The Finance Act 2023 and Beyond

ICAN Lagos & District Society - Mr. Segun AFERE, FCA – Technical Session 10 August 2023

Finance Act 2023 Overview

- The Finance Act 2023 was signed by President Muhammadu Buhari on the 28th day of May 2023.
- The Act has amended and introduced new provisions to various statute including:
  - ✓ Capital Gains Act
  - ✓ Companies Income Tax Act
  - ✓ Personal Income Tax Act
  - ✓ Value Added Act
  - ✓ Petroleum Profits Tax Act
  - ✓ Stamp Duties Act
  - ✓ Customs, Excise, Tariff etc. (Consolidation) Act
  - ✓ Corrupt Practices and other Related Offences Act
  - ✓ Tertiary Education Trust Fund (Establishment) Act
  - ✓ Public Procurement Act
  - ✓ Ministry of Finance Incorporated Act.
- The amendments are focused mainly on tax revenue generation, economic growth, promotion of tax equity and ensuring clarity within tax legislation and administration.
- The amendments will take effect from 1 September 2023.

Capital Gains Tax

Digital assets included as chargeable assets for Capital Gains Tax (CGT) purposes

- The Act introduces a notable expansion to the scope of chargeable assets under the CGT Act to include digital assets.
- This implies that capital gains on the sale of digital assets such as cryptocurrencies and non-fungible token (NFT's) have been clarified as being subject to CGT at 10%.
- CBN alone? No. Many central banks, international financial institutions, and distinguished investors and economists have cautioned against the utilization of cryptocurrencies based on risk of loss of investments, money laundering, terrorism financing, illicit fund flows and criminal activities.

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- Despite the Central Bank of Nigeria (CBN) instituting measures against cryptocurrency trading in February 2021, thereby leading to closure of banks of some customers by all deposit money banks, non-bank financial institutions and other financial institutions in Nigeria.

Implication: FIRS needs to provide guidance on the modality for computing and remitting the applicable CGT on chargeable gains resulting from digital assets.

Nonetheless, policy harmonisation is required. The disparity in policy alignment due to the current state of the CBN's directive on digital currency market.

Capital Gains Tax

Amendment: Relief of Capital Losses

- The new s5: Losses arising from the disposal of a chargeable asset can now be offset against gains realized from the disposal of the same asset category. In addition, if the cumulative capital losses incurred by a taxable individual within a given tax year surpass the cumulative chargeable gains, these losses can be carried forward for a period of up to five consecutive years following the year of loss occurrence.
- Prior to the enactment of the Finance Act 2023, losses incurred from the disposal of chargeable assets were not eligible for tax deduction in the computation of chargeable gains.
- This amendment will allow taxpayers to offset capital losses from capital gains and reduce the impact of CGT that should be payable on gains from the disposal of assets.

Capital gains on the sale of shares can be rolled over for CGT purposes

A modification has been introduced to Section 31 of the Capital Gains Tax Act (CGTA) within subsection (6) to provide for roll over of the capital gains arising from the sale of shares for CGT purposes.

For the roll over relief to apply, it is imperative that the proceeds derived from the sale of shares are reinvested in the acquisition of shares within a Nigerian corporation within the same fiscal year of assessment.

Companies Income Tax

Companies Engaged in Shipping and Air Transport (Section 14) - CITA

- Introduction of subsection 4 (a) in Section 14 of the CITA: entities operating in the shipping and air transport sectors, which are incapable of presenting financial statements related to their Nigerian activities, are now mandated to furnish the following documentation:

  - ✓ Detailed gross revenue statements of the company's Nigerian operations, showing the amount of full sums receivable during the period, certified by one of the company's directors and external auditors.
  - ✓ Copies of all invoices issued to the relevant customers.

Companies Income Tax

Companies Engaged in Shipping and Air Transport (Section 14)- CITA

- The amendments compel regulatory bodies within the shipping and air transport sectors to mandate companies to provide:

  - ✓ Evidence of income tax returns filings and;
  - ✓ Tax clearance certificates

as prerequisites for conducting business in Nigeria and acquiring relevant authorizations, licenses, and permits for their activities.

