The Finance Act 2019: what you should know

Newsletter Vol.1 2020

January 13, 2020, became a historical date in the annal of the Nigerian tax jurisprudence as the long-awaited Finance Bill 2019 was finally signed into law by President Mohammed Buhari. The bill was initiated by the Executive arm on the premise that Nigeria can no longer solely rely on oil proceeds as a means of revenue generation.

The principal objectives of the Finance Act 2019 ("the Act") are as follows:

a. Promoting fiscal equity by mitigating instances of regressive taxation;
b. Reforming domestic tax laws to align with global best practices;
c. Introducing tax incentives for investments in infra structure and capital markets;
d. Supporting small businesses in line with the ongoing ease of doing business reforms;
e. Raising revenue for government, by various fiscal measures, including a proposed increase in the rate of VAT from 5% to 7.5%.

Additionally, the Act amends the following Seven (7) Tax Legislations, namely:

1. Capital Gains Tax Act
2. Companies Income Tax Act
3. Customs and Excise (Consolidation) Tariff Act
4. Personal Income Tax Act
5. Petroleum Profit Tax Act
6. Stamp Duties Act
7. Value Added Tax Act

SALIENT HIGHLIGHTS

1. **Small Companies:** Henceforth companies with a gross turnover of N25 million or less are exempted from Company Income Tax (CIT). Also, small companies with supplies - the value of which does not exceed N25 million, individual or cumulatively are exempt from Value Added Tax (VAT). This implies that busi nesses that fall within this threshold are no longer obliged to pay corporation tax to the Federal Inland Revenue Service ("FIRS"), neither are they expected to charge nor remit VAT. This development will foster the economic growth of Micro, Small and Medium Scale Enterprises (MSMEs) and aid their ease of doing business. It will further encourage entrepreneurship and business innovation amongst the working segment of the country's population, facilitating a reduction in the high unemployment rates prevalent across the country. It is important to note that where CIT is exempted, Withholding Tax (WHT) on the com pany's income is also inapplicable.

   This is however without prejudice to the statutory obligation of a small company to file its annual tax returns with the FIRS.

2. **Medium-Sized Companies:** These are companies that earn a gross turnover between N25 million and N100 million. The payable CIT for these companies has been lowered from 30% to 20%. Also, there is a 2% rebate on the payable CIT as an encouragement for early payment of CIT, 90 days before the due date for filing.

3. **Large-sized Companies:** These are companies with a gross turnover above N100 million and are thus entitled to pay 30% Companies Income Tax (CIT). They are also entitled to a bonus of 1% for the early payment of CIT.

4. **50% increment VAT rate**: It suffices to state that the VAT rate has been increased from 5% to 7.5%. This is anticipated to increase the prices of goods and services. Government earnings and revenue will also increase.

5. **Excess Dividend Tax Rule**: This happens to be the most significant amendment to the CITA. It has finally addressed the controversies surrounding the previous interpretation and resultant double taxation. The current amendment exempts the following profits or dividends from further taxes:

I. Dividends paid out of retained earnings of a company, where such dividend have previously been subjected to tax under CITA, Petroleum Profits Tax Act (PPTA) or the Capital Gains Tax Act (CGTA);

II. Dividends paid out of profits, whereby such profits are exempted from income tax by the provisions of CITA, the Industrial Development (Income Tax Relief) Act, the Petroleum Profit Tax Act, or the Capital Gains Tax Act or any other legislation;

III. Profits that are regarded as Franked Investment Income under the CITA; and

IV. Rental income and Dividend Income from distributions made by a Real Estate Investment Company to its shareholders

6. **Exempted Goods and Services**: Specific goods and services listed in the First Schedule to the VAT Act (as amended) are now exempted from VAT. The Schedule was revised with the addition of new items and the definition of existing items. For instance, Tuition relating to nursery, primary, secondary and tertiary education and locally manufactured sanitary towels, pads or tampons are now included in the exemption list under Schedule 1 Part I and II of the Amended Act, and thus exempted from VAT.

In addition, existing items such as basic food items now comprise of agro and aqua-based staple foods such as additives, bread, cereals (raw or semi-processed), cooking oils, culinary herbs, fish, flour, starch, fruits, live or raw meat and poultry, milk, nuts, pulses, roots, salt, vegetables, natural and table water.

