

Finance Act 2021

KEY CHANGES TO EXISTING LEGISLATION



Introduction

President Muhammad Buhari signed both the Finance Act 2021 and Appropriation Act 2022 (national budget) into law on the 31st of December, 2021.

The President stated that budget will be one of “Economic Growth and Sustainability” and the Finance Act 2021 (FA 2021) was enacted in accordance with macroeconomics policy reforms and public financial management of the Federal Government. FA 2021 gives effect to the 2022 budget.

According to the Minister of Finance, Budget and National Planning, FA 2021 is enacted to address five (5) reform areas, namely:

1. Domestic revenue mobilisation;
2. Tax administration;
3. International taxation;
4. Financial sector reforms and tax equity; and
5. Improving public financial management reform.



Finance Act 2021 amends the Capital Gains Tax Act; Companies Income Tax Act; Customs Excise Tariffs, Etc, (Consolidation Act); Federal Inland Revenue Service (Establishment) Act; Personal Income Tax Act; Stamp Duties Act; Tertiary Education Trust Fund (Establishment, Etc.) 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.

Some of the changes to relevant tax laws in the FA 2021 are highlighted below:

A. Capital Gains Tax Act

1. Capital gains from the disposal of stocks and shares in Nigerian companies, for aggregate proceed amounting to N100 million or more in any period of 12 consecutive months, is liable to CGT at 10% where the proceeds have not been reinvested within the same year of assessment in the acquisition of shares in the same or other Nigeria companies [section 30(2)]

B. Companies Income Tax Act (CITA)

1. Companies providing digital goods and services to Nigerian customers and liable to tax under the Significant Economic Presence (SEP) rule may now be assessed on fair and reasonable percentage of their turnover, where there is no assessable profit, or other assessable profit is less than what us to be expected from that type of trade or business or the assessable profit cannot be ascertained [section 13]
2. Profits of companies engaged in educational activities are no longer exempt from tax [section 23(1)(c)]
3. Companies in petroleum operations across all levels are excluded from enjoying the exemption of exported goods from tax [section 23(1)(q)]
4. The capital allowance to be claimed in any year of assessment will be limited to the amount relating to the qualifying capital expenditure incurred in generating the assessable profits [section 31(1A)]
5. The capital allowance for any assessment year for a small company or medium company computed together with any unabsorbed allowances brought forward from previous years shall be deemed to have been made and consumed by such company in each such year of assessment and the residue carried forward

into subsequent years [section 31(1)(c)]

6. Companies may enjoy two years reduction in the rate of minimum tax from 0.5% to 0.25% for either accounting period 1 January 2019 to 31 December 2020 or for accounting period 1 January 2020 to 31 December 2021, as may be elected by the taxpayer [section 33(2)]
7. Any company that fails to file its annual tax returns within the specified timeline and claims minimum tax relief will be liable to pay as penalty for late filing, an amount equivalent to the relief sought [section 55(8)]
8. Tax assessment that has not been subject to objection or appeal must be paid within 30 days of service of such assessment [section 77(1)]
9. Taxpayers now have absolute discretion to pay their taxes in instalment, provided that the final instalment shall be paid on or before the due date [section 77]

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

1. The rate of tertiary education tax has been changed from 2% of assessable profits to 2.5% of assessable profits, other than a small company [section 1]

D. Customs Excise Tariffs, Etc, (Consolidation) Act

1. Excise duty on non-alcoholic, carbonated and sweetened beverages shall be charged at a specific rate of N10 per litre [section 29(3)]

E. Personal Income Tax Act

1. Deduction is allowed on the annual amount of any premium paid by an individual to an insurance company in respect of insurance on his life or the life of his spouse in the year preceding the year of assessment [section 33 (3)]
2. An officer of the relevant tax authority not below the rank of a Senior Manager or Grade Level 15 equivalent can issue a notice for request returns, books, documents and information from a taxpayer for examination in accordance with section 47 [section 47(2)]
3. The returns to be prepared by bankers specifying the names and addresses of new customers of the bank should now be prepared as quarterly returns [section 49(2)]
4. The penalty for non-compliance of a bank with section 47 has been increased to N1 million [section 49(4)]
5. The penalty in section 49(4) shall be payable in respect of each quarterly return not filed by the bank [section 49(4A)]
6. A person guilty of an offence under PITA where no other penalty is specifically provided is liable to a fine of N20,000 as opposed to the previous fine of N5,000 [section 94(1)]

