



TEMPLARS LEGISLATIVE WATCH: FINANCE BILL, 2019: SB. 140

On Thursday, 21 November 2019, the Senate passed the Finance Bill, 2019. The Bill seeks to amend seven (7) existing tax and fiscal policy laws (Companies Income Tax Act, 2004; Value Added Tax Act, 2007; Customs and Excise Tariff (Consolidation) Act, 2004; Personal Income Tax Act, 2007; Capital Gains Tax Act, 2007; Stamp Duties Act, 2007; and Petroleum Profit Tax Act, 2004) to reform Nigeria's tax system for enhanced implementation and effectiveness.

The Finance Bill 2019 (the 'FB' or 'Bill') is an executive bill introduced at a Joint session of the National Assembly (the 'Nass') on the 8th October 2019, where it was passed for first reading. On 5th November 2019, the FB passed its second reading and was forwarded to the Senate Committee on Finance for review which led to its passage on Thursday.

The Bill proposes aggressive changes to Nigeria's tax and fiscal laws in what is seen as an effort to ensure the optimal funding of the 2020 Budget and future revenue requirements of the country. Specifically, the Bill is stated to have five strategic objectives which includes:

- Promoting fiscal equity by mitigating instances of regressive taxation;
- Reforming domestic tax laws to align with global best practices;
- Introducing tax incentives for investments in infrastructure and capital markets;
- Supporting small businesses in line with the ongoing ease of doing business reforms; and

- Raising revenues for Government, by various fiscal measures, including a proposed increase in the rate of Value Added Tax from 5% to 7.5%.

Salient provisions of the Bill are as follows:

A. Proposed Amendment to The Petroleum Profit Tax Act ('PPTA')

The Bill seeks to improve revenue by removing the tax exemption granted for dividends or income received from companies charged under PPTA by repealing section 60 and ensuring dividends paid out of petroleum profits are subject to withholding tax.

B. Proposed Amendment to the Value Added Tax Act, Cap. C21, LFN, 2004 ('VAT')

The Bill seeks to expand VAT coverage including taxation of the digital economy, VAT registration thresholds and intangibles. The key provisions of the Bill in this regard include the following:

- Rate of Tax is increased from 5% to 7.5%
- Tax must be charged and payable on the supply of all goods and services in Nigeria other than those listed in the First Schedule to the VAT Act. For the purpose of the VAT Act, goods and services shall be deemed to be supplied in Nigeria if:

a) In respect of goods:

- The goods are physically present in Nigeria at the time of supply, imported into Nigeria for use by a person, assembled in Nigeria, or installed in Nigeria; or
- The beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right thereof is situated, registered or exercisable in Nigeria

b) In respect of services:

- The services are rendered in Nigeria by a person physically present in Nigeria at the time of service provision; or
- The services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria.

- A taxable person who fails or refuses to register with the Federal Inland Revenue Service (the "Service") within the time specified under the Act will be liable to pay as penalty an amount of:

- a) N50,000 for the first month in which the failure occurs; and
- b) N25,000 for each subsequent month in which the failure continues.

- Where a taxable person permanently ceases to carry on a trade or business in Nigeria, the taxable person must notify the Service of its intention to deregister for tax purposes within 90 days of such cessation of the trade or business.

- Re-enactment of section 38 to provide that a non-resident company must include the tax on its invoice for the supply of taxable services; and the person to whom the services are supplied in Nigeria must withhold and remit the tax directly to the Service in the currency of payment. Also, where a person to whom taxable supplies is made in Nigeria is issued an invoice on which no tax is charged, such a person must self-account for the tax payable and remit the output tax to the Service within the timeline prescribed under the Act.

- The repeal of section 15(1) which provides that taxable persons must render returns now provides that a taxable person who in the course of a business has made taxable supplies or expects to make taxable supplies, the value of which, either singularly or cumulatively in any calendar year, is twenty-five million naira (N25,000,000) or more must render to the

Service, on or before the 21st day of every month in which this threshold is achieved and on or before the 21st day of every month in which this threshold is achieved and on or before the same day in successive months thereafter, a return of the input tax paid and output tax collected by him in the preceding month in such a manner as the Service may from time to time prescribe.

