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On January 13, 2020, President Muhammed Buhari, GCFR signed the Finance Bill 2019 into law. This Article will provide a background to the Finance Act 2020 (the **"Finance Act"** or the **"Act"**), give a few highlights of the Act and identify the impacts on the Act in relation thereto.

BACKGROUND

Nigeria's abysmal domestic revenue mobilization has hampered its economic growth and its quest to create an enabling framework for investments. The country has seen its oil revenues dwindle owning to constant oil production disruptions and price shocks. Further, non-oil revenues have been stagnant at less than 4% of GDP, offering no cushion against oil revenue instability.

The World Bank and IMF medium-term outlook for the country is that of a sluggishly growing but stable economy. Both international organisations projected GDP growth rate at 2.2% and 2.3% respectively. The consensus among industry practitioners is that there is room for improvement in economic outlook and that this could be achieved through a combination of rapid execution of policy reforms and deliberate effort on the part of the government to minimise legislative and regulatory uncertainty.

It is against the backdrop of this economic outlook that President Muhammadu Buhari submitted the Finance Bill to the National Assembly, to amend existing tax laws in Nigeria. It is fair to say that the main strategic objective of the Finance Act is to raise revenue for the Government with a view to reducing budget deficits.

HIGHLIGHTS OF THE FINANCE ACT 2020

The following are some of the major highlights of the Finance Act 2020:

(1) Introduction of a Progressive Company Income Tax System: Start-ups and small enterprises with annual gross turnover not exceeding N25 million would be completely exempted from paying companies income tax (**"CIT"**) subject to timely filing of CIT returns. Medium-sized companies whose turnover exceed N25 million but is less than N100million will be subject to CIT at 20%. Large companies (that is, companies with annual gross turnover of N100million and above) will pay tax at the standard CIT rate of 30%[1] .

(2) Increase in VAT Rate and Palliative Measures in Relation Thereto: The Finance Act provides for a value added tax (**"VAT"**) rate increase from 5% to 7.5%[2] . This is expected to increase VAT revenue significantly. To cushion the effect of the revised VAT rate increase and facilitate economic growth and development through SMEs, the Finance Act introduces palliative measures for micro and small enterprises. For example, the Act introduces a VAT compliance threshold - the threshold exempts companies with an annual turnover of N25,000,000 or less from registering for the tax, charging the tax, rendering a monthly return of its sales and purchase and from the penalties prescribed by the Act for non-compliance with its administrative provisions[3].

(3) Expansion of the list of VAT-Exempt Goods and Services: The Finance Act expands the list of VAT-exempt goods in the First Schedule to the Act to include locally manufactured sanitary towels, pads and tampons, as well as certain categories of "basic food items". Further, the Act also expands the list of VAT-exempt services to include tuition relating to nursery, primary, secondary and tertiary education[4] .

Exemption of Assets Transferred from VAT: The Act exempts assets transferred in a related-party business reorganization from VAT, provided the reorganization is between related parties who have been so related for a period of not less than 365days. The Act also requires the acquiring company to hold the underlying assets transferred for a minimum of 365days after the date of the transaction[5].

(4) Elimination of Double Taxation: The excess dividends tax rule provides in the Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria (**"LFN"**) 2004, (as amended by the Companies Income Tax Amendment Act No. 11 of 2007) mandates Nigerian companies to compare the dividends distributed with their taxable profits of the same year.

[1] *Section 16 Finance Act, 2020*

[2] *Section 34 Finance Act, 2020*

[3] *Section 38 Finance Act, 2020*

[4] *Section 47 Finance Act, 2020*

[5] *Section 49 Finance Act,2020*

Where the dividends exceed such profits, income tax at 30% is applied on the dividends. This is irrespective of whether the dividend is being paid out of previously taxed retained earnings or from tax-exempt income.

This double taxation has been a major cause for concern for entities that are part of Nigerian holding company structures, entities that reinvest their profits over time before paying dividends, and those that earn significant tax-exempt income. However, by virtue of the Finance Act, EDT will no longer apply to dividends paid out of previously taxed profits included in retained earnings; dividends paid from profits that are exempt by any tax law and distributions made by Real Estate Investment Companies[6].

(5) Removal of Tax Exemption on Petroleum Profits Dividends: The Finance Act revokes the Withholding Tax (**"WHT"**) exemption on income or dividends paid out of after-tax petroleum profits, provided for under section 60 of the Petroleum Profits Tax Act Cap. P13 LFN 2004 **("PPTA"**). Given that the exemption under section 60 of the PPTA was introduced as a palliative to upstream oil and gas investors whose profits suffer tax at a higher rate tax compared to the corporate income tax rate applicable to non-oil and gas businesses, it would appear that revoking the exemption will further worsen the tax burden of upstream oil and gas companies[7] .

(6) Digital Economy: The Act introduces new provisions under the CITA aimed at capturing the digital economy by adopting "significant economic presence" (**"SEP"**) to affix the affected companies with a fixed base in Nigeria. Prior to the Finance Act, Section 13 of the CITA subjected a non-resident company (**"NRC"**) to tax in Nigeria only if such company had a fixed base in Nigeria and the taxable profit was the profit attributable to that fixed base. Thus, NRCs who had no fixed base in Nigeria under the erstwhile tax regime and no tax obligation would be liable to Nigerian income tax so long as they meet the SEP threshold[8].

(7) Moderation of Foreign Loan Exemption: Under the previous provisions of the CITA, foreign companies were allowed to enjoy full or partial WHT exemption on interest where the terms of a loan provided to a Nigerian person meet the specific grace period and loan tenor requirements under the CITA. However, the Finance Act modifies these exemptions by revising downward the WHT exemption applicable on interest income on such foreign loans[9] .

(8) Amendment to Stamp Duty Act: The Act provides for modifications to the Stamp Duties Act Cap. S8 LFN 2004 the effect of which is to legalise the charge of stamp duties on electronic receipts. The Act also appoints the Federal Inland Revenue Service and State Internal Revenue Service as the competent authorities responsible for collecting stamp duty on behalf of the Federal Government and the State Governments, respectively[10] .

(9) The Nigerian Capital Market: The Act removes the requirement on unit trusts to deduct WHT on dividends paid to their beneficiaries in order to ensure consistency with the CITA provision exempting distributions to Unit Trust beneficiaries from WHT[11] .

(10) The Act requires every person (body corporate, trustee, partnership, etc.) to provide a tax identification number as a precondition for opening or continued operations of an account with a bank or any other financial institution[12] .

(11) The Act recognizes electronic mail as a mode of delivery of tax objection to the tax authorities[13].

CONCLUSION

The Finance Act is a step in the right direction, as it seeks to implement several important overdue changes to the Nigerian taxation regime while providing clarity on previously controversial tax issues. It is expected that the Act would stimulate economic activities and bolster investor confidence and create an opportunity for revenue mobilization in a more efficient and equitable manner that encourages economic growth and development.

[6] *Section 9 Finance Act, 2020*

[7] *Section 24 Finance Act,2020*

[8] *Section 37 Finance Act, 2020*

[9] *Section 23 Finance Act, 2020*

[10] *Section 54 Finance Act, 2020*

[11] *Section 36 Finance Act, 2020*

[12] *Section 28 Finance Act, 2020*

[13] *Section 54 Finance Act 2020*