

UDO UDOMA &
BELO-OSAGIE

THE FINANCE ACT 2019: WINNERS & LEARNERS



A SECTORAL IMPACT ANALYSIS

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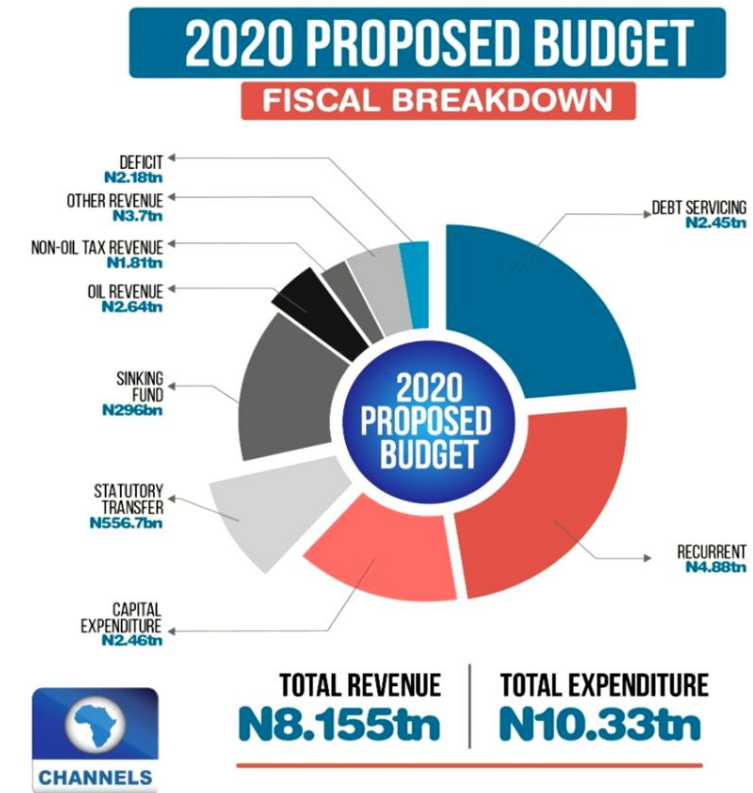
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Introduction

- Nigeria's GDP growth rate for 2020 was projected to be 2.4% by the African Development Bank, representing a decline rather than growth in the nation's economy.
- On 17th December, 2019, President Muhammadu Buhari signed the 2020 Appropriation bill into law.
- The Appropriation Act contains a =N=10.59 trillion (\$34.62 billion) budget for 2020.
- Projected revenue available to fund the 2020 Budget stands at =N=8.155 trillion, with a deficit of 1.52% of the estimated GDP amounting to N2.18 trillion (\$7.2 Billion).
- Ultimately, foreign and domestic debt and potential increased revenue will be used to finance the deficit in the 2020 Budget.
- In view of this, the Finance Act has been enacted as a mechanism to efficiently increase the government's revenue by eliminating loopholes in the existing tax laws to minimise tax leakages.



ALL FIGURES ARE GOVERNMENT ESTIMATES



Key objectives of the Finance Act 2019

- To promote fiscal equity by mitigating instances of regressive taxation
- To reform domestic tax laws to align with global best practices.
- To introduce tax incentives for investments in infrastructure and capital markets.
- To support SMEs in line with the Ease of Doing Business Reforms.
- To raise revenues for the Government.



Overview of the Finance Act

- The Finance Act amends the Companies Income Tax Act 2004 (as amended) (“CITA”); Value Added Tax Act, 2004 (as amended) (“VAT Act”); Personal Income Tax Act 2004 (as amended) (“PITA”); Capital Gains Tax Act, Cap C4 LFN 2004 (“CGT Act”); Petroleum Profit Tax Act 2004 (as amended) (“PPTA”); Stamp Duties Act Cap S8, Laws of the Federation of Nigeria 2004 (as amended) (“SDA”); and Customs and Excise Tariff etc. (Consolidation) Act Cap C49, Laws of the Federation of Nigeria 2004 (as amended) (“CETCA”).

Some of these amendments include:

- Small companies i.e. companies with turnover below =N=25 million are now exempt from Companies Income Tax (“CIT”) payment and the minimum tax requirement. **Quare:** Are they exempted from tertiary beducation tax?
- Companies with a turnover of =N=25 million but less than =N=100,000,000 are now liable to a lower CIT rate of 20%.
- Companies with a turnover above =N=100,000,000 will continue to pay CIT at the rate of 30%.



