

Finance Act 2020

Highlight of Key Changes



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Finance Act 2020

In fulfilment of his promise to issue a Finance Act annually to accompany the nation's budget, the President, Muhammadu Buhari presented the 2020 Finance Bill to the National Assembly on 8th October 2020.

According to the President, the Finance Bill would support the implementation of the 2021 budget through key reforms in taxation, customs, excise, fiscal and other laws.

After extensive stakeholders' engagement, the Bill was passed by both houses of the National assembly on And signed into law by the President on 31 December 2020.

The Finance Act amends:

1. Capital Gains Tax Act;
2. Companies Income Tax Act;
3. Industrial Development (Income Tax Relief) Act;
4. Personal Income Tax Act;
5. Tertiary Trust Fund Act;
6. Customs and Excise Duties Tariff;
7. Value Added Tax Act;
8. Stamp Duties Act;
9. Federal Inland Revenue Service (Establishment) Act;
10. Nigeria Export Processing Zone Authority Act;
11. Oil and Gas Export Processing Zone Act;
12. Companies and Allied Matters Act, 2020;
13. Fiscal Responsibility Act; and
14. Public Procurement Act.

The Finance Act 2020 was designed to support the implementation of the 2021 FGN Budget, tagged: Budget of Economic Recovery and Resilience.

The new Act takes effect from **1st January 2021**

The key objectives of the Finance Act 2020 were to:

- ✓ Adopt appropriate counter cyclical fiscal policies to respond to the economic and revenue challenges;
- ✓ Reform extant fiscal policies to priorities job creation, economic growth and social economic development and domestic revenue mobilisation;
- ✓ Provide fiscal relief for taxpayers;
- ✓ Propose measure to fund the Federal Government's COVID-19 pandemic as well as any similar crises in the future;
- ✓ Ensuring coordination of fiscal, monetary and trade policies; and
- ✓ Reform the Fiscal Responsibility and Public Procurement Acts.

Key Changes

Reduction of minimum tax rate from 0.5% to 0.25% of gross turnover.

Reduction of minimum tax rate from 0.5% to 0.25% of gross turnover for financial years ending within 2020 and 2021 calendar years, to cushion the effect of Covid19 on companies.

Ref: Section 33 (2) of CITA, which states that, for the purposes of subsection (1), the minimum tax to be levied and paid shall be 0.5% of gross turnover of the company less franked investment income;

Provided, that the applicable minimum tax is reduced to 0.25% for tax returns prepared and filed for any year of assessment falling due on any date between 1 January 2020 and 31 December 2021, both days inclusive.

Tax Exempt Compensation for Loss of Office under CGT

More Clarity has been provided around compensation for loss of office. Only the amount in excess of N10million paid to an individual as compensation for loss of office will be taxable under the Capital Gains Tax and the party paying the compensation would be responsible for deducting and remitting the capital gains tax due on the transaction.

Ref: Section 36 (2) of the CGT which states that, sums obtained by way of compensation for loss of office, up to a maximum of N10,000,000 shall not be chargeable gains and subject to tax under this Act.

Provided that any sum in excess of N10,000,000.00 shall not be so exempt but the excess amount shall be chargeable gains and subject to tax accordingly.

Additional tax break for primary Agricultural production.

VAT exemption on animal feeds, lease of equipment, and lower import duty on tractors

Tax Exempt Interest on Loans for Primary Agricultural Production

Only the interest on loans given to businesses involved in 'primary agricultural production' instead of all 'agricultural trade or business' will now qualify for the tax exemption under the Companies Income Tax Act (CITA).

Ref: Section 11 (2a) of CITA which states that Interest on any loan granted by a bank on or after 1 January 1977 to a company engaged in- (a) primary agricultural production; shall be exempted from tax, provided the moratorium is not less than 12 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted, refinanced or otherwise restructured.

Primary Agricultural Production according to the law would include: Primary crop production, primary livestock production, primary forestry production and primary fishing production.

