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Finance Bill 2019 - Introduction of Noteworthy Changes in the Nigerian Tax Laws

It would be recalled that President Muhammadu Buhari GCFR presented the budget estimates for 2020 to the joint session of the National Assembly on October 8 2019. The budget proposal includes a total expenditure of over N10 trillion to be funded with revenues of N8.1 trillion, with non-oil tax revenue contributing about 22% of the total revenue. It is in view of the important role that tax revenue is expected to play in the funding of the budget that the government has also presented a finance bill alongside the budget. The Finance Bill 2019 is geared towards reforming the tax system and shoring up revenue for the government.

The Finance Bill 2019 proposes amendments to virtually all the tax laws currently in force in Nigeria, but more extensively to the Companies Income Tax Act and the Value Added Tax Act.

Some of the major highlights of the Bill, as they affect each tax law are enumerated in the following paragraphs.

Companies Income Tax Act (CITA)

Foreign Companies – Section 13: Foreign companies will now be liable to a minimum of withholding tax deduction on all technical, management or professional consultancy service rendered to a Nigerian company, provided the foreign company has a significant economic presence in Nigeria. The Minister of Finance is empowered to determine whether a particular transaction involved a significant economic presence in Nigeria. Similarly, a foreign company providing remote communication and e-commerce activities to Nigerian customers will now also be liable to income tax in Nigeria. The withholding tax deducted from foreign companies whose only income from Nigeria is consultancy, professional, technical or management fees would now be the final tax, whether or not the company has a significant economic presence in Nigeria.

Taxation of Insurance Companies – Section 16: The ambiguities in the section which had made the taxation of insurance companies a subject of controversies, especially its inconsistencies with the requirements of the Insurance Act have now also been clarified. Furthermore, insurance companies will also be able to carry forward their losses indefinitely, just like all other companies.

Excess Dividend Tax – Section 19: The provision for the taxation of excess dividend is now simplified, to exclude dividends paid out of retained earnings that have previously suffered adequate tax and dividend paid out of franked investment incomes.

Real Estate Investment Trusts (REIT): Various provisions have now also been made for REIT companies to make them more attractive investment vehicles. REITS will be able to distribute dividends without incurring excess dividend tax. REITs will also not be liable to any income tax provided they distribute not less than 75% of the total dividends and rental income earned in the period and within 12 months of the year end. Normal tax treatment will however apply on other incomes earned by the REIT outside of rents and dividends.

New Incentives: The Bill has introduced the following new incentives:

- Turnover threshold for Small Companies increased to N25 million from N1 million. These companies will also be exempted from the payment of income tax.
- Classification of companies with turnover of between N25 million and N100 million as Medium Companies with reduced tax rate of 20%.
- Medium companies will enjoy 2% tax discount for early payment of income tax, while large companies will receive a 1% discount. Early payment is payment of income tax not later than 90 days before the due date.

Deductions not allowed – Section 27: Expenses incurred on non-taxable income will no longer be deductible from taxable profits, while all related party transactions shall be in line with Transfer Pricing Regulations.

Minimum Tax – Section 33: This provision has also now been simplified by restricting the base to only 0.5% of turnover. The current practice of imposing tax on a company's share capital and net asset is to be dispensed with.

Commencement and Cessation Rules – Section 29: The Bill seeks to amend the rules governing commencement and cessation of business by replacing the current basis of computation with actual year basis. There is still some confusion with the wordings for the third and subsequent years of commencement, as it is not clear whether the intention is to discard the prior year basis of assessment entirely or repeat the second year in the third year. We hope this will be clarified during the legislative process.

Thin Capitalization: For the first time in Nigerian taxation, thin capitalization rules are being introduced. Interest payable on foreign related party loan is now restricted to 30% of earnings before interest, tax, depreciation and amortization (EBITDA) in line with the OECD recommendation on the BEPS action plan.

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Excess interest not deductible can however be carried forward to the next assessment year but to a maximum of five (5) years from when the interest was first incurred. Banks and Insurance companies are however exempted from this restriction.

Penalties – Section 55: The penalty for late filing of income tax returns is to be reviewed to N50,000 (previously N25,000) for the first month of lateness and N25,000 (previously N5,000) for each subsequent month until the returns are filed.

Value Added Tax Act

Proposed amendments to the VAT Act include principally the increase in the VAT rate to 7.5% from the existing 5% and the introduction of N25million turnover threshold for companies to file VAT returns. Other amendments include:

- Expansion of the definition of "supply of goods and services" to now include intangibles.
- Expansion and clearer definition of "basic food items."
- Inclusion of additional items such as locally manufactured sanitary pads and school tuition in the VAT exemption list.
- Some clarification on the requirement for self-charge of VAT on imported services and an attempt to clarify what constitutes exported services for exemption from VAT.
- Penalty for not filing VAT returns is also to increase to N50,000 in the first month and N25,000 for each subsequent month of default.

Petroleum Profit Tax Act

The only proposed amendment to the PPTA is to impose a withholding tax of 10% on the dividend paid by petroleum companies that have been taxed under the PPTA. This dividend is exempted from withholding tax under the current legislation.

Capital Gains Tax Act

Compensation for loss of office below N10 million is now exempted from capital gains tax.

Stamp Duties Act

The Finance Bill proposes to amend the Stamp Duties Act to legitimize the contentious charge of N50 bank deposits above N10,000, by extending the definition of "instrument" to include electronic documents, as well as "stamp" to include electronic stamp.

Our Comments

Most of the changes proposed in the Bill are long overdue and thus a welcome development, to align Nigeria's tax framework with the best global practices. While a total overhaul of the existing legislations would have been more desirable, we understand this approach may have been taken for the purpose of expediency. Although the Bill is currently undergoing legislative review, we are of the opinion that if passed into law, it will in no doubt enhance compliance especially with the incentives for small and medium businesses and the elimination of some of the provisions generally seen as anti-business in the existing laws.

We urge active participation of the business and professional community in the legislative process to ensure that the final product will meet the objectives set by the government for the introduction of the Bill.