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AN OVERVIEW OF THE FINANCE ACT 2023

INTRODUCTION

The Finance Act 2023 (the "FA 2023") was signed into law by former President Muhammadu Buhari on 28 May 2023, prior to his leaving office. The FA 2023 takes effect from 28 May 2023, and it replaces the Finance Bill 2022 ("FB 2022"), which had been circulated widely within the public domain. The Finance Act 2023 introduces some sweeping changes, such as the withdrawal of incentives, the introduction of a loss relief regime for the disposal of assets, and the inclusion of digital assets as chargeable assets for capital gains tax purposes, which had been anticipated by taxpayers, based on the provisions of the FB 2022. Unlike in previous years, the FA 2023 was not signed into law and did not become effective in the first quarter of 2023.

KEY LAWS AMENDED BY THE FA 2023

The Finance Act 2023 amends the Capital Gains Act 2004 (as amended) ("CGTA"), Companies Income Tax Act 2004 (as amended) ("CITA"), Customs, Excise Tariff, Etc. (Consolidation) Act 2004 (as amended) ("CETA"), Personal Income Tax Act 2004 (as amended) ("PITA"), Petroleum Profit Tax Act 2004 (as amended) ("PPTA"), Stamp Duties Act 2004 (as amended) ("SDA"), Value Added Tax Act 2004 (as amended) ("VAT"), Corrupt Practices and Other Related Offences Act (as amended) ("CPORO Act"), Public Procurement Act ("PRA"), Tertiary Education Trust Fund (Establishment Etc.) Act 2010 (as amended) ("TET Fund Act") and the Ministry of Finance (Incorporated) Act 2004 (as amended) ("MOF Act").

KEY CHANGES INTRODUCED BY THE FA 2023

The following is a summary of some of the amendments to the major tax laws:

Capital Gains Tax

- **Gains of the disposal of digital assets are now subject to tax:** Digital assets are now considered to be chargeable assets under the CGTA, thereby making them liable to capital gains tax upon disposal. The term "digital asset" is, however, not defined. Considering the broad spectrum of digital assets, the absence of a definition for the term "digital assets" creates uncertainty for taxpayers. It will be interesting to see how the tax authorities will implement these provisions, particularly in relation to digital

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assets such as cryptocurrencies which the CBN prohibited its regulated financial institutions from either dealing in them or facilitating its trade or exchange.

- **Extended loss relief period for capital gains:** Making it clear that, in computing capital gains tax ("CGT"), losses incurred on the disposal of a chargeable asset 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, where the aggregate capital losses exceed the aggregate capital profit, taxpayers will now be able to carry forward such losses for a period of up to five years commencing from the immediately succeeding year in which the loss was incurred.

- **Roll-over relief for stocks and shares:** The FA 2023 provides that, in order for the roll-over relief to be applicable to stocks and shares, the proceeds from the qualifying disposals must be reinvested in the acquisition of shares either within the same company or any other Nigerian company. This reinvestment is to be done within the same year of assessment.

<u>Companies Income Tax</u>

- **New compliance obligation for shipping and air transport operators**: Any company engaged in shipping and air transport business is now required to submit a certified copy of its detailed gross revenue statement covering its Nigerian operations and showing the full amount earned over the relevant period. This requirement is only applicable when the company fails to provide a separate financial statement for its Nigerian operations. In addition, regulators such as the Nigerian Shippers Council and the Nigerian Civil Aviation Authority are required to mandate all non-Nigerian companies engaged in the business of shipping or air transport to provide evidence of income tax filing for the preceding year as well as a tax clearance certificate before issuing any approvals or permits.

- **Withdrawal of Incentives:** Taxpayers can no longer claim the additional investment allowance of 10% on qualifying expenditure incurred on plant and equipment. This does not affect qualifying assets acquired on or before 28 May 2023. The Rural Investment Allowance which allowed companies that build and develop public infrastructures such as roads, electricity, or water, some allowance to be deducted from their profits, has been repealed. Companies already enjoying the incentive before 28 May 2023 are

allowed to continue claiming the allowance until it is fully utilised. Also, the 25% tax exemption available to hotels in connection with income that they earn from trading convertible currencies provided by tourists has been repealed with the qualification that Companies already enjoying the incentive before 28 May 2023 are allowed to continue claiming the allowance until it is fully utilised.

- FA 2023 has restated that capital allowance on qualifying assets is limited to sixty-six two-thirds percent of the assessable profits of a company. This limitation does not apply to companies engaged in upstream and midstream gas operations, agro-allied industry or in the trade or business of manufacturing.

<u>Value Added Tax</u>

- **VAT GAAR rule:** The FA 2023 empowers the Federal Inland Revenue Service ("FIRS") to disregard a disposition or adjust controlled transactions that it considers there has actually been no disposition or to be artificial and fictitious for VAT purposes. Disposition includes trust, grant, covenant, scheme, agreement or arrangement, and related parties' transactions.

- **Elimination of double VAT on goods purchased from a non-resident supplier:** The FA 2023 now provides that where goods are purchased from a non-resident supplier ("NRS") through an online or digital platform, and such an NRS has remitted the associated VAT for the transaction to the FIRS, when the goods are physically imported in Nigeria, the Nigerian Customs Service will not be required to collect VAT on those same goods, provided that the importer/recipient of the goods in Nigeria shows proof that VAT has been remitted in respect of those goods by the NRS.

