TEMPLARS

THE FINANCE BILL in Five Minutes

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01 COMPANIES INCOME TAX

UNLOCKING MSME GROWTH THROUGH PROGRESSIVE TAX RATES

The Finance Bill would alter the corporate tax regime with the aim of fostering MSME growth.

- Small companies with N25 million (approx. US$69,000) turnover or less would be exempt from companies income tax (CIT).
- Medium companies with N25 million – N100 million (approx. US$69,000 – US$276,000) turnover would pay CIT at the rate of 20%.
- Large companies (any company not small or medium) would pay CIT at the rate of 30%.

All companies must still remit WHT on dividends declared.

The minimum tax rate would be simplified and unified. Companies pay minimum tax where they have no taxable profits.

- The new harmonized minimum tax rate is 0.5% of turnover.
- Companies that earn less than N25 million (approx. US$69,000) turnover in any relevant year of assessment are exempt from minimum tax.

SECURING INVESTOR CONFIDENCE BY ELIMINATING DOUBLE TAXATION ON RETAINED EARNINGS

The Bill eliminates the current double taxation on dividends paid out of retained earnings that have already been subject to tax.

REMOVING OBSOLETE COMMENCEMENT AND CESSATION RULES

Old and complicated rules on computation of tax during the commencement and cessation of a company's business would be repealed and replaced with a simplified computation based on the company's **"actual year" basis period.**

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PREVENTING VALUE EROSION THROUGH NEW THIN CAPITALIZATION

- A threshold of 30% of EBITDA is being introduced for interest deductibility for related party loans. Any interests on loans granted to a Nigerian company by a foreign connected person which exceed this threshold would be a disallowable expense.

- This is an entirely new change from the existing provisions of CITA. Questions on thin capitalization were generally treated under artificiality and arm's length provisions.

- The goal of this rule is to prevent some controlling foreign shareholders from burdening Nigerian subsidiaries with substantial loan stock with exorbitant interest rates and extracting value from the business to the detriment of other shareholders.

- In line with international practice, the new thin capitalization does not apply to a Nigerian subsidiary of a foreign company engaged in the business of banking or insurance.

ELIMINATING 100% TAX EXEMPTION ON FOREIGN LOAN INTERESTS

- The maximum possible tax exemption for WHT on interests on foreign loans would be 70%. Currently, interests on foreign loans with a repayment period above 7 years with a minimum of 2 years grace period are entitled to 100% WHT exemption.

- If the new limit is implemented, it may reduce Nigeria's attractiveness as an FPI destination.

REPAYMENT PERIOD INCLUDING MORATORIUM	MORATORIUM	TAX EXEMPTION ALLOWED
Above 7 years	Not less than 2 years	70%
5-7 years	Not less than 18 months	40%
2-4 years	Not less than 12 months	10%
Below 2 years	Nil	Nil

- The Finance Bill also brings precision and clarity to the meanings of "grace periods" and "moratorium". "Moratorium" is to include the grace period covering interests and principal. The new tax exemption rates on interest on foreign loans are in the table above.

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WIDENING THE TAX BASE TO COVER DIGITAL AND OFFSHORE SERVICES

- A new rule of "***significant economic presence***" is being created to establish the income tax liability of non-resident companies (NRCs) providing either digital services in Nigeria or offshore services to Nigeria.
- CIT would be payable on profits of NRCs in Nigeria if the NRC transmits or emits electronic signals through any medium to Nigeria, to the extent that the company has ***significant economic presence*** in Nigeria and profit can be attributable to such activity.
- Withholding tax (WHT) would be payable on profits of NRCs in Nigeria if they provide technical, management, consultancy or professional services to a person resident in Nigeria with the same requirement of ***significant economic presence*** and attributable profits.
- This has been enacted to specifically extend the tax coverage to match an evolving digital economy as offshore digital services could previously escape the tax net due to lack of specific legal provisions.
- It is likely that disputes would arise from these changes due to the ambiguous nature of "***significant economic presence***" if, as the Finance Bill requires, no order is made by the Minister of Finance to clarify the definition.

