UDO UDOMA & BELO-OSAGIE

The Changing Tax Landscape:

Understanding the Tax Implications of Mergers and Acquisition Transactions under the Tax Reform Acts 2025

Introduction

Nigeria's tax landscape has undergone a fundamental shift with the enactment of the Nigeria Tax Act, 2025 ("NTA"), which took effect on 1st January, 2026. For the first time, the country's core federal tax laws have been consolidated into a single and unified framework. For dealmakers, this is more than a legislative clean-up; it also changes how transactions are structured, priced, and executed.

Alongside the NTA, the Nigeria Tax Administration Act, 2025 ("NTAA") streamlines the compliance and enforcement process, while the Nigeria Revenue Service (Establishment) Act, 2025 establishes the Nigerian Revenue Service ("NRS") to enhance regulatory oversight and administer tax administration, assessment, collection and enforcement. The combined effect is a more coordinated process for tax administration and payment, including a more scrutinised environment for mergers and acquisition ("M&A") transactions.

We have highlighted in this article the key tax considerations arising under the new regime for M&A transactions. In particular, we examine the integration of capital gains into the income tax framework, the revised exemptions for share disposals, and the introduction of taxation for indirect transfers. We also consider the tax treatment of business restructurings, including the distinction between mergers, business transfers and asset transfers. In addition, the article addresses the value-added tax ("VAT") and stamp duty implications of transaction structuring, as well as anti-avoidance and disclosure rules that increase transparency around tax-driven arrangements.

1. Integration of Capital Gains into the Income Tax Framework

One of the most consequential changes under the NTA is the integration of capital gains into the corporate income tax regime. Assessable gains realised on disposal of chargeable assets, including shares, are now taxed at the applicable income tax rate of 30% instead of the previous rate of 10%. This effectively removes the historical separation between the taxation of capital gains and business income. .

For M&A transactions, the implication is that a disposal of chargeable assets, whether structured as share or asset sales, must now be considered within the broader income tax position of the seller. Sellers will need to think more carefully about how the disposal of chargeable assets is timed and structured, as the tax impact of a disposal can no longer be viewed in isolation from income tax

2. Share Disposal Exemption: Revised Thresholds

2.1 The exemption for gains on the disposal of shares has been retained under the NTA, but the framework has been refined. Under the repealed Capital Gains Tax Act, 2004 (as amended) (the *"*CGT Act*"*), gains arising from the disposal of shares in a Nigerian company were exempt from CGT in two main scenarios. First, where the proceeds from the disposal were reinvested within the same year of assessment in shares of the same or another Nigerian company. Secondly, where the aggregate proceeds from such disposal did not exceed NGN100 million in any 12 consecutive months. While the NTA preserves the exemption for gains realised from share disposals, it introduces more defined and higher conditions.

2.2 Under Section 34(1) of the NTA, gains are exempt where the aggregate disposal proceeds are less than NGN150 million, and the chargeable gain does not exceed NGN10 million in any 12 consecutive months. In addition, the reinvestment exemption continues to apply, such that gains will not be taxable where the proceeds are reinvested within the same year of assessment in shares of the same or other Nigerian companies. The NTA makes it clear that this reinvestment exemption applies notwithstanding the disposal threshold. In practical terms, the NTA introduces a dual threshold for exemption: both the value of the proceeds and the amount of gain must fall within prescribed limits before the exemption can apply.

3. Taxation of Indirect transfer of shares

3.1 Sections 46 and 47 of the NTA now expressly bring indirect transfer of shares within the Nigerian tax net. This represents a significant development for cross-border M&A transactions. Under Section 47 of the NTA, gains accruing to any person from an offshore disposal of shares by a non-resident person may be treated as chargeable gains in Nigeria where the transaction results in a change in the ownership: (i) structure or group membership of a Nigerian company; or (ii) of, title in, or interest in, assets located in Nigeria. In effect, the fact that a disposal takes place offshore no longer prevents Nigeria from asserting taxing rights where the underlying value is connected to Nigerian assets or entities and the specified conditions are met.

3.2 Pursuant to Section 46(f) of the NTA, shares or comparable interests in a foreign entity may be deemed to be located in Nigeria where, at any time within the 365 days preceding the disposal, more than 50% of the value of those shares is derived directly or indirectly: (i) through one or more interposed entities resulting in the change in direct or indirect ownership structure of a Nigerian entity, or (ii) from immovable property or any other chargeable assets situated in Nigeria.

