope of application

FA 2020 expands the scope of application of the PPA to include all public procuring and disposal entities under the three arms of the FG.

It also comprises the FG and all entities that derive at least 35% of the funds appropriated or proposed to be appropriated for any type of procurement including FG's Ministries, Departments and Agencies, Institutions, Government Owned Enterprises, Federal Tertiary and Non-Tertiary educational institutions, Federal Hospital and other health institutions, Central Bank of Nigeria and other Federal Government-owned Financial Institutions, the National Defence and the National Security Agencies, the National Assembly and the Judiciary.

4.4.2 Approving Authorities

Section 17 of the PPA provides that the approving authority for public procurements in a government agency, parastatal, or corporation shall be the Parastatals Tenders Board, while for ministries or extra-ministerial entities, it shall be the Ministerial Tenders Board. This approval is subject to thresholds set by the National Council on Public Procurement.

FA 2020 amended the above section by including the National Assembly and the Judiciary in the list of bodies whose conduct of public procurement would now come within the purview of the PPA. Based on the Act, the approving authority for the National Assembly shall be the Parastatals Tenders Board, while the approving authorities for the Judiciary will be the Judicial Bodies Tender's Board and the Courts Tender's Board.

FA 2020 also provides for circumstances where a procurement exceeds the Ministerial Tenders Board threshold, or any other threshold set by the National Council on Public Procurement or the Bureau of Public Procurement. In that regard, the Federal Executive Council shall be the approving entity for the executive arm of government, the National Assembly Tender's Board for the legislative arm of government and the National Judicial Council Tender's Board for the judicial arm of government.

4.4.3 Accounting officer

Section 20 of the PPA defines an accounting officer as someone charged with the line supervision of the conduct of all procurement processes. It further assigns a Permanent Secretary as the accounting officer in the case of a Ministry and the Director-General or officer of coordinate responsibility in the case of an extra-ministerial department and corporation.

FA 2020 further includes a Clerk as an accounting officer, in the case of the National Assembly and the Secretaries of the judicial bodies and the Chief Registrars of the courts in the case of the Judiciary.

FA 2020 also lays out the responsibilities of the accounting officer as well as his power to approve low value procurement without open competitive bidding. Among other things, the accounting officer is required to render a quarterly report to the Parastatals Tenders Board.

4.4.4 Tenders Board

FA 2020 establishes Tenders Boards in the three arms of the Federal Government for the purpose of approving procurements. Also, where a decision has been made by the relevant Tenders Board with respect to bids submitted for a procurement, such decision shall be confirmed by the political head of the procuring entity provided that the political head is not the Chairman of the Tenders Board.

4.4.5 Open competitive bidding

FA 2020 amends the provision of section 24 of the PPA by requiring that any procuring entity that undertakes a procurement by any way other than by open competitive bidding, shall submit a request and obtain approval from the Bureau of Public Procurement.

The Act also redefines the meaning of open competitive bidding as *"the process by which a procuring entity, based on previously defined criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods, works and services needed"*

4.4.6 Invitations to bid and electronic submission

FA 2020 reduces the timeline for submission of international and national bids for goods, works and services from six weeks to four weeks in the case of contracts within the threshold of the Parastatals and Ministerial Tenders Boards. For contracts above the threshold of the Parastatals and Ministerial Tenders Boards, the timeline for submission of international bids is six weeks.

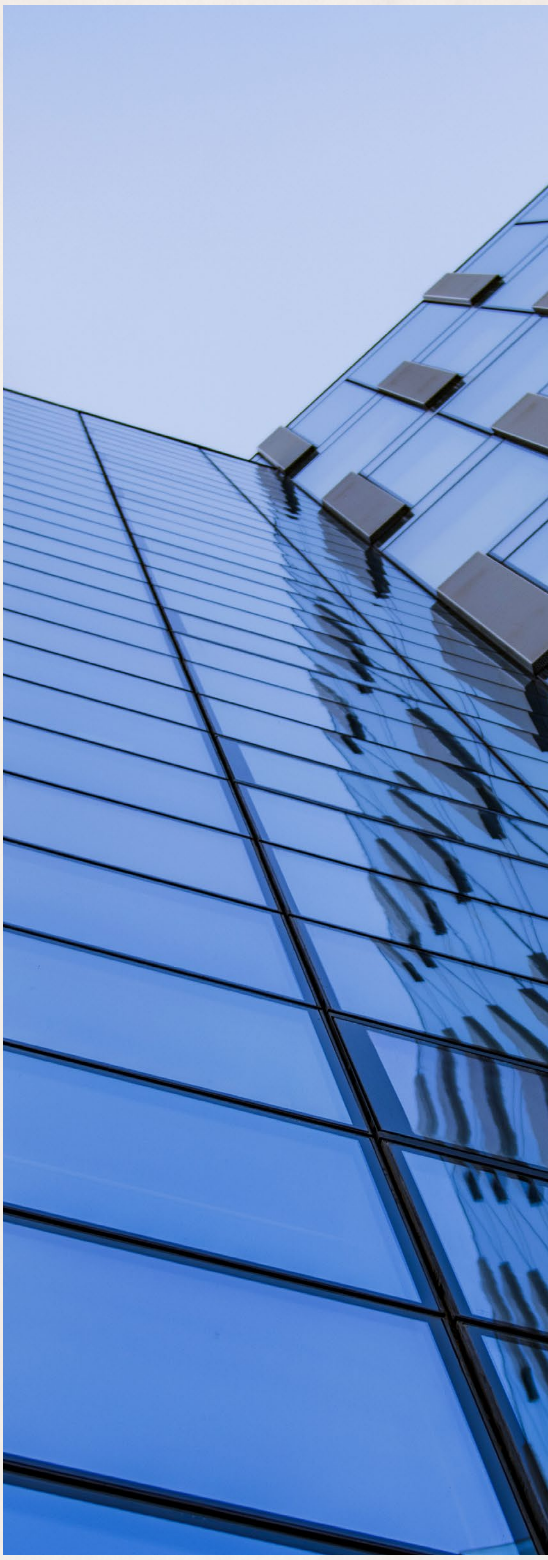
FA 2020 also introduced electronic submission of bids as an alternative to submitting hardcopy documents. This is a step in the right direction as the world moves to digitization.

