Snapshots of Finance Act, 2021

His Excellency, President Muhammadu Buhari, GCFR signed Finance Act, 2021 (“the Act”) into law on 31 December 2021, following its passage by the National Assembly. The Act updates some of the amendments introduced in the previous Finance Acts and introduces additional changes to several existing tax laws and other legislations.

We have highlighted below some of the key amendments introduced by the Act:

- Introduction of 10% 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 ₦100million - except where the proceeds are reinvested in shares of the same or other Nigerian company within the same year of assessment. However, gains from transfer of shares in a Securities and Exchange Commission (SEC)’s regulated securities lending transaction are exempt from CGT.

- Specific provisions applicable to the Federal Inland Revenue Service (FIRS)’ powers to assess non-resident companies to Companies Income Tax (CIT) based on a fair and reasonable percentage of the turnover attributable to their Nigerian operations (i.e., deemed profit basis). Although the FIRS always had general power to do this in Section 30, specific provisions have now been made to make clear that this power will be exercised in the case of companies with significant economic presence in Nigeria. This aligns with the Federal Government of Nigeria (FGN)’s mandate to improve taxation of the digital economy and expand Nigeria’s tax base.

- Amendment of Section 23(1)(c) of the CIT Act to remove specific reference to income from educational activities. Consequently, such institutions would benefit only from the general exemption applicable to public interest businesses, i.e. to Not-For-Profit organisations providing ecclesiastical or charitable activities of a public character. Educational institutions that are profit oriented will be liable to CIT on their profits much the same as other business sectors.

- Provision of an extension to the period within which minimum tax reduced rate (0.25% tax rate) introduced by Finance Act, 2020 by an additional year, to end on 31 December 2021. This is in consonance with the FGN’s efforts to extend COVID-19 support to the most vulnerable business sectors in Nigeria and the thought that businesses that are loss making in the Pandemic should have some succor.

  The minimum rate reduction will now apply for three reporting periods, being 1 January 2019 to 31 December 2021. However, beneficiaries will only be allowed to apply such reduced rate for two out of the three reporting periods available.

  Furthermore, companies that claim the minimum tax rate incentive but fail to file CIT returns by the statutory due date will be liable to penalties equal to any amount of relief sought. Essentially, such companies would forfeit the benefit derivable from the minimum tax rate reduction. This should encourage taxpayers to be diligent in filing their returns as and when due.

- Restriction of capital allowance claimable by a company that earns both taxable and tax-exempt incomes, where the tax-exempt income is greater than 20% of taxable income in any year of assessment. The capital allowances computed on qualifying assets used in generating both taxable and tax-exempt incomes will be prorated and only the portion relating to the taxable income will be allowed as capital allowance deduction against the assessable profit of the company.

- Clarification of the conditions for claim of the incentive under Section 39 of the CIT Act for downstream gas utilisation projects. The Act also addresses the eligibility of companies 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.

- Resolution of the hitherto impossible tax position of Unit Trusts and Real Estate Investment Trusts (REITS), to incentivize investment in such business structures that are currently serving as capital aggregation platforms under the SEC's regulatory oversight. Specifically, REITS and Unit Trusts will now operate as pass-through vehicles for tax purposes. This will help to ease the administration of these vehicles for the benefit of investors and the capital markets.

- Increase of Tertiary Education Tax (TET) rate from 2% to 2.5% for Nigerian companies. Furthermore, the Act reduces the timeline for payment of TET from 60 to 30 days after the FIRS has served a notice of the assessment on a company.

- Introduction of excise duty on non-alcoholic, carbonated, and sweetened beverages at ₦10 per liter, aimed at discouraging excessive consumption of beverages that are associated with excess sugar-related illnesses.

- Modification of the administrative provisions of the Value Added Tax (VAT) Act relating to Business-to-Customer (B2C) e-commerce transactions. Consequently, the Act empowers the FIRS to appoint non-resident B2C service providers as agents for VAT collection. This is to prevent tax leakage on transactions between digital suppliers and individual customers who would ordinarily be unable to deduct and remit the tax as required under the VAT Act. This will also allow VAT on B2C transactions to be easily captured and remitted from an aggregation point.

- Amendment of Section 33 of the Personal Income Tax (PIT) Act to exclude contracts for deferred life annuity from allowable deductions for PIT computation purposes.

- 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 will effectively 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.

- Clarification of companies liable to the National Agency for Science and Engineering Infrastructure levy of 0.25% of profit before tax. Affected companies include companies operating in the banking, mobile telecommunication, ICT, oil and gas, aviation, and maritime companies with turnover of ₦100,000,000 and above.

- Empowerment of the FIRS to assess, collect, account, and enforce the payment of the Nigerian Police Trust Find levy.

- The Act reiterates the role of the FIRS as the primary agency of the FGN responsible for the administration, assessment, collection, and enforcement of taxes and levies due to the FGN to the exclusion of all other FGN agencies.

Comments

We commend the FGN on its commitment to enhance Nigeria's tax administration process, increase investment, and improve domestic revenue mobilization through the enactment of Finance Act, 2021 and other macro-economic policies. It is therefore hoped that the amendments introduced by the Act will help to improve the ease of doing business in the country and reflect in the country's economic performance during the year.

There are several other provisions not covered here and a lot of details to unpack. We will publish our *Impact Analysis e-book* on the expected effect of these and other changes to the relevant laws introduced by the Act on taxpayers operating in various sectors of the economy when the gazetted copy of the Act becomes available.

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