



FINANCE ACT 2020: AMENDMENTS, PROSPECTS AND CHALLENGES

On 31 December 2020, President Muhammadu Buhari signed the Finance Act 2020 alongside the Appropriation Act into law. One would recall that a similarly named legislation; Finance Act 2019 (FA19) was signed into law in 2019 so as to [align with the country's ever-changing economic realities and address the emerging challenges](#).

Consequently, the Finance Act 2020, which took effect from 1st January 2021, comes as a sequel to the FA19 and aims at addressing the shortcomings of the latter. Notably, the amendments introduced by the Act are in furtherance of the Federal Government of Nigeria's commitment to ensure that the tax and fiscal laws [are up-to-date and reflect current economic realities](#).

Hence, the Act introduces amendments to fourteen (14) fiscal legislations, including principal tax legislations. **Our focus in this piece will be on Nine (9) key amendments made to principal tax legislations.**

1. CAPITAL GAINS TAX ACT

The Finance Act makes amendments to the CGTA thus:

❖ **Compensation for loss of office:** [Section 4 of the FA20](#) amends section 36(2) of the CGTA to the effect that only the excess of ₦10 million paid as compensation for loss of office is subject to capital gains tax. That is, Capital Gains Tax (CGT) on compensation for loss of office is limited to an amount in excess of N10 million. So, where a company loses its office and realises a sum lower than N10 million, it won't be required to pay capital gains tax on such money. It further states that the person paying such compensation for loss of office is required to deduct the CGT due and remit same to the relevant tax authority under the Pay As You Earn (PAYE) regulations.

❖ **Due date for filing and payment:** Controversially, the Act, in section 2, amends section 2 of the CGTA and stipulates the filing of capital gains tax (CGT) returns and the payment of CGT arising from the disposal of chargeable assets in a particular year is due on or before 30 June and 31 December of the same year. The provision has been termed "[ambiguous](#)" having provided two dates for filing of returns and payments of CGT. [An explanation](#) has however been given thus: that filing of CGT returns and payments of CGT for disposals made before June 30 are to be made on June 30, whereas those made after June 30, should be made on 31 December. Also, this provision clashes with an existing provision of the Act, particularly section 43 of the Schedule, which provides that the filing of CGT returns shall be made in accordance with the PITA and the CITA. Whereas, the PITA and CITA already stipulate 3 months and 6 months respectively for filing of returns.

2. COMPANIES INCOME TAX ACT (CITA)

The Finance Act 2020 (FA20) makes amendment with respect to the CITA thus:

❖ **Minimum Rate Reduction:**

Notably, the minimum tax rate at "0.5%, less franked investment income" is applicable where companies run at a loss or where their profits are significantly inadequate to tax or even lower than the minimum tax rate. However, based on the amendment of S.33 of CITA by [S.13 of the FA20](#), a proviso has been added to reduce the minimum tax from 0.5% to 0.25% for 2020 and 2021 years of assessment only; and the old rate will be reverted to thereafter. This in its own is to provide some relief to companies that fall under this category even in the face of the dire economic crisis that the previous year posed. Nevertheless, it is argued that this provision is soon to be amended because the intention of the draftsmen, logically, is that the reduction to 0.25% affects the years 2021 and 2022, since 2020 tax returns have been filed by companies under the Finance Act 2019 tax rate of 0.5%.

❖ **Non-resident companies filing:** The Federal government in its bid to tie up loose ends and ensure proper compliance has amended S. 55 of the CITA in S.16 which clarifies that income tax returns of Non-resident Companies (NRCs) must include the full audited financial statements of the companies and financial statements of the Nigerian operations, duly certified by independent auditors in Nigeria. Still, the proviso thereto implies that this requirement does not apply to NRCs that has withholding tax as its final tax on incomes in Nigeria for a particular year of assessment.

2. VALUE ADDED TAX ACT

The Finance Act makes amendment with respect to the VATA thus:

❖ **NRCs Required To Obtain TIN:**

In furtherance of the nation's tax intelligence goals, NRCs making taxable supplies in Nigeria are now mandated to obtain a Tax Identification Number (TIN) upon registration with FIRS and may thus appoint representatives for the purposes of its tax obligations in Nigeria.