- Amendment of section 19 to provide that ‘if a taxable person does not remit the tax within the time specified in section 15 of this Act, a sum equal to 10% of the tax not remitted per annum and interest at the prevailing Central Bank of Nigeria minimum re-discount rate plus a spread to be determined by the minister, shall be added to the tax not remitted and the provision of this act relating to collection and recovery of unremitted tax, penalty and interest shall apply. The Service should notify the taxable person or his agent of the tax due together with the penalty and interest and if payment is not made within thirty days of such notification, the Board may proceed to enforce payment as provided in section 15 of this Act.
- Any taxable person who fails to notify the Service of any change of address within 30 days of such change, or who fails to comply with the requirement for notification of permanent cessation of trade of business under section 8 of this Act, is liable to pay –
 - a. N50,000 for the first month in which the failure occurs; and
 - b. N25,000 for each subsequent month in which the failure continues.
- Also, any taxable person who fails to submit returns to the Service is liable to a fine of N50,000 in the month of default and N25,000 for every month in which the default continues.

C. Proposed Amendment to the Personal Income Tax Cap P8, LFN 2007 (‘PITA’)

The Bill provides that all banks must require as a precondition that a person intending to open or continue operating a bank account to provide a tax identification number.

There is also a revision in the case of an objection to accommodate delivery in person, by courier service or via electronic mail’.

D. Proposed Amendment to The Companies Income Tax Act, Cap. C21, LFN 2004 (‘CITA’)

The Bill seeks to amend some provisions of CITA by curbing Base Erosion and Profit Shifting (BEPS) as proposed by the Organisation for Economic Cooperation and Development (OECD) to broaden the triggers for domestic taxation of income earned by non-resident companies in Nigeria through dependent agents and via online market platforms. In addition, the Bill provides that:

- Tax for each year of assessment will be payable at the relevant rates upon the profits on company accruing in, derived from, brought into, or received in, Nigeria ‘that are not subject to tax under the Capital Gains Tax Act, Petroleum Profits Tax Act and Personal Income Tax Act.’¹ This amendment to the CITA promotes fiscal equity by ensuring companies are not taxed twice on the same income stream.
- All Banks must require all companies to provide their tax identification numbers as a precondition for opening a bank account or for the continued operation of their bank accounts.² This amendment synchronises taxpayer banking and tax databases with a view to improving tax compliance and ease of tax administration.
- Section 13 will be amended to provide that the profits of a company other than a Nigerian company from any trade or

¹ New section 9, CITA

² New section 10, CITA

business will be deemed to be derived from or otherwise be taxable in Nigeria:

- *‘if it transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity.’³ This amendment expands tax revenue sources by including digital services tax.*
- *‘if the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity’.⁴ The insertion of this new clause helps create a nexus for taxation of services rendered offshore and ensures Nigeria earns its fair amount of revenue from such activities.*
- That the Minister may by an order determine what constitutes the significant economic presence of a company other than a Nigerian company⁵.
- Section 16 will be amended to provide that “investment income for the purpose of taxation of a life insurance company under this section means income derived from investment of shareholders’ funds”. This amendment ensures that insurance companies are taxed in a fair and equitable manner relative to other companies operating in other sectors of the economy.
- Modification of section 16(8) to provide that an insurance company, other than a life insurance company, shall be allowed

as deductions from its premium the following reserves for tax purposes-

- a) for unexpired risks, 45% of the total premium in case of general insurance business other than marine insurance business and 25% of the total premium in the case of marine cargo insurance;
- b) *‘for outstanding claims and outgoings, an amount equal to the total estimated amount of all outstanding claims and outgoings, with a further amount representing 10 per cent of the estimated figure for outstanding claims in respect of claims incurred but not reported at the end of the year under review, provided that any amount not utilised towards settlement of claims and outgoing shall be added to the total profits of the following year.’*

It is noted that the foregoing modifications have long been sought by the Insurance Industry with a view to ensure that investment in the sector is encouraged and it stimulate economic growth and potentially increase revenue from the sector. In addition, Section 19 of CITA is altered to provide that payment of dividend by a Nigerian company will not apply to:

- a) *Dividends paid out of the retained earnings of a company. Provided that the dividends are paid out of profits that have been subjected to tax under CITA, the Petroleum Profits Tax Act, or the Capital Gains Tax Act;*
- b) *Dividends paid out of profits that are exempted from income tax by any provision of this Act, the Industrial Development (Income Tax Relief) Act, the Petroleum Profits Tax Act, or the Capital Gains Tax Act or any other legislation;*
- c) *Profits or income of a company that are regarded as franked investment income under CITA; and*
- d) *Distributions made by a Real Estate Investment Company to its shareholders*

³ New section 13(c), CITA

⁴ New section 13(f), CITA

⁵ New section 13 (4), CITA

from rental income and dividend income received on behalf of those shareholders; whether such dividends are paid out of profits of the year in which the dividend is declared or out of profits of previous reporting periods.

