

# Finance Act 2019

Key Changes and what you need to know





## Introduction

On 13th January 2020, President Muhammadu Buhari, GCFR signed the 2019 Finance Bill into law (now the Act). The passage of the Bill into law has brought certain significant changes into the Nigeria tax system. It is important to note that there are some changes in the Finance Act, which were not in the Finance Bill. These changes, as well as others, have been included in this article.

The Act has 57 different sections and it amends 7 different tax laws with over 75 changes in the various applicable tax laws. The strategic objectives of the Act include:

- Promoting fiscal equity by mitigating instances of regressive taxation
- Reforming the domestic tax laws to align with global best practices
- Introducing tax incentives for investment in

infrastructure and capital market

- Supporting small businesses in line with the ease of doing business reforms
- Raising revenue for government, by various fiscal measures including a proposed increase in the rate of value added tax (VAT) from 5% to 7.5%.

Recently, the Minister of Finance, Mrs. Zainab Shamsuna Ahmed, announced the effective date for the commencement of the new VAT rate (i.e. from 5% to 7.5%) to be from 1st February 2020.

In view of the above, the objective of this article is to highlight some of these key changes that will now be applicable to all taxpayers in the discharge of their compliance obligations to the relevant tax authorities, on these tax types (i.e. direct and indirect taxes compliance).

The following tax laws have been significantly affected upon the passage of the Finance Bill into law

### Direct taxes and compliance

- Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004 (as amended)
- Personal Income Tax Act, Cap. P8, Laws of the Federation of Nigeria, 2007 (as amended)
- Petroleum Profit Tax Act, Cap. P Laws of the Federation of Nigeria, 2004 (as amended)
- Capital Gain Tax Act, Cap. C, Laws of the Federation of Nigeria, 2004 (as amended).

### Indirect taxes and compliance:

Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2007 (as amended) Stamp Duties Act, Cap. S8, Laws of the Federation of Nigeria, 2007 (as amended) Customs and Excise Tariff, Etc. (Consolidation) Act, Cap C49, Laws of the Federation of Nigeria, 2004 (as amended)

Following the various amendments, repeals and substitutions made under the above Nigerian tax and fiscal laws, the following will now be applicable to all taxpayers in Nigeria

### Direct taxes and compliance companies income tax act

#### Section 9: Profits chargeable to tax

Following the amendment of this provision, these items have been included as profits chargeable to tax:

- Profits from securities lending transaction

other than compensating payments to the lender or borrower

- Compensating payment received by a borrower from its approved agent or lender in a regulated securities lending transaction is now chargeable to tax provided that such compensating payment is a receipt of interest by the lender on collateral received from the borrower or lender.

Dividends in form of compensating payments received by a lender from its approved agent or borrower in a regulated securities lending transaction, provided that such compensating payments relate to a transaction involving a receipt of dividends by the borrower in any shares or securities.

#### Section 10: Identification of companies

Following the substitution of this provision, the following will now be applicable to all corporate taxpayers:

- All companies are now required to obtain a taxpayer's identification number (TIN), which will be displayed on all business transactions with other taxpayers and on every document, statement, returns, audited accounts and correspondences with revenue authorities, Ministries, Departments and Agencies.
- Banks in Nigeria are now mandated to request for a TIN as a precondition for opening a bank account for all companies or in the case of an existing bank accounts, the banks shall require TIN to be provided by the affected companies as a precondition for the continued operation of their bank accounts within 3 months from the passage of the Act (i.e. from 13th January 2020 to 12th April 2020).

#### Section 13: Nigeria companies

- Non-resident companies that provide any digital activities and so on to the extent that the company has significant economic presence in Nigeria and profit can be attributed to such activity are now chargeable to tax.





- Non-resident companies that provide technical, consultancy, management or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has significant economic presence in Nigeria are now chargeable to tax . It is important to note that the Withholding tax (WHT) applicable on such income shall be the final tax provided that such non-resident companies do not have permanent establishment.

Please note that the Minister of Finance may by order, determine what constitutes significant economic presence of a company other than a Nigerian company.