DEVELOPING AN IDENTIFIABLE TAXPAYER DATABASE IN NIGERIA

- **There would be a new requirement for all companies to provide their banks with their Tax Identification Numbers (TIN) for continued account operation.**
- The obligation is on banks to require that the TIN be supplied on **all prior and future accounts.**
- The objective of this is to synchronise taxpayer banking and create a unified system of tax databases in order to enhance tax monitoring, compliance and ease of administration.

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CREATING AN EQUITABLE TAX REGIME FOR INSURANCE COMPANIES

Stakeholders in the insurance industry will be pleased to see that the Finance Bill proposes many coveted changes in the taxation of insurance companies in the sector.

Non-Life Insurance Companies

The Finance Bill would eliminate the previous 25% premium cap on tax deductibility on outstanding claims, bringing it in line with the Insurance Act.

Companies would be able to deduct from their premiums (for tax purposes) all outstanding claims and outgoings plus 10% of the estimated figure for outstanding claims in respect of unreported claims incurred.

Allowable deductions for "unexpired risks" from the premiums of non-life insurance companies would be calculated on a time apportionment basis on the risks accepted in the year.

All Insurance Companies

Insurance companies would be able to carry forward losses indefinitely as the current 4-year limit on carrying forward losses would be eliminated.

Insurance companies (in respect of their life insurance business) would also be able to deduct all normal allowable business outgoings as the current restriction of keeping 20% of gross income available as "total profit" post-deduction for tax purposes would be eliminated.

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ESTABLISHING A UNIQUE TAX FRAMEWORK FOR REGULATED SECURITIES LENDING TRANSACTIONS

- The Bill creates the tax framework applicable to Regulated Securities Lending Transactions (RSLTs) and safeguards against double taxation on such transactions.

- Compensating payments received by a Borrower from its approved agent or a Lender in an RSLT now fall under the definition of "interest" which is chargeable to tax under CITA.

    - Any compensating payment made by the Lender is an allowable deduction solely for the Lender. It is non-deductible if made by the Borrower's approved agent.

- Compensating payments received by a Lender from its approved agent or a Borrower in an RSLT now fall under the definition of "dividends" which is chargeable to tax under CITA.

    - Any compensating payment made by a Borrower or the Lender's approved agent is non-deductible.

- The proceeds from the transfer of securities or shares by a Lender, Borrower or Approved agent will not be subject to tax.

TAPPING INTO THE VALUE CHAIN OF REAL ESTATE INVESTMENT TRUST SCHEMES

- Dividends and rental income received by a REIC on behalf of its shareholders would be CIT exempt at the company level (i.e. in the hands of the REIC). When paid to shareholders, SEC approved dividends or rental income qualify as deductible expenses.

- In order to qualify for the exemption, a minimum of 75% of dividend or rental income must have been distributed within 12 months of the end of the financial year it was earned.

- WHT would still be applicable on dividends or rental payments paid to shareholders.

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OTHER CHANGES TO CORPORATE TAX REGIME

- **Promoting efficient and timeous CIT payments**
  - Companies would be able to agree with the FIRS on any number of instalment payments to meet their CIT obligations. **The previous limit of six (6) instalments would be repealed.**
  - Companies could benefit from **a 2% bonus (medium companies) or 1% bonus (large companies)** available for use as future tax credit where tax is paid at least 90 days before the due date.
- **Eliminating tax on interim dividends**
  - The Finance Bill would eliminate onerous provisions on computation of tax on interim dividends.
- **Further CIT exemptions for:**
  - Dividends paid out of tax exempted profits.
  - Profits or income regarded as franked investment income.
- **Changes to deductible expenses**
  - Interest expense incurred on related party transactions which are not in compliance with the Transfer Pricing Regulations are not deductible.
  - Expenses incurred in deriving tax-exempt income, losses of a capital nature and any expense allowable as a deduction under the Capital Gains Tax Act (CGTA) would not be deductible.