3.3 In practical terms, this means that where a foreign holding company derives the majority of its value from a Nigerian subsidiary or Nigerian assets, a sale of shares in that offshore holding company may be treated as a disposal of Nigerian assets for tax purposes. The gains realised by the selling shareholders may, therefore, be taxed in Nigeria as though the shares in the Nigerian company were disposed of directly. For dealmakers, this underscores the need to assess not only the legal form of a transaction, but also the underlying value drivers and how they are connected to Nigerian assets.

4. Business Restructurings: Tax Outcomes Based on Transaction Structure

The NTA sets out the tax treatment applicable to business reorganisations and draws a clear distinction between mergers, transfers of a business resulting in cessation, and transfers of assets without cessation. This distinction is central because it determines whether (a) a transaction is treated as a continuation of the existing business or as a termination of that business; (b) chargeable gains arise on the transfer of assets; and (c) existing tax attributes, such as losses, capital allowances, and withholding tax credits, are preserved or lost. For M&A transactions, the implication is straightforward. The classification of a transaction is not merely descriptive; it will, in most cases, determine the tax outcome. Where the objective is to preserve value or avoid immediate tax exposure, the structure adopted at the outset must be aligned with the conditions set out in the NTA. These distinctions are reflected in the specific treatment of mergers, business transfers and asset transfers under the NTA.

5. Merger Transactions

5.1 Where two or more trades or businesses are merged, the NTA treats the resulting business as a continuation of the existing operations. The merging entities are not regarded as having ceased business, and the surviving entity is not treated as commencing a new trade. As a result, the cessation rules do not apply. The transfer of assets pursuant to the merger does not give rise to chargeable gains.

The assets are deemed to have been transferred at their tax written-down value. Outstanding/unutilised capital allowances continue. Any tax credit remains available, and any unabsorbed losses may also be carried forward if the prescribed conditions are met.

5.2 From a transaction perspective, the benefits above make the merger route particularly relevant where the target has material tax attributes. This, however, requires proper diligence. Buyers will need to verify the availability and integrity of those attributes, while sellers should be mindful of the representations they give in relation to them. The transaction documentation should also align with the intended treatment, as the ability to rely on these provisions will depend on the transaction properly qualifying as a merger in substance and form.

6. Sale or Transfer of a Business Resulting in Cessation

6.1 Where a transaction is structured as a sale or transfer of a trade or business that results in cessation, the NTA applies a different approach. The business is treated as having come to an end, and the cessation rules would apply. Assets transferred as part of the transaction will be recognised at the value at which they are sold or transferred. This may have tax implications for the seller, depending on the transfer value and the existing tax position of the business. More significantly, the tax attributes of the old business do not transfer along with the trade or business; unutilised capital allowances, unabsorbed losses, taxes deducted at source, etc., may be unavailable to the acquiring entity.

6.2 For M&A transactions, this has direct implications for pricing and structuring. A buyer acquiring a business under this structure will not have access to the seller's tax assets. Where the commercial value of the business is tied to its tax attributes, a straight business transfer may not achieve the intended outcome. This should be addressed early in the transaction process, particularly where the buyer's financial model assumes the use of existing tax assets. From a documentation perspective, warranties and indemnities should reflect this position.

7. Transfer of Business Assets Without Cessation

7.1 Section 189(1)(c) of the NTA also provides for situations where assets are transferred without the underlying business coming to an end. In this case, a limited form of continuity is available, but only where the transfer is carried out at a

value not exceeding the sum of the residue of the qualifying capital expenditure and unutilised capital allowance of the asset. Where this condition is satisfied, the transfer does not give rise to chargeable gains. The asset continues at its existing tax value, and capital allowances apply only to the remaining balance. Any unutilised capital allowance attached to the asset may be utilised by the buyer, while the seller relinquishes its entitlement to those allowances.

7.2 This provision is relevant for intra-group transfers, restructuring, carve-outs and pre-completion reorganisations where parties are able to control the transfer value. It allows specific assets to be moved without triggering immediate tax costs, but only where the transfer value is aligned with the tax value. In practice, this means that parties will need to carefully determine and support the transfer value, as any transfer at a value exceeding the asset's tax value may result in the loss of the relief. Transaction documents should clearly set out the basis of valuation and the allocation of capital allowance entitlements post-transfer.

8. Notification Requirements

8.1 The NTA requires that the relevant tax authority be notified prior to the restructuring of any trade, business, profession, or vocation. From a transaction perspective, this should be treated as a pre-completion process. Where the parties intend to rely on the restructuring provisions, notification should be factored into the transaction timetable. This may also need to be aligned with other regulatory approvals and filings.

8.2 In addition, the NTAA imposes a general obligation on taxable persons to notify the relevant tax authority of any changes in their particulars within 30 days of such change. This includes changes arising from M&A transactions, such as a sale, acquisition, takeover or merger of a business, as well as changes in ownership (including persons holding 5% or more of the share capital or beneficial owners), business address, and other key identifying information.

