

TAX BULLETIN ON FINANCE ACT, 2020

Introduction

Finance Act, 2020 (the 'Act') signed into law on 31 December 2020, which took effect from 1st January 2021 or as specified in the Act, is in furtherance of government's objective of amending existing laws to drive the fiscal policies contained in the annual budget. The Act introduced amendments to the following extant Acts:

- Capital Gains Tax Act
- Companies Income Tax Act
- Personal Income Tax Act
- Customs & Excise Tariff etc (Consolidated) Act
- Value Added Tax Act
- Nigeria Export Processing Zone Act
- Oil and Gas Export Free Zone Act
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- Oil and Gas Export Free Zone Act
- Industrial Development (Income Tax Relief) Act
- Stamp Duties Act
- Tertiary Education Trust Fund (Establishment) Act
- Federal Inland Revenue Service (Establishment) Act
- Fiscal Responsibilities Act
- Public Procurement Act
- Companies and Allied Matters Act

Highlights of some of the provisions in the Act are listed below:

- Capital Gains Tax (CGT) to be remitted twice yearly, i.e. not later than 30 June and 31 December in the year of chargeable asset disposal
- CGT on compensation for loss of employment to be remitted in accordance with the provision of Personal Income Tax Act (PITA) on PAYE remittance
- As part of palliative measures, minimum tax rate for companies has been temporarily reduced from 0.5% to 0.25% of turnover for any tax returns due for filing between 1st January 2020 and 31 December 2021
- Gross income and gross premium of life and non-life insurance businesses respectively have been re-defined
- Donation to Covid-19 Crisis Intervention Fund or similar funds established by Federal and State Governments would be tax deductible
- Ancillary services in the shipping and air transport businesses such as leasing, containers, non-freight operations and other shall be chargeable under Section 9 of Companies Income Tax Act (CITA)
- Penalty for the contravention of legislation enacted by the National Assembly or State House of Assembly would not be tax deductible
- Service of notice of assessment by Federal Inland Revenue Service (FIRS) to be done by courier, email or any other means directed by FIRS
- Payment of government assessment raised by FIRS reduced from 60 days to 30 days
- Capital allowances to be claimed on expenditure on development and acquisition of software
- Small and Medium Sized Companies engaged in agricultural production to enjoy tax holiday of 4 years renewable for another 2 years.
- Small company with turnover of N25million or less per annum exempted from the payment of education levy
- N50 levy is to be imposed on all electronic transfers of N10,000 and above to be shared between the Federal Government & FCT and State Governments at the rate of 15% and 85% respectively based on derivation
- Goods and Services re-defined under the VAT Act
- Additions have been made to list of VAT exempt items particularly in the air transportation and agricultural production sectors.
- Telecoms companies to be charged excise duties
- Import duties rates on tractor and specified motor vehicle have been reduced
- Non-resident individuals who render technical, management, consultancy professional services to an individual in Nigeria with significant economic presence would liable to tax under PITA
- Commencement and cessation business by individuals have been amended under PITA to align it with the provision of CITA
- Gross income under PITA has been redefined as income from sources excluding non-taxable income and deductions allowed
- Relief on premium paid on life assurance or defined annuity contribution of an individual or his spouse to be claimed in the following year
- Several amendments were introduced to the FIRS Act on tax administration and enforcement, specific information to be provided by taxpayers, banks and other institutions.
- Accountant General of the Federation to open dedicated accounts for the refund of each type of tax collected by the FIRS
- More penalties have been introduced for non-compliance with the provision of the FIRS Act.
- Any Officer who unlawfully discloses taxpayer data or information shall on conviction be liable to a fine of N1 million or 3year imprisonment or both
- Tax Appeal Tribunals can conduct their proceedings remotely
- Crisis Intervention Fund is established to manage crisis in the Country
- Unclaimed Funds Trust Fund, a sub-fund of the Crisis Intervention Fund is also established
- Unclaimed dividend after 12 years after the date of declaration by companies not quoted on the Nigerian Stock Exchange (NSE) shall be ploughed back to profit and redistributed to existing shareholders
- Unclaimed dividend after 6 (six) years after the date of declaration by companies quoted on the NSE shall be transferred to Unclaimed Funds Trust Fund
- Moneys left in dormant bank account for a period of more than 6 years to be transferred to the Unclaimed Funds Trust Fund