### Section 16: Insurance companies

Following the amendment of this provision, the following will now be applicable to insurance companies:

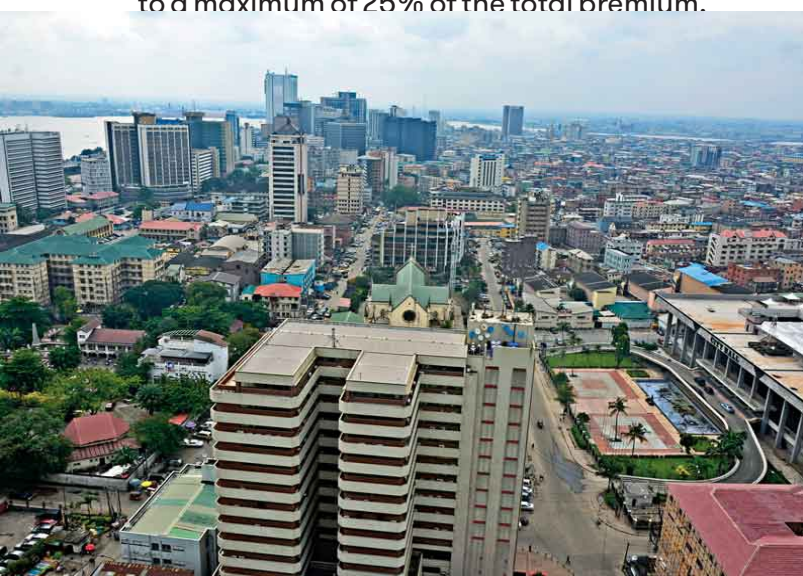
- The amount of reserve for unexpired risks that is allowed to be deducted from total premium is now calculated on time apportioned basis of the risks accepted in the year unlike before where it was calculated as 45% of the total premium for the general non-marine insurance and 25% of total premium for marine insurance.
- All estimated outstanding claims and outgoing so fall non-life insurance companies are now deductible for tax purposes provided that any unutilized claims and outgoings will be added back to the total profit for the subsequent year. As against before where allowable claims and outgoings are restricted to a maximum of 25% of the total premium.

- Insurance companies can now carry forward their unutilized losses indefinitely unlike before where such losses were restricted to a maximum period of four years.
- Special minimum tax provision applicable to insurance companies (i.e. the restriction of allowable deductions for any year of assessment to an amount which ensures that the total profit of the company shall not be less than 20% of the gross income for tax purposes) has now been deleted. This means that all expenses wholly, reasonable, exclusively and necessarily incurred will now be fully deductible for tax purpose.
- The investment income of insurance companies subjected to tax will now be restricted to income derived from the investment of shareholders' funds. This means that the investment income taxable, is the income accruing to the insurance company and not the income accruing to the insurance funds.

The following new minimum tax table will now be applicable to both life and non-life insurance companies. The tax payable for any year of assessment shall not be less than:

Life assurance companies	0.5% of gross income
Non-life insurance companies	0.5% of gross premium

This means that non-resident companies will no longer be subjected to dividend tax in any year of assessment.





### Section 19 : Payment of dividend by a Nigerian company (excess dividend taxation)

Following the amendment under this provision, the following dividends paid out, have now been exempted from excess dividend taxation:

- Dividends paid out of retained earnings where tax had previously been paid on the income under CITA, PPTA or CGTA.
- Dividends paid out of profits that are exempted from income tax by any provision of this Act (i.e. Petroleum Profit Tax Act, Industrial Development (Income Tax Relief) Act, Capital Gain Tax Act or any other legislation).
- Profits or income of a company that are regarded as frank investment income under CITA.
- Distribution of profits made by real estate investment company to its shareholders from rental income or dividend income received on behalf of shareholders.
- Please note that such dividend is regardless of whether the dividend is paid out of profits of the year in which the dividend is declared or out of profits of the previous reporting periods.

### Section 20: Nigerian dividends received by non-resident companies.

- Deletion of dividend taxation under this provision

### Section 23: Profits exempted

Following the amendment of this provision, the following profits will now be exempted from companies' income tax:

- The profits and dividend of a small company in a relevant year of assessment, provided that such company has fulfilled the compliance obligations such as registration, filing of returns etc.
- The profits of any Nigerian

company in respect of goods exported from Nigeria, if the proceeds of such exports are used for the purchase of raw materials, plant equipment and spare parts.

