



Tax Alert

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President submits Finance Bill, 2021 to the National Assembly for consideration and passage

His Excellency, President Muhammadu Buhari, GCFR, on Tuesday, 7 December 2021 submitted Finance Bill, 2021 ("the Bill") to the National Assembly for passage. The Bill proposes changes and updates to some of the provisions of the following pieces of legislation: Capital Gains Tax Act, Companies Income Tax Act, Personal Income Tax Act, Tertiary Education Trust Fund (Establishment, etc.) Act, Value Added Tax Act, Stamp Duties Act, Federal Inland Revenue Service (Establishment) Act, Insurance Act, Nigerian Police Trust Fund (Establishment) Act, National Agency for Science and Engineering Infrastructure Act, Finance (Control and Management) Act, and Fiscal Responsibility Act.

Some of the key proposals in the Bill are:

- Introduction of 5% Capital Gains Tax (CGT) rate on the gains from disposal of shares in any Nigerian company where the gross proceeds from such sales in any 12 consecutive months exceed ₦500million - except where the proceeds are reinvested in shares of the same or other Nigerian company within the same year of assessment. However, gains accruing to persons on the disposal of Nigeria Government shares and stocks, and gains from transfer of shares in a regulated securities lending transaction are exempt from CGT.
- Introduction of provisions for taxation of the income/ profits of lottery and gaming businesses. The Bill also clarifies what constitutes allowable deductions for lottery and gaming business.
- Expansion of the Federal Inland Revenue Service (FIRS)' powers to assess companies that have significant economic presence in Nigeria to income tax on deemed profit basis.
- Restriction of capital allowance claimable by a company engaged in both taxable and tax-exempt activities. The capital allowance arising from assets used in generating income that is tax-exempt will now be deemed to be consumed in the tax exemption and no longer available to be offset against taxable income of a company. This further extends the matching principle relating to expenses introduced by the Finance Acts of 2019 and 2020. Limited exceptions are being made for companies whose tax exempt income is no more than 20% of total income for any year of assessment.

- Right of election by taxpayers in respect of the reduced minimum tax rate of 0.25% granted to mitigate the impact of COVID-19. Eligible companies may claim the incentive for any two accounting periods ending on any date between 1 January 2019 and 31 December 2021.
- Prescription of the conditions for claim of the incentive under Section 39 of the Companies Income Tax Act on downstream gas utilisation projects. This provision also addresses the eligibility of a company incorporated by exploration and production companies intending to operate in more than one stream, i.e., upstream, midstream or downstream operations, in line with the requirements provided under the Petroleum Industry Act, 2021.
- Conferment on the FIRS the power to serve as the primary agency of the Federal Government responsible for the administration, assessment, collection, and enforcement of taxes and levies due to the Federal Government to the exclusion of all other Federal Government agencies.
- Empowerment of the Minister of Finance to make regulations, subject to the approval of the National Assembly, for auditing, accounting, allocation and distribution of stamp duties and Electronic Money Transfer (EMT) levies collected between 2015 and 2019 fiscal years. This is to address the current dispute amongst the financial institutions, FIRS and State Boards of Internal Revenue on the remittance of stamp duties and EMT levies collected on transactions with individuals in their respective States.
- Definition of "Capital Requirement" in the Insurance Act to clarify what constitutes capital for insurance businesses.
- Reduction of the timeline for payment of Tertiary Education Tax (TET) from 60 to 30 days. This is to align the timing of payment of TET with the CIT and the current practice of the FIRS.
- Appointment of the FIRS as the relevant agency to assess, collect and enforce the payment of Nigerian Police Trust Fund levy. This is to fill the lacuna in the Nigerian Police Trust Fund (Establishment) Act, which did not specify the appropriate tax authority for its administration and has thereby delayed its implementation.
- Resolution of the hitherto impossible tax position of Unit Trusts and Real Estate Investment Trusts, in order to breathe life into such business structures that are currently serving as capital aggregation platforms under the Securities and Exchange Commission regulatory oversight. This will help to ease the administration of these vehicles for the benefit of investors and the capital markets.
- Modification of the administrative provisions of the Value Added Tax (VAT) Act to allow VAT on Business to Customer e-commerce related trade to be more easily captured and remitted from an aggregation point and empowering the FIRS to appoint an agent of collection for this purpose.

These and other proposed revisions to the above-mentioned tax laws will be further evaluated after the Bill is enacted by the National Assembly.

Comments

We commend His Excellency, the President, the Honourable Minister for Finance, Budget & National Planning, and the Executive Chairman of the FIRS for maintaining a consistent tradition of having Finance Bills submitted annually in the last two years as an instrument for revenue generation and stimulating investments and economic growth. Relatedly, the National Assembly must be commended for its speedy consideration of previous Finance Bills early at the beginning of the financial years to which they related. It is, therefore, hoped that Finance Bill, 2021 will receive similar urgent attention.

In line with legislative procedure, the Bill must be passed by the Senate and House of Representatives before it is presented to the President for assent. Consequently, the provisions above are still subject to the review and consideration of the National Assembly.

We will keep you abreast of further developments in due course.

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