Finance Act 2021: **A Rebirth Of Tax Law**

Four months ago, on December 31, 2021 to be precise, President Muhammadu Buhari signed into law the Finance Bill, 2021 , now the Finance Act, 2021, along with the 2022 Appropriation Bill. The Finance Act is a piece of legislation that warehouses various laws for quick and focused amendments, in order to facilitate an effective and efficient operation of the national budget.

Buhari had, in October 2019, presented the Finance Bill 2019 along with the Appropriation Bill 2020 to the joint sitting of the National Assembly. The Bill was later signed into law by the President on February 13, 2020. It heralded a new dispensation which has remained in the fiscal landscape, with the subsequent enactment of the 2020 and 2021 versions.

The Act, however, did not come into being with the administration of Buhari. Although the last of it was the Finance , Miscellaneous Provisions, Act No.30 of 1999, which was passed by the government of General Abdulsalam Abubakar, the model legislation was birthed during the military era to revise certain provisions of the Nigerian tax laws.

For clarity of purpose, the rebirth of the Act came as a provision of the revised National Tax Policy in 2017. It prescribes that, “The Ministry of Finance shall work with the Legislature to ensure that the requisite changes to tax laws are enacted together with the Appropriation Act of the same year”.

Taking effect from January 1, 2022, the Act amended provisions in various Acts of the National Assembly.

The Act introduces significant changes to 13 tax and regulatory laws in Nigeria, in line with the Federal Government thematic policy. The Act, amends key provisions of Capital Gains Tax Act, Companies Income

Tax Act, Federal Inland Revenue (Establishment) Act, Personal Income Tax Act, Stamp Duties Act, Tertiary Education Trust Fund (Establishment) Act, Customs, Excise, Tariffs etc. (Consolidation) Act, Value Added Tax Act, Insurance Act, Nigerian Police Trust Fund (Establishment) Act, National Agency for Science and Engineering Infrastructure Act, Finance Control and Management Act, and Fiscal Responsibility Act.

Capital Gains Tax Act, CGTA: Capital gains tax is to be levied at the rate of 5% on disposal of shares in a Nigerian company registered under CAMA. The new section 30 of Capital Gains Tax Act made provisions for an exception to CGT liable where the disposal proceeds accruing from disposing Nigerian Government Securities, disposal proceeds, in aggregate, is less than N 500 million or more in any 12 consecutive months in which case the person making the disposal shall render appropriate returns annually; or where the disposal is between approved borrower and lender in a regulated security lending transactions.

Companies Income Tax Act, CITA: The following changes were introduced by the Finance Act 2021 in the amended CITA.

a) Taxation of Lottery and Gaming business, including betting, game of chance, promotional competition, gambling, or gaming machines is now accessed and administered under CITA and the likes.

b) Companies engaged in petroleum operations including Midstream and Downstream operations will not be eligible for exemption on profits in respect of goods exported from Nigeria. Downstream companies were previously eligible under the old Upstream and Downstream classification.

c) Federal Inland Revenue Service, FIRS, is required to assess, change and administer CIT on foreign technology or digital company in Nigeria that carry on the business of transmitting, remitting, or receiving signals, sounds, messages, images or data of any by cable, radio, electromagnetic systems or any other electronic or wireless apparatus in respect of any activities including electronic-commerce, application stores, online adverts, etc. The key factor while assessing CIT liability under the new Section 13 (2) supra of any foreign digital company in Nigeria is; the foreign company must have significant economic presence in Nigeria, and profit can be attributable to such activities.

d) Conditions precedent as to accrual and claim for capital allowance is now limited to the portion used for generating taxable profits; capital allowance shall be deemed accrued for such amount relating to qualifying capital expenditure incurred in generating assessable or taxable profit, and where assets partially used to generate taxable income in pro-rata capital allowance provided that the proportion of non-taxable income constitutes greater than 20% of the total income of the company.

e) Minimum tax is reduced from 0.5% to 0.25% of gross turnover, less franked investment income, applicable only for two accounting periods prepared between January 1, 2019 and December 31, 2021, and this may be determined by the taxpayer.

f) Disputed tax assessment is now placed in abeyance until determination of objection or appeal.