- Please note that tax will accrue appropriately on the portion of such proceeds not utilised in the manner prescribed.
- Rental/Dividend income of real estate investment companies.
- Dividends received from small companies in the manufacturing sector in the first five years of operation.
- The dividend and rental income received by a real estate investment company on behalf of its shareholders provided that:
  - a. A minimum of 75% of the dividend and rental income is distributed; and
  - b. Such distribution is made within 12 months of the end of the financial year in which the dividend or rental income was earned. However, shareholder will be subjected to tax on the dividend or rental income received from a real estate investment company.





Furthermore, management fee, profits or any other income earned, dividend and rental income not distributed within 12 months by the real estate investment company will be subjected to tax.

- Compensating payments, which qualify as dividends received by a sender from its approved agent or a borrower in a regulated securities lending transaction. Such payments shall be deemed to be franked investment income and shall not be subjected to further tax in the hands of the lender.
- Companies engaged in agricultural production will now enjoy this additional incentive aside from other incentives available to all companies:
  - a. An initial tax-free period of 5 years which may be subject to statutory performance of agricultural production, be renewed for an additional maximum period of 3 years.
  - b. Such companies cannot be granted similar incentive under any other Act in Nigeria.
- Any profits on the transfer or sale of business or assets from one company to another company resident in Nigeria will be exempted from companies' income tax provided that both companies are related companies and have been so for at least 365 days before the date of transfer.
- However, any retransfer or resale of such business or assets within 365 days from the date of first transfer will nullify the exemption and such profit on transfer will be assessable to companies' income tax.

#### Section 24: Deductions allowed

Following the amendment of this provision, the following deduction shall be allowable for tax purposes:

- Any sum payable by way of interest on debt borrowed and employed as capital in acquiring the profits of a company will now be tax deductible



- Dividend or mandatory distributions made by real estate investment company duly approved by Securities and Exchange commission, to its shareholders are now tax deductible
- Compensating payment which qualify as interest made by a lender to its approved agent or borrower in a regulated securities lending transaction

#### Section 27: Deduction not allowed

- Any expenses whatsoever incurred within or outside Nigeria involving related parties as defined under the Transfer Pricing Regulations, except to the extent that it is consistent with the Transfer Pricing Regulations shall be disallowed
- Any expenses incurred in deriving tax-exempt income, losses of a capital nature and any expense allowable under the CGTA for the purpose of determining chargeable gain are also disallowed.
- Any compensation payment made by a borrower, which qualify as dividend to its approved agent or lender in a Regulated Securities Exchange Transactions will now be disallowed
- Any compensating payment made by an approved agent, which qualify as dividend to a borrower or to a lender in a Regulated Securities Exchange Transactions will be disallowed.
- Any penalty prescribed by in any Act of the National Assembly for violation of any statute; and

- Any taxes or penalties borne by a company on behalf of another person.

## Section 29: Basis for computing assessable profit (new commencement and cessation rule)

Following the amendment of this provision, the commencement rule usually used to determine the assessable profit of a company in its first 3 years of operation has been modified to avoid double taxation issues encountered by the rule.

The determination of assessable profit for a company in its first 3 year of operation is as follows:

- First year, the assessable profit shall be the profits from the date of commencement of operation to the end of the first accounting period
- Second year, the assessable profits shall be the profit from the first day after the first accounting period to the end of the second accounting period; and
- Third year and for each subsequent year, the assessable profit shall be the profit from the day after the accounting period just ended.

While the new cessation rule states that the applicable assessable profit shall be the amount of the profit from the beginning of the accounting period of the year it ceased operation to the cessation date and the tax thereon shall be paid within 6 months from the date of cessation.

## Section 33: Payment of minimum tax

Following the substitution of this provision,

companies are now required to compute their minimum tax to be 0.5% of the company's turnover. Also, small companies with turnover of less than N25million is exempted from paying minimum tax.