Ref: Section 11 (4a-d) of CITA which defines "Primary agricultural production" to mean-

- (a) Primary crop production comprising the production of raw crops of all kinds, but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop product;**
- (b) Primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or raw poultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock product;**

- (c) Primary forestry production comprising the production of timbers of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and saplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber product; and**
- (d) Primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate or final processing of any other manufactured or derivative fish product.**

Significant Economic Presence

Non-resident companies whose activities in Nigeria would otherwise have been subject to only Withholding Tax (WHT) as final tax, would be subject to full company income taxation in Nigeria if they are involved in other business activities that trigger taxable presence in Nigeria.

Ref: The Proviso of Section 13 (2e) of CITA which provides that the withholding tax applicable to income under this paragraph shall be the final tax on the income of a non-resident recipient who does not otherwise fall within the scope of subsection (2 (a)-(d)



QCE on Software acquisition & development

Provisions were made for claim of capital allowance on capital expenditure relating to software acquisition or development by companies.

Ref: Second Schedule under Qualifying Expenditure subparagraph (1j) of CITA states that capital expenditure that is incurred on the development or acquisition of software or other such capital outlays on electronic applications.

Allowable deduction for pension contribution under PITA

Deductions allowed under the PITA regarding contributions to pension or retirement benefit fund would now be restricted only to such funds/scheme as recognised under the pension reforms act.

Ref: Section 20 (1g) of PITA which states that a contribution to a pension, provident or other retirement benefits fund, society or scheme, recognised under the Pension Reform Act.

Gross income for CRA under PITA Defined

'Gross income' with regards to claim of consolidated relief allowance (CRA) under PITA has now been redefined to exclude non-taxable incomes / tax-exempt items.

Ref: Section 33 (2) of PITA which states that for the purposes of this section, "gross income" means income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the Sixth Schedule and all allowable business expenses and capital allowances.

Relief for Donation for Pandemic or Natural disaster

Cost of donation made in cash or kind to any fund set up by government in respect of any pandemic or natural disaster to be tax deductible subject to a maximum of 10% of assessable profit after deduction of other allowable donations.

Ref: Section 25 (8&9) of CITA which states that;

- (8) Donations made by companies in cash or kind to any fund set up by the Federal Government or any State Government, or to any agency designated by Federal Government or to any similar Fund or purpose in consultation with any Ministry, Department or Agency of the Federal Government, in respect of any pandemic, natural disaster or other exigency shall be allowed as deductions as follows:**
 - (a) the cost of in-kind donations made to the Government and any designated agency shall be allowed as deductions; or**

(b) where companies have either procured or manufactured items for contribution, the cost of purchase, manufacture or supply of such in-kind contributions shall be allowed as deductions:

Provided that requisite documentation evidencing the donation and the cost thereof are provided to the relevant tax authority and demonstrated to be wholly, reasonably, exclusively and necessarily incurred in relation to the procurement, manufacture or supply of the in-kind contributions.

(9) Notwithstanding the provisions of subsections (2) and (3), amounts allowable for deduction, in respect of subsection (8), in any year of assessment shall be limited to 10% of assessable profits after deduction of other allowable donations made by the company.

Exemption of minimum wage earners and below from personal income tax/PAYE.

Exemption of low-income earners earning minimum wage or less from personal income tax.

Ref: the Proviso of Section 37 of PITA which provides that minimum tax under this Section or as provided for under the Sixth Schedule to this Act shall not apply to a person in any year of assessment where such person earns the National Minimum Wage or less from an employment.

Duty reduction for Tractors, Mass transit vehicles and Trucks.

Reduction of import duty on Tractors from 35% to 5%; Mass transit vehicles for transport of more than 10 persons and Trucks from 35% to 10%, and reduction of import levy on (NEW) Cars from 30% to 5%.

Ref: the First Schedule of Customs and Excise Tariff Act of the following duties and levies-

- (a) Duty on Tractors (HS Headings 8701) from 35% to 5%;**
- (b) Duty on Motor Vehicles for the transport of more than ten persons (HS Heading 8702) from 35% to 10%;**
- (c) Levy on Motor Vehicle for the transport of person [cars] (HS Headings 8703) from 30% to 5% and;**
- (d) Duty for Motor Vehicle for the Transport of Goods (HS Headings 8704) from 35% to 10%**

Exemption of minimum wage earners from PAYE/PIT

Withholding obligation for CGT on compensation for loss of employment

Provided that vehicles exempt from applicable duties and levies shall continue to enjoy such exemption.