F. Value Added Tax Act (VATA)

1. Non-resident suppliers of taxable goods or services to Nigeria, or any other person as may be appointed by the FIRS to collect tax under the VATA are now obligated to collect the tax and remit to the FIRS [section 10];
2. The FIRS may appoint any person to withhold or collect the tax, and the person so appointed shall remit the tax so withheld or collected as and when due in the currency of the transaction [section 14(3)]
3. The N25 million threshold with respect to taxable supplies shall not apply to companies engaged in upstream petroleum operations as described in the Petroleum Industry Act and Petroleum Profits Tax Act, and as such, the provisions of section 8 (2), 13, 29, 34 and 35 of VATA shall apply to them [section 15(3)]

G. Nigerian Police Trust Fund (Establishment) Act

1. The FIRS is empowered to assess, collect, account and enforce the payment of the police levy, and the provisions of CITA and FIRSEA shall apply to the administration, collection and enforcement of the levy [section 4]

H. National Agency for Science and Engineering Infrastructure Act

1. Companies engaged in the business of banking, mobile telecommunications, ICT, aviation, maritime, oil and gas, with turnover of N100 million and above are now to pay National Agency for Science and Engineering Infrastructure (NASENI) tax of 0.25% of their profits before tax and the tax is to be administered by the FIRS [section 20]