CAPITAL GAINS TAX ACT

Remittance of CGT on Chargeable Gains

A new Section 2(4) has been introduced to the Capital Gains Tax Act on the remittance of chargeable gains on assets disposed of. The tax on chargeable gains in the first half of the year shall be remitted not later than 30th June while tax on chargeable in the 2nd half of the year shall be remitted not later than 31 December. Taxpayers are required to complete self assessment form on the CGT and remit to the FIRS within each of the periods mentioned above.

The new provision would enable the FIRS to collect the tax due on the chargeable gains in year of the transaction instead of waiting till the following year.

Compensation for Loss of Employment

Section 36(2) of the CGT has been further amended to the effect that the compensation for loss of employment chargeable to CGT shall be on an amount in excess of N10m. In addition, the tax due on the compensation shall be computed and remitted within the same time frame for the remittance of PAYE, i.e. not later than the 10th day following the month which the compensation is paid.

COMPANIES INCOME TAX ACT

Primary Agricultural Production



Under Section 11 of Companies Income Tax Act (CITA) 'primary agricultural production' has been substituted for 'agricultural trade or business' and categorized into:

- primary crop production
- primary livestock production
- primary forestry production
- primary fishing production.

The proper definition of primary agricultural production would serve as a guide to what constitute primary agricultural production.

Moratorium Period on Interest on Loan

The moratorium period for the exemption of interest on loan for agricultural production, fabrication of local plant and machinery and providing working capital for any cottage industry has been reduced from 18 months to 12 months.

The reason for the reduction of the period is not understandable at a time when the agricultural sector needs more funding to scale up its production.

In order to ensure that all tax holidays are administered under one Act, the tax holiday for agricultural production of 5 years, renewable for another 3 years, introduced by the Finance Act 2019 has been withdrawn. Consequently, companies in agricultural production are to enjoy tax holiday under the Industrial Development (Income Tax Relief) Act only.

Taxation of Non-residents

Non-resident companies doing business in Nigeria are now required to file the following documents with the Service

- Audited Financial Statements of the Nigeria operation attested to by an independent qualified or certified accountant in Nigeria
- Tax computations based on their Nigeria operation
- Duly completed Company Income Tax Self Assessment Form

The above requirements would not be applicable if WHT is the final tax on the income derived in Nigeria. In the case of small and medium companies, the Service may specify the form of accounts to be presented in place of Audited Financial Statements.

In the Finance Act 2019, all services rendered by non-residents to a person resident in Nigeria are taxable. An amendment has been included in the 2020 Finance Act to the effect that WHT shall be the final tax for non-residents who render technical, management, consultancy or professional services rendered outside of Nigeria that constitute significant economic presence to a person resident in Nigeria.

Taxation of Shipping And Air Transport Businesses

The provision on taxation of shipping and air transport shall not apply to income from leasing, containers, non-freight operations and any other incidental expenses which are otherwise chargeable to tax under Section 9 of CITA.

The amendment is necessary in order to subject ancillary services connected with shipping and air transport to tax separately.

Minimum Tax

As part of the Covid-19 palliative measures, the minimum tax rate of 0.5% of turnover introduced by the Finance Act, 2019 has been temporarily reduced to 0.25%. The new rate will be applicable to tax return due for filing within January 1 2020 and 31 December 2021 (both days inclusive).

Redefinition of Gross Premium and Gross Income for Insurance Companies.

For the purpose of the tax computation of Insurance Companies, gross premium and gross income for non-life and life insurance businesses respectively have been redefined under Section 16 of CITA as follows:

Non-life Business

- Gross premium for non-life business shall consist of total premium written, received or receivable, less unearned premium and premium returned to insured.

Life Business

- Gross income for life business shall be total income i.e. investment income (excluding franked investment income, i.e. dividend) fee, commission and income from other assets but excluding premium received and claims paid by re-insurers.

