



Nigeria

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Finance Act 2021

Capital Gain Tax (CGT)

Gain on disposal of Shares.

Gains accruing to a person from the disposal of shares in any Nigerian company will be chargeable to Capital Gain Tax (CGT) at the rate of 10%. CGT will apply on the whole or part of the proceeds that are not reinvested in the acquisition of shares in the same year of assessment. Disposal of shares below N100 million in any 12 consecutive months, transfer of shares between an approved borrower and lender in a Regulated Security Lending Transaction and gains on disposal of Nigerian government securities are exempted from CGT.

Company Income Tax Act

Compensating payment from the Borrower or Approved agent

Dividends resulting from compensating payment received by a lender from its approved agent or borrower in a Regulated Securities Lending Transaction will be a taxable income in ascertaining company income tax payable.

Arms Length Adjustment of Related Party Transactions

The service shall make necessary adjustment to any related party transaction that is deemed artificial or fictitious in the opinion of the service. Such adjustment may vary the established tax liability and result in additional payment or refund.

Taxation of Insurance companies

Insurance business will be taxed on two classes: General Insurance Company and Life Insurance Company. The two classes of insurance shall be assessed separately to company income tax. Furthermore, where there is more than one type of insurance business in a class of insurance, the loss in one type of insurance business shall not be allowed against the profit from the other type but shall be carried forward against the profit of the same type of insurance business until it is fully relieved. A Nigerian Insurance company shall be charged to tax as though the whole profit of the company is derived from Nigeria while a Non-resident Insurance company shall be charged to tax on profits derived in Nigeria.

General Insurance Company

The profit that will be subjected to tax shall be the gross premium and other income receivables less reinsurance and other allowable expenses incurred in Nigeria. A general insurance company shall be allowed to deduct reserve for unexpired risks and reserve for outstanding claims and outgoings from its premium.

Reserve for unexpired risk is that which is calculated on time apportionment basis of the risks accepted in the year while reserve for outstanding claims and outgoings is the total estimate of all outstanding claims and outgoings for the year and any unutilized amount shall be carried forward and added to the total profit of the following year.

Life Insurance Company

The profit of a life insurance company shall be investment income i.e., income derived from investment of shareholders' fund less the management expenses including commission, allowable deductions include transfer to:

- General reserve fund an amount equal to net liabilities on policies in force at the time of actuarial valuation.
- Special reserve fund an amount equal to higher of 1% of gross premium earned and 10% of profit.

Dividend distributed from the actuarial revaluation of unexpired risks and other revaluation shall be deemed to be part of the total profits for tax purposes. Note that the insurance company should provide the service with the full particulars and certificate of an actuarial all revaluation including unexpired risks within three months after such revaluation.

Reinsurance Company

A reinsurance company shall be allowed to deduct from its gross profit and credit it to general reserve fund.

- 50% of the gross profits of the reinsurer for the year where the general reserve fund is less than the initial statutory minimum authorized share capital.
- 25% of the gross profit of the reinsurer for the year where the general reserve fund is equal to or exceeds the initial statutory minimum authorized share capital.

Note: Any insurance company that engages the services of an insurance agent, a loss adjuster and an insurance broker shall include in its annual tax returns, schedule showing the name and address of that agent, loss adjuster and insurance broker, the date their services were employed and terminated as applicable, and payments made during period covered by the tax returns. Minimum tax shall be applicable to insurance companies on their gross turnover which means gross premium and other income for general insurance business and only gross income for life insurance business.

Educational Institution is liable to Company Income Tax

An educational institution registered in Nigeria as a limited liability or as an unlimited liability company is liable to company income tax. Schools and other educational Institutions of public character whether it shares profit or not are no longer exempted from company income tax.

Profit from export business of Upstream, Midstream or Downstream Petroleum companies

Profits of a Nigerian company that engages in the Upstream, Midstream or Downstream Petroleum operation in respect to goods exported from Nigeria are no longer exempted from company income tax whether or not the proceeds are used for the purchase of raw materials, plant, equipment, and spare parts.

