UDO UDOMA & BELO-OSAGIE

TAX SERIES

HIGHLIGHTS OF THE FINANCE BILL 2022

PART 1

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Taxation of Digital Assets

On the 3rd of January 2023, President Muhammadu Buhari signed the 2023 Appropriation Bill for the implementation of the National Budget (the "Budget") into law. One of the key things that stood out about the Budget is that Nigeria's projected expenditure for 2023 is the highest in its over 60-year history, with the Federal Government of Nigeria ("FGN") expected to spend over NGN21 trillion. Interestingly, Nigeria hopes to generate NGN11 trillion in revenue to finance the Budget, with taxes forming a significant source of income.

As has become customary in Nigeria since 2019, and to align with the FGN's drive to increase its revenue generation to fund the Budget, the Finance Bill 2022 is presently awaiting the President's assent. Typically, the 2022 FB should have become effective on 1st January 2023, like the previous Finance Bills. Still, the President has indicated that he has yet to assent to the Finance Bill 2022 because some changes made by the National Assembly need first to be reviewed by the relevant government agencies, following which the Finance Bill 2022 should be re-submitted for the President's final review and assent. The Finance Bill seeks to amend 9 (nine) statutes including the major tax laws.

This update, which is the first in a series, highlights the key amendments to the Capital Gains Tax Act in relation to digital assets, and examines some of the changes in the version of the Financial Bill, which has been published by the House of Representatives Committee on Finance. It is important to note that this version may be different from the version which was passed by both the Senate and the House of Representatives, and the version that will eventually become law after the President's assent.

The Capital Gains Tax Act, Cap C1 Laws of the Federation of Nigeria 2004 (as amended) (the "CGTA") is the law that governs the taxation of gains that are derived from the disposal of various classes of assets, which the CGTA refers to as "Chargeable Assets." Whenever there is a disposal by way of a sale, assignment, or transfer, and a gain accrues to the person that makes the disposal, such gain will be subject to CGT, provided the CGTA defines the asset that was disposed of as a "Chargeable Asset."

The Finance Bill 2022 proposes an amendment to the definition of "Chargeable Assets" to include digital assets and cryptocurrencies. This class of assets will now be liable to capital gains tax.

This is one of the most anticipated changes under the Finance Bill 2022. This change is significant because of the Central Bank of Nigeria's ("CBN") decision to prohibit financial institutions from dealing with or facilitating transactions relating to digital assets/cryptocurrencies as far back as 2017. It is expected that the CBN will have to lift this ban for the Federal Inland Revenue Service ("FIRS") to effectively monitor the flow of funds from transactions involving digital assets and collect the applicable taxes.

Other proposed changes relate to the treatment of losses incurred upon the disposal of an asset. Such losses will now be deductible from gains accruing to a person disposing of the asset or against any other chargeable gain from the disposal of other assets from the same class. In addition, the Finance Bill proposes to amend the roll-over relief provision of the CGTA to expressly include shares as one of the specified classes of assets to which the roll-over relief applies. Until the Finance Bill becomes an Act, these changes cannot take effect.