4.4.7 Other relevant amendments

a. FA 2020 amends section 30 of the PPA by providing for additional information to be called out by the procuring entity during a bid opening. The additional information are the validity period and completion period.

b. Section 35 of the PPA provides for a mobilization fee of not more than 15% to be paid to a supplier or contractor. Finance Act 2020 amends this provision by restricting the payment of mobilization fees to local suppliers only, while increasing the rate from 15% to 30%. Also, FA 2020 provides that where a review threshold has been set by the Bureau in a procurement regulation, no fund shall be disbursed from the Treasurer or Federation Account or any bank account of any procuring entity for any procurement, unless the cheque, payments or other form of request for payment is accompanied by a Certificate of No Objection from the Bureau.

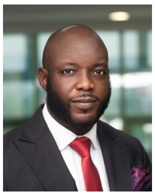
c. FA 2020 amends section 36 of the PPA by providing that in lieu of a performance guarantee, an insurance bond may be accepted as a precondition for the award of a procurement contract and subsequent payment of the mobilization fees. The performance guarantee or insurance bond must not be less than 10% of the contract value.



5

Consumer Markets and Infrastructure Industry Impact Analysis

Tayo Ogungbenro
Partner



Olufemi Babem
Partner

The real economy of any country is pivotal to its sustained economic growth. Nigeria is no different. Based on the latest statistics from the NBS, Agriculture, Manufacturing, Transportation and Storage, Information and Communication, and Education contributed 54.46% in aggregate to Nigeria's total nominal Gross Domestic Product (GDP) in Q3 2020. However, while the Agriculture, Information and Communication and Manufacturing sectors grew by 2.53%,1.03% and 1.22%, respectively, the Transport and Storage, and Education sectors all had negative growth rates[1] .

The tax changes introduced by Finance Act, 2020 are intended to spur economic growth in a COVID-19-impaired real economy. We have, therefore, reviewed the amendments introduced by the Act as they affect companies operating in the consumer markets and infrastructure sectors of the Nigerian economy.

5.1 Consumer Markets

5.1.1 Further expansion of scope of excise duty (ED)

Before 2019, ED was applicable on only excisable goods (such as cigarettes, wines, spirit, beer, stout etc.) manufactured in Nigeria. FA 2019 expanded the scope of ED to include imported excisable goods, but exempted goods and raw materials that are not produced or available in Nigeria from being charged to ED.

Finance Act, 2020 has further expanded the scope of ED by essentially rescinding the above exemption. Consequently, businesses will be required to account for ED to the Nigeria Customs Service on all categories of excisable goods, going forward, whether they are raw materials, finished goods, imported into Nigeria or locally produced.

5.1.2 Requirement for Approved Enterprises operating in Free Trade Zones (FTZs) to file income tax returns

Companies that are registered and operating in FTZs [otherwise known as Approved Enterprises (AEs)] are exempted from *"legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations"* by Section 18(1)(a) of the Nigeria Export Processing Zones Authority Act (NEPZA). AEs have relied on this provision to argue that they are exempted from the requirement to submit annual CIT returns to the FIRS for their operations within FTZs.

Consequently, the FIRS had hitherto relied on FTZ authorities to obtain information relating to the operations of AEs.

Finance Act, 2020 has amended the NEPZA to include a requirement for AEs to comply with Section 55 of the CITA and render returns to the FIRS in the manner prescribed in the section. Thus, AEs will henceforth be statutorily required to file CIT returns with the FIRS, failing which they would be exposed to relevant penalties under the CITA and FIRSEA.

This statutory requirement is likely to increase the administrative burden of AEs. However, the amendment aligns with the general thrust of the amendment to Section 55 of the CITA, which is to enhance the FIRS' information database on all companies operating in Nigeria, whether or not such companies are incorporated in or taxable in Nigeria. Access to this information will also enable FIRS to close the window of non-compliance to companies operating in Free Trade Zones without being licensed by NEPZA as AEs.

5.2 Agricultural Sector

5.2.1 Replacement of "agricultural trade or business" with "primary agricultural production"

Companies engaged in *"agricultural trade or business"* are entitled to several tax incentives under the CITA (some of which are discussed below). *"Agricultural trade or business"* is defined in Section 11 of the CITA to mean any trade or business connected with animal husbandry, the establishment or management of plantations for the production of rubber and other cash crops, and the cultivation and production of cereal crops, tubers, fruits, vegetables and other specific crops.