Overview (Cont'd)

- Substantially eliminates the incident of 'excess dividend tax'.
- Remove the payment of income tax based on interim dividend.
- Limits deductible interest on related party loan to 30% of EBITDA.
- Stringent penalties for non-compliance to provisions of the laws.
- Introduced 365 days rule for related parties reorganisations.
- Imposes withholding tax on dividends paid by oil and gas exploration companies.
- Streamline the commencement and cessation rules to be on actual year basis.



Overview (Cont'd)

- Introduced tax exemptions to facilitate real estate investment companies
- Introduced tax exemptions to facilitate securities lending transactions.
- Expanded the concept of fixed base for non-resident companies.
- Empowered the Minister of Finance to determine significant economic presence.
- Tax withheld on management, technical, consultancy etc fees now final tax in Nigeria.
- Intangibles now liable to VAT.



Overview (Cont'd)

- Medium-sized and large companies are now entitled to a tax bonus of 2% and 1% respectively if tax paid within 90 days before the due date for filing.
- Payment if CIT based on interim dividend deleted.
- Possessing a tax identification number (“TIN”) is now a precondition for opening and operating a corporate bank account.
- VAT rate has been increased from 5% to 7.5%.
- New requirement for VAT deregistration upon cessation of business.
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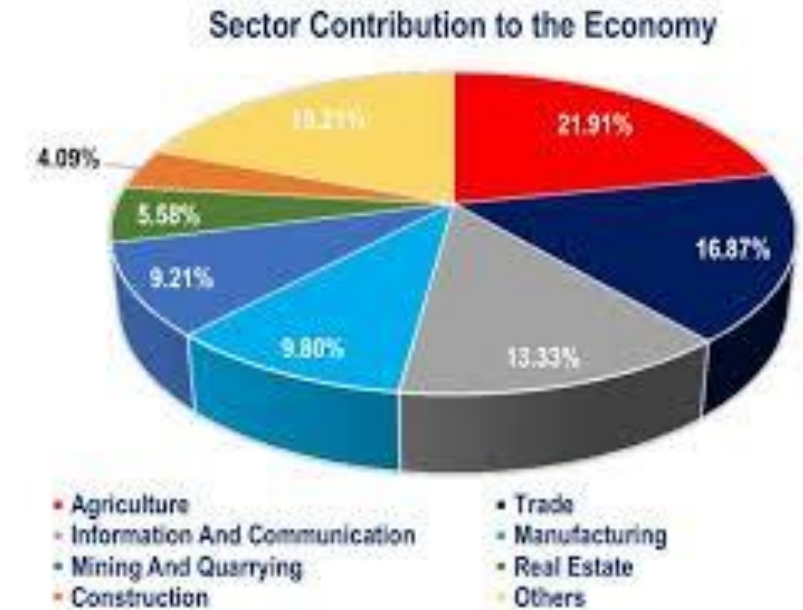
Overview (Cont'd)

- Minimum tax is now imposed on companies at the rate of 0.5% of gross turnover, less franked investment income. Small companies are exempted from minimum tax.
- Ministerial approval is no longer required for expenses incurred in relation to management services between non-related parties before such expenses could be tax-deductible.
- The definition of vatable goods and services has been expanded by the Finance Act to include intangibles such as intellectual property rights, assignment of contractual rights, shares and royalties.



Impact of the Finance Act on various sectors

- Banking
- Capital Market
- Insurance
- Real Estate
- VATable Entities
- Non-Resident Companies (NRCs)
- Oil & Gas
- Holding Companies
- Agricultural sector
- Others



Banking Sector

- **Exemption for Microfinance Banks** – It clarifies the VAT exemption status of services rendered by microfinance banks in Nigeria and thereby reduces the cost of microfinance bank services.
- **Tax Identification Number(TIN)** – Banks and other financial institutions are required to obtain TIN of new and existing customers prior to opening an account for business operation.
- **Amendment of Stamp Duty** – It expands the definition of “stamp”, “stamped” and “instrument” under Section 2 of the Stamp Duties Act to accommodate electronic and digital transactions. It also imposes stamp duty of =N=50 on all electronic receipts/transfers above =N=10,000 for all types of accounts except bank transfers between own accounts.