Other profits currently exempted from tax

1. Profit of a small company in any relevant year of assessment provided that such company complies with tax registration and self assessment provisions.
2. Dividend and rental income received by a real estate investment company on behalf of its shareholders. A minimum of 75% of such income must be distributed within the financial year in which it was earned.
3. Dividend received by a lender as a compensating payment from its approved agent or a borrower in a Regulated Securities Lending Transaction.
4. Dividend or interest received by an approved agent as a compensating payment from a borrower or lender on behalf of a borrower or lender in a Regulated Securities Lending Transaction.

Turnover Assessment of Non-Resident Companies

Non-resident companies that carry out business through electronic or wireless means in Nigeria may be assessed to company income tax on a fair and reasonable percentage of the turnover derived in Nigeria to the extent that such non-resident company has significant economic presence in Nigeria. This is applicable where there is no assessable profit or the assessable profit is below expectation.

Treatment of Capital Allowance relating to both Taxable and Non-Taxable Income

Only capital allowance relating to the qualifying capital expenditure incurred in generating the assessable profits shall be allowed as deduction in that year of assessment. When the qualifying capital expenditure is in relation to an asset that is partially utilised in generating the taxable income, the qualifying capital expenditure shall be pro-rated and only the portion

relating to the taxable income shall be allowable as a deduction if the portion of non-taxable income is greater than 20%.

This is not applicable to company that is enjoying pioneer status under the Industrial Development (Income Tax Relief) Act.

Capital Allowance for Small and Medium Companies

A small and medium company as defined by Company Income Tax Act shall compute capital allowance relief using the relevant restriction in a year of assessment. Such amount so computed shall be deemed to have been consumed in that year of assessment and it will not form part of the amount to be carried forward into subsequent year of assessment.

Application of the reduced minimum tax rate of 0.25%

The reduced minimum tax rate of 0.25% can only be enjoyed in two accounting years either from 1 January 2019 to 31 December 2020 or 1 January 2020 to 31 December 2021. The full minimum tax rate of 0.5% shall take effect immediately a company has enjoyed the two years of reduced minimum tax rate.

Restriction on Incentive to Gas Utilisation Company

The tax incentive available to companies that engage in gas utilisation in the downstream operation shall only be claimed once by the same company. The incentive is not available to any gas utilisation company formed from reorganization, restructuring, buy-stock and other similar schemes out of a company that has already enjoyed this incentive. Also, a company that has claimed an incentive for same trade or business under any law in Nigeria including Petroleum Profit Tax Act and Industrial Development (Income Tax Relief) Act is not eligible for this incentive.

Penalty for late filing of returns: on reduced minimum tax rate

Where a company fails to submit its tax returns to the authority within the specified time and such company qualifies for the reduced minimum tax, the penalty for late filing shall be the amount of relief on the minimum tax (0.25% of the gross turnover less franked investment income). By implication, such company will pay 0.5% of the gross turnover less franked investment income as it tax and penalty for late filing.

Time frame for payment of tax assessment

The tax charged by any assessment that is not objected or appealed within 30 days after the service of such notice shall be payable to the service. The time frame may be extended by the service based on its discretion. Where there is objection, the assessment shall be suspended until the determination of such objection or appeal. However, the company is expected to pay the undisputed portion of the assessment. Once the objection or appeal is determined, the service will issue a revised assessment that shall be payable within 30 days from the date of such notice.

Every company can make payment of tax due in one lump sum or in instalments; the final instalment must be paid on or before the due date.

Any balance of tax that remains unpaid after the due Taxes due shall be paid in the currency in which the income is derived or received. Medium-sized companies shall enjoy a tax rebate of 2% of tax due if such tax is paid 90 days before the due date while other companies shall enjoy 1%. Such rebate will be available as a credit against future taxes.

Withholding tax on Interest payment as a final tax

Interest payment made to Non-resident and unit trust companies, from which withholding tax has been deducted, shall not be subjected to further tax in the hands of the recipient: it is a final tax.

