

## FINANCE ACT 2021: WHAT HAS CHANGED?



**“...disposal of shares by (both resident and non-resident persons) in a Nigerian company will now attract CGT at 10%.”**

The President has signed the Finance Act 2021 (“the Act”) into law, the third of its kind since its re-introduction in 2019 to accompany the annual budgets. The Act, which is effective from 1 January 2022, introduces some changes to both tax and non-tax statutes.

The Act amends thirteen (13) existing statutes – Capital Gains Tax Act, Companies Income Tax Act, Value Added Tax Act, Personal Income Tax Act, Tertiary Education Trust Fund (Establishment) Act, Stamp Duties Act, Customs and Excise Tariff etc. (Consolidated) Act, Federal Inland Revenue Service Establishment Act, Fiscal Responsibility Act, Nigerian Police Trust Fund (Establishment) Act, National Agency for Science and

Engineering Infrastructure Act, Insurance Act, and the Finance (Control and Management) Act.

### Key Changes

#### Capital Gains Tax Act

#### Gains on Disposal of Shares now liable to CGT

Section 30 of the CGTA is amended to birth a new regime for disposal of stocks and shares in Nigeria. While disposal of government securities such as Nigerian treasury bonds, premium bonds and transfers between borrowers and lenders in regulated securities transaction, remain exempted from CGT, disposal of shares by (both resident and non-resident persons) in a Nigerian company will now attract CGT at 10%. For this to

apply however, the proceeds of such disposal must not be less than ₦100m in any 12 consecutive months.

The amendment includes a 'rollover relief' clause which exempts the gains from tax if the proceeds of disposal are reinvested in the shares of a Nigerian company within the same year of assessment. However, where there is partial rollover, the gain related to the portion not reinvested, will be liable to CGT.

The major challenges would be how to ascertain and monitor when the threshold have been met by investors, including foreign investors who are not required to file tax returns in Nigeria. While the law may be silent as to who is



**Fidelis Chukwu**  
Senior Manager  
fchukwu@pedabo.com



**Oluwasanmi Ogunsanwo**  
Assistant Manager  
oogunsanwo@pedabo.com

**Lagos Office:**  
67, Norman Williams Street  
South West, Ikoyi  
Lagos, Nigeria  
Tel: 01-2919041; 0808 820 8747  
info@pedabo.com  
www.pedabo.com

**Abuja Office:**  
4th Floor, Grand Square  
Mohammed Buhari Road  
Central Business District,  
Abuja  
Tel: 09-8707692

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from the Nigerian resident to whom the taxable supplies are made where the NRC or its appointed agent fails to collect the VAT, following the amendment to Section 10.

### 2. FIRS Circulars to Guide Non-Resident Companies

With the amendment of Section 10 of the VAT Act, circulars issued by FIRS would now serve as the operating documents in respect of charging, filing and remittance of VAT for non-resident companies in relation to taxable transactions in Nigeria.

### Stamp Duties Act

#### Administration of Electronic Money Transfer (EMT) Levy

It would be recalled that the Finance Act of 2020 introduced the EMT Levy to be charged on electronic transfer of monies from ₦10,000 and above. This Act now amends Section 89A of the Stamp Duties Act and mandates the Minister of Finance to make regulations for the imposition, administration, collection, and remittance of the Levy.

Similarly, regulations relating to the auditing, accounting, allocation and distribution of arrears of the relevant stamp duties and EMT Levies

collected between 2015 and 2019 fiscal years, is to be made by the Minister within 30 days of commencement of the Finance Act 2021.

### Other Notable Changes introduced by the Finance Act 2021

#### 1. Increase in Education Tax Rate

Tertiary education tax chargeable on the assessable profit of a Nigerian company has been increased from 2% to 2.5%, following the amendment to Section 2 of the Tertiary Education Trust Fund (Establishment) Act.

#### 2. FIRS to Administer Police Trust Fund Levy

Some clarity has been provided in respect of the Police Trust Fund Levy which was introduced in 2019. FIRS now expressly declared as the responsible agency to assess, collect, account and enforce the payment of the Levy.

#### 3. NASENI Levy

The Finance Act has amended the National Agency for Science and Engineering Infrastructure (NASENI) Establishment Act, to make companies with a turnover of ₦100m and above liable to a levy of 0.25% of their profit before tax, payable to

the NASENI Fund. This levy applies only to companies engaged in banking, telecommunications, ICT, aviation, maritime, and oil and gas activities. The amendment empowers FIRS to administer the assessment, collection and administration of the levy.

#### 4. Excise Duty on Non-Alcoholic Drinks

Section 21 of the Customs & Excise Tariffs Act has been amended by introducing an excise duty of ₦10 per litre on non-alcoholic, carbonated and sweetened beverages.

Unlike the last two Finance Acts, the 2021 Act has introduced some taxes and increased some tax rates. This requires careful consideration by taxpayers to avoid the penalty for non-compliance. However, clarifications are still expected from the appropriate authorities in respect of some grey areas of the Act.

These clarifications will help to boost compliance, even as we commend the Federal Government for continuously demonstrating its commitment to update the tax laws via the annual Finance Acts. It is expected that this will bring Nigerian tax laws at par with current realities which will in turn ensure that taxation plays its role in the economy.



**Lagos Office:**  
 67, Norman Williams Street  
 South West, Ikoyi  
 Lagos, Nigeria  
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