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NewsLetter

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Finance Act 2023:
Key Changes and New Introductions

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"...The Finance Act 2023 provides mainly for the correction and updating of the various tax laws to align with current realities..."

The Finance Act 2023 ("the Act") was finally assented to by His Excellency, President Muhammadu Buhari on the 28th May 2023 just before he left office. It is the fourth of its kind since the reintroduction of the annual Finance Act in 2019. The Finance Act which has an effective date of 1st May 2023 amends some provisions in eleven (11) existing statutes.

The Act is aimed at promoting the macroeconomic policy reforms of the federal government, whilst making additional provisions and amendments to specific laws to improve tax administration and collections.

The amended statutes include Capital Gains Tax Act, Companies Income Tax Act, Customs and Excise Tariff etc. (Consolidated) Act, Personal Income Tax Act, Petroleum Profit Tax Act, Stamp Duty Act, Value Added Tax Act, Tertiary Education Trust Fund (Establishment) Act, Corrupt Practices & Other Related offences Act, Public Procurement Act and Ministry of Finance (Incorporated) Act.

KEY CHANGES

Capital Gains Tax Act (CGTA)

Amendments to the CGTA include the introduction of a new Section 3(a) which brings gains from the sale of digital assets to the list of chargeable assets. This means that any gains realised from sale of Bitcoins and other crypto currencies are now taxable under the CGTA, a first initiative towards the taxation of crypto transactions in Nigeria.

Section 5 of CGTA has also been amended to allow for the deduction of loss from the sale of shares from the gains made in subsequent periods from similar transactions, provided that such losses are not carried forward beyond five (5) years from when the loss was incurred. Similarly, Section 31(6) has been amended to allow taxpayers to claim a Roll-Over Relief on the disposal of shares and stocks. Prior to this amendment, roll-over relief was only applicable to sale of buildings, plant & machinery, ships, aircrafts, and goodwill. The introduction of roll-over relief for taxing gains from the disposal of shares implies that the chargeable gains for subsequent disposal of reinvested proceeds will be determined using the cost of the assets whose disposal proceeds were reinvested and not the cost of acquiring the new asset now disposed.

Companies Income Tax Act (CITA)

The amendments to CITA include the streamlining of capital allowance claimable by companies, with the repeal of Sections 32 and 34 which hitherto granted the popular 10% investment allowance on plant and equipment as well as the rural investment allowance which ranged from 15% to 100%. Any previously claimed but yet to be fully utilised allowances shall remain available to the company. However, there is good news for upstream and midstream gas companies who are now allowed to recover their capital allowance to the maximum possible each year, via the amendment of Section 24 (7) of the Second Schedule to CITA. The hitherto restriction of capital allowance to 66 2/3% will no longer apply to these companies.

The amendment of Section 14(4) of CITA has now also given legitimacy to the request by the tax authority for foreign shipping companies and airlines

to submit some form of special financial statements of their Nigerian operations, certified by directors and a Nigerian auditor, as part of their tax returns in Nigeria. The companies must also be able to furnish the FIRS with details of all invoices issued to customers during the period. Furthermore, a new subsection (6) has been inserted in Section 14 to mandate Nigerian regulators of shipping and air transport operators to request evidence of income tax filing and tax clearance certificates before granting permits or relevant approvals to carry on business in Nigeria.

Finally, Section 37 has been deleted from CITA, thereby withdrawing the hitherto incentive that granted 25% exemption for hotels on incomes received in convertible (foreign) currencies. This means that all the income of a hotel business are now fully taxable unless otherwise exempted. However, companies that have set aside reserved funds shall continue to enjoy the exemption until the funds are fully utilised or lapsed after five years, whichever occurs first.

Petroleum Profit Tax Act (PPTA)

The amendments to the PPTA are in three main areas:

- **Deduction of Contributions to Decommissioning and Abandonment Fund (DAF):** A new paragraph (1A) was introduced to Section 10 to allow for tax-deduction of any amount contributed to a fund, scheme or arrangement approved by the Nigerian Upstream Petroleum Regulatory Commission for the purpose of decommissioning and abandonment. However, any surplus or residue of the fund after decommissioning and abandonment of the field shall be subject to tax under PPTA. This amendment gives equal benefits to companies that are yet to convert to the Petroleum Industry Act (PIA) with regards to these costs, as granted under the PIA.

- **Additional Chargeable Tax:** A new Section 23 has been introduced to replace the old provision, also to align with Section 268 of PIA which provides the basis for determining the total value of Chargeable Oil for a period, i.e. the number of barrels of crude oil determined at the measurement point multiplied by the fiscal oil price per barrel, provided that the Nigerian Upstream Regulatory Commission (NUPRC) have the power to establish the fiscal oil price for any stream for which no fiscal price is available.