Historically, this definition had been interpreted to include companies carrying on both primary and secondary agricultural production activities and other agro-allied activities. However, this will no longer be the case. This is because FA 2020 has replaced the term *"agricultural trade or business"* in Section 11 of the CITA with *"primary agricultural production",* and limited the scope of the definition to the following four categories:

- primary crop production (comprising production of raw crops of all kinds);
- primary livestock production (i.e., production of live animals and their direct produce);
- primary forestry production (comprising the production of timber and other forestry products); and
- primary fishing production (i.e., production of fish of all kinds).

[1]NBS, Nigerian Gross Domestic Product Report Q3 2020

The Act explicitly defines *"primary agricultural production"* to exclude any form of intermediate or final processing of agricultural products and any associated manufactured or derivative products. Thus, those activities would clearly not qualify as *"primary agricultural production".*

The major tax implications of the above amendment are discussed below.

5.2.2 Tax exemption of interest on agricultural loans

One of the implications of the abovementioned amendment to Section 11 of the CITA is its impact on the beneficiaries of the tax exemption provided by Section 11(2)(a) of the Act. The section previously exempted from tax the interest on loans advanced by banks to companies engaged in agricultural trade or business, subject to certain moratorium and interest rate threshold conditions. However, by virtue of the amendment, the exemption would only apply going forward, to loans (including restructured and refinanced loans) granted by banks to companies engaged in *"primary agricultural production".*

This is not-so-good news for non-qualifying agricultural companies that had previously been able to lower their financing cost by taking advantage of the tax incentive (as banks typically consider their net return on loans advanced when negotiating interest rates). It remains to be seen what impact this change will have on such companies' profitability (or even survival) and on processed food prices and inflation.

Hopefully, the impact of the amendment on non-qualifying agribusinesses would be cushioned by the expected positive impact of the relaxation of the moratorium condition in the proviso to Section 11(2) of the CITA. Based on the provision, loans provided by banks to companies engaged in *primary agricultural production*[2] were previously required to have a moratorium period of at least 18 months in order to enjoy the tax exemption on loan interest. However, FA 2020 has reduced this moratorium threshold to 12 months.

The reduction in the moratorium period is expected to spur bank lending to companies engaged in primary agricultural production, increase the number of loan portfolios that would qualify for the tax exemption on interest, and enable qualifying agribusinesses to scale their business operations in a cost-optimal manner.

5.2.3 Minimum tax and capital allowance implications of the amendment of Section 11 of the CITA

Section 33(3) of the CITA exempts companies *"carrying on agricultural trade or business"* as defined in subsection 9 of section 11 of CITA, from minimum tax. Similarly, Paragraph 24 of the Second Schedule to the CITA exempts *"any company in the agro-allied industry"* from the general cap on the claim of capital allowances based on which the maximum capital allowances claimable by a company is restricted to two-thirds of its assessable profits. *"Company in the agro-allied industry"* is defined by the paragraph as "a company to which section 11(9) of this Act applies".

Given the replacement of *"agricultural trade or business"* with *"primary agricultural production"* in Section 11 of the CITA, without any amendment to the above provisions of Section 33(3) of the CITA and Paragraph 24 of the Second Schedule to the Act, the interpretation of the provisions may be a point of dispute between taxpayers and the FIRS.

[2]The provision also applies to companies engaged in the fabrication of local plant and machinery and the provision of working capital loans to cottage businesses.

Specifically, there is a risk that the FIRS may seek to limit the tax benefits to only companies engaged in primary agricultural production going forward, on the ground that the previous Section 11(9) of the CITA has become the current Section 11(2) of the Act due to the various amendments made to the section over the years.

However, taxpayers could argue that the definition of *"primary agricultural production"* is in Section 11(2) of the CITA, and not the Section 11(9) referenced in the abovementioned minimum tax and capital allowance-related provisions; and that as Section 11(9) of CITA no longer exists, the terms *"agricultural trade or business"* and *"agro-allied industry"* should be interpreted broadly on their own merit.

Ultimately, references to Section 11(9) of the CITA (and others like it) in other sections of the Act may need to be corrected in future legislative amendments to fully address the above controversy.

5.2.4 Special tax holiday for small and medium agribusinesses

Finance Act, 2019 introduced a special tax holiday regime for companies engaged in agricultural production, via an amendment of Section 23(1) of the CITA. Based on the amendment, qualifying companies would be eligible for tax exemption for a period of five years, which could be extended for another three years subject to the determination of satisfactory performance of such business. However, the framework for granting the incentive was not stipulated by Finance Act, 2019.

Finance Act, 2020 has resolved this grey area by introducing a clear framework for implementing the incentive, albeit with some modifications. The incentive has been deleted from CITA and incorporated into the IDA instead. The tax exemption has also been reworked to target only small and medium-sized companies[3] engaged in primary agricultural production. However, it is important to note that the introduction of the special incentive does not forestall companies of all sizes engaged in pioneer industries or producing pioneer products (as published in the Official Federal Gazette of 14 August 2017) from applying for pioneer status incentive under the normal tax holiday framework in the IDA.

To enjoy the special tax holiday, qualifying companies will need to apply to the President through the Honourable Minister for Industry, Trade and Investment. Upon approval, such companies would enjoy tax holiday for a maximum period of six years, comprising an initial four-year term plus an additional maximum period of two years, subject to satisfactory performance.

The introduction of Section 1(7) in the IDA will potentially encourage investment in primary agricultural production and buoy the growth of the agricultural sector of the economy at large.