Companies Income Tax

Introduction of Unrestricted Capital Allowance for Upstream and Midstream Gas Operations

01

Prior to FA 23

Previously, Capital allowances claimable in any year are limited to up to 2/3 of assessable profits, a rule applicable to all corporate entities, except those functioning within the manufacturing and agricultural sectors, which were exempted.

02

Amendments made by FA 23

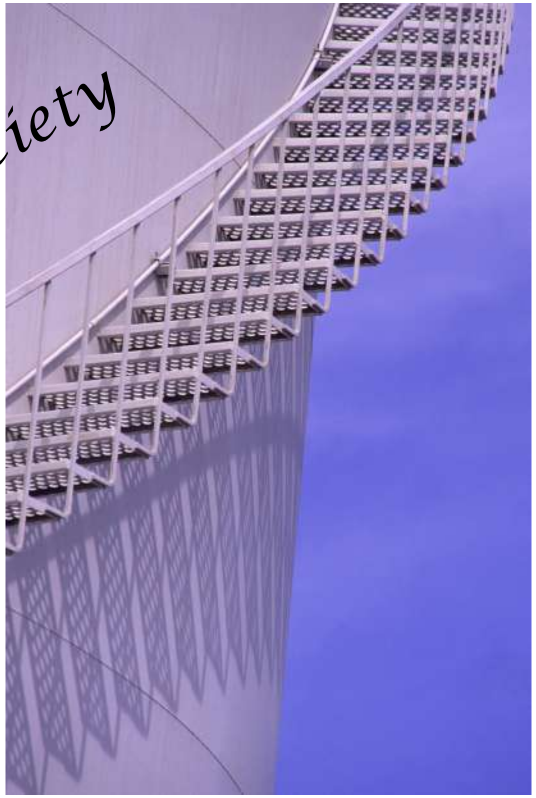
This exemption has now been expansively expanded to encompass enterprises actively engaged in upstream and midstream gas activities, as explicitly defined within the contours of the Petroleum Industry Act of 2021.

As a result of this, companies involved in upstream and midstream gas operations can fully offset their capital allowances against their assessable profits.

03

Impact

The exemption from capital allowance limitations stands as a strategic measure aimed at fostering heightened investment within these particular industries, thereby serving as an inducement for enhanced capital inflow and participation.



Companies Income Tax

Deletion of the 25% exemption of FX earnings by hotels:

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Prior to FA 23

Prior to the Act, s37 of the CITA afforded to hotels a tax exemption of 25% on foreign currency income earned from guests if the income is placed in a reserve fund for expansion purposes (hotel infrastructure development). Furthermore, such funds were required to be utilized within a stipulated timeframe of 5 years.

2

Amendments made by FA 23

The Act has deleted this exemption.

However, hotels that had previously set aside funds prior to the effective date of the Act can continue to enjoy the exemption until the earlier of the utilisation of the funds or the expiry of the five-year limit.

3

Impact

The removal of the tax exemption on foreign currency income earned by hotels, may negatively impact the Nigerian tourism industry.

The removal of this exemption has the potential to dampen investor confidence and hinder the realization of growth projections within this sector.

Companies Income Tax

The investment allowance on purchase of plant and machinery has been removed

Prior to FA 23

Prior to the Act, a provision allowed for a 10% investment allowance to be applied to the acquisition of plant and equipment by any company This allowance was eligible for claim during the year in which the qualified asset was initially employed for the company's operational activities. The Investment Allowance mechanism provided an additional tax deduction at 10% of the cost of the relevant QCE.

Amendments made by FA 23

With the passage of that Act, the allowance is no longer available for any expenditure on plant and equipment incurred after the effective date of the Act. Consequently, any plant and equipment that is acquired and first used by a company for its trade or business after the effective date of the FA 2023 will no longer enjoy the 10% investment allowance stipulated in Section 32 of the CITA.