The above clarifications would ensure that tax of insurance business is not computed on unearned premium and income not taxable under CITA.

Additional Allowable Donation

Covid-19 Crisis Intervention Fund or similar funds established by the State or Federal Government has been added to the list of organizations that allowable donations could be made to. Donations made in cash or in kind in respect of any pandemic, natural disaster or other exigency to the funds would be treated as an allowable deduction from profit. However, the donation to be allowed for tax purposes is subject to a maximum of 10% of assessable profit after the deduction of other allowable donations from the profit made by the Company.

Disallowed Deductions

The amendment introduced in the Finance Act 2019 to disallow penalty and fines pursuant to legislations enacted by the National Assembly has been modified. In the Finance Act 2020 penalty and fines pursuant to legislations enacted by any of the State House of Assembly would also not be disallowed for tax purposes.

Books of Account

A new Section 63 has been introduced to CITA to replace the former one on the books of account to be maintained by every company including those exempted from incorporation tax. Some of the new provisions are stated below:

- All companies are required to maintain books or records containing sufficient information or data of all their transactions.
- The books of account must be maintained in English language. Where for any reason they are prepared in other language, they must be translated to English language by the taxpayer to make it readable by the FIRS.
- Any taxpayer that fails to provide books of account as and when required by the FIRS shall incur penalty of N100,000 for the first month and N50,000 the subsequent months the failure continues.
- The books of account must be maintained for at least 6 years after the year of assessment in which the incomes relate. This conforms with the statute of limitation.
- Penalty and interest in accordance with the provisions of CITA or relevant laws would be imposed on taxpayers who deliberately file dishonest returns from the date the tax is due in addition to payment of the tax due on the dishonest return.

Service of Notice of Assessment

Henceforth, notices of assessment could be sent to the taxpayer by email, courier, or any other means as directed by the FIRS.

Taxpayers should ensure that they check the email account they registered with the FIRS regularly in order not to miss the opportunity to raise valid objection to disputed notice of assessment within the statutory period or incur penalty for late payment of undisputed notice of assessment.

Payment of Government Assessments

The period for the payment of undisputed Government assessment has been reduced from 60 days to 30 days. Penalty and interest would be imposed for payment not made within the 30 days window.

Capital Allowances



An addition has been made to Part I, Schedule II to CITA. Henceforth, capital allowances shall be claimed on capital expenditure on development and acquisition of software or such outlays on electronic applications.

The inclusion of this capital expenditure would encourage companies to invest in the development and acquisition of software to computerize their processes.

INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT

Addition To The List of Companies Eligible For Tax Holidays



Small or Medium Sized Company engaged in agricultural production would enjoy tax holiday of 4 years in the first instance which is renewable for another 2 years if it meets the laid down guidelines. Small company is defined as a company with turnover of N25million or less while medium company's turnover is more than N25million but less than N100million per annum.

The inclusion of small companies in the list of those to benefit from tax holiday is surprising because the Finance Act, 2019 exempts small companies from payment of companies income tax under CITA.

PERSONAL INCOME TAX ACT

Taxation of Non-residents who render services to a person in Nigeria

Individuals, executors or trustees who render technical, management, consultancy and professional services to a person resident in Nigeria to the extent that the individual, executor and trustee that has a significant economic presence shall be liable to tax in Nigeria.

The amendment is aimed at harmonizing the provision of PITA with that of CITA on significant economic presence in order to ensure that all income derived by non-resident individuals on services rendered to a person resident in Nigeria is subjected to tax.

Commencement and Cessation of Business By Individuals.

New Sections 24 and 25 on commencement and cessation of business by individuals have been introduced to PITA to replace the old ones. The income tax for the first year shall be based on the profit from the date of commencement to the end of the accounting period. The tax due for the second and third years of assessment shall be based on the reported profits for the second and third accounting years respectively. The tax due on cessation of business shall also be based on the income from the beginning of the last accounting period to the date of cessation. The tax due shall be paid within 3 months from the date of cessation.

The amendments became necessary in order to align the provisions of the PITA with the changes in the provisions of CITA on commencement and cessation of business. It would eliminate excess taxes charged in the past on overlapping basis periods.