8.3 In practical terms, this means that M&A transactions may trigger both a pre-restructuring notification and a post-transaction update requirement, depending on the nature of such a transaction. Parties should, therefore, ensure that these obligations are captured in the transaction timeline and compliance workstreams, particularly where ownership changes or business transfers form part of the transaction. Failure to comply with these requirements may create uncertainty as

to the entitlement to benefit from the reliefs provided under the NTA and other associated risks.

9. Considerations for Upstream Oil and Gas Restructurings

9.1 For companies engaged in upstream petroleum operations, the NTA introduces a specific rule on the commencement of accounting periods following a restructuring. Where a restructuring results in the formation of a new company and the cessation of the old business, the acquiring company's accounting period will commence on the date of the transfer or such date within the calendar month in which the sale or transfer takes place, as may be agreed with the Nigeria Revenue Service ("NRS") and will end on 31st December of that same year.

9.2 Any gap between the cessation of the old business and the commencement of the new business is treated as part of the new company's accounting period. This is particularly relevant in upstream restructurings, where licence approvals, operator transitions and joint venture arrangements may not align with completion, and the rule ensures that production income during any interim period is included in the new company's tax computation and taxed in its hands.

10. Value Added Tax Considerations

10.1 Where a business, or a part of a business capable of separate operation, is transferred as a going concern and the purchaser uses the assets in the same type of business, the transaction is not treated as a supply of goods and services for VAT purposes. This is provided that the purchaser is registered for VAT or becomes registrable as a result of the transfer. If not, the transaction could be treated as a supply of goods or services, and VAT may apply.

10.2 This is particularly relevant for asset-based transactions, where VAT would otherwise arise on the transfer of assets. Structuring the transaction as a transfer of a going concern could, therefore, eliminate what would otherwise be a real cost. In practice, parties will need to ensure that the conditions for a going concern transfer are met. This includes confirming that the assets transferred are capable of separate operation and that the purchaser will carry on the same type of business. The purchaser's VAT registration status should also be confirmed before completion, and the intended treatment could be reflected in the transaction documents.

10.3 The NTA also exempts securities, including interests in securities, from VAT. As a result, the transfer of shares or other securities in an M&A transaction will not be treated as a supply of services that would be subject to VAT.

11. Stamp Duties Considerations

The NTA exempts all documents relating to the transfer of stocks and shares from stamp duties. This means that instruments effecting the transfer of shares, including share transfer forms, share purchase agreements and related transfer documentation, should not attract stamp duty under the NTA. In practice, parties may still present such documents for stamping, typically at a nominal amount, for evidentiary and administrative purposes. The applicable stamp duty payable on an instrument can, however, only be conclusively determined following an assessment of the document by the NRS.

12. Anti-Tax Avoidance Considerations in M&A Transactions

12.1 The NTA introduces a framework to address tax avoidance arrangements and increase transparency around tax-driven transactions. In particular, companies entering into arrangements, especially with related parties, are required to ensure that such arrangements are not structured to obtain tax advantages. The scope of what constitutes an “arrangement” captures a wide range of transactions commonly undertaken in the context of M&A, including intra-group asset transfers, business reorganisations, financing arrangements, and post-acquisition integrations. Where the tax authority considers that an arrangement constitutes a tax avoidance arrangement, it is empowered to disregard the parties’ agreement or re-characterise the transaction and make the necessary adjustments.

12.2 In addition, the NTA introduces a disclosure obligation in respect of tax-driven restructuring arrangements. Any person who enters into, or intends to enter into, a transaction or agreement whose principal purpose is to secure a tax advantage is required, without notice or request from the tax authority, to provide information on that arrangement to the relevant tax authority.

Conclusion

The tax reforms bring a more structured approach to the tax issues relating to M&A transactions. Outcomes are now more directly tied to how transactions are structured and implemented. While reliefs are available, they are conditional and closely tied to compliance with prescribed requirements. The anti-avoidance and disclosure rules, together with the notification obligations, signal a greater willingness by the tax authority to interrogate transaction structures and challenge outcomes that do not align with the object and purpose of the tax laws. For dealmakers, the implication is that tax considerations must be embedded into the transaction from the outset. Structuring decisions, sequencing of steps, and compliance processes will need to be managed deliberately to ensure that the intended outcomes are achieved and sustained.

This publication has been provided by Joseph Eimunjeze, Tochukwu Nwankwo, and Seyifunmi Sobowale 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 CorpTaxTeam@uubo.org