Nigeria issues circular informing the public on what constitutes Significant Economic Presence (SEP) for Non-Resident Companies in the country for the purpose of Tax

Below is a summary of the highlights of the Finance Act 2019

THE FINANCE ACT 2019

The Finance Act 2019 was introduced by the Government of Nigeria in the year 2020 to promote the ease of doing business in the Country for Small and Medium Enterprises and align with best practices around the world. Significant Changes were made to The Company Income Tax Act, VAT Act, and Capital Gains Tax Act

The Honorable Minister of Finance, Budget and National Planning in the first quarter of the year 2020 issued the Company Income Tax (Significant Economic Presence) Order *to support the Finance Act 2019.*

Some of the activities now recognized as taxable transactions are electronic commerce, app store, e-data storage, participative network platform and so on. Also, any trade or business which entails the receipt of services from persons outside Nigeria to a person resident in Nigeria

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Amidst the identification of products or services that constitute transactions in Nigeria, their taxable nature is still dependent, solely on the company having Significant Economic Presence in Nigeria.

For clarity, some of the criteria to determine Significant Economic Presence as provided for in SEP Order 2020 are listed below.

i. Any company that derives Gross Turnover or Income of above 25 million naira or its equivalent in other currencies in the relevant accounting year from transactions which are listed under section 13 of Company Income Tax Act.

i. Any company which has a purposeful or sustained interaction with persons in Nigeria by Customizing its digital page or platform to target persons in Nigeria, including reflecting the prices of its products/Services in Nigerian currency or it provides options for billing or payments in Nigerian currency.

PKF Comment:

The Nigerian tax environment is taking considerable steps to ensure that all types of transactions are captured for income tax purposes without making it difficult for non-resident companies dealing on a one-off basis within the Nigerian Tax Base.

Also, the country is acutely aware of the economic benefits attached to the digital industry and is prepared and determined to spread the tax net.

Non-Resident companies in Nigeria need to ensure that they get clarity on their status for Tax purposes in Nigeria. This is especially true for companies, which hitherto were unsure of their level of economic presence in Nigeria.

Commencement and Cessation rules are modified to eliminate overlaps and gaps to avoid double taxation and complication during commencement

Prior to now, the basis of computing the assessable profit of a company commencing business in Nigeria gave rise to possible gaps and profits, overlapping for different years of assessment.

The relevant section of the law as amended by the Finance Act 2019 now provides that the basis of taxation will be the preceding year basis, which effectively means that tax will be assessed in arrears.

PKF Comment:

This reduces the cumbersome nature of the previous law which sometimes makes companies pay tax as much as three times on a single accounting period profit. This should encourage investors to set up companies in Nigeria.

A change to the basis on which a Company in Nigeria is deemed to be exempt from Minimum Tax for a relevant tax year.

The provisions of CITA prior to the introduction of the Finance Act 2019 required companies with no assessable profit in any year of assessment to compute Minimum Tax as guided by the Law with exception to companies which met the criteria below:

Companies within the first four calendar years of commencement of business.

Companies carrying on agricultural trade or business as defined in Section 11 of the Act
Companies with at least 25% foreign equity

However, the Finance Act 2019 has amended the provision by replacing the availability of at least 25% foreign equity with any company having gross turnover of less than 25 million naira (small companies).

PKF Comment:

This is in line with the Government's efforts to increase the ease of doing business for SMEs.

Dividend Distributed from Petroleum Profits to attract 10% withholding tax

Section 60 of the Petroleum Profits Tax Act (PPTA) was repealed. It previously exempted deduction of withholding taxes on dividends paid out of Petroleum Profits.

PKF Comment:

This means that players in the oil and gas sector are now obliged to remit withholding taxes on dividends declared.

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Insurance Companies can now carry forward tax losses indefinitely, deduct reserve for unexpired risks on time apportionment basis; also the special calculation of minimum tax attributed to the Insurance industry has been abolished.

The computation of Income Tax for Insurance Companies in Nigeria has always had somewhat of a "special status" attached to it. For instance, taxable losses could not be carried forward for more than 4 years of assessment.

Also, the basis of computing minimum tax for Insurance companies differed from companies in all other industries.

PKF Comment:

This addresses some of the complex issues which arises in the computation of the Company Income tax for Insurance companies and also the benefits of being able to carry forward tax losses indefinitely just like other companies operating within other industries.

Amendment to Stamp Duties Act (SDA)

The Nigeria Stamp Duties Act was amended as part of the comprehensive amendment to the various tax laws by the Finance Act 2019 which was signed into law in the early part of the 2020 calendar year. The amendment covers the scope of instruments and transactions liable to Stamp Duty.

The schedule to the SDA lists instruments and transactions that are liable to include among others – agreements, appraisements or valuations, promissory notes & bills of exchange, bills of lading, bonds, deeds of assignment duties on share capital etc.

This Stamp Duties takes 2 types of form:

- *Fixed Duties – duties that do not vary with consideration or;*
- *Ad-valorem – duties that vary with consideration.*

In June 2020, an Inter – Ministerial committee on Audit and Recovery of back years stamp duties was inaugurated to recover backlog of unremitted stamp duties.

PKF Comment:

This goes to reinforce the belief that the Federal Government through the Federal Inland Revenue Service (FIRS) has identified stamp duty as having significant potential for revenue generation, especially given the impact of Covid – 19 on oil earnings.