5.2.5 VAT exemption of leased agricultural equipment and reduction of import duty on tractors

Finance Act, 2020 expanded the list of VAT-exempt goods to include the hire, rental or lease of tractors, ploughs and other agricultural equipment or implements for agricultural purpose. The Act has also significantly reduced the rate of import duty payable on tractors from 35% to 5%, and the duty on motor vehicles for the transport of goods from 35% to 10%.

The above fiscal changes will help agricultural businesses cut down on overhead cost as they adopt mechanized farming for increased food production.

5.2.6 Definition of "animal feeds" in the VATA

Over the years, there has been a raging debate on the applicability of VAT to animal feeds. Taxpayers have generally argued that animal feed qualifies as a *"basic food item"* based on the ordinary definition of the term and the nutritional composition of the feeds, whilst the FIRS has averred that the term should be interpreted exclusively in relation to human beings.

Thus, there was an expectation that the debate would be resolved by the explicit definition of *"basic food items"* by Finance Act, 2019. Unfortunately, this did not happen, as FA 2019 did not include animal feeds in the list of VAT-exempt basic food items. The VAT Modification Order, 2020 sought to bridge the gap by including *"locally produced animal feeds"* in the list of VAT-exempt items in the First Schedule to the VATA.

Finance Act, 2020 has now closed the loop by defining *"animal feed"* as raw, semi-processed, processed and otherwise enhanced animal feed that is fed to domesticated and other animals raised and slaughtered for human consumption. This should resolve the controversy on the VAT-exempt nature of animal feeds going forward.

[3]A "small sized company" is one that earns a gross turnover of N25 million or less per annum, while a "medium sized company" is one whose annual gross turnover is greater than N25 million but less than N100 million.

5.3 Transportation and Logistics Sectors

5.3.1 CGT on sale of aircraft and ships

The CGTA imposes tax on capital gains accruing on disposal of assets, irrespective of whether the asset is situated in Nigeria or not.

However, capital gains accruing outside Nigeria to a non-resident company or individual from the disposal of an asset situated outside Nigeria, are subject to CGT only on the amount received or brought into Nigeria.

Section 24 of the CGTA defines the location of assets for CGT purposes. Based on the section, ships and aircraft (and any interest or right in or over the assets) are deemed to be situated outside Nigeria where the owner of the asset, interest or rights is not resident in Nigeria. Thus, in practice, CGT seldom crystallizes on the disposal of ships and aircraft owned by non-residents, notwithstanding the physical location of the assets in Nigeria.

FA 2020 has restricted the ships and aircraft whose location would be determined based on the residency of their owners to ships and aircraft *"used in international traffic".* Accordingly, the location and taxation of capital gains arising from the disposal of ships and aircraft not used in international traffic would now be based on their physical location..

5.3.2 Taxation of incidental income earned by International Shipping and Airline Companies (ISACs)

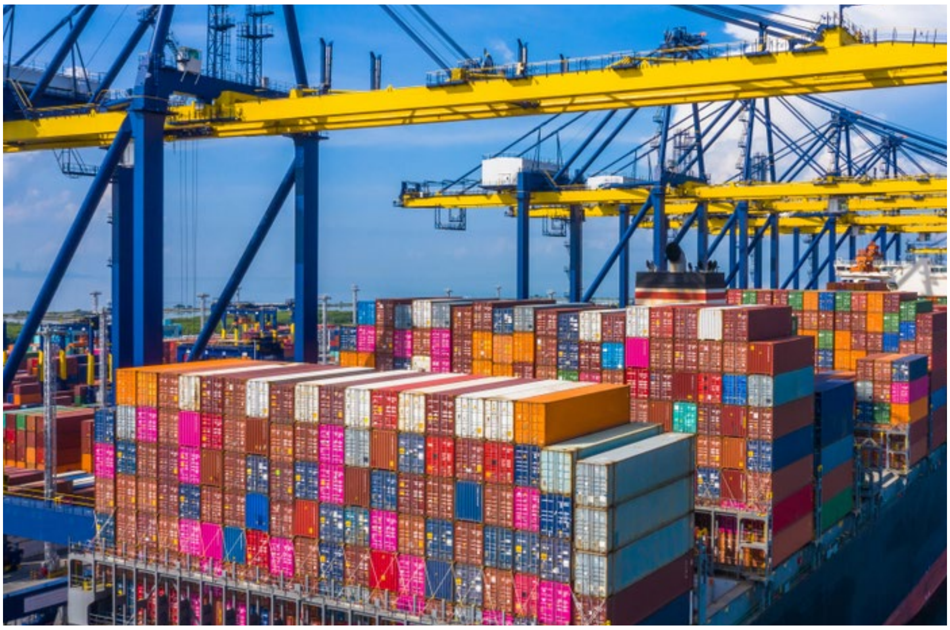
Under CITA, the profits or loss deemed to be derived by an ISAC from Nigeria are the full profits or loss arising from its carriage of passengers, mails, livestock or goods shipped or loaded into an aircraft in Nigeria. Given their relatively low profit margin, ISACs generally pay a minimum tax of 2% on their Nigeria-sourced outbound freight income in line with Section 14(4) of the CITA.

Over the last five years, the FIRS has sought to subject ISACs' profits – especially demurrage income arising from inbound containerized shipping – to tax at a higher effective tax rate (ETR) of 6%[4]. Many ISACs have questioned the FIRS' move as an attempt to amend a legislative provision through administrative fiat, while some have escalated the matter to the TAT for adjudication. It, therefore, appears that the FIRS has resorted to a legislative amendment of Section 14 of CITA through Finance Act, 2020.