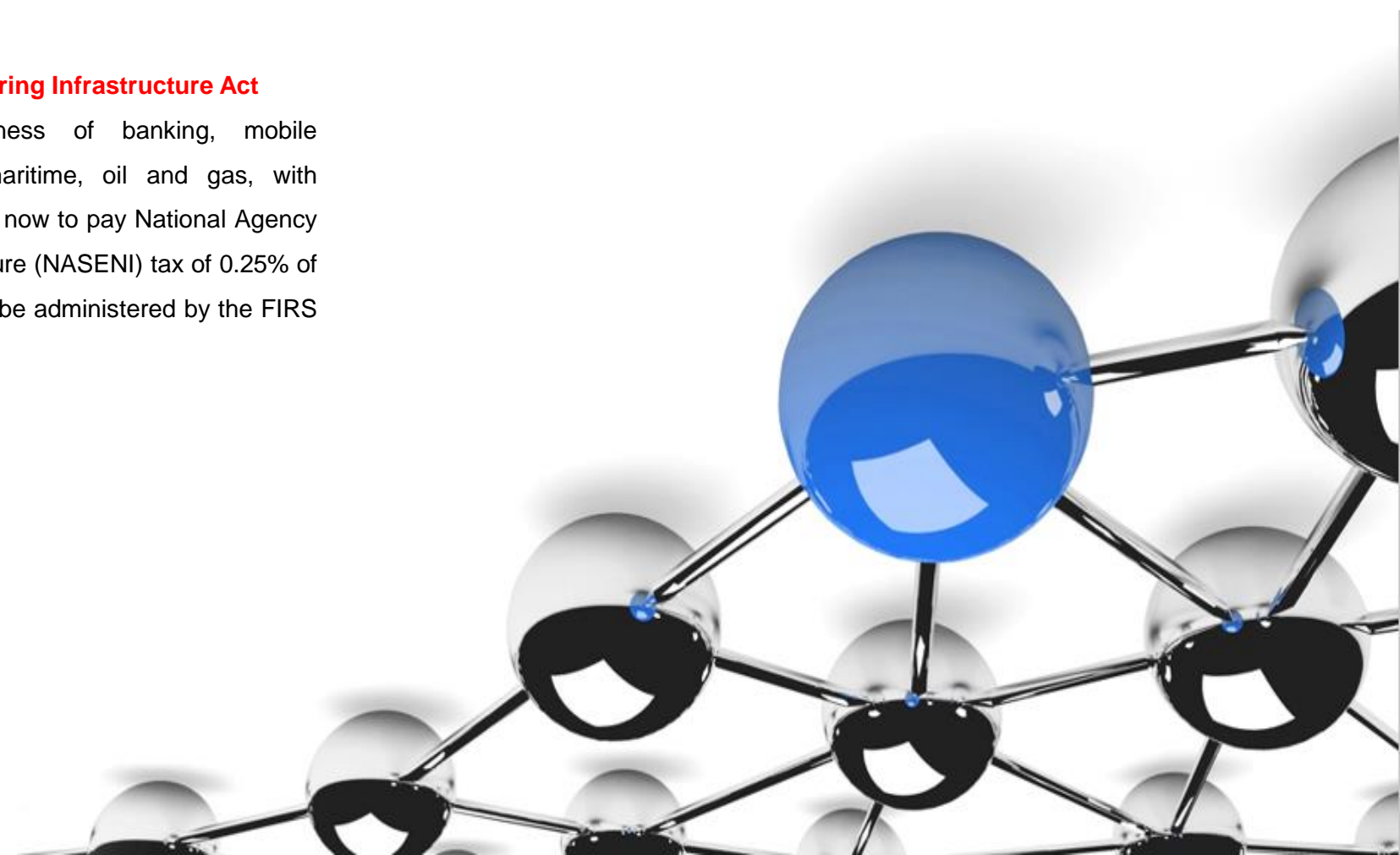
I. Stamp Duties Act

1. The Minister of Finance, subject to the approval of the National Assembly shall make regulations for the imposition, administration, collection, and remittance of the Levy, including regulations relating to the auditing, accounting, allocation, and distribution of arrears of the relevant stamp duties and Electronic Money Transfer Levies (EMT Levy) collected between 2015 and 2019 fiscal years within 30 days from the date when the FA2021 becomes effective.

Provided that the EMT levies subsequently collected shall be distributed within 30 days following the month of collection [section 89A(3)]

J. Federal Inland Revenue Service (Establishment) Act (FIRSEA)

1. The FIRS is allowed to use third party technology for the automation of tax administration process including tax assessment and information gathering, provided a 30 days' notice is given to the taxpayer [section 25(4)]
2. The penalty for failure to grant access to the FIRS after the 30 days' notice is N25,000 for each day of default [section 25(4B)]
3. The penalty for failure of banks to provide returns or information to the FIRS is now N1 million irrespective of the status of the customer, and the penalty is payable in respect of each quarterly return not filed [section 28(3-4)]
4. The FIRS is the primary agency responsible for the administration, collection and enforcement of taxes due to the Federation and the Federal Government, or any of its agencies, except as may be authorised by the Minister responsible for Finance by regulation [section 68(2)]
5. The FIRSEA takes precedence over any other laws with regards to the administration, assessment, collection, and enforcement of taxes and levies due to the Federal Government or Federation. Furthermore, if the provision of any other law is inconsistent with the FIRSEA, the provisions of the FIRSEA shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void. [section 68(1)]
6. Any person convicted under the provisions of section 68 of the FIRSEA will be liable to imprisonment for a term not exceeding 5 years or to a fine of N10 million or both [section 68(6)].



Conclusion

The introduction of the FA 2021 is laudable, and it further strengthens the commitment of the Federal Government to align Nigeria's tax legislations and fiscal policies with the global best practice. The FA 2021 addresses some existing challenges faced by taxpayers, and introduces measures to tackle them accordingly.

It is also important that the FIRS issues information circulars for the guidance of the general public, taxpayers and tax practitioners in line with the provisions of the relevant tax laws as amended by the FA 2021.

It is also noteworthy, that the Nigerian Police Trust Fund (Establishment) Act does not specifically provide for the deadline for payment this levy nor penalty for default, but only that the FIRS is responsible for its administration, collection and enforcement in line with the provisions of CITA and FIRSEA.

