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Tax Alert

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Highlights of Finance Act, 2023

On 28 May 2023, the former President, Muhammadu Buhari, GCFR, signed the Finance Bill, 2023 into law as Finance Act, 2023 ("the Act")   The Act, which has an effective date of 28 May 2023, introduces changes to some of the provisions of the following pieces of legislation: Capital Gains Tax (CGT) Act, Companies Income Tax (CIT) Act, Tertiary Education Tax (TET) Act, Customs, Excise Tariff, Etc (Consolidation) (CET) Act, Personal Income Tax (PIT) Act, Petroleum Profit Tax (PPT) Act, Value Added Tax (VAT) Act, Stamp Duties (SD) Act, Corrupt Practices and Other Related Offences Act, Ministry of Finance Incorporated Act and Public Procurement Act

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

1. CGT Act:

- Inclusion of digital assets as chargeable assets for capital gains purposes   The amendment only seeks to clarify digital assets as chargeable assets as existing provision already states that all forms of property are assets for the purposes of the Act   Therefore, chargeable gains derived from the disposal of digital assets such as cryptocurrencies, non-fungible tokens (NFTs), and other tokenised assets will be subject to CGT at the rate of 10%

- Incorporation of tax-loss harvesting principle by allowing the setoff of capital losses arising from disposal of chargeable assets from capital gains derived from the disposal of assets of a similar class   Unabsorbed capital loss can also be carried forward for a maximum period of 5 years and applied against any future capital gains derived from the disposal of a chargeable asset of the same asset class

- Expansion of the qualifying assets for roll-over relief to include *shares and stocks* However, the proceeds must be reinvested withing the same year of assessment

2. CIT Act:

- Repeal of the provision that allows a 10% investment allowance on capital expenditure incurred on plant and equipment as it is deemed to be redundant In other words, taxpayers will still make the investment even if the incentive is not available   However, companies will continue to enjoy investment allowances already granted on qualifying assets prior to the effective date until such allowances are fully utilised

  Deletion of incentives such as rural investment allowances granted to companies that provide certain facilities such as roads, electricity, etc in a rural community where they have operations and exemption of 25% of income in convertible currencies derived from tourist by hotels   However, where a company has put the related income in a fund for the purpose of expansion, such fund will continue to be exempt from tax for 5 years or when the fund is fully utilised, whichever occurs first

- Requirement for international shipping and air transport companies that fail to provide audited financial statements when filing their CIT returns to submit a comprehensive gross revenue statement of the Nigerian operations for the specified period, endorsed by a director of the company and an external auditor and supported with all invoices issued to relevant customers

- Requirement for regulatory agencies to request evidence of income tax filing and tax clearance certificates from shipping and air transport companies prior to processing and approving their business approvals and permits

3. **TET Act:**

- Increase in TET rate from 2 5% to 3%

4. **PIT Act:**

- Reintroduction of the tax deductibility of any premium paid by an individual to an insurance company during a tax year, in respect of insurance or a contract for deferred annuity on the individual's life or the life of their spouse, for PIT and/ or Pay-As-You-Earn tax purposes However, any withdrawal within 5 years will be subject to tax

5. **PPT Act**

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

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

- Companies engaged in upstream and midstream gas operations are entitled to to fully relieve their capital allowances against their assessable profits like those in manufacturing industry

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

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

6. **VAT Act:**

- Requirement for importers, who purchase taxable goods on an online electronic or digital platform operated by a non-resident supplier (NRS) appointed by the Federal Inland Revenue Service to charge and collect VAT, to provide proof of the NRS' registration or appointment as well as evidence that VAT was charged, on the sales invoice of the goods, as a condition for clearing the goods without paying VAT at the port of entry into Nigeria

- The amendment of the definition of "*building*" to mean structures permanently affixed to land for all or most of the useful life of the structure but excluding fixtures or structures that can easily be removed such as radio or television masts, transmission lines, cell towers, vehicles, mobile homes, caravans and trailers

- Revision of the due date of filing in respect of VAT withheld at source by appointed VAT collection agents to the 14th day of the month following the month of transaction

7. **CET Act:**

- Introduction of import levy of 0 5% on all eligible goods imported into Nigeria from outside Africa to finance capital contributions, subscriptions and other financial obligations to various multilateral institutions (such as the African Union, African Development Bank, African Export-Import Bank, ECOWAS Bank for Investment and Development, Islamic Development Bank, United Nations, etc) as may be designated by regulation issued by the Minister of Finance

- Introduction of excise duties on all services (including telecommunication services) provided in Nigeria at rates that may be prescribed by the President through an Order

8. **SD Act:**

- Revision of Electronic Money Transfer (EMT) levy sharing formula to 15% to Federal Government, 50% to State Governments and 35% to Local Governments

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 in due time

However, one key issue that will agitate the minds of taxpayers is when the provisions of the Finance Act 2023 will come into force In other words, should they apply to accounts prepared before May 28, 2023 even if the related returns have not been filed? The decision of the Federal High Court in the case between Accugas and FIRS *(FHC/ABJ/CS/1289/2020)* may help resolve this dilemma even though High Court decisions do not constitute precedent Paragraph 2 2 1 of the National Tax Policy specifically provides that tax policies and laws shall not be retroactive However, it will be interesting to see how the FIRS would apply these changes especially with respect to the change in the TET rate

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