- **VAT Collection Agents**: Section 14(3) of the VAT Act has been amended to allow the FIRS to appoint persons to withhold or collect VAT. Persons appointed by the FIRS are to remit the applicable tax in the currency withheld on or before the 14th day of the following month.

- **New definition of "building":** A new definition of "building" for VAT purposes has been included and it excludes any fixtures or structures that can be easily removed from land such as radio and television masts, transmission lines, cell towers, mobile homes, caravans and trailers. This implies that such assets are not eligible for the VAT exemption on buildings.

Petroleum Profits Tax

- **Recognition of the Nigerian Upstream Petroleum Regulatory Commission ("NUPRC"):** The PPTA has now been amended to recognise the NUPRC as the regulator of the Nigerian upstream petroleum sector.

- **Tax-deductible contributions:** Monies contributed to a NUPRC-approved fund, scheme, or arrangement for the purpose of decommissioning and abandonment have now been included as part of the allowable deductions under the PPTA. This is, however, subject to the production of the statement of account of the decommissioning and abandonment fund. Any surplus or residue monies after decommissioning and abandonment of the field are subject to tax under the PPTA.

- **Increased Fines:** The FA 2023 also amends the PPTA by updating the penalty sections. There has been a general increase in the amount payable as fines under the PPTA. For instance, the fine payable has been increased from NGN10,000 to NGN10 million for non-compliance with the provisions of the Act and from NGN2,000 to NGN2 million for each day that the default continues. In addition, the Minister is also empowered to prescribe any other financial penalties. The FA 2023 imposes an administrative penalty of NGN15 million and 1% of the amount of tax undercharged, on the filing of incorrect returns.

Personal Income Tax

- **Allowable deduction of life insurance premiums:** Amounts paid as premium by an individual during the preceding year of assessment in respect of his/her own life or the life of a spouse, or contract for a deferred annuity are now tax deductible provided that any portion of a deferred annuity withdrawn within 5 years of paying the premium will be taxed at the point of withdrawal.

Tertiary Education Trust Fund (Establishment Etc.) Act

- **Increased tax rate**: One of the most significant changes under the TET Fund Act is the increase in the rate of education tax from 2.5% to 3%. This is significant as it effectively increases the overall tax rate for companies in Nigeria.

Customs and Excise Duties

- **Introduction of import levy:** The CETA has been amended to provide for an import levy of 0.5% chargeable on all eligible goods imported into Nigeria from countries outside Africa. This is to finance Nigeria's capital contributions, subscriptions, and other financial obligations to various multilateral institutions such as the African Union, African Development Bank, the African Export-Import Bank, the ECOWAS Bank for Investment and Development, and the Islamic Development Bank.

- **Excise duty now payable on all services:** Excise duty will now apply to all services provided in Nigeria at rates to be specified by the President in an Order. Pending when the President issued the relevant Order, it is not clear yet the nature of services on which the duty will be imposed. You may recall that the Finance Act 2020 had subjected telecommunication services to excise duties, and this has now been extended by the FA 2023 to all services.

- The CETA was also amended to clarify the responsibility and powers of the Minister of Finance (the "Minister") to review customs and excise tariffs through the Tariff Review Board set up by the Minister.

Stamp Duties

- **Electronic Money Transfer Levy:** The sharing formula for revenue generated from the Electronic Money Transfer Levy has been amended. 15% is to go to the Federal Government, 50% to the state governments, and 35% to the local governments. The Minister recently released the Electronic Money Transfer Levy Regulations, 2022, to provide an effective framework for the effective and efficient administration of the levy.

Corrupt Practices and Other Related Offences Act

- To ensure that the necessary approvals are obtained before public officers sign contracts, the FA 2023 has amended the provisions of section 22(4) of the CPORO Act by making it an offence for any public officer, while acting in an official capacity, to award or sign any contract without budgetary provision, administrative approvals, and a procurement plan. Upon conviction, such an official is to be imprisoned for a term of three (3) years or liable to a fine of NGN10 million. A corresponding amendment has also been made to section 16(1)(b) of the PPA which now requires an approved procurement plan, subject to complying with the prescribed threshold before any procurement proceedings are formalised by the procuring entity and relevant authorisations obtained.

Ministry of Finance (Incorporated) Act

- The FA 2023 amends the MOF Act by including new sub-sections 3, 4, and 5 under section 3 of the Act. Now, the President is empowered to appoint persons to the Governing Council, Executive Board, and Management Team (as required), of the Ministry of Finance ("MOF") on the recommendation of the Minister. The MOF is to also develop, amend and revoke or supplement appropriate regulations, codes, internal guidelines, and procedures consistent with the MOF Act in furtherance of the MOF's objectives. In addition, the Minister is to be consulted prior to the adoption of any regulations, internal guidelines, and procedures.

CONCLUSION

The primary purpose of a Finance Act is to implement current fiscal policies. Considering the delay in passing the FA 2023, and the recent change in government, further changes or amendments may still be made to existing tax laws. We will continue to follow new developments as they unfold and will, in our further publications, analyse their implications for taxpayers.

This update has been provided by Lolade Ososami, Joseph Eimunjeze, and Oluwatobi Akintayo of the Tax team at Udo Udoma & Belo-Osagie. For more information about our Tax practice group offerings, please visit our website at www.uubo.org or email us at uubo@uubo.org.