Also, in this wise, the qualification for an obligation to register for the tax purposes has changed from 'carrying on business in Nigeria' to 'makes a taxable supply of goods or services to Nigeria'. See s.43 FA20 which amends s.10 of the VATA

❖ **Expansion of VAT-Exempt Goods and Services:**

Commercial aircrafts, aircraft engines and spare parts as well as commercial airline tickets and lease of agricultural equipment for agricultural purposes now exempted from VAT. Also, animal feed now deemed as basic food item, and as such not subject to VAT. See section 45 FA20 which amends the schedule to the VATA.

4.PERSONAL INCOME TAX ACT

The Act makes amendment with respect to the PITA thus:

❖ **Exclusion of Minimum Tax Earners From Personal Income Tax:**

Earners who are within the minimum wage bracket (i.e those paid N30,000 or less) are now exempted from the

payment of Personal Income Tax under the Pay As You Earn system (PAYE). However, their employers are still required to file annual tax returns. See s.33 amending the third schedule of the PITA.

- ❖ **Significant Economic Presence Rule For Individuals:** Interestingly, we all know by now that the Federal government is already striving to tax incomes of persons who make money from Nigeria but don't reside in the country. By this new law, there is an inclusion introduced in S.25 of the FA 2020, stating that services provided by an individual, executor, or trustee outside Nigeria and who are providing technical, management, consultancy or professional services to a person resident in Nigeria, shall be deemed as provided in Nigeria & be subject to tax in Nigeria to the extent that such individual, executor or trustee has significant economic presence in Nigeria. Although, this provision does not apply to income of non-resident persons who do not fall within the

scope of S. 6 of the PITA, as such persons are only liable to withholding. Lastly, the Minister is to determine what constitutes the SEP of a non-resident individual.

5. STAMP DUTIES ACT (SDA)

The Act makes amendments to the SDA thus:

- ❖ **New "Stamp" Definition**
The definition of stamp was amended to include the utilization of adhesive stamp produced by the Nigeria Postal Service. See; S.46 FA20
- ❖ **Electronic Money Transfer Levy**
S.48 FA20 introduces Electronic Money Transfer Levy which applies on electronic receipts or electronic transfer for money deposits in any deposit money, bank or financial institution. [The charge remains N50, as with the preceding stamp duty charges, for receipts or transfers above N10,000.](#) Furthermore, the Minister of Finance shall make regulations for imposition, administration, collection and remittance of the Levy.

This leaves the mandate for the administration of the Levy open to another government agency other than the (FIRS).

6. CUSTOM AND EXCISE TARIFF, ETC (CONSOLIDATION ACT) ACT (CETA)

The FA20 amends the CETA thus:

- ❖ Previous exemption from excise duty on imported goods that are not locally produced in Nigeria, and raw materials that are not locally available in Nigeria, will no longer apply. [S.37 FA20.](#)
- ❖ Telecommunication services provided in Nigeria will now be liable to excise duties at rates to be specified by the President. S.37 FA20.
- ❖ Reduction on import duties and levies on tractors and motor vehicles. Ranging from 35/30% to reduced rates of 10/5%. [S.38 FA20.](#)

7. FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT (FIRSEA)

The FA20 amends the FISREA thus:

❖ **Tax refunds:** Here, the Finance Act has made provision for the Attorney-General of the Federation to open a dedicated account for the sole purpose of providing refunds of tax payers money for any kind of tax-type. This is to provide clarity as to how tax payers who have been wrongly taxed, will be able to get their funds promptly remitted back into their accounts.

❖ **Administration of tax laws.**

FIRS are empowered to use technology to collect taxpayer information and ensure the confidentiality of information collected. Also, the Tax Appeal Tribunal may now conduct its proceedings virtually. S.57 FA20

9. TERTIARY EDUCATION TRUST FUND ACT (TETFA)

Small companies (i.e. companies with an annual turnover of N120 million or less) are exempted from paying Tertiary Education Tax (TET). This gives legal backing to the current practice of exempting small companies from tertiary education tax (TET). See S.34 FA20. This is to encourage the growth of such companies, help them become more productive and not break down under excessive taxes.

9. INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT (IDITRA)

❖ **Pioneer Status for Primary Agricultural Production Companies:** By S.23 FA20, small or medium-sized companies involved in primary production i.e. these activities: crop, livestock, forestry and fisheries production are introduced as pioneer industries and are therefore eligible to apply for pioneer status incentive, that is, a period of tax freedom for four(4) years which may be extended with an additional two (2) years subject to "satisfactory performance". Companies involved in these activities are only allowed to apply for incentives to the president through the Minister under IDITRA and not CITA.

PROSPECTS AND CHALLENGES

The impacts of the Finance Act 2020 on Nigeria's fiscal and economic outlook are relatively favorable and promising when we take into consideration the economic crisis the country is currently faced with. This is excellent news. Particularly because it is projected to encourage accelerated revenue mobilization in Nigeria, provide proper incentives for the business environment, promote fiscal equity and strengthen the economy to keep pace with international best practices, among other things.

Giving a holistic view to the new Finance Act, it is evident that it bears significant changes bordering key issues affecting the economy, by incorporating revisions that seek to promote investments in infrastructure and capital market, which in turn provide some form of relief during these trying times. It is against this backdrop that we are going to discuss some of the impacts of the new Finance Act on the economy.

Quite noticeably, the Finance Act exempted low-income earners of N30, 000 and below from the Personal Income Tax. This will serve as a boost to the large percentage of individuals who are within this wage bracket, and with the high inflation rate that currently subsists in the country, such development will inevitably reduce the apparent burden on the people in this category and also increase their purchasing power.

Analysts have also indicated that the law will encourage massive investments and additional incentives for SMEs engaged in primary agricultural production by granting them pioneer status which is a form of "tax holiday" for a total number of (6) years. This will boost investors' confidence and also bring a significant push to the economy, knowing that the small and medium enterprises account for over 20% of the GDP and over 50% of the business activities and employment in the country.

Furthermore, the Act also touches on the aviation sector by exempting commercial flight tickets from Value Added Tax (VAT). This is positive news to airline passengers and also helps cushion the downside of COVID-19 on them having endured the heavy prices of plane tickets, which have skyrocketed during the past year.

One very important issue at the front burner of recent discussions is the issue of unclaimed dividends in a listed company and dormant account balances that are unutilized for 6 years or more. The law states that such funds shall be directed into the Unclaimed Funds Trust Fund to be managed by the debt management office. The government has also assured that interests will be paid on these funds, but there is no clear indication as to how transparent the process will be conducted. Against this backdrop is the concern that the applicability of this innovative provision will

automatically make it retroactive and therefore will be a huge blow to the concerned individuals. More so, the law provided that owners of these dormant accounts will be able to claim these dividends plus the yields upon request. However, there are questions as to how seamless the procedures will be made, so there needs to be more clarity in this aspect.

In fact, the idea that the government will be assessing the funds itself will not only become a bottleneck for the government but also lead to an increase in the government liability over time and the problem of debt servicing will inevitably hit the roofs. The tentacles of excise duties have been spread to also include the telecommunications sector. This will surely become a burden on consumers that may have to pay additional costs on products made available by service providers.

ARTICLE WRITTEN BY:

CONCLUSION

Whilst it is certain that there are some grey areas requiring breakdown by the tax authorities through its circulars, the innovative provisions of the Act are quite commendable. More needs to be done in the area of effective and efficient administration. Therefore, the tax authorities need to be on the top of their game to enforce these laws to the latter.



Abdulateef Muhammed Ibrahim is a 3rd-year law student at the University of Ilorin. He is quite enthusiastic about tax matters and is readily available for opportunities that may expand his grasp of the field. He writes on tax and other related affairs. He can be reached on LinkedIn via <https://www.linkedin.com/in/abdulateef-muhammed-ibrahim-1a9748158> OR through his email on ibrahimlateef654@gmail.com

&



John Olamide Baiyeshea is a third-year student of the Faculty of law, University of Ilorin. He is an avid researcher and writer. His interests are in commercial law and revenue law. He can be contacted through: johnbaiyeshea20@gmail.com or through his [LinkedIn page](#)

NB: THIS PUBLICATION IS ONLY AN INFORMATIVE PIECE FROM THE EDITORIAL BOARD, THE TAX CLUB, UNIVERSITY OF ILORIN. FOR PROFESSIONAL ADVICE, REACH OUT TO EXPERTS.