Custom, Excise Tariffs, etc (Consolidation) Act

Excise duty on non-alcoholic, carbonated, and sweetened beverages

Non-alcoholic, carbonated, and sweetened beverages shall be subjected to excise duty of N10 per litre.

FIRS (Establishment) Act

FIRS power to automate the tax administration processes

FIRS has been empowered by law to deploy proprietary or third-party technology to automate the tax administration including both tax assessment and information gathering. However, the service must give the taxpayer a minimum of 30 days' notice before the deployment of the technology. Taxpayers can also request for an additional extension from the initial 30 days upon demonstrating a good cause.

Any person who fails to grant access to the Service after the required periods of notice shall be liable to an administrative penalty of #25,000 for each day that the failure continues.

Penalty for failure to file Quarterly returns by Banks

Any bank which fails to file its quarterly returns with FIRS shall be liable to a penalty of N1,000,000 for each quarterly returns or information not provided.

Confidentiality of Taxpayers Information

Any staff of FIRS assigned to administer this Act will have access to the taxpayer information and must deal with such information as secret and confidential.

FIRS as the primary collection agent of the Federal Government

FIRS is currently the primary collecting agent of the Federal Government of Nigeria or any of its agencies for all the taxes and levies listed under the First Schedule of FIRS Establishment Act including any other laws enacted by the National Assembly that is imposing taxes or levies in Nigeria. FIRS shall administer, assess, collect, account and enforce the provisions of such laws except where it is authorized by the Minister of Finance as approved by the National Assembly or in the case where such provision is subjected to litigation in a court of competent jurisdiction.

The provision of First Schedule of FIRS establishment Act shall override any provision of any other law in any inconsistency between the two provisions. FIRS may collaborate with relevant

MDAs or Institutions of the Federal Government to enforce compliance and to avoid revenue loss. Any person who contravenes the provisions is liable on conviction to 5 years imprisonment or a fine of N10,000,000 or both.

Personal Income Tax Act

Deduction of life insurance premium

Taxpayer shall be allowed to deduct annual amount of premium paid in the year preceding the year of assessment to insurance company on his life or the life of his spouse.

Period of Notice to call for returns, books, documents and other information

The time limit for a notice to any person for the purpose of obtaining full information in respect of the income or gain of a person by any relevant tax authority shall not be less than 7 days from the date of the service of the notice. Also, an officer who should not be below the rank of a Senior Manager or Grade Level 14 equivalent may require a taxpayer to produce for the purpose of the examination any book, document, account, return and give orally or in writing any other information which the relevant authority may deem necessary.

Penalty for failure to provide information

A person engaged in banking in Nigeria who fails to provide information after a notice signed by the chairman of relevant tax authority, or fails to file quarterly returns with the relevant tax authority, will be liable to a penalty of #1,000,000 for each information or returns not provided.

Penalty for other offences under PITA

Any person who is guilty of an offence or contravenes the provision of Personal Income Tax Act and any regulation under the Act for which no penalty is specified, shall be liable to a fine of #20,000 on conviction.

Where the offence is failure to furnish a return, statement or information or to keep records required, such person shall be liable to a further sum #2,000 for every day during which the failure continues. If the offence is default of payment, such person shall be liable to imprisonment for six months.

Stamp Duties Act

Distribution of Electronic Money Transfer Levies (EMTL) and stamp duties.

The Minister of Finance under the approval of the National Assembly shall make regulations for the imposition, collection and distribution of EMTL and Stamp Duties to the relevant tax authority.

It is expected that all arrears of Electronic Money Transfer Levies and Stamp Duties collected between 2015 to 2019 fiscal years shall be distributed before 30th January 2022. Subsequently, all Electronic Money Transfer Levies collected are to be distributed within 30 days following the month of collection.

