A PRIMER OF KEY CHANGES FOR TAXPAYERS IN THE 2020 FINANCE ACT.

On 31 December 2020, President Muhammadu Buhari assented to the 2020 Finance Act, giving it the force of law. With a commencement date of 1 January 2021, the Finance Act 2020 (“**FA**” or “**The Act**”) introduces significant changes to Nigeria’s tax and regulatory landscape and clarifies some issues which caused controversy under the 2019 Finance Act.

The Act amends several provisions of Nigeria’s key tax legislation including the Capital Gains Tax Act, Companies Income Tax Act (“**CITA**”), Industrial Development (Income Tax Relief) Act (“**IDITRA**”), Personal Income Tax Act (“**PITA**”), Tertiary Education Trust Fund Act, Customs & Excise Tariff (Consolidation) Act, Value Added Tax Act (“**VAT Act**”) and Federal Inland Revenue Service (Establishment) Act. It also amends some other non-tax legislations such as Fiscal Responsibility Act, Public Procurement Act, Companies and Allied Matters Act, Nigerian Export Processing Zone Act and the Oil and Gas Export Processing Free Zone Act, in a bid to respond to current economic realities, especially following the effects of the COVID-19 pandemic on the Nigerian economy.

Summary of Salient Provisions

The Act introduced the following salient changes:

Reduction of Minimum Tax Rate for the 2020 year of Assessment:

As a way of cushioning the effect of COVID-19 on businesses, the Act reduces the minimum tax rate for Companies Income Tax (“**CIT**”) from 0.5% to 0.25% for tax returns prepared and filed for any year of assessment falling due on any date between 1 January 2020 and 31 December 2021, both days inclusive.[1]

Exemption from Payment of Minimum Tax -

The Act provides that persons liable to Personal Income Tax (“**PIT**”) who earn from their employment the National Minimum Wage or less in any year of assessment shall be exempt from the payment of minimum tax.[2]

[1] Section 13 of the Act

[2] Section 30 of the Act

Aviation Sector Incentives:

The Act introduces certain incentives for the aviation sector. They include:

I. **Duty-Free Importation of Aircraft:** Airlines registered in Nigeria and providing commercial air transport services shall be entitled to duty-free importation of their aircraft, components whether purchased or leased.[3]

II. **VAT exemption**: The Act exempts commercial aircraft (including their engines and spare parts), airline transportation tickets issued and sold by commercial airlines registered in Nigeria from Value Added Tax ("**VAT**").[4]

Pioneer Status for Agribusiness SMEs:

Small or medium sized companies engaged in primary agricultural production shall on application to the President of the Federal Republic of Nigeria through the Minister for Industry be granted pioneer status incentive for an initial period of 4 years which may be extended, subject to the satisfactory performance of such primary agricultural production, for an additional 2 years (making it a total of 6 years). [5] This is an extended pioneer status period as against the maximum 5-year cumulative period applicable to other approved sectors.

New Filing Requirement for Free Zone Entities:

Companies operating in Free Trade Zones are now required to file tax returns with the Federal Inland Revenue Service ("**FIRS**"). Failure to do so will attract penalties.[6]

Electronic Money Transfer Levy:

The Act introduces a one-off charge of NGN50.00 to be known as the Electronic Money Transfer Levy ("**EMTL**") on electronic receipts, transfers and deposits of money in the sum of NGN10,000.00 or more. The levy replaces stamp duties hitherto charged on electronic transfers and deposits of money. Revenue made from EMTL will be shared based on derivation with 15% accruing to the Federal Government and the Federal Capital Territory, whilst the remaining 85% would be shared by the states.[7]

Education Tax Exemption for Small Companies:

Small companies are now exempt from the payment of 2% Education Tax. [8] This provides the required clarity missing under the Finance Act 2019 regarding whether small companies which are exempt from the payment of CIT would be required to pay Education Tax.