Exemption of Minimum Wage Earners from Payment of Pay-As-You Earn

Individuals earning minimum wage or less amount pursuant to the Minimum Wage Act are totally exempted from payment tax on their salaries.

With the exemption, minimum wage earners would have more income at their disposal.

Gross Income

The gross income of individuals and employees taxable under PITA has been redefined as income from all sources less income not taxable under PITA, capital allowances and allowable deductions. Consequently, Consolidated Relief Allowances (CRA) shall not be computed on income exempted from PITA and allowable deductions.

The implication of the amendment is that CRA would reduce hence individual and employees would pay more taxes.

Relief on Life Assurance Policy or Life Annuity

It has been clarified in the Finance Act 2020 that relief on premium on the life assurance or contract of deferred annuity on an individual's life or the life of his spouse paid in one year would be enjoyed in the following year. The new provision would encourage a self-employed individual to take up life assurance or contract of deferred annuity for himself or his spouse.

Allowable Deduction

Contributions by individuals to a pension, provident or other retirement benefit fund, society or scheme recognized under the Pension Reform Act shall be allowed as deduction in the determination of his taxable income. This amendment would encourage individuals running their business to contribute to the self pension scheme.

Small businesses with turnover of N25million or less per annum have been exempted from payment of education tax. The amendment is necessary because they have been exempted from payment of tax under CITA.

VALUE ADDED TAX

Definition of Goods and Services

Goods and services have been redefined in the Finance Act 2020. Goods have been redefined as all forms of tangible properties, movable or immovable, excluding land and building, money or securities. The exclusion of VAT on land and building in particular, has put to rest the conflicting judgements by Tax Appeal Tribunals on VAT on land and building in the past.

A service has been re-defined as anything other than goods and services provided under contract of employment. Further definition of services excluded charging of VAT on interest in land and building, money or securities.

Additional VAT Exempt Items



The following items have been added to the list of VAT exempt goods and services.

- Commercial aircrafts, commercial engines and spare parts as defined in the Act
- Airline tickets issued or sold by commercial airlines registered in Nigeria
- Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes

The above exemptions would result to cost reduction in the airline and agricultural production industries.

Effective Date of Increase in Rate of VAT

The effective date of the increase in VAT rate introduced by Finance Act 2019 from 5% to 7.5% has been properly enacted in the Finance Act 2020 as 1 February 2020.

FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENTS) ACT

Several amendments were introduced to the Federal Inland Revenue Service (Establishments) Act on the administration and collection of taxes (particularly on international digital transactions), request for taxpayer information, confidentiality of taxpayers data and information. Also included in the amendments are penalties for non-compliance by taxpayers and sanctions for unlawful divulging of taxpayer information by officials of the Service. Notable among the amendments are:

- The Accountant General of the Federation has been empowered to open dedicated accounts for the refund of each type of tax to taxpayers
- Deployment of digital platform for the collection of taxes due on international transactions carried out through remote digital, electronic or other platform
- Taxpayers to be given 30 days notice to deliver books, documents or records or other electronic devices including magnetic cloud computing facilities at such place and time as the Service may deem fit as well as requesting representative of the taxpayer to appear in person to provide explanations of the documents or records presented to the Service
- Non-compliance with the Service directive relating to (i) tax liability, in addition to tax liability, would include a penalty of 10% and interest at the prevailing CBN minimum rediscount rate (ii) issues other than tax liability a fine of N25,000 in the first month and N10,000 for every subsequent month the failure continues.

- Specific information to be provided by every bank, insurance companies, stock broking firm and other financial institutions in accordance with circulars issued by the Service was also spelt out in the Act. Upon failure to comply, penalty of N25,000 for the first month and N10,000 for every subsequent month the failure continues.
- Protection of taxpayer information is viewed seriously in the Act. Any officer of the Service who discloses taxpayer information unlawfully on conviction shall be fined a sum of N1,000,000 or 3 years imprisonment or both.

Proceedings At The Tax Appeal Tribunal



In order to maintain social distancing while the Covid-19 pandemic persists, the Tax Appeal Tribunal (TAT) can conduct its proceedings remotely by deploying such technology and applications necessary to ensure fair hearing of all parties concerned.