Essentially, FA 2020 has introduced a proviso in Section 14 of CITA to exclude income from leasing, containers, non-freight operations or any other incidental income liable to tax under Section 9 of the CITA, from the special tax regime for ISACs in Section 14 of CITA. The implication of this amendment is that those income streams may be taxed at an ETR of 6% going forward.

5.3.3 VAT and duty exemption of commercial aircraft, engines and spare

For over a decade, commercial airlines operating in Nigeria have clamoured for various VAT and import duty exemptions to enable them to reduce their high operating cost and stay afloat. Various representations had been made by the FG to the companies during this period. However, none had resulted in a codification of the desired tax exemptions in the relevant tax statutes.



[4]This rate was introduced by the Federal Government of Nigeria's 1996 Budget and is derived by multiplying the standard CIT rate of 30% with a 20% deemed profit rate.

With the enactment of Finance Act, 2020, commercial airlines registered in Nigeria can finally heave a sigh of relief, as the Act has amended the CETA to allow them to import their purchased/ leased aircraft, engines, spare parts and components into Nigeria duty-free. Moreover, the Act has amended the VATA to include commercial aircraft, commercial aircraft engines and commercial aircraft spare parts in the list of VAT-exempt goods. Consequently, the supply of the goods by way of sale, lease or otherwise, would no longer attract VAT.

The above measures will doubtless provide the much-need succour to commercial airlines registered in Nigeria and increase their chances of survival and profitability as they recover from the severe impact of the COVID-19 pandemic on their operations in 2020.

5.3.4 VAT-exemption of commercial airline tickets and reduction of import duties and levies on passenger vehicles

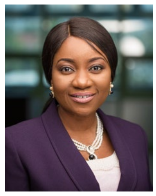
Finance Act, 2020 has also exempted airline transportation tickets issued and sold by commercial airlines registered in Nigeria from VAT. This exemption, together with the above-mentioned tax and duty exemptions for commercial airlines registered in Nigeria, should hopefully make domestic air travel more affordable in Nigeria.

Road travellers will also be impacted by the fiscal changes introduced by Finance Act, 2020, as it has reduced the rate of import duty payable on mass transit vehicles for the transportation of more than 10 persons from 35% to 10%, while the import levy on cars has been slashed from 30% to 5%.

6

Financial Services Industry Impact Analysis

Ajibola Olomola
Partner



Nike James
Partner

The Financial Service Industry ("the Industry") recorded growth in the first two quarters of the year 2020. According to the NBS, financial institutions in Nigeria reported a GDP growth rate of 22.3% in the last quarter of 2019, which increased to 24% and 28.41% in the first and second quarters of 2020, notwithstanding the impact of the COVID-19 pandemic on the Nigerian economy. This indicates a promising outlook for the Industry and with more support from the government, the Industry would contribute significantly to the national economy in 2021.

It is important to note that the FG introduced some tax palliatives and economic concessions to cushion the effect of the pandemic on businesses in 2020 which also provided relief to the Industry. Some of these palliatives have now been codified into law in Finance Act, 2020 which consolidates the gains catalyzed by amendments in Finance Act, 2019.

We have summarized the impact of the amendments made by FA 2020 on the Industry as follows:

6.1 Insurance Sector

i. Finance Act, 2020 introduced a 50% temporary reduction in the minimum tax rate for insurance companies from 0.5% to 0.25% of gross premium and gross income for non-life and life insurance businesses, respectively. This reduction in the minimum tax rate is in line with Government's initiatives to support companies due to the impact of the COVID-19 pandemic on businesses.

ii. The Act also introduces a new Section 16(13) to the CITA which defines gross income and gross premium for the purpose of minimum tax calculation. Gross premium is defined as *"the total premiums written, received and receivable excluding unearned premium and premiums returned to the insured".*
These definitions clarify the ambiguity regarding the taxable gross premium for a non-life insurance business thereby eliminating the current practice whereby income not earned by insurance companies in an assessed financial year was subjected to tax under the erstwhile definition.

iii. Further, the Act defines gross income earned by a life insurance company as *"the total income including investment income (excluding franked investment income), fees, commission and income from other assets but excluding premiums received and claims paid by re-insurers."* This amendment puts life insurance companies on a level playing field with companies in other sectors, where franked investment income is not included in the total income for computing minimum tax.

6.2 Banks and other financial institutions

i. Finance Act, 2020 inserts a new section 28A into the FIRS Establishment Act (FIRSEA) which prescribes the information to be prepared and submitted by banks and other financial institutions in relation to international tax treaty and other exchange of information obligations. It also provides for a revised administrative penalty of ₦25,000 in the first month of failure to comply with the requirements and ₦10,000 for every month in which the failure continues.

ii. The Federal Government of Nigeria in 2017 signed up to a Multilateral Competent Authority Agreement which provides for the Automatic Exchange of Information with other participating countries using the Common Reporting Standard released by the Organization of Economic Cooperation and Development. Pursuant to the above, the FIRS issued the Income Tax (Common Reporting Standards) Regulations, 2019 ("the CRS Regulation"). The CRS Regulation, amongst other compliance guidelines, imposes a stiff administrative penalty regime on financial institutions that includes ₦10,000,000 for failure to comply with a duty or obligation imposed by the CRS Regulation and an additional ₦1,000,000 for every month such failure continues.

iii. It is unclear whether the penalties stipulated in the new Section 28A of FIRSEA should replace that of the CRS Regulations. Nonetheless, it is our view that, where there is any inconsistency, the provision of Section 28A will supersede the conflicting provision of the CRS Regulations as it also addresses the obligations of financial institutions regarding international tax treaty and exchange of information and compliance with regulations, guidelines or circulars issued by the FIRS pursuant to such treaty. Therefore, the administrative penalties stipulated in Finance Act, 2020 will override those imposed by the FIRS in the CRS Regulations.