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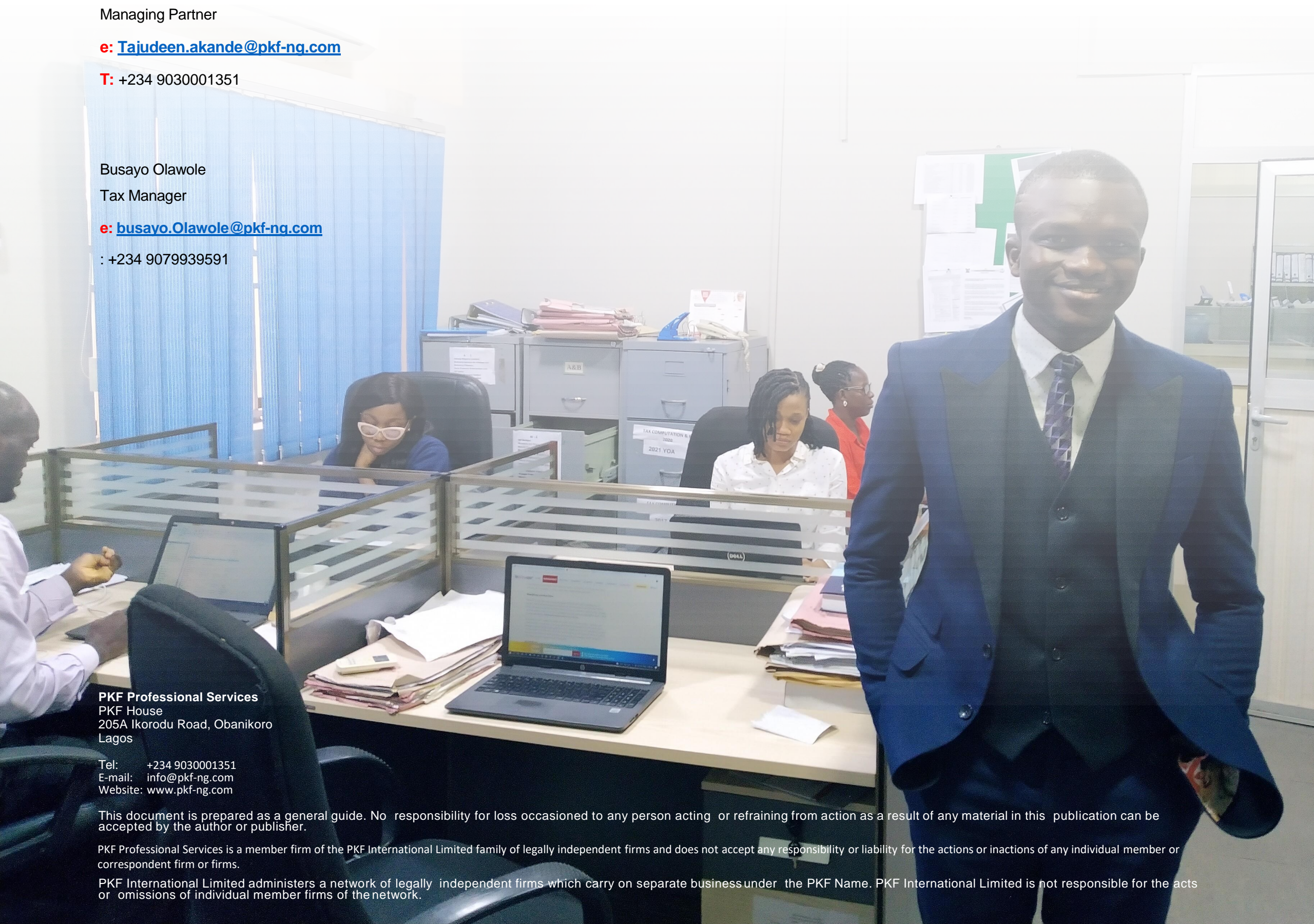
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