Federal Inland Revenue Service (Establishment) Act, FIRS Act: FIRS is to deploy proprietary or third party technology to automate tax administration including assessment and information gathering, after the expiration of 30 days' notice issued to the taxpayer. Subsection 6 provides for a penalty of N50,000 payable by taxpayer/company that denies FIRS access after the expiration of prior 30 days' notice issued; and penalty of N25,000 for each day in continuous default.

FIRS is now saddled with the duty of administration, assessment, collection, accounting and enforcement of taxes and levies due to the federation, the Federal Government and any of its agencies, and invoke supremacy of FIRS Act as amended above any other laws for the purposes of administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federation, the Federal Government and any of its agencies.

Any person or agency of the Federal Government must refer matters requiring tax investigation, enforcement and compliance to the FIRS. Relevant officers who violate the rule to be liable to a penalty of N10 million and/or five years imprisonment on conviction.

Insurance Act: Deductible life assurance premium for personal income tax purposes to exclude a contract for deferred annuity.

Stamp Duties Act: The Finance Minister, subject to the approval of the National Assembly, to make regulations for the imposition, administration, collection and remittance of levy, including regulations relating to auditing, accounting, allocation and distribution of arrears of stamp duty and Electronic Money Transfer levies collected between 2015 and 2019 fiscal years.

Tertiary Education Trust Fund (Establishment, Etc.) Act: Section 2 (2) of Tertiary Education Trust Fund (Establishment, Etc.) Act is amended substituting 60 days' with 30 days'. Education Tax is now increased from 2% to 2.5%.

Value Added Tax Act: Non-residents making taxable supplies to recipients in Nigeria to register for VAT, charge, collect and remit VAT to services.

FIRS can now appoint anybody for the purpose of collection and remittance of VAT.

National Agency for Science and Engineering Infrastructure Act: Primary sources of funds are now limited to 1% of the Federation Account in the first instance.

Finance (Control and Management) Act: Ministries, departments, agencies, MDAs, and other institutions of the Federal Government are mandated, while discharging their duties for the purposes of collecting Federal Government taxes and lives, to remit all payment of gross revenue collected to the federation account or consolidated revenue fund.

Fiscal Responsibility Act: Governments at all tier levels can now apply and obtain facility/loan for capital expenditure, human development, and for purposes of critical reforms of significant national impact. The key note under the new amendment is that all borrowing is required to be on concessional terms or at relatively low interest rates and long amortization period, “Subject to the approval of the appropriate legislative body”.

Nigerian Police Trust Fund (Establishment) Act: FIRS is now saddled with the duty of administration, assessment, collection, accounting, return and enforcement of the levy.

Personal Income Tax Act: There is now penalty for non-compliance with the provision of PITA, the fine of N20, 000 and where the non-compliance is on default to file returns, statement or information, or to keep record attract penalty of extra N2, 000 for every day the failure subsist. Where the taxpayer fails to pay the penalty fee, such taxpayer is liable to the option of imprisonment for the period of six months.

Introduction of filing quarterly returns thereby removing the provisions for filing of returns at the end of every month.

Deduction of annual amount of any insurance premium paid by an individual to insurance company for the insurance of his life or life of his spouse provided that such payment is made during a year preceding the year of assessment.

Conclusion: It’s deserving that the nation’s laws should be up to date, thereby making provisions for the dynamic nature of law. It is advisable that individual taxpayers, businesses and corporate entities take advantage of the innovations introduced while keeping up-to-date compliant requirements.

Meanwhile, the provision of Section 77(2) of CITA, as amended by the Finance Act 2021, is in conflict with Order 3 Rule 6 of the Tax Appeal Tribunal (Procedure) Rules 2021. The Tax Appeals Rules made provisions for mandatory payment of 50 per cent of disputed tax assessed, whereas, Section 77(2) of CITA, as amended, expressly put in abeyance the payment of disputed tax assessed until determination of objection or appeal. On this note, we recommend that Tax Appeal Tribunal (Procedure) Rules 2021 be amended by amending particularly Order 3 Rule 6 to reflect the present position of the CITA.