Banking Sector (Cont'd)

Winners	Learners
<p>Customers of MFB – Exemption from VAT</p>	<p>Government – Loss of revenue from exemption of MFB.</p>
<p>Banks – (a) The FA reinforces the requirement of obtaining TIN from customers. (b) Tax on interim dividend abolished. (c) Interest deductibility limit of 30% of EBITDA not applicable to Nigerian banks with offshore parents.</p>	<p>Intangibles such assignment of loans and receivables now VATable</p>
<p>Customers - No stamp duty on electronic transfers less than =N=10,000</p>	<p>Obligation to collect stamp duty on electronic documents.</p>
<p>Government – Revenue from digital bank transactions</p>	



Capital Market

Regulated Securities Lending Transactions (RSLT)

- Securities involves the exchange of shares between a lender and borrower.
- It introduces a tax framework for securities lending in Nigeria. The amendments include:
 - exchange of securities does no constitute the disposal of an asset.
 - defines “interest” and “dividends” to include compensating payment made by “Lender to a Borrower” and by a “Borrower to a Lender” respectively.
 - WHT on interest only applies at the point of payment by the borrower, and on dividends only at the point of payment by the lender.
 - lender to deduct tax from compensating payments, amounting to interest, made to the agent or borrower.
 - exempts documents, shares, and securities relating to securities lending from stamp duty.



Capital Market (Cont'd)

- **Exemption of Unit Trust's dividend from WHT**
It exempts franked investment income such as the dividend distributed by Unit Trust to its beneficiaries from WHT.
- **Exemption of REICos Dividend from CIT**
– Dividend distributed to a REICo shareholders are exempted from tax provided a minimum of 75% of dividend and rental income is distributed within 12 months of the end of the relevant financial year.
- REICos not liable to excess dividend tax.





Capital Market (Cont'd)

Winners	Learners
Unit Trust Holders – WHT is not payable on dividend distributed.	Government – Potential loss of revenue because of the exemptions
Securities Lender/Borrower – Income from transfer of assets for securities lending is not taxable.	Intangibles such as securities now VATable.
REICOs – No CIT on dividends distributed to shareholders. Excess dividend rules inapplicable to REICOs. Dividend payable to REICOs exempt from WTH.	
Investors – Tax exemption guarantees high return of investment	
Government – Possible increase in the inflow of foreign investment	



Insurance

- **Removal of the limitation period of tax losses carried forward** – Insurance companies can now carry forward their tax losses indefinitely.
- **Taxation of Life Insurance Business** – It provides that the investment income for the purpose of taxation of a life insurance company now means income derived from investment of shareholders' funds.
- **Deletion of Life Insurance Minimum Tax** – The provision which requires an insurance company to have 20% of its gross income available as taxable profit after all deductions has been deleted.



Insurance (cont'd)

- **Removal of restriction of the tax deduction for claims and outgoings –** Eliminates the restriction on the tax deduction for claims and outgoings to a cap of 25% of the total premium.
- **New minimum tax regime –** Provides that tax payable by an insurance company in a year of assessment shall not be less than (a) 0.5% of the gross premium for non-life insurance businesses and (b) 0.5% of gross income for life insurance businesses.





Real Estate Sector

- A REICo is a company duly approved by the Securities and Exchange Commission to operate a real estate investment scheme in Nigeria.
- **Exemption of dividends and rents received by REICos from CIT**– Finance Act grants REICos pass-through status. It exempts dividend and rental income received by a REICo on behalf of its unit holders from CIT under the condition that a minimum of 75% of the dividends or rent earned is distributed within 12 (twelve) months of the end of the financial year in which the income was earned.
- **Exemption from Excess Dividend Tax**– It eliminates distribution of rental income and dividend income by REICos from the ambit of Excess Dividend Tax.



Real Estate Sector (cont'd)

- **Exemption of dividends received by REIC from WHT** – Exempts dividend paid by REICo from WHT.
- REICos are liable to pay tax on management fee, profits or other income earned for and on its own account.
- These provisions relieves REICos of the incidence of double taxation and seeks to unlock the value chain potential of real estate investment.



Real Estate (Cont'd)

Winners	Learners
<p>REICos -</p> <ul style="list-style-type: none"> (i) No CIT on rents and dividends received by REICos (ii) No excess dividend tax on dividend distributed by REICos 	<p>REICos - Tax is payable on management fee, profits or other income earned for and on its own account.</p> <p>Exemption lost if less than 75% income is distributed within within 12 months or distribution is made after 12 months</p>
<p>Shareholders of REICos – No WHT on dividend payment by REICos, provided at least 75% of income is distributed within 12 months</p>	<p>Intangibles (such as receivables) now VATable.</p>



VATable entities

- **New VAT Regime** – The Finance Act introduces a new system of VAT with the following changes:
 - Increase in the VAT rate from 5% to 7.5%
 - Exemption of Companies with an annual turnover of =N= 25 Million Naira or less from (a) registering for VAT, (b) charging VAT and (c) filing of VAT returns
 - Expansion of the list of items exempted from VAT to include “basic food items”.
 - Definition of “goods” and “services” – (i) goods are defined as movable tangible properties excluding money or securities, and transferrable intangible products, assets or property, excluding interest in land. (ii) Services are defined to include anything other than goods, money or securities which are supplied excluding services provided an employment contract.