Expansion of the scope of Significant Economic Presence ("SEP"):

The Act provides for the payment of PIT on gains or profits derived by a non-resident (individual, executor and trustee) from providing technical, management, consultancy or professional services to a person resident in Nigeria, where such non-resident person has significant economic presence in Nigeria. By this provision, the Act introduces SEP rules to the PIT regime in Nigeria. It also empowers the Minister of Finance to issue additional rules to define what constitutes SEP under the PITA.[9]

The Withholding Tax ("**WHT**") paid by a non-resident person who is liable to PIT under the SEP provision would constitute final tax for that person.

Deductibility of Pension Contributions –

The Act clarifies that contributions to pension, provident or retirement benefit fund must be recognized under the Pension Reform Act to be deductible for the purpose of PIT assessment. [10]

[3] Section 39 of the Act
[4] Section 45 of the Act
[5] Section 23 of the Act
[6] Sections 58 and 59 of the Act
[7] Section 48 of the Act
[8] Section 34 of the Act
[9] Section 25 of the Act
[10] Section 26 of the Act

Deductibility of COVID-19 Donations:

Donations made by companies either in cash or kind to COVID-19 intervention funds set up by either the Federal Government, State Governments or any of their agencies are now deductible. Deductibility of those donations is however restricted to 10 per cent of assessable profits after deduction of other allowable donations.[11]

Gas Utilization (Down Stream Operations):

The Act clarifies that a company that claims the gas utilization incentive (for downstream operations) under the CITA would not be entitled to similar incentives in respect of the same qualifying capital expenditure under the Petroleum Profits Tax Act, the IDITRA or any other law.[12]

Exemption of Sale and Rental of Residential/Commercial Building from VAT:

The Act provides that transfer of interest in land and building are exempted from the definition of service under the VAT Act. The Finance Act 2019 had also established that interests in land do not qualify as VAT-able goods. With these provisions, it appears that the controversy surrounding the VAT-ability of interests in land and buildings (including leases) has been resolved[13].

Service of Notice of Assessment and Objections:

Notices of Assessment of taxes can now be served on taxpayers electronically or by courier[14].

Virtual Hearings for Tax Appeal Tribunal ("TAT"):

The Act empowers the TAT to conduct hearings remotely via virtual means, using such technology or application as may be necessary to ensure a fair hearing.[15]

Supplies of Goods and Services Deemed to take place in Nigeria:

For the purpose of VAT assessment, the Act expands the scope of when supplies of goods or services will be deemed to have been made in Nigeria. In respect of goods, supplies are deemed made in Nigeria where the goods are physically present in Nigeria, or the beneficial ownership of the rights over the goods resides in a taxable person in Nigeria and the goods or rights are situated, registered or exercisable in Nigeria.

With respect to services, services are supplied in Nigeria where they are rendered to a person in Nigerian by another who is physically present in Nigeria, or consumed by a person in Nigeria (regardless of its origin) or connected with immovable property situate in Nigeria. Incorporeal rights are deemed supplied in Nigeria where the person exploiting same is in Nigeria, or the right is registered, assigned or acquired by a person in Nigeria or it is connected with an immovable asset located in Nigeria.[16]

Time of Supply of Goods or Services for Value Added Tax ("VAT") purposes:

The Act clarifies that, for VAT purposes, the time of supply of goods or services is the earlier of the date of the supply or the date of issuance of an invoice or receipt. There is a special consideration for related party transactions and for supplies of goods and services which are done successively. For related party transactions where no invoice has been issued, the time of supply will be the time the goods were moved or for immovable goods/incorporeal, the time they became available to the recipient party. For services, it shall be when they were furnished.

