Impact of Finance Act on Businesses

The long awaited 2019 Finance Act has been published in the Gazette with a commencement date of Monday 13th January 2020 being the date it was signed into law by President Muhammadu Buhari.

Technically, what this means is:

1. that the Finance Act 2019 came into force on Monday 13th January 2020
2. since the Gazetted copy was only made public, the Act is technically retroactive
3. where it is not practicable to apply the provision of the Act retroactively then the effective date will be 1st of February 2020 as earlier announced by the Minister of Finance

We have highlighted below, the major changes to the existing tax laws and impact the changes will have on business in Nigeria

Tax Type	Approved Changes	Analysis of Changes
Companies Income Tax	Taxation of non-resident companies: Introduction of Digital and Service Permanent Establishment	The Finance Act indicated that tax payable by foreign companies will be limited to the Withholding Tax (WHT) deducted from them on income earned from technical, management, consultancy or professional services that are remotely provided to a person resident in Nigeria.
	Exemption of profits from Excess Dividend Tax rule	Section 19 of CITA which imposed CIT on dividends in excess of retained earnings has been amended to eliminate double taxation that occurs where such dividends are paid from retained earnings that have been taxed and to also ensure that tax incentives are not eroded when dividends that are paid out of tax-exempt income suffer the excess dividend tax. Consequently, CIT will no longer apply to excess dividends
	Commencement and Cessation Rule	The Finance Act seeks to replace the old rule with a new basis for computing the assessable profit of companies just starting or ending their business. This is to eliminate the risk of double taxation of such companies.
	Introduction of early payment bonus	Taxpayers who pay their tax liability at least 90 days before due date would be entitled to a bonus of 2% and 1% of the tax paid for medium and large companies respectively.
	CIT on Interim Dividend	Section 43 of the CITA has been repealed and as such CIT is not payable on interim dividend anymore.
	Progressive CIT System	The Act provides that start-ups and small enterprises with annual gross turnover of not more than N25 million would be completely exempted from paying CIT subject to timely filing of CIT returns. Also, medium sized enterprises whose turnover exceeds N25 million but is less than N100million will be subject to CIT at 20%. While companies with annual gross turnover of N100million and above, will pay tax at the standard CIT rate of 30%.
	Tax Holiday for Agricultural Companies	Agricultural production companies will enjoy initial tax-free period of five years that is renewable for a maximum period of three years, subject to satisfactory performance.
Capital Gains Tax	Termination Benefits	Compensation received for loss of employment of up to ₦10million would be exempted from CGT. This is against the previous 10% imposed on any capital sum received as compensation for loss of office.
	Related Party Business Reorganization	The Finance Act exempts from CGT assets sold or transferred to a related party in a restructuring exercise provided such assets are not sold by the acquiring company within 365 days after the date of restructuring.
Personal Income Tax	Personal Reliefs	The Finance Act has deleted references to the reliefs for children and dependents.
	Delivery of Notice of Objection	Submission of notice of objection via electronic e-mail will be considered valid.

	Deductibility of Pension Contribution	The Act provides that contributions made to pension, provident and other retirement benefits fund, society or scheme would constitute allowable deductions for tax purposes.
	Tax Identification Number to Open or Maintain a Bank Account	The Finance Act requires every person (body corporate, trustee, partnership, etc.) to provide a Tax Identification Number as a precondition for opening a bank account and for continued operations of its bank account in respect of its business operations.
Value Added Tax	Increased VAT rate	The Finance Act provides for a VAT rate increase from 5% to 7.5%.
	VAT Threshold	The Finance Act introduces a ₦25million revenue threshold for taxable persons required to register for VAT and file returns.
	Exported Service	The Finance Act defined exported service as services provided within or outside Nigeria to a non-resident person provided that the non-resident person is neither a fixed base nor a permanent establishment in Nigeria.
	Imported Service	This has been deleted to align with the destination principle
	Cash Basis	The Finance Act states that VAT should be accounted for on cash rather than accrual basis. Accounting for VAT on cash basis means that a taxpayer can only recover input VAT that has been "paid" against output VAT that has been "collected"
	Self-charging of VAT	There is a provision for a customer to self-account for VAT where the supplier of VATable goods or services failed to charge VAT.
	Penalty	An increase in the penalty for failure to register for VAT as prescribed from N25,000 for the first month in which the default occurs and N5,000 in subsequent months of default to N50,000 in the first month, and N25,000 in subsequent months.
	Exempt Items	This has been expanded to include locally manufactured sanitary towels, pads and tampons, tuition relating to nursery, primary, secondary and tertiary education.
	Definition of Goods and Services	The definition of goods was expanded to include 'any intangible product, asset or property over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land" While a service would be deemed to be supplied in Nigeria if the "services are rendered in Nigeria by a person physically present in Nigeria at the time of service provision, or the services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria".
Stamp Duties		Increase in the stamp duty on receipts to ₦50 on every transaction from ₦10,000 and above except for own account transfers in the same bank. Also, there is an expansion to the definition of "receipt" to cover electronic transactions to bring them within the scope of taxable transactions.
Petroleum Profit Tax		Repeals the provision of PPTA that exempts dividends paid out of profits derived from petroleum operations from withholding tax. This means that dividends from upstream companies will henceforth be subject to withholding tax. The current rate is 10% (or 7.5% if payable to recipients of a treaty country).

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