

Finance Bill 2021; Proposed Changes to Other Tax and Fiscal Legislations

On Thursday 8 October 2020, His Excellency, President Muhammadu Buhari presented the 2021 Budget Proposal to the Joint session of the National Assembly. While delivering the budget presentation speech, the President also announced that the Finance Bill 2021 would be presented to the National Assembly for consideration and passage into law. On Wednesday 18 November 2020, the Federal Executive Council (FEC), presided over by the President approved the Finance Bill 2021.

In our article last week, we reviewed the proposed changes to the Companies' Income Tax Act. In this article, our focus will be on the significant changes being proposed to other extant tax and fiscal legislations.

Personal Income Tax Act (PITA)

Taxation of Non-Resident Individuals, Executors or Trustees

Section 6 of PITA provides the conditions for taxation of a non-resident individual, executor, or trustee. However, a new section 6A is being proposed to align the provisions of PITA and the Companies Income Tax (CITA), whereby gains or profit from a trade or business, such as technical, management, consultancy or professional services provided by a non-resident individual, executor, or trustee to a Nigerian resident would be deemed to be derived and taxable in Nigeria to the extent that the non-resident individual, executor or trustee has a significant economic presence in Nigeria. Previously, these incomes were not generally taxed in Nigeria.

As is the case under CITA, the definition of 'significant economic presence' for a non-resident individual, executor, or trustee is to be provided by the Minister of Finance via an Order.

Deductions allowed

Section 20(g) of PITA will be amended to allow only contributions to pension, provident or other retirement benefits fund, society or scheme that is recognized under the Pension Reform Act for the purpose of ascertaining the income or loss of an individual.

Commencement Rule

A new Section 24 of PITA is being proposed to align with the provisions of CITA and ensure consistency in the basis period used by both companies and individuals for the determination of assessable income during the commencement of a new trade, business, profession or vocation. Similar amendments were made to the commencement rules for companies under CITA by the Finance Act 2019. This amendment is aimed at eliminating the risk of double taxation inherent in the commencement rules.

The basis period for computing income tax on assessable income for individuals will be, for the first year, the date when the trade commences to the end of its first accounting period. The second year will be from the first day after the end of the first accounting period to the end of the second accounting period, while the third year and subsequent years will be the day after the accounting period just ended till after twelve months.

Cessation of Trade

Likewise, the provisions of Section 25 of PITA on assessable income upon the cessation of trade will be amended to align with the provisions of CITA. Income that will be assessable to tax upon the cessation of trades will be income from the beginning of the accounting period to that of the date of cessation. The tax computed shall be payable within three months from the date of cessation. This amendment is aimed at eliminating the risk of double taxation inherent in the existing cessation rules in PITA.

Tertiary Education Trust Fund (Establishment, Etc.) Act (TETFUND)

Exemption of Small Companies from Payment of Tertiary Education Tax

An amendment is proposed to Section 1 TETFUND Act to exempt small companies with turnover below N25 million from the payment of TET. This amendment will align the provisions of the TETFUND Act with respect to small companies, to that of CITA and eliminate the ambiguity on whether small companies are exempt from paying TET. It is also aimed at implementing the Federal Government's policy directive of exempting small companies from tax in line with the ease of doing business initiatives.

“These amendments will clarify some ambiguities and contradictions observed in the Finance Act 2019 as well as other issues that were not previously addressed. While we await further deliberations, eventual passage and signing of the Finance Bill 2021 into law, taxpayers are encouraged to examine the provisions of the Bill and how it will impact their affairs”

Customs & Excise Tariff etc. (Consolidation) Act (CETA)

Goods and Services Liable to Excise Duty

The proviso to Section 21(1) of CETA allows for the exemption of imported goods and raw materials that are not locally produced or not locally available in Nigeria from excise duties will be deleted. This proviso is contradictory to Section 21(1) of CETA, as it subjects imported goods to excise duty as well as those manufactured locally.

Interestingly, a new Section 21(2) is being proposed to impose excise duty on services provided in Nigeria. The President will amend the fifth schedule of CETA via an Executive Order, in order to include the dutiable services and the rate that will apply.

Value Added Tax Act (VATA)

Rules to Determine Time of Supply

A new Section 2A of the VATA is proposed to provide guidance on the determination of 'time of supply' of goods and services. Movable goods will be deemed to be supplied on the date of delivery by the supplier; for non-movable or intangible goods, supply would take place on the date the goods are available for use to the person to whom they are supplied. Services will be supplied on the date the services are performed.

However, the following exceptions will be provided for:

- ❖ Supply would be deemed to have taken place on the date of supply where goods have been delivered and invoices are not issued within 60 days from the date goods were supplied.
- ❖ Supply would also have taken place on the date invoice was issued where the invoice has been issued in advance of the supply of goods or service.
- ❖ Supply would have also taken place on the date invoice was issued where goods or services are supplied periodically, continuously, or in succession and invoice

can only be issued upon completion of a milestone or other contractual terms.

VAT Exemption for Animal Feeds, Transfer of Interest in Land, Assignment of Leasehold Interest in Land, etc.

The interpretation to the VAT Act is being amended to categorize animal feed as basic food items, hence exempt from VAT. Similarly, the definition of intangible goods is being amended to exclude the transfer of interest in land, assignment of leasehold interest in land, transfer of interest in a license to produce or explore solid minerals of petroleum, or a right to use water drawn from a river, dam or aquifer.

Capital Gains Tax Act (CGTA)

Compensation for Loss of Office

The wordings of the Finance Act 2019 suggested that compensation for loss of office exceeding N10 million will be subject to CGT. It was however not clear whether it was the amount in excess of N10 million or the entire compensation that will be subject to CGT. The proposed amendments is aimed at clarifying that only the amount in excess of N10 million will be subject to CGT and the person paying the compensation will be responsible for deducting and remitting the applicable CGT.

Conclusion

The various amendments proposed via the Finance Bill 2021 further reiterates government's commitment to align the Nigerian tax system with global best practices and ensure the ease of doing business in Nigeria. These amendments will clarify some ambiguities and contradictions observed in the Finance Act 2019 as well as other issues that were not previously addressed.

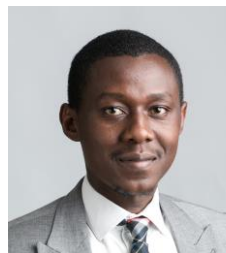
One of such is the alignment of provisions in PITA with CITA with respect to taxation of non-resident individuals, executors, and trustees. Another one, is the amendment to the commencement and cessation rules in PITA to eliminate the double taxation challenges in the old commencement rule. Similarly, the introduction of rules to determine time of supply of goods and services will also eliminate the inherent ambiguities.

While we await further deliberations, eventual passage and signing of the Finance Bill 2021 into law, taxpayers are encouraged to examine the provisions of the Bill and how it will impact their affairs.

This article was written by:



Olufunso Ola-Ojo
Director, Tax and Regulatory Services
Olufunso.Ola-Ojo@mazars.com.ng
+234 (0) 807 579 2310



Oluwatobi Olafaju
Senior, Tax and Regulatory Services
Oluwatobi.Olafaju@mazars.com.ng
+234(0) 905 859 2550

About Mazars

Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services*. Operating in over 90 countries and territories around the world, we draw on the expertise of 40,400 professionals - 24,400 in Mazars' integrated partnership and 16,000 via the Mazars North America Alliance - to assist clients of all sizes at every stage in their development.

*where permitted under applicable country laws

www.mazars.com.ng
www.mazars.com/identity
www.linkedin.com/company/mazars-in-nigeria/