Taxable supply for VAT purposes

Taxable supply with respect to goods is defined to include where the beneficial owner of the right in or over goods is a taxable person in Nigeria or the goods or right is situated, registered or exercisable in Nigeria. Services include those consumed by a person in Nigeria whether rendered within or outside Nigeria excluding employment; and in respect of incorporeal, includes exploitation of a right, acquisition of or assignment of rights by a person in Nigeria and incorporeal connected with tangible or immovable asset located in Nigeria. Goods exclude land and building, money or securities.

Ref: Section 2 (1-3) of VAT which states that;

- (1) The tax shall be charged and payable on all supplies of goods and services in Nigeria other than those listed in the First Schedule to this Act.**
- (2) For the purpose of this act, goods and services consumed or otherwise utilised in Nigeria are supplied in Nigeria.**
- (3) Notwithstanding the provisions of subsection (1), a taxable supply shall be deemed to take place in Nigeria if;**
 - (a) in respect of goods: -**
 - (i) the goods are physically present in Nigeria at the time of supply, imported into Nigeria, assembled in Nigeria, or installed in Nigeria, or**
 - (ii) the beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the**

goods or right is situated, registered or exercisable in Nigeria;

(b) in respect of services: -

(i) the services is rendered in Nigeria by a person physically present in Nigeria at the time of providing the service,

(ii) the services is provided to and consumed by a person in Nigeria, regardless of whether the services is rendered within or outside Nigeria or whether or not the legal or contractual obligation to render such service rests on person within or outside Nigeria, or

(iii) the service is connected with existing immovable property (including the services of agents, experts, engineers, architects, valuers, etc.), where the property is located in Nigeria; and

(c) in respect of an incorporeal:

(i) the exploitation of the right is made by a person in Nigeria;

(ii) the right is registered in Nigeria, assigned to or acquired by, a person in Nigeria, regardless of whether the payment for its exploitation is made within or outside Nigeria, or

(iii) the incorporeal is connected with a tangible or immovable asset located in Nigeria.

VAT registration for NRP

A non-resident person that makes a taxable supply to Nigeria is required to register for tax and obtain TIN, include VAT on its invoice, and may appoint a representative in Nigeria for the purpose of its tax obligations. The FIRS may issue guidelines for this purpose.

Ref: Section 10 of VAT Act which states that;

- (1) For the purpose of this Act, a non-resident person that makes a taxable supply of goods or services to Nigeria shall register for the tax with the Service and obtain Tax Identification Number (TIN).**
- (2) A non-resident person shall include the tax on its invoice for all taxable goods or services.**
- (3) The taxable person to whom the supply of taxable goods or services are made in Nigeria or such other person as may be appointed by the Service shall withhold and remit the tax to the Service in the currency of the transaction.**

(4) Notwithstanding the provision of subsection (1) of this Section, a non-resident person that makes a supply of taxable goods or services in Nigeria may appoint a representative, for the purposes of its tax obligations.

(5) The Service may issue a guideline for the purposes of giving effect to the provisions of this Section.

Exemption from VAT

Exemption of commercial airline ticket from VAT, and hire or lease of agricultural equipment for agricultural purposes.

Ref: Part II of First Schedule paragraph 6 & 7 of VAT which states that;

- (6) Airline transportation tickets issued and sold by commercial airlines registered in Nigeria.**
- (7) Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.**



Stamp Duty on Electronic Bank Transfer replaced with Electronic Money Transfer Levy

Deletion of electronic bank transfer as transaction liable to stamp duty and introduction of electronic money transfer levy of N50 on electronic transfer of money deposited in any bank or financial institution on any account on sums of N10k or more. Revenue is to be shared based on derivation 15% to FG & FCT and 85% to states.