For rental payments, it will be the earlier of when payment became due or is received. With respect to successive supplies of goods and services, each successive supply shall be

[11] Section 11 of the Act
[12] Section 14 of the Act
[13] The question as to whether interests in land and buildings are liable to payment of VAT is a long-debated question which has elicited conflicting answers from judicial bodies. For example, in September 2020, the Lagos Zone of the Tax Appeal Tribunal in ***Ess-ay Holdings Limited v FIRS*** held that a lease of real property whether for commercial or residential purposes is not subject to Value Added Tax (VAT). However, a day earlier, the South-South Zone of the Tax Appeal Tribunal sitting in Benin made a contrary decision in ***J.W. Ellah, Sons & Company Ltd. v. FIRS***.
[14] Sections 18 and 19 of the Act
[15] Section 57 of the Act
[16] Section 40 of the Act

deemed to take place when payment becomes due or is received or an invoice relating to only that payment is issued, whichever occurs first. [17]

Compensation for loss of office:

Sums obtained by way of compensation for loss of office will only be chargeable to CGT if in excess of NGN10 million as against the previous provision of NGN10,000.00. Only the excess amount shall be chargeable to CGT. An employer paying such compensation is responsible for deducting the tax due at the point of payment and remitting same to the relevant tax authority, within the specified period under the Pay As You Earn regulations.[18]

Tax Registration of Non- Resident Companies (NRCs):

NRCs that make taxable supplies of goods or services to Nigeria are required to register for tax and obtain a Tax Identification Number which shall be included on the invoices for all taxable goods and services.[19] Also, such NRC may have a representative for the purpose of compliance with its tax obligation.

Non-Resident Companies engaged in Shipping and Air Transport:

The Act clarifies that section 14 of the CITA (which provides for the taxation of the income of NRCs engaged in shipping or air transport in Nigeria) does not apply to income from leasing, containers, non-freight operations or any incidental income of such companies that are otherwise liable to tax in Nigeria.[20]

Tax Returns:

The Act provides that where a company, by a deliberate and dishonest act, fails to declare a true and correct amount of profits or tax payable, interest and penalty on the outstanding tax shall accrue from the date of the incorrect tax return. .[21]

Further, the Act now expressly stipulates that NRCs liable to tax under section 13(2) shall file tax returns. The Act stipulates the contents of such returns and excludes NRCs whose WHT obligation constitutes final tax.[22] This provision is a welcome development as it resolves the hitherto lack of clarity as to whether NRC liable to only WHT should also file tax returns in Nigeria.

Books of account:

Every company (including NRCs) regardless of their tax exemption status are required to maintain books of accounts in relations to all their transactions.[23]

Protection of Taxpayers Data:

The Act confirms that the FIRS would heed to data protection laws whilst executing its functions. Further, it stipulates a penalty for unauthorised use or release of taxpayer's information by an employee or former employee of the FIRS.[24]

Right of Shareholders to Claim for Dividend:

For private companies, where dividends are unclaimed after 12 years, the dividends are to be included in the distributable profits of the company and distributed to other shareholders of the company. For public companies quoted on the Nigerian Stock Exchange (“**NSE**”), dividends unclaimed after six years shall be transferred to the Unclaimed Funds Trust Fund.[25]

Establishment of Crisis Intervention Fund and Unclaimed Funds Trust Fund:

The Act provides that the sum of NGN500billion shall be approved from the Consolidated Revenue Fund and the Special Accounts for the establishment of a Crisis Intervention Fund. There is also to be

[17] Section 41 of the Act
[18] Section 4 of the Act
[19] Section 43 of the Act
[2020] Section 8 of the Act.
[21] Section 15 of the Act.
[22] Section 16 of the Act
[23] Section 17 of the Act
[24] Section 54 of the Act
[25] Section 60 of the Act

established as a sub-fund of the Crisis Intervention Fund, an Unclaimed Funds Trust Fund, where every unclaimed dividend of a public company quoted on the NSE and any unutilized amounts in dormant bank accounts maintained by deposit money banks shall be transferred. Such unclaimed dividends and unutilized amounts transferred to the Unclaimed Funds Trust Fund shall be a special debt owed by the Federal Government to the shareholders and dormant bank account holders and shall be available for claim at any time.

Conclusion

Given that the Act introduces several salient changes to the Nigerian tax and regulatory framework, corporate and non-corporate taxpayers operating in the Nigerian economy are advised to seek legal advice on how these provisions impact their tax obligations including benefitting from tax incentives that may be available to them.

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