- **Updated Penalty Regime:** Amendments to align the penalty regime under PPTA with that of the PIA have been made by the introduction of a new Section 30(4) and the amendments of Sections 51, 52, and 53, and the deletion of Section 55. The new penalty regime is summarised in the table below.

Section	Offences	New Penalties
30 (4)	Penalty for Late Filing of Returns	N10 million on the first day and N2 million every subsequent day in which the failure continues. Previously N10,000 on the first day and N2,000 every subsequent day in which the failure continues
51	Penalty for Offences and Other Offences for which no penalty is specifically provided.	▪ Administrative penalty of N10million on the first day of such offence and N2 million every subsequent day in which the failure continues. ▪ Fine of N20 million or as may be prescribed by the Minister of Finance, Budget and National Planning upon conviction or imprisonment for 6 months or to both fine and imprisonment. Previously N10,000 on the first day and N2,000 every subsequent day in which the failure continues.
52	Penalty for making incorrect accounts	Administrative penalty of N15m or 1% of the amount of tax which has been undercharged, whichever is higher. Previously N1,000 and double the amount of tax in respect of which the offence was committed.
53	Penalty for false statement and returns	Administrative penalty of N15m or 1% of the amount of tax which has been undercharged, whichever is higher. Previously N1,000 and treble the amount of tax in respect of which the offence was committed.

Value Added Tax Act (VAT)

There are also three (3) notable amendments to the VAT Act; first is with regards to the shortened due date for filing VAT returns for companies appointed to withhold VAT at source, via the amendment of Section 14(3). Such companies are now to remit the withheld VAT within 14 days following the month of transaction. It is expected that this will allow enough time for the beneficiaries of the VAT withheld to have access to the credit arising from the payment within the same return circle.

Also amended is Section 16(3) of VAT Act to cater for the supply of goods to Nigeria via digital platforms operated by a non-resident supplier that has been appointed by FIRS as agents for the collection of VAT. With this amendment, the risk of double taxation at the port of entry by inclusion of VAT by the Nigerian Customs Service has been eliminated. The non-resident supplier/importer must however provide proof of such appointment by FIRS, or other documentation to be advised by FIRS at the point of clearing.

The term "Building" has been redefined in Section 46 to exclude fixtures or structures that can easily be removed from land, such as radio and television masts, transmission lines, cell towers, mobile homes, caravans and trailers. This implies that rent paid for the use of these excluded items will no longer be exempted from VAT.

Other Notable Changes: the Finance Act 2023 also contains some other important provisions, such as the following:

a. Increase in Tertiary Education Tax rate from 2.5% to 3% based on the amendment of Section 1 (2) of the Tertiary Education Trust Fund (Establishment) Act, and this comes only one year after the rate was increased from 2% to 2.5%
b. Introduction of Excise Duty on all Services provided in Nigeria, including telecommunication services. An Order to be signed by the President is expected to guide the implementation.
c. Duty on Imported Goods from Outside Africa: A 0.5% special levy on all eligible goods imported into Nigeria from outside Africa. The proceeds of this levy is earmarked for financing capital contributions, subscriptions and other financial obligations to multilateral institutions to which Nigeria belongs. A regulation detailing the eligible goods and the process of collection is expected to be issued by the Minister of Finance.
d. Deduction of Life Insurance Premium for PAYE: Payment of premiums under a contract of life insurance or deferred annuity in the preceding year on the life of the taxpayer or that of his/her spouse has again been reintroduced as a tax relief via the amendment of Section 33 of the Personal Income Tax Act (PITA). However, any withdrawals before the end of the 5th year from the date the premium was

paid shall be subject to tax at the point of withdrawal.
e. Distribution of EMT Levy to be based on Derivation: Revenue accruing from the Electronic Money Transfer Levy shall now be distributed on the basis of derivation, with 50% going to States, 35% to Local Government Areas and 15% to the Federal Government. The Minister of Finance is expected to issue Regulations on how financial institutions are to make returns to enable the implementation of this new provision.

Conclusion

The Finance Act 2023 provides mainly for the correction and updating of the various tax laws to align with current realities, remove redundant provisions and eliminate some perceived ambiguities that may have affected effective implementation in the past. It is expected that the fiscal authorities will be issuing further implementation guidance soon, but a common question in the minds of most people would be how the unusual effective date of 1st May 2023 will affect implementation, considering that the year is already almost half-spent, and with income tax returns for 2023 year of assessment just 60 days away from the effective date and barely 30 days from the date the law first became public, even though the official gazette is yet to be published.

The above concerns notwithstanding, taxpayers are advised to get acquainted with the new changes introduced and put in place all necessary mechanisms to ensure the smooth transition to the new requirements introduced by the Finance Act on their businesses. Lastly, it is important for taxpayers to evaluate the impact of the Act on their businesses and seek professional guidance where necessary.

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