Furthermore, non-resident companies are no longer exempted from minimum tax payment. This means that such companies will now be subjected to minimum tax payment in Nigeria when they have an assessable loss or when they have no taxable profit, or the tax liability is lower than the minimum tax.

## Section 40: Rates of tax

Following the substitution of this provision, the following rates of tax will now be applicable on total profits of companies.

Company's Type	Applicable revenue	Rate of tax
Small company	Revenue less than N25M	0%
Medium company	Revenue from N25M to N100M	20%
Large Company	Revenue above 100M	30%

## Section 77: Time within which tax is to be paid

Following the amendment of this provision, provisional assessment is no longer applicable while taxpayers will now enjoy bonus from early tax payment.



- All companies are now required make payment of tax due on or before the due date of filing (i.e. for a new business 18 months from commencement of business or 6 months after the accounting year end, whichever is earlier while for existing trade or business, 6 months after the end of its accounting period), in one lump sum or in instalment, provided that:
- the taxpayer will first write, with evidence of first instalment and obtain the approval of the FIRS to pay in such number of instalments as may be approved by the FIRS; and
- the final instalment must be paid on or before the due date of filing. Where a company pay its tax 90 days before the due date, such company will now be entitled to a bonus of:
  - a. For a medium sized company, 2% of tax paid; and
  - b. For other companies, 1% of tax paid

Please note that the bonus shall be available as credit against the future taxes.



### Section 81: Deduction of tax at source

Companies executing road, bridges, building and power plant construction contract will now be subjected to two and a half percent as tax to be deducted at source.

In addition to the amendments above the third Schedules of Company Income Tax Act (CITA) was also amended while seventh schedule was introduced.

The Third Schedule of Companies Income Tax Act LFN 2004 is amended as follows:

Tax exemption on certain interests on foreign loans.

Repayment period including Moratorium	Grace period	Tax exemption allowed
Above 7 years	Not less than 2 years	70%
5 - 7 years	Not less than 18 months	40%
2 - 4 years	Not less than 12 months	10%
Below 2 years	NIL	NIL

“And a new paragraph inserted to the third schedule which defines “Moratorium”  
And “repayment period”

“Moratorium” a period at the beginning of a long term where the borrower does not pay neither principal nor interest where this happens, the tax exemption under this schedule shall be adjusted by the Service

“Repayment period” is the agreed tenor for the repayment of loans, where loans are paid before this tenor ends, a tax exemption under this schedule shall be adjusted by the Service.

A new “Seventh Schedule” has been introduced by inserting after the Sixth Schedule,

### Deductible Interest

Where a Nigerian company, or a fixed base of a foreign company in Nigeria, incurs any expenditure by way of interest or other finance charges in respect of debt (loan, financial instrument, finance lease) issued by a foreign connected person (related party), in excess of 30% earnings before interest, taxes, depreciation and amortization (EBITDA) of the Nigerian company in that accounting period shall be a



“disallowable deduction” for the purpose of this Act.

However, this clause is not applicable for Nigerian subsidiary of a foreign company which is engaged in the business of banking or insurance.

It is also worthy to note that where excess interest expenditure is not wholly deducted against income in that assessment year, it can be carried forward for a maximum of 5 years post of the assessment year.

Any person who violates the provision of this schedule shall be liable to penalty and interest on any adjustments made by the Service on excess interest charged in a tax year.

## Petroleum profit tax act



### Section 60: Restrictions on effect of the personal income tax act and other acts.

Following the repeal of this section, dividend paid out of petroleum profit by upstream petroleum companies will now be subjected to withholding tax at the rate of 10% or 7.5% when paid to a recipient of a treaty country.

## Personal income tax act

### Section 20: Deduction allowed

Contribution to a pension fund or other retirement benefits fund, society or scheme will now be allowable deduction for tax purposes.

### Section 33: Personal relief and relief for children and dependents

This section has been amended to delete child relief allowance, dependent relatives' allowance and alimony allowance, respectively. This means that these reliefs are no longer claimable by individuals.



### Section 49: Information to be delivered by bankers

Banks are now mandated to request for TIN from individuals intending to open a bank account for the purposes of its business operations as a precondition for opening or continued operation of existing bank account.