VATable entities (Cont'd)

- Deletion of the definition of “imported service” in alignment with the “Place of Supply” principle.
- Definition of “exported services” to mean “a service rendered within or outside Nigeria by a person resident in Nigeria to a person resident outside Nigeria. It excludes service provided to a fixed base or permanent establishment of a non-resident person in Nigeria.
- Taxable goods now include intangibles.
- Introduced 365 days rule to related parties reorganisations.
- Services provided by non-resident companies enjoyed/received in Nigeria now liable to VAT

VATable entities (Cont'd)

Winners	Learners
<p>Consumers –</p> <ul style="list-style-type: none"> (i) Expanded list of goods and services exempted from VAT (ii) Exclusion of exported services from VAT 	<p>Consumers – Increase in VAT rate Services received in Nigeria from an offshore resident now liable to VAT.</p>
<p>SMEs – Exemption of companies with less than =N=25 million turnover from VAT filing obligation and payment of VAT.</p>	<p>SMEs – Inability to recoup input VAT</p>
<p>Land owners – Exclusion of transfer of interest in land from definition of goods.</p>	<p>Transfer of intangibles now liable to VAT.</p>
<p>Non- SMEs – Ability to recoup input VAT</p>	<p>Importers – imposition of excise duties on imported goods.</p>
<p>Government – Increase revenue</p>	



Non-Resident Companies

- **Establishment of fixed based for digital commercial activities**

To capture the digital economy, the Finance Act expands the basis for taxing Non-resident companies to include digital/electronic services. A non-resident company that transmits, emits or receives signals, sounds, messages, images or data of any kind to Nigeria in respect of any activity, including electronic commerce, online adverts, online payments, etc., and has a significant economic presence in Nigeria will be taxed on the profits attributable to such activity in Nigeria.





Non-Resident (Cont'd)

- **Fees – Final tax**

Fees earned from the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident, and the non-resident company has a significant economic presence, in Nigeria the profit can be attributable to such activity. The tax withheld on the fees for such services shall be the final tax on the income in Nigeria.

- **Introduction of “reverse charge” on imported services**

The finance Act introduces the “place of supply” rule and imposes an obligation on Nigerian customers of an NRC to self-account for VAT.

The VAT is applicable to services provided to Nigerian customers even where the services are rendered outside Nigeria.



Non-Resident (Cont'd)

- **Application of Stamp Duties to Electronic Documents**

It expands the definition of “stamp”, “stamped” and “instrument” under the Stamp Duties Act to accommodate electronic and digital transactions. There is an ongoing debate on the extent of the application of the definition of instruments to include electronic documents and whether that now means that original documents executed offshore with PDF copies sent to someone in Nigeria will not become liable to stamp duty, even when the original has not been received in Nigeria. The jury is still out on this.



Non-Resident (Cont'd)

- **Interest Deductibility** – The FA introduces a benchmark of 30% of EBITDA as the limit for an interest deduction on loans by a foreign ‘connected person’ to a Nigerian company. Nigerian subsidiaries of foreign companies engaged in banking and insurance activities are exempted.
- **Removal of 100% WHT exemption on foreign loans** – it reduces the maximum exemption from WHT relating to interest on foreign loans to 70% with a graduated reduction for loans of lower terms and moratorium.

Repayment period including Moratorium	Moratorium period (previously “grace period”)	Previous WHT Exemption	Current WHT Exemption (Finance Act)
Above 7 years	Not less than 2 years	100%	70%
5-7 years	Not less than 18 months	70%	40%
2-4 years	Not less than 12 months	40%	10%
Below 2 years	Nil	Nil	Nil

Non-Resident (Cont'd)

Winners	Learners
<p>NRCs – Exported services are exempted from VAT.</p>	<p>NRCs Expansion of fixed base to include e-commerce activities.</p>
<p>Customers – No stamp duty on electronic transfers less than =N=10,000</p>	<p>Consumers - Reverse charge and the requirement to self account for VAT.</p> <p>Intangibles VATable.</p>
<p>Government – (i) Increase revenue from taxing digital economic activities (ii) Interest deductibility rules would check tax avoidance strategies.</p>	<p>Foreign Lenders & Borrowers – (i) Instrument under SDA may include scanned documents. (ii) No full exemption on interest payments on foreign loans. (iii) Interest deductibility rule limit tax benefit for local subsidiaries</p>





Oil & Gas Production Companies

- **Removal of exemption for petroleum profit dividend**

The Finance Act deletes Section 60 of the Petroleum Profit Tax Act 2004 which exempts income or dividends paid out of after-tax petroleum profits from WHT.