Ref: Section 89A of SDA which states that;

- 1) There is imposed a levy, to be referred to as the Electronic Money Transfer Levy, on electronic receipts or electronic transfer for money deposited in any deposit money bank or financial institution, on any type of account, to be accounted for and expressed to be received by the person to whom the transfer or deposit is made.**

- 2) **The levy shall be imposed as a singular and one-off charge of N50 on electronic receipts or electronic transfer of money in the sum of N10,000 or more.**
- 3) **The Minister of Finance shall, subject to the approval of the National Assembly, make regulations for the imposition, administration, collection and remittance of the Levy.**
- 4) **Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this Section, shall on the basis of derivation, be distributed as follows:**
 - (a) **15% to the Federal Government and the Federal Capital Territory, Abuja; and**
 - (b) **85% to the State Governments**

Tax Filing required for Companies in EPFTZ

For companies operating in the free trade zones, exemption from taxes is subject to compliance with tax filing and returns obligation to the FIRS under section 55(1) of CITA.



Ref: Section 18(1a) of NEPZA states that;

- (a) **Exemption from taxes, levies, duties and foreign exchange regulations in accordance with Section 8 of this Act, subject always to the provisions of the Banks and Other Financial Institutions Act, 2020; provided that all companies registered and operating in the Zone shall comply with the provisions of Section 55(1) of CITA and render returns in the manner prescribed therein, to the FIRS and all penalties prescribed in CITA and FIRS (Establishment) Act that may apply in the event of non-compliance with Section 55(1) of CITA shall apply to such companies in the event of default to comply.**

Establishment of a Crisis Intervention Fund

Establishment of a Crisis Intervention Fund of N500b or other sums as may be approved by the National Assembly; and by way of trust, as a sub-fund of the Crisis Intervention Fund, an Unclaimed Funds Trust Fund.

Ref: Section 75 of PPA which provides for the establishment of the Crisis Intervention funds states that; there shall be provided out of the Consolidated Revenue Fund and the Special Accounts listed in the First Schedule to this Act upon the coming into operation of this Act, the sum of N500,000,000,000 or other such sums as may be approved by the National Assembly for the establishment of a Fund to be known as the Crisis Intervention Fund.

Unclaimed Dividends and Dormant Bank Accounts

Unclaimed dividends in a listed company and unutilized amounts in a dormant bank account outstanding for 6 years or more to be transferred to the Unclaimed Funds Trust Fund as a special debt to the Federal Government to be managed by the Debt Management Office and shall be available to the shareholder or account holder at any time together with the yield thereon.

Ref: Section 77(2) of the PPA which provides for the establishment of an Unclaimed Funds Trust Fund states that; From the commencement of this Act, any unclaimed dividend of a public limited liability company quoted on the Nigerian Stock Exchange and any unutilized amounts in a dormant bank account maintained in or by a deposit money bank which has remained unclaimed or unutilized for a period of not less than 6 years from the date of declaring the dividend or domiciled the funds in a bank account shall be transferred immediately to the Unclaimed Funds Trust Fund.

Provided that this section shall not apply to official bank accounts owned or belonging to the Federal Government, State Government or Local Government or any of their Ministries, Departments or Agencies.

Service of Notices by electronic means or courier

Service of notice of assessment and objections under CITA may be done via courier service, email or other electronic means as may be directed by FIRS in a notice.

Ref: Section 69 (1) of CITA which states that; If any company disputes the assessment it may apply to the Board, by notice of objection in writing, delivered in person, by courier service, email or any other electronic means, as directed by the Service in any notice issued pursuant to this Act or any other relevant law to review and to revise the assessment made upon it.

Introduction of filing of Self-Assessment Returns for Capital gains Tax



Anyone who disposes of a chargeable asset in a year, will now be required to file Returns with respect to the Capital Gains Tax arising on such transactions.

Ref: Section 2 (4) which states that; Subject to the provisions of Section 31 of this Act, every person having disposed a chargeable asset shall, not later than 30 June and 31 December of that year, compute the capital gains tax, file self-assessment return, and pay the tax computed in respect of the chargeable assets disposed in the periods.

Tax Appeal Tribunal may conduct its hearing remotely via virtual means, using such technology or application as may be necessary to ensure fair hearing.

See the Fifth Schedule Paragraph 20 (2) (viii) which states the Tribunal for the purpose of discharging its function under this Schedule, have power to conduct its hearing remotely via virtual means, using such technology or application as may be necessary to ensure fair hearing.



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