### Section 58: Revision in the case of objection

An objection letter or other correspondences can now be delivered in person, by courier service or by electronic mail. This means that these communication media now acceptable by tax authorities as formal mean of communication.



## Capital gains tax act

### Section 32: Business reorganization

Following the substitution and renaming of this provision, where a business carried on by a company is sold or transferred, or the transfer of its management to Nigeria company for the purpose of better organization of the business, if any asset employed in such business is sold or transferred, no tax (i.e. capital gain tax) will apply to the sale or transfer of the assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognized group of companies and have been so for a consecutive period of at least 365 days prior to the date of reorganization.

### Section 36: Personal injury

Following the amendment of this provision, compensation for loss of office will not be chargeable gain except where the amount of such compensation or damages exceeds N10,000,000 in any year of assessment.

This means that compensation for loss of office for an amount up to N10,000,000 will not be chargeable gain while amount above N10,000,000 will now be chargeable gain, and subsequently subjected to capital gain tax.

## Indirect taxes and compliance

### Value added tax act (VAT)

#### Section 2: Taxable goods and services

Following the substitution of this provision, VAT will now be charged and payable on the supply of all goods and services in Nigeria other than those listed in the VAT exemption list as amended.

The substituted provision covers goods that are physically present in Nigeria at the time of supply regardless of whether they are imported, assembled or installed in Nigeria. It also includes right in or over a goods that are situated, registered or exercisable in Nigeria in as much as the beneficial owner is a taxable person in Nigeria. Services rendered in and outside Nigeria to a person in Nigeria is also part of the changes.



### Section 4: Rate of tax

Following the substitution of this provision, the value added tax rate has been increased from 5% to 7.5%, this means that the rate of 7.5% will now be applicable.

### Section 8: Registration and deregistration requirement

Following the substitution of this provision, all taxable persons are now required to register their business for VAT purposes upon commencement of business.

A taxable person who fails or refuses to register within the time specify by the FIRS, will now be





liable to pay as penalty an amount of N50,000 for the first month in which the failure occurs and N25,000 for each subsequent months in which the failure continues.

For the purposes of deregistration, where a taxable person permanently ceases to carry on business in Nigeria, the taxable person will now notify the FIRS of its intention to deregister for tax purposes within 90 days of such cessation of business.

### **Section 10: Registration by non-resident companies**

Following the substitution of this provision, a non-resident company that carries on business in Nigeria will now register for VAT purposes with the FIRS, using the address of the person with whom it has a subsisting contact with as its address for any correspondences relating to tax. Non-resident companies are now mandated to include VAT on their invoice for the supply of taxable service. This provision also requires taxable person to whom services are supplied in Nigeria to withhold the VAT and remit same to the service in the currency of payment.

### **Section 14: Collection of tax by taxable person**

Following the addition of new subsections to this provision, a non-resident company is only required to include VAT in its invoice while a taxable person that is receiving goods or services is now expected to remit the tax in the currency of transaction. Where the non-resident company did not include VAT in its invoice, the taxable person to whom the goods and services is supplied is required by the new sub-section 4 to self-account for the VAT payable and remit the output VAT to the service on or before 21st day of the following month.

### **Section 15: Taxable person to render returns**

Following the substitution of this provision, taxable person with turnover of less than N25,000,000 are now exempted from penalty for failure to register with the FIRS, failure to issue tax

invoice, failure to collect tax and penalty for failure to submit returns. This means that such taxable persons are now exempted from registering for the tax, charging the tax, rendering a monthly return of its sales and purchases.

### **Section 16: Remission of tax**

Following the substitution of this provision, taxable person can now apply the excess of input paid over output collected as credit against subsequent months. Excess of input VAT not utilised as credit can be forwarded for refund.

### **Section 19: Effect of non-remittance of tax**

Following the substitution of this provision, non-remittance of VAT within the stipulated time will now attract a penalty of 10% of the tax not remitted and interest at the prevailing CBN minimum discount rate plus a spread to be determined by the minister, shall be added to the tax not remitted.