There is also a general exemption from corporate tax for small companies earning lower than N25 million turnover in any tax year as well as a tax relief of five years for medium companies that earn turnover above N25million but less than N100 million in any tax year. However, such companies are obligated to deduct WHT on dividends distributed.⁶ Section 27(1) of CITA is amended to provide that no deduction shall be allowed in respect of ‘any expense whatsoever incurred within or outside Nigeria involving related parties as defined under the Transfer Pricing Regulations, except to the extent that it is consistent with the Transfer Pricing Regulations.

Furthermore Section 29(4) is amended to provide that where a company permanently ceases to carry on a trade or business in an accounting period, its assessable profits therefrom shall be the amount of the profits from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within six months from the date of cessation.

Penalties for late filings and incentives for early filings

There is an increase in the penalty fees for late filing by imposing a fee of N50, 000 for the first month in which failure occurs; and N25, 000 for each subsequent month in which failure continues.

Introduction of incentives for early payment of tax under the current self-assessment framework to provide that: ‘where a company pays its tax 90 days before the due date as provided under section 55 of this Act, such company shall be entitled to a bonus of 2% if such company is a medium-sized company; and 1% for any other company on the amount of tax

paid, which shall be available as credit against its future taxes.

E. Proposed Amendment to the Capital Gains Tax Act Cap C1, LFN 2007 (‘CGTA’)

The Bill seeks to cover the taxation of business combination and seeks to prevent abuse of provisions of the Act on group restructuring by providing that:

- Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, no tax shall apply under this Act to the sale or transfer of the aforementioned assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of reorganization.
- That sums obtained by way of compensation for loss must not, however be chargeable gains, except where the amount of such compensation or damages exceeds N10,000,000.

F. Proposed Amendment to the Stamp Duties Act Cap S8, LFN 2007 (‘SDA’)

The bill seeks to increase revenue from duties on electronic stamps by providing that any electronic receipt or electronic transfer for money deposited in any bank or with any banker, on any type of account, to be accounted for and expressed to be received of the person to whom the same is to be received of the person to whom the same is to be accounted for of amounts from Ten Thousand Naira (N10,000) upwards shall attract a singular and one-off duty of the sum of fifty naira (N50); provided that monies paid into ones account or transferred electronically

⁶ Section 7, Finance Bill

⁷ Section 36(2)

between accounts of the same owner by the owner within the same bank shall not be chargeable to duty.

In addition, the exemption of stamp duties on shares, stocks or securities transferred and returned by a Lender to its approved agent or a Borrower in furtherance of a Regulated Securities Lending Transaction; including all document relating to a Regulated Securities Lending Transaction Carried out Pursuant to regulations issued by the Securities and Exchange Commission.

Proposed Amendment to the Customs and Excise Tariffs Etc. (Consolidation) Act, Cap C49, LFN, 2004 ('CETA')

The Bill seeks to impose excise duties to certain imported goods in similar manner as their locally manufactured counterparts by providing that goods manufactured in Nigeria and specified in the Fifth Schedule to this Act shall be charged with duties of excise at the

rates specified under the Duty Column in the said Schedule' with 'Goods imported and those manufactures in Nigeria and specified in the Fifth Schedule to this Act shall be charged with duties of excise at the rates specified under the Duty Column in the said Schedule. This amendment seeks to incentivise local production⁸.

The Bill is being considered concurrently in the House of Representatives and the Senate. Following its passage by the Senate, it is expected that the House of Representatives will soon pass the Bill. Following passage by both Senate and the House of Representatives, the Bill will be harmonised and presented to the President for assent. Given the urgency of this Bill in connection with the Appropriation Bill 2020, which was presented on the same day as the Bill, we envisage that the Bill will become law by the end of 2019.

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⁸ Section 21 of the CETA Act is amended