6.3 Exemption of interest on loans relating to primary agricultural production from CIT

Finance Act, 2020 amends Section 11(2) of CITA which exempts the interest earned from certain types of loans from CIT. Further, the Act reduced the conditional moratorium period from 18 to 12 months for interest earned on loans granted by a bank to a company engaged in primary agricultural production, fabrication of local plant and machinery, or for working capital to any cottage industry established by the company, provided that the rate of interest is not more than the base lending rate at the time the loan was granted, refinanced or restructured.

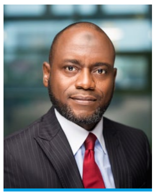
The Act also replaced *"agricultural trade or business"* with "primary agricultural production" and expanded the definition to include primary crop (comprising production of raw crops of all kinds), livestock (production of live animals and their direct produce), forestry (production of timber) and fishing (production of fish of all kinds) productions. Based on this amendment, the Government has clarified its key area of focus in the agricultural sector and aligned its objectives with current economic demands. It is expected that the activation of the erstwhile inoperative Section 11(2) of the CITA will incentivise Nigerian banks to increase their lending to companies engaged in primary agricultural production to enjoy the tax exemption on interest income from such loans and allow more qualifying agribusinesses to access the required funds to scale their businesses.

Relatedly, it is expected that a similar modification will be made to the definition of cottage industry in subsequent amendments to include new categories of small and medium enterprises that require government incentives for further development.

7

Oil and Gas Industry Impact Analysis

Wale Ajayi
Partner



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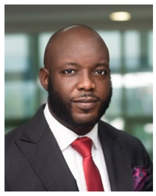


Olufemi Babem
Partner

Finance Act, 2020 seeks to clarify certain provisions in the extant tax laws, which were hitherto controversial, thus, resulting in conflicting interpretations between the relevant tax authorities and taxpayers. We have reviewed below the amendments introduced by the Act as they affect companies operating in the oil and gas industry.

7.1 Clarification on the incentives available to companies engaged in gas utilisation (downstream operations)

The provisions on Gas Utilization (Downstream Operation) incentives contained in the CITA, granted some benefits to companies in the downstream sector of the Nigerian oil and gas industry. These include a tax holiday for a maximum of five (5) years, additional investment allowance and accelerated capital allowance utilization.

In recognition of the growing importance of utilization of natural gas in downstream operations[5], Section 39 of the CITA (which specifies incentives available for such businesses) has been amended for the second successive year.

FA 2020 provides additional clarification and restriction on the application of these incentives following the amendment introduced by Finance Act, 2019.

The Act in clarifying the application of the incentives introduced the following amendments:

7.1.1 Clarification on the grant of the incentives to trade or businesses

The amendment to the opening sentence of Section 39 clarifies that the listed incentives apply to the trade or business of gas utilisation in the downstream operations of a company – which may be carrying on other kinds of trade or business – and not only to companies set up to engage solely in downstream gas utilization.

This seems to put to rest the erstwhile ambiguity in the application of these incentives, which the FIRS had relied on to suggest that the incentives can only be accessed by corporate entities that are set up specifically to engage in downstream gas utilization. Therefore, companies engaged in other trades or businesses (such as upstream petroleum operations) that sought to commence a downstream gas utilization business had to incorporate a separate company specifically for this purpose. The rationale for the position of the tax authority was anchored on the erstwhile opening sentence of section 39 of CITA.

The tax authority had interpreted the opening sentence to mean that the applicable incentives were to be granted only to *"a company which is engaged in downstream gas utilisation".* This has now been amended to provide the required clarity. However, the clarification provided by FA 2020 may become moot if the current provision in the draft Petroleum Industry Bill (requiring that an upstream company sets up separate entities for midstream and downstream operations) is retained when enacted.

Further, FA 2020 clarifies the commencement date of the tax-free period to be the day the trade or business commences production as certified by the Ministry of Petroleum Resources, rather than the day the company commences production.

This amendment raises some fundamental issues on whether or not a company which is also involved in the business of gas utilization can claim the incentives in respect of new qualifying capital expenditure. In other words, would the output resulting from a new gas processing plant be entitled to a tax holiday since the company would not have claimed any incentive in this regard? These issues need to be clarified as soon as possible.

Interestingly, the issue concerning which authority or Ministry will be responsible for granting the renewal of the tax holiday is yet to be resolved.

7.1.2 Restriction on the number of tax incentives that can be claimed on the same Qualifying Capital Expenditure

FA 2019 had restricted companies enjoying gas utilization incentives in respect of their qualifying capital expenditure (QCE) from enjoying the Pioneer Status Incentive on the same QCE. FA 2020 has extended this restriction to include the incentives provided by Section 11(1) of the Petroleum Profits Tax Act (PPTA).

[5] Gas utilisation is defined as "*the marketing and distribution of natural gas for commercial purposes and includes power plant, liquefied natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines*".

Consequently, where a company operating in the upstream petroleum sector utilizes the incentives provided under Section 11(1) of the PPTA (such as claiming the capital expenditure of the gas operations-related QCE against its petroleum profits), such company will be unable to claim the incentives provided under Section 39 of the CITA on the same QCE.