Tertiary Education Trust Fund (Establishment) Act

Increase in Education Tax Rate

Education Tax has been increased from 2% to 2.5% on assessable profit of all company registered in Nigeria except small company with turnover less than or equal to #25,000,000 in any year of assessment. Non-resident companies are also exempted from Education Tax. Education Tax shall be due and payable within 30 days after the notice of assessment.

Value Added Tax Act

Registration of Non-resident person for VAT

Non-resident person that makes taxable supply to Nigeria need to register for tax purposes with FIRS and shall include VAT on its invoice for all taxable supplies. The non-resident person may appoint a representative for the purpose of compliance with its tax obligation in Nigeria.

A taxable person to whom a taxable supply is made to in Nigeria by non-resident person or any other person appointed by FIRS shall withhold and remit the withheld VAT to the Service on or before 21st day of the following months in the currency of the transaction.

Removal of Upstream petroleum companies from VAT threshold

Any company operating in the upstream petroleum industry is expected to charge, withhold, and remit VAT on all taxable supplies whether its total taxable supplies for the preceding year is up to N25,000,000 threshold or not.

Nigeria Police Trust Fund (Establishment) Act

FIRS Power to assess and collect Nigeria Police Trust Fund Levy

FIRS has been empowered to assess, collect, account, and enforce the payment of the Nigeria Police Trust Fund Levy (NPTFL). Nigeria Police Trust Fund Levy is 0.005% of the Net Profit for the relevant years of assessment. The Nigeria Police Trust Fund is to operate for 6 years except where it is extended by an Act of the National Assembly. Recall that the Nigeria Police Trust Fund (Establishment) Act 2019 was assented to by the president on 24 June 2019 but no effective date was communicated.

National Agency for Science and Engineering Infrastructure Act

NASENI levy is 0.25% of Profit before tax

All companies and firms in banking, mobile telecommunication, ICT, aviation, maritime, oil and gas industries with turnover of N100,000,000 and above shall pay a levy amounting to 0.25% of profit before tax into National Agency for Science and Engineering Infrastructure Trust Fund.

Finance (Control and Management) Act

Payment of all revenue into Consolidated Revenue Fund

Any revenue or money that does not make up statutory transfer nor form part of other such payment required by law to be first paid into any fund before being paid into the consolidated revenue fund and subsequently transferred into the fund shall be

paid into the consolidated revenue fund of the federation.

No money shall be withdrawn from the consolidated revenue fund or any public fund except to meet expenditures that are charged to the consolidated revenue fund or other public fund by the constitution of the federal republic Nigeria or where the issues of such money has been approved by an appropriation act, supplementary appropriation act or any act passed in pursuance of section 81 of the constitution.

Responsibility of officials of MDAs in charge of public assets

Every official of MDA's or any other responsible body for collection, receipts, custody, issue or payment of public moneys, stores, stamps, investments, securities or negotiable instruments whether the property of the government, or on deposit or entrusted with the government shall abide by the rules, regulations, guidelines and instructions that may be issued by or under the supervision of the minister for finance in respect to custody, handling and accounting of such public assets.

The official shall ensure all Taxes, levies, revenues or other monies raised or received by the federation, the federal government of Nigeria or an agency of the Federal government of Nigeria shall be paid in gross into the federation account, the consolidated revenue fund or special purpose account as provided by the constitution or act enacted by the national assembly.

Any person who being an officer of any federal MDAs or institution of government to which this section refers and who fails to pay, or authorizes the payment of any part of tax or taxes, levies and other revenue collected on behalf of the federation, federal government, MDAs or institution of the federal government to any person before the money is paid into the federation account or consolidated revenue fund except authorized by the national assembly or minister for finance commits an offence and shall be convicted to imprisonment for a term not more than five years or a fine of 5,000,000 or both.

Fiscal Responsibility Act

Debt management framework for all tiers of government

All tiers of government shall only borrow for capital expenditure, human development and projects that are significant to national impact. They must be on concessional terms, low interest rate and long amortization period and be approved by the legislative arms of the government. Every Government must ensure that the level of public debt it holds is at a sustainable level. This means that it should be a proportion of national income.