The result of this amendment may lead to a decrease in the market price of these items.

7. **Tax Identification Number (TIN)**: TIN requirement for opening and operating an account with any bank has been legitimized as the amended Act now mandates every new individual and pre-existing customers to have a TIN to operate an account in any Nigerian Bank.

8. **Stamp Duty Charge**: There is an introduction of N50 stamp duty charge on bank transfers of monies from N10,000 and above. However, the stamp duty charge will not apply to bank transfers between the same owner's accounts in the same bank.

9. **Non-Resident Companies**: These companies are now mandated to include VAT on their invoices, and the person to whom the goods and services are supplied in Nigeria must deduct and remit the tax in the currency of the transaction. Similarly, a beneficiary of such invoice (that contains no VAT) will be required to self-account for the tax payable and remit the output tax to FIRS.

Similarly, all non-resident companies earning income from data transmission, advertising, marketing, social media platforms, etc would be subject to tax on profits realised in Nigeria.

10. **Compensation for Job Loss**: Any person who receives an amount of approximately N10 million or less as compensation or damage for job loss is hereby exempted from Capital Gains Tax (CGT) on the amount received. Prior to the amendment to the CGT Act, the threshold for such a tax waiver was N10,000.

11. **Imported Goods**: Goods liable to excise duty charge have been expanded to include goods imported into Nigeria. This amendment has formalized the taxation of imported goods and the applicable rates are specified under the Duty Column in the relevant Schedule of the Customs and Excise Tariffs etc (Consolidation) Act.

12. **Dividend Pay Out**: The exemption to the 10% WHT attributed to the dividend paid from petroleum profits has now been repealed. Consequently, every company within the oil industry will be subjected to 10% WHT deduction on profits realized pursuant to section 60 of the Petroleum Profits Tax Act (as Amended).

13. **Related Party Transactions**: The amended Capital Gains Tax Act (CGT) has accorded an absolute waiver of CGT in transactions involving the transfer or sale of a trade or business between two companies in the course of a business combination or reorganisation. Any company that chooses to utilize this waiver must satisfy to the tax authority that one company has control over the other or both are controlled by some other person for a consecutive period of at least 365 days prior to the date of reorganization and that the acquired assets will not be disposed within 365 days after the transaction.

14. **Commencement Date**: The meaning of "commence ment of business for the purpose of the payment of the Value Added Tax" has been clearly defined and a business is deemed to commence in Nigeria on the date that an entity;

i. carries out its first transaction;
ii. begins to market or first advertises its products or services for sale;
iii. obtains an operating license from a regulatory authority in Nigeria;
iv. made its first sale or purchase;
v. executes its first trading contract after incorporation;
vi. it issues or receives its first invoice;
vii. it delivers or receives its first consignment of goods; or
viii. renders its first services to customers.

15. **Default Filings**: The penalty for default or late filings of tax has been scaled up. The new rates are:

- The penalty for late filing of return is N50,000 for the first month of default and N25,000 for each subse quent month in which the default filing continues
- The penalty for non-remittance of VAT is a sum equal to 10% of the tax not remitted in a year plus the prevailing CBN minimum rediscount rate.
- The penalty for failing to notify FIRS of a change of address or permanent cessation of trade or business is N50,000 for the first month and N25,000 for subse quent months until notification is made.
- The penalty for failing to return monthly returns is increased to N50,000 for the first month and N25,000 for subsequent months of default.

Conclusion

The foregoing is an indication that tax is a viable means for the generation of wealth for the country especially considering that the oil reserves are no longer a viable source of income for Nigeria, the efficient administration of these taxes with high accountability of the tax authorities can go a long way in, ensuring budget revenue targets are met, thereby narrowing the country's fiscal deficits and reducing pressure on external debts, which stood at N25.7 trillion in June 2019. Notably, the Minister of Finance has announced that the commencement date of the Finance Act 2019 will be 1st February 2020. It is expected that these provisions will be intensely publicised, particularly with regards to the incentives granted to MSMEs to aid their ease of doing business as the Act takes effect.

STRACHAN
PARTNERS