This amendment further reduces tax revenue loss as a result of multiple dips in tax incentive claims. The impact of this amendment on existing gas-oriented companies, which may have prepared estimated profit analysis based on projected full recovery of the capital allowances claimable per the PPTA and additional claim of the CITA incentives, will be significant.

7.2 Requirement for Approved Enterprises operating in Oil and Gas Export Free Zone (OGFZ) and Nigeria Export Processing Zones (NEPZ) to file income tax returns

Companies that are registered and operating within the OGFZ and NEPZ [otherwise known as Approved Enterprises (AEs)] have relied on tax exemption from all legislative provisions pertaining to taxes prescribed by Section 18 of both the OGFZ Act and the NEPZ Act (hereinafter collectively referred to as "the Free Zone Acts") to argue that they are exempted from the requirement to submit annual income tax returns for their operations within the OGFZ and or NEPZ, respectively.

In order to obtain information relating to the operations of these AEs, the FIRS used to rely on the OGFZ and NEPZ authorities to ensure that the statutory returns required to be submitted to them by the AEs under Section 19 of the Free Zone Acts include the annual income tax returns.

However, this will no longer be necessary as FA 2020 has now made it mandatory for AEs to file their CIT returns with the FIRS in line with Section 55 of the CITA. In the event of non-compliance with the requirement to file the returns in line with this section, the AEs will be liable to the relevant penalties prescribed in the CITA and the FIRS Establishment Act.

This statutory requirement for AEs to submit CIT returns on self-assessment basis would most likely increase the AEs' administrative burden. Nonetheless, the amendment will enhance the tax authority's database of all companies operating in Nigeria, whether such companies are liable to pay tax or not.

7.3 Impact of VAT on liftings of joint venture (JV) equity by other partners

FA 2020 amended Section 2(3) of the VATA to the effect that a taxable supply of goods shall be deemed to take place in Nigeria if the goods are physically present in Nigeria notwithstanding that the goods are exempt or zero-rated.

This may trigger a VAT exposure for JV partners that lift the equity crude of their partners based on buy-back agreements, as this may be considered a local sale concluded within Nigeria, rather than an export sale. Prior to the amendment, the justification for not applying VAT on such sale was that the crude oil was destined for export. Further, the lifting parties would process and pay the Nigerian Export Supervision Scheme (NESS) levy on the crude, implying that it is for export. However, given the use of the phrase *"notwithstanding the provisions of Section 2(1)",* it appears that such a position may no longer be sustainable based on the plain and literal interpretation rule of construction. The International Oil Companies, which usually lift the Nigerian National Petroleum Corporation's equity crude, may, therefore, be exposed to VAT on such sale, which may not be the intention of the law.

Consequently, this issue should be addressed urgently to avoid unintended consequences for the operators in the upstream sector of the oil and gas industry.

8

Impact on the Digital Economy

Wole Obayomi
Partner

The introduction of SEP provisions in Finance Act, 2019 and subsequent enactment of the Companies Income Tax (Significant Economic Presence) Order, 2020 ("the SEP Order") marked the beginning of the Government's efforts to address the taxation of the ever-changing digital economic business landscape. The SEP Order mirrors some of the preliminary agreements reached by the Organization for Economic Cooperation and Development (OECD) in developing the framework for addressing the tax issues relating to the digital economy and to ensure fairness and equity in global tax systems. Although COVID-19 pandemic has slowed down the OECD's pace of finalizing the long-term solution to the tax challenges arising from the digitalization of the economy, the OECD plans to conclude all agreements and develop a more robust framework by mid-2021. Nonetheless, Finance Act, 2020 has leveraged some of the recent agreements and introduced additional provisions to bolster the regulation and taxation of the digital economy in Nigeria.

8.1.1 Recognition of digital documents in tax administration and enforcement

Finance Act, 2020 amends CITA to recognize emails and other electronic means as approved channels for the FIRS to serve notices of assessments and taxpayers to submit their objections, respectively. This amendment codifies the measure introduced by the FIRS in March 2020, approving the submission of tax returns and objections to tax queries via e-mails in response to COVID-19 pandemic. The recognition of e-mails and other electronic means as legitimate channels for tax administration is long overdue. It is also a positive development because of the impact on environmental sustainability and cost savings for both taxpayers and the FIRS. Further, it is hoped that it will reduce the time within which companies receive audit reports and assessments and lead to quicker resolution of tax audits.

The Act also introduced provisions in the FIRS Establishment Act (FIRSEA) which allow the FIRS to deploy and utilise digital platforms for the gathering of information, and tax administration, enforcement and collection. For this purpose, Finance Act, 2020 empowers the use of *"proprietary or third-party payment processing or other digital platform or application to collect and remit taxes".* It will be recalled that in June 2020, the FIRS signed a memorandum of understanding with the Nigerian Communication Commission as part of inter-agency collaboration efforts aimed at improving transparency of business operations and ascertaining the completeness of value added tax and other taxes payable by telecommunication operators. In exercising its powers pursuant to this amendment, the FIRS must recognize that there is no one-size-fits-all when it comes to the digital economy. Hence, it must be sensitive to the nuances of each subsector before any action is taken so as not to stifle its growth. The digital economy is still in its infancy in Nigeria and requires policy, fiscal, regulatory and institutional support to be nurtured to maturity for the overall long-term benefit of the economy.