However, the FIRS is required to notify the taxable person or its agent of the VAT due with the penalty and interest, and if payment is not made within 30 days of such notification, the FIRS may proceed to enforce payment.

### **Section 28: Failure to notify change of address or permanent cessation of business**





Following the substitution of this provision, a taxable person who fails to notify the FIRS of change of address within 30 day of such change or fail to comply with the requirement for notification for permanent cessation of business, will now be liable to pay N50,000 for the first month in which the failure occurs and N25,000 for each subsequent month the failure continues.

### Section 35: Failure to submit returns

The amended to this section: “A taxable person who fails to submit returns to the Service, is liable to a fine of N50,000 in the month of default and N25,000 for every month in which the default continues.”

### Section 46: Interpretation. Commencement of business

The issue surrounding the actual time that a business can be said to have commence has been clarified. A business is said to have commence in Nigeria on the date the company made its first transaction in any of following forms:

- a) Begins to market or advertise its goods or service for sale;
- b) Obtains an operating license from a regulatory authority in Nigeria;
- c) First sale or purchase;
- d) Executes its first trading contracts after incorporation;
- e) Issues or receives its first invoice;
- f) Delivers or receives its first consignment of goods; or
- g) First renders services to its customers.

Expanding the scope of the term “Goods” under Value Added Tax Act [VATA]

The Finance Act expands the definition of “goods” to include “incorporeal property” such as rights, patents, trademarks, royalty and are therefore now Vatable.

Furthermore, the first schedule of the VAT Act, has now include the following as goods and services exempted from value added tax. They are: honey, bread, cereals, cooking oil, culinary herbs (curry, thymes, onions etc.), fish of all kinds, flour and

starch, fruits, milk, nuts, pulses (if raw and unprocessed), live or raw meat, sanitary pads that are locally manufactured, services rendered by microfinance banks and mortgage institutions, tuitions relating to nursery, primary, secondary and tertiary education.

## Custom and excise tariff act

### Section 32: Goods liable to excise duty

Following the amendment of this provision, all goods listed in the fifth schedule of the Act are now chargeable to excise duty whether locally manufactured or imported goods.

This is unlike before where only those goods manufactured in Nigeria and included in the Fifth schedule are chargeable to excise duty. These goods listed include Perfumes and Other Toilet Water, Cosmetics, Non-Alcoholic Beverages, Fruit Juice, Soap and Detergent, Beer and Stout, Wines, Cigarettes and Tobacco etc.

## Stamp duties act

Stamp duties came into effect as a result of Ordinance 41 of 1939. Stamp duty is a tax payable in respect of dutiable instrument as provided under the Stamp Duties Act, CAP S8, LFN 2004 (as amended).

Instruments such as Agreements, Contracts, Receipts, MOU, Promissory notes, Insurance policies. The Finance Act of 2019 added Technology, E-commerce, and Cross border



transactions to the list.

Following the amendment of this provision, the meaning of “stamp” and “stamped” has been redefined to include electronic stamps or any electronic acknowledgement of duty or fee on electronic documents while “instrument” to include every written document and electronic documents.

Receipts has been redefined to include any notes, memorandum, electronic documents, writings, promissory notes, bills of exchange etc. that acknowledge that money has been received or paid or that debt has been settled.

### Section 89: Duty upon receipt

Electronic transfers or receipts for money deposited in any bank for every transaction from N10,000 and above will now attract a singular and one-off duty of N50. However, money paid into one's own account or transfer from one account to another account of the same bank shall not attract stamp duties.

## Concluding thought

This initiative is a welcome development in the Nigeria tax system as we expect these to continue in the future as it will positively impact on the Nigeria's fiscal and economic outlook. However, we expect the Federal government to come up with clear and workable transition guidelines that would ensure smooth conversion to the new changes introduced by the Finance Act, 2019 into the Nigerian tax space. It is also expected that FIRS will issue information circulars regarding the new changes for effective administration and implementation of these great strides in the Nigerian tax system. It is our expectations that this new tax regime will attract foreign investors to Nigeria. These changes will also promote the ease of doing business in Nigeria for both local and foreign investors.



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