NIGERIA EXPORT PROCESSING ZONE ACTS and NIGERIA OIL AND GAS FREE ZONE ACT

Relevant Sections of the Nigerian Export Processing Zone Act and Nigeria Oil and Gas Free Zone Act have been substituted to the effect that Companies registered to operate in the two zones are now required to file tax return with the Federal Inland Revenue Service (FIRS) in compliance with Section 55 Subsection 1 of

CITA. The return shall comprise Audited Financial Statements, tax and capital allowances computations and completed self-assessment forms.

The rationale for the companies in the zones to include tax and capital allowances computations in the returns to be filed with the FIRS is not clear since they are exempted from payment of any tax.

CUSTOMS AND EXCISE TARRIF ETC (CONSOLIDATED) ACT.

Telecoms Companies To Be Charged Excise Duties

The Act provides that telecommunication companies shall be charged excise duties at a rate to be determined by an Order of the President.

Reduction of Customs Duties on Tractor and Motor Vehicles

Import duties on imported tractor and motor vehicles are to be charged at the reduced rates shown in the table below:

Description	HS Code	Old Rate (%)	New Rate (%)
Tractor	8701	35	5
Motor Vehicle	8702	35	10
Motor Vehicle	8703	30	5
Motor Vehicle	8704	35	10

It is expected that with the significant reductions of the import duties rates there will be reasonable reduction in the prices of tractors and motor vehicles.

STAMP DUTIES ACT

Electronic Money Transfer Levy

A levy of N50 shall be charged on any electronic transfer or receipt of N10,000 or more. The Minister of Finance shall, subject to the approval of the National Assembly, make regulations on the distribution of the money. That notwithstanding, the distribution, based on derivation formula, shall be as follows:

- Fed Govt & FCT 15%
- State Governments 85%

The above amendment lays more emphasis on electronic transfers to ensure full compliance with the imposition of stamp duty on all transactions that fall within the threshold. However, it is surprising that the Act is silent on the sharing formula for stamp duties charged on non-electronic transactions of N10,000 and above.

COMPANIES AND ALLIED MATTERS ACT

Unclaimed Dividend

- Unclaimed dividend declared by companies other than those quoted on the Nigerian Stock Exchange (NSE), after 12 years, shall be written back to profit and distributed to other shareholders.
- Dividend declared by companies quoted on the NSE that remained unclaimed for a period of 6 years from the date the dividend is declared shall be transferred to 'Unclaimed Funds Trust Fund'.

ESTABLISHMENT OF CRISIS INTERVENTION FUND and UNCLAIMED FUNDS TRUST FUND

The Act provides for the establishment of Crisis Intervention Fund (Fund) to be saddled with the responsibility of managing crisis in the Country. The take-off fund of the Fund shall be N5 billion. Composition of the Governing Council of the Fund is stated in Section 77 Subsection 6 of the Act. Also to be established is UNCLAIMED FUNDS TRUST FUND which shall be a sub-fund of the Fund. The following amount are to be transferred to the Unclaimed Funds Trust Fund.

Unclaimed Dividend of Companies Quoted on the Nigerian Stock Exchange.

- Dividend declared by companies quoted on the NSE that remained unclaimed for a period of 6 years from the date the dividend is declared.

Funds In Dormant Account

- Any fund left in dormant account for a period of more than six years, excluding money held in official bank accounts by the Ministries, Departments and Agencies of the 3 tiers of Government.

The amounts transferred to the Fund Account shall be a special debt owed by the Federal Government to the shareholders and bank account holders and it would be managed by the Debt Management Office (DMO). Companies and Banks are required to make returns of unclaimed dividends and money left in dormant account as prescribed in the Act to the Fund. Penalty and interest for not making the returns to the fund is 5 times the value of the fund and interest at CBN Monetary Policy Rate.

Shareholders of unclaimed dividend and account holders of money in dormant account shall make claim for their money which shall be repaid to them with a yield.

It is hoped that the claims will be treated expeditiously as and when they are made.

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