8.1.2 Capital allowance on software acquisition and development

Finance Act, 2020 introduces a new provision that recognizes costs incurred for software acquisition and development or on electronic applications as qualifying capital expenditure for capital allowance purposes. This resolves the current practice of the FIRS provided in its Information Circular *"Tax Implications of the Adoption of the International Financial Reporting Standards"* of March 2013, that allows for the amortization of the cost of stand-alone software as an intangible asset. However, the Act did not update the tables in the Second Schedule to the CITA to indicate the appropriate initial and annual allowances rates for software acquisition and development or capital outlays on electronic applications. Therefore, there is still a need for additional clarification on the rates to ensure a uniform application of the capital allowance rates.

8.1.3 Establishment of Digital Permanent Establishment for Personal Income Tax

Finance Act, 2020 introduces the SEP rule under the PITA for the taxation of income derived by non-resident individuals that provide technical, management, consultancy or professional services to persons resident in Nigeria. The Act also empowers the HMoFBNP to determine, by an Order, what would constitute a SEP for a non-resident individual, executor, or trustee providing the afore-mentioned services. It is, therefore, expected that the PIT administration for the digital economy introduced by the Act will only become effective after the Order has been issued.

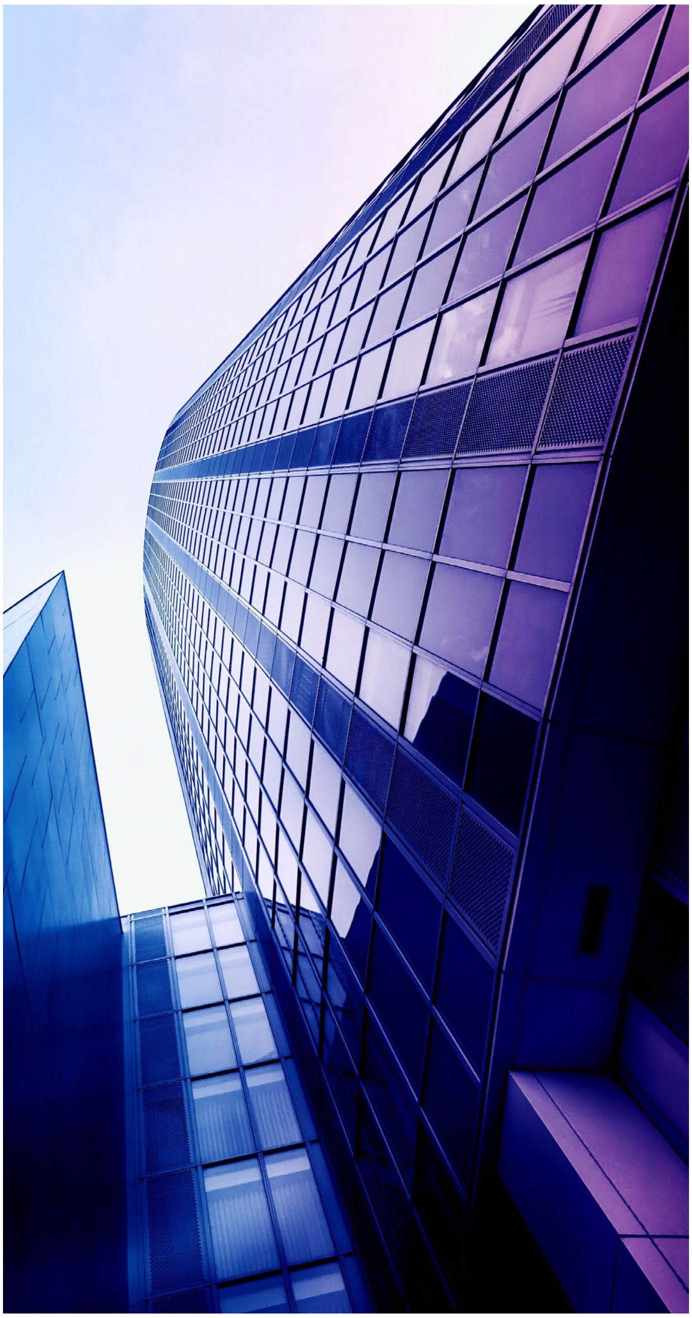
Conclusion

The changes introduced by Finance Act, 2020 are largely geared towards economic recovery given the impact of COVID-19 on the Nigerian economy. The changes demonstrate the government's effort to ease the difficulty faced by Nigerians at this time. They also reflect the government's desire to leverage technology in the administration of critical sectors of the economy, such as tax collection and general administration.

The notable changes which we believe will impact positively on Nigerians are: the exemption of minimum wage earners from income tax, the tax concessions granted to the aviation industry, the reduction in import duty rates for motor vehicles and tractors, amongst others. These changes are well-timed as many companies, such as the airlines, are struggling to survive at this time. Equally, the rising inflation has eroded the disposable income of Nigeran consumers.

We expect that, when fully implemented, these changes will jumpstart the economy and, hopefully, return the country to the path of recovery, economic growth and prosperity

It is important that taxpayers carefully evaluate how the Act impacts them and their businesses. We hope this book serves as a useful resource in this regard.



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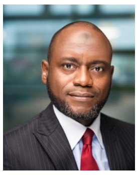

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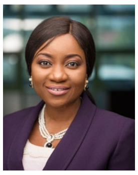

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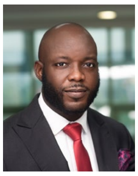

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