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- **VAT rate would increase from 5% to 7.5%.**

- **VAT scope would be widened in certain aspects to make VAT chargeable on a wider scale**
  - The meaning of "goods and services supplied in Nigeria" would be broadened. Supplied goods do not need to be physically present in Nigeria for the transaction to be subject to VAT. It would be enough if the beneficial owner of the rights in the goods is a taxable person in Nigeria.
  - Services provided to persons in Nigeria are subject to VAT regardless of whether the service is rendered within or outside Nigeria.
  - Services provided by Nigerian residents to non-residents would be subject to VAT if the non-resident is physically in Nigeria or the service is provided to the fixed base of the non-resident in Nigeria.

- **Devising taxation on digital presence**
  - The supply of intangible goods (such as software, apps, downloadable music, etc.) would be subject to VAT. This excludes interests in land.

- **The VAT exemption list would now include:**
  - Basic food items (agro and aqua based staple foods)
  - Locally manufactured sanitary towels, tuition (primary, secondary and tertiary education)
  - Services rendered by Microfinance Banks

NEW VAT CORPORATE OBLIGATIONS

- **Obligations on NRCs and Nigerian Companies on VAT compliance**
  - Non-resident companies are to include VAT on their invoices for the supply of taxable goods and services to Nigerians.
  - Nigerian companies are to self-account and remit VAT where it is not provided on invoices. It is immaterial whether the invoice is from a resident or non-resident company.

- **VAT Registration and Filing – Exemption for Small Companies**
  - Companies with an annual turnover of N25 million (approx. US$69,000) or less would be exempt from VAT registration and filing obligations.

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KEY CHANGES TO OTHER TAX LAWS: PETROLEUM PROFITS TAX, STAMP DUTIES AND MORE

PETROLEUM PROFITS TAX

- Section 60 of the Petroleum Profits Tax Act (which restricts tax liability on PPT income or dividends) would be repealed. **This means that income or dividends already subject to PPT could potentially be subject to tax under other extant tax laws.**

STAMP DUTIES

- The Stamp Duties Act would be amended to account for electronic stamping and receipts.
- Share, stock or security transfers made pursuant to a regulated securities exchange transaction would be exempted.

PERSONAL INCOME TAX

- **All individuals would have to provide their TIN numbers for opening or continued operation of bank accounts.**
- The tax relief for children and dependent relatives would be deleted.
- The Federal Inland Revenue Service would take over the responsibilities and duties of the Joint Tax Board.

CUSTOMS AND EXCISE

- Customs duties would be charged on "goods imported" and specified in the Fifth Schedule of the Customs and Excise Tariff (Consolidation) Act.

CAPITAL GAINS TAX

- The Finance Bill would amend the CGTA to provide clarity on when CGT will apply to transfer of assets during a business reorganization. This closes out loopholes that currently allow for abuses in related party reorganization.
- Compensations for losses would not be subject to CGT except where they exceed N10 million.

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04 CONCLUSION

Since being submitted to the National Assembly by the President, the Finance Bill has been passed by the Senate and the House of Representatives. The Minister of Finance recently stated that the Bill will take effect from January 2nd, 2020 but this anticipated commencement date is subject to the Bill being signed into law by the President.

In any event, based on the speed with which the Bill has progressed through the legislative process, we can expect to see the many changes to the tax regime in Nigeria being implemented within a short while.

Looking further into the future, government officials have recently expressed the intention to amend the Finance Bill yearly in accordance with each year's Appropriation Bill. If this is the case, the Finance Bill may very well be the first step into a new regime of consistent updates to Nigerian taxation to align with the country's ever-changing economic realities.

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