

Recent developments in international taxation in Nigeria

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Introduction

The Finance Act 2019 (the 'Act') signifies a return to an era of active fiscal supervision, motivating regular review of the macro environment and stimulation of the economy on an annual or at least regular basis with global best practices and increased revenue generation for the nation.

The Finance Act made changes to the following tax legislations: the Companies Income Tax Act; the Value Added Tax Act; the Customs and Exercise Tariff Etc. (Consolidation) Act; Personal Income Tax Act; Capital Gains Tax Act; Stamp Duties Act; and Petroleum Profit Tax Act.

Other recent developments preceding the finance Act include the Implementation of the Automatic Exchange of Financial Account Information (AEOI), Common Reporting Standard (CRS) and other measures related to the Organisation for Economic Co-operation and Development's (OECD) recommendations on Base Erosion and Profit Shifting (BEPS). Nigeria has also moved forward with the ratification of the Multilateral Instrument (MLI).

Below are some of the highlights:

Companies Income Tax Act (CITA)

All companies are required to display tax identification numbers (TIN) in transactions with other companies including in all documents, statements, audited accounts, filed returns and correspondence with revenue authorities and government ministries, departments and agencies.

Non-Resident Companies are to pay companies' income tax (CIT) on income derived from operating within the digital economy and income derived from providing technical, management, consultancy or professional services to a person resident in Nigeria, provided the non-resident company has significant economic presence in Nigeria.

Furthermore, companies are now divided into three:

- small companies with less than ₦25m annual gross turnover are completely exempted from paying CIT that year provided the CIT return is not filed late;
- medium companies whose annual gross turnover is more than ₦25m but less than ₦100m will now be subject to CIT of 20 per cent as opposed to the initial 30 per cent prior to the passage of CITA; and
- large companies with annual gross turnover of ₦100m and above will continue to be subject to the 30 per cent CIT rate.

This relief does not exempt company returns from Desk Examinations and Tax Audits.

Other provisions of note include the following:

- excess dividends tax is to apply to only untaxed distribution other than profits specifically exempted from tax and franked investment income under the provision of Section 19 of CITA;
- minimum tax computation will now be based on 0.5 per cent of gross turnover alone. Companies with imported share capital of 25 per cent are no longer exempted from minimum tax;
- e-mail communications with the tax authority are now accepted as a valid means of communication;
- fees on technical services payable to a non-Nigerian company without a fixed base in Nigeria is now chargeable to withholding tax (WHT) at 10 per cent which shall be a final tax;
- interest on a loan from a connected or related party shall be allowed – up to 30 per cent of Earnings before Interest (EBIT); and
- if company income tax is paid early (90 days before the due date for the company to pay tax or three months after the end of an accounting year of the company), the company gets a bonus:
 - two per cent of the tax payable for a medium-size company (defined as any company with an annual turnover of ₦25–100m); and
 - one per cent for any other company (big company or foreign company). The company will pay 29 per cent.

Value Added Tax Act

Amendments to VAT under the Finance Law include the following:

- an increase in the VAT rate by 50 per cent, from five per cent to 7.5 per cent;
- items exempted from VAT are basically the essential items and others listed in the VAT exemption list;
- the definition of goods and services has been expanded to cover all forms of supplies, tangible or intangible except money or securities; and
- the introduction of a 'self-charge provision' to ensure payment of VAT on all supplies even when invoiced for taxable persons is set at ₦25m. VAT Returns are to be rendered on a cash basis instead of an accrual basis.

Stamp duties

The amendment recognised technology, ecommerce and cross-border transactions in line with global practice and current realities. Also receipts subject to stamp duties have been expanded to include electronic transfers of money more than ₦10,000 from one bank account to another. Thus, a bank transfer of ₦10,000 or more shall now attract a singular ₦50 stamp duty. However, this will not apply if the transfer is between accounts held by the same owner in the same bank.

Petroleum Profit Tax Act (PPT)

Section 60 of the PPT Act has been repealed. Hence, dividend paid out of PPT to individuals or corporate entities (under the PIT regime) is now subject to WHT.

Deep Offshore and Inland Basin Production Sharing Contracts Act (DOIBPSCA)

The Amendment Act introduces a combined production and price-based royalty system to replace the existing production-based royalty system, which varies according to areas of operations. The new royalty regime specifies a baseline royalty of ten per cent for crude oil and condensates produced in the deep offshore (greater than 200-metre water depth) and 7.5 per cent for the frontier and inland basin. In addition to the baseline royalty, a royalty based on the applicable price of crude oil, condensate and natural gas will apply, but only when the price exceeds \$20 per barrel.

The penalty for non-compliance with any obligation imposed by the provision of DOIBPSCA is a fine of at least ₦500m or imprisonment for a period not less than five years, or both, upon conviction.

Common Reporting Standards (CRS)

Nigeria signed a declaration on joining the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA) on 17 August 2017. Further to this, Nigeria also submitted a commitment letter to begin the

first exchanges under the standard in September 2019, which was however postponed to September 2020. The implemented OECD/G20 Common Reporting Standards require certain financial institutions to report their tax administration and financial accounts held by certain non-resident individuals or entities, and certain entities controlled by non-residents.

BEPS measures

Nigeria formally became a member of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) at the inaugural meeting held in Kyoto, Japan on 30 June 2016 and has continued working to implement the BEPS Action Plan recommendations and move forward with the MLI ratification procedure. These measures include the following:

Country-by-country reporting (CbC)

Mindful that all members of the OECD, G20 countries and all countries within the inclusive framework have committed to implement the outcome of the BEPS project, Nigeria issued the Income Tax (Country-by-Country) Regulations in 2018 and entered into the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country reports. Clear guidelines were also issued to enable easy compliance with the CbC Regulations and provide guides and templates for reporting Multinational Enterprises (MNEs) – large multinational enterprises with a total consolidated group revenue of €750m or more in Nigeria and elsewhere).

Multilateral Instrument (MLI)

Nigeria has been involved in the negotiation and development of the MLI. The MLI is intended to streamline the implementation of certain tax-treaty related BEPS recommendations by allowing specific changes to be automatically made to bilateral tax treaties where both parties to the bilateral treaty have signed on to the MLI.

Preventing treaty abuse

Nigeria has updated its Tax Treaty Model and included all the anti-treaty abuse provisions. These updates include provisions that would be adopted under the MLI and those that would be adopted while negotiating new tax treaties.

Covid-19: Nigeria extends CIT, VAT and WHT filing deadlines

Finally, in order to cushion the effects of the Covid-19 pandemic, which is affecting the entire world, taxpayers have been given an extension of the deadline for filing of VAT and WHT to the last working date of the month, following the month of deduction as opposed to the statutory period of 21 days after the month of deduction. The due date for filing of CIT has also been extended by one month, that is, seven months after the end of the financial year end (eg, July 2020 for companies with a 31 December 2019 year end).