Dividend paid by such companies to their shareholders will now be liable to WTH.



Downstream Gas Companies

- **Amendment of Downstream gas utilisation incentives** – Modifies the gas utilisation incentives for downstream operations through:
 - Elimination of the requirement to obtain ministerial approval to claim tax deductible-expense.
 - Restriction on the number of incentives that can be claimed: Companies cannot claim both gas utilisation incentives and pioneer status incentives on the same qualifying capital expenditure.

Oil & Gas (Cont'd)

Winners	Learners
<p>Government – Increased revenue from the oil and gas sector.</p>	<p>Shareholders of Oil and Gas Companies – WHT is now payable on dividend paid by oil and gas companies.</p>
<p>Downstream Companies – Removal of the requirement of ministerial approval to claim tax deductible-expenses.</p>	<p>Oil and Gas Companies</p> <ul style="list-style-type: none"> (i) No more 15% investment tax credit for replacement of obsolete machinery. (ii) Restriction on the number of incentives claimable. (iii) Intangibles VATable.





Holding Companies

- **Elimination of double taxation risks (Excess Dividend Tax)** – The FA exempts dividends paid out of the following from EDT:
 - Retained earnings that have suffered CIT, PPT and CGT;
 - Exempted profits/income under any law;
 - Franked investment income;
 - Rental income received by REICs for distribution to shareholders.
- **Exemption of VAT on related companies restructuring** – The FA exempts the assets transferred from VAT provided that pre and post 365 days rule is met.



Holding (Cont'd)

- **Exemption of CGT on related companies restructuring**

The FA exempts gains that may be deemed realised from disposal of assets in such restructuring from CGT provided the companies meet the pre and post 365 days rule.

- **Companies income tax benefits for related companies restructuring**

The tax benefits for related parties reorganisation (such as transfer of assets at tax written down value, commencement and cessation rule not applying, claim of unutilised capital allowance etc) will only apply to the reorganising entities if the companies meet the pre and post 365 days rule.

Holding Companies (Cont'd)

Winners	Learners
<p>HoldCos – Elimination of excess dividend tax to encourage the setting up Holdcos in Nigeria</p>	<p>Shareholders/Investors – Introduction of 365 days rules limits the opportunities for related parties tax planning through reorganisation.</p>
<p>Shareholders – Holdcos are encouraged to distribute retained earnings as dividends.</p>	<p>Government – Reduced revenue</p>





Agricultural Sector

- The Act introduces a tax holiday of up to 8 years for companies engaged in agricultural production comprising of an initial period of five years and another 3 years subject to satisfactory performance.



Importation of Goods

- **Excise duties on imported goods**
Importation of prescribed products (such as tobacco, spirit, alcohol, etc) liable to excise duties at the same rates applicable to locally manufactured items.

This does not apply to:

- (a) Goods that are not locally produced in Nigeria; or
- (b) Raw materials that are not locally available in Nigeria.





Where we stand ...

- We are right behind and in front of you! Count on us...
- You need to be aware of how they will impact your business and operations.
- You can rely on us to provide tax planning advice.
- In case of any dispute, we can also represent you in any tax dispute with any tax authority in Nigeria.
- Tax hovers around most business planning and restructuring/reorganisation – ask us to guide you – taxwise – before you proceed.



Conclusion

- The amendments to the principal tax legislation in Nigeria will have significant on tax planning in Nigeria.
- Although aimed at increasing the government's revenue, also seek to encourage investment activities in the country by:
 - Removing obsolete provisions from the tax statutes;
 - Creating a more favourable tax environment for SMEs to operate;
 - Promoting growth of the real estate sector through the capital market;
 - Encouraging investment in the Insurance, agricultural and downstream gas sectors;
 - Creating tax incentives that will make for ease of doing business etc.

Thoughts?

Thank you

E ʒé

Na gode

Danke schön

Graziemille

Merci