Impact

While the removal of the incentive will effectively increase the cost of acquisition of plants, machinery and equipment in Nigeria, the removal of Investment Allowances might not significantly impact the productive sectors of the economy because the incentive's applicability did not markedly influence taxpayers' choices concerning investments in plant and machinery.

Companies Income Tax

Withdrawal of Rural Investment allowance Incentives:

PRIOR TO FA 23

Previously, where a company incurs capital expenditure on electricity, water and tarred roads for its business because no such government infrastructure is available within 20 kilometres of its business, the company is entitled to claim RIA at specified rates depending on the type of infrastructure provided.

AMENDMENTS MADE BY FA 23

The Finance Act cancels the rural investment allowance provided in Section 34 of CITA. Commencing from the effective date of the FA 2023, companies would no longer benefit from this incentive on relevant QCE. However, any unutilised Rural Investment Allowances from previous tax years can continue to be enjoyed.

IMPACT

The impact of the withdrawal of this incentive would be of limited significance, given that only a small number of companies meet the requisite criteria for annual eligibility in relation to the rural investment allowance.

Tertiary Education Tax

Withdrawal of Rural Investment allowance Incentives:

Prior to FA 23

Finance Act, 2021 increased the TET rate for companies, excluding small companies, from 2% to 2.5%.

Amendments made by FA 23

FA 23 has further increased the rate to 3%. The increased TET rate will be applicable to the assessable profits of any company registered in Nigeria, except for small companies as defined in the CITA.

Impact

This will lead to additional increase in the tax burden of medium and large companies incorporated in Nigeria and the hope is the additional tax increase will be allocated towards furnishing Nigerian tertiary educational institutions

Personal Income Tax

Treatment of Premium on Life Insurance

Prior to FA 23

Previously, the Finance Act of 2021 in a bid to prevent the abuse of life insurance premiums amended Section 33(3) of the Personal Income Tax Act (PITA) to disallow tax deductions of premiums paid or payable on contract for deferred annuity taken up by an individual, leading to disinterest.

Amendments made by FA 23

FA 23 allows for a tax deduction on the premium paid or payable on contract for deferred annuities. The amendment includes a condition, that any portion of the premium withdrawn five years from the date the payment was made, will be subject to tax.

Impact Of The Amendment

The implication of this amendment is that the premium an individual paid to an insurance company in respect of a contract for deferred annuity, on his/her life or that of his/her spouse, can now be granted as tax relief in the individual's income tax computation. However, it is important to note that any portion of the premium that is withdrawn within five years of payment, will no longer be exempt from personal income tax.

Value Added Tax

The Four Amendments made to the Value Added Tax Act

Power to Counteract Fictitious Transactions

- S7 of the VAT Act: the FIRS has the power to review artificial or fictitious transactions between related parties that should ordinarily be subject to VAT and thereby make the necessary adjustments for the imposition of VAT.

- Before now, there was no clarity in the Principal Act on the powers of the FIRS to adjust fictitious VATable transactions, which hopefully will address base erosion, profit shifting, tax evasion etc.

- To challenge abuse, taxpayers have the right to object to any adjustments made by the FIRS where in the opinion of the taxpayer, such adjustment is unreasonable.

Appointment of VAT withholding agents by the FIRS

- FA 21 made changes to section 14(3) of the main legislation. This alteration aimed to authorize the FIRS to select tax agents who would be responsible for collecting and remitting VAT to the FIRS by the 21st of the subsequent month in Nigeria.

- The FA 23 amended this by stating that the tax agents responsible for VAT collection are to withhold and remit taxes before the 14^{th} day of the following month. A new filing deadline was provided.

- The category of tax agents who are to withhold and remit taxes are companies in the oil and gas sector, deposit money banks, MTN Nigeria, Airtel Plc and companies that withhold VAT on transactions with non-resident companies.

- The agents now face two VAT remittance timelines - 14^{th} of every month for VAT withheld at source and 21^{st} of every month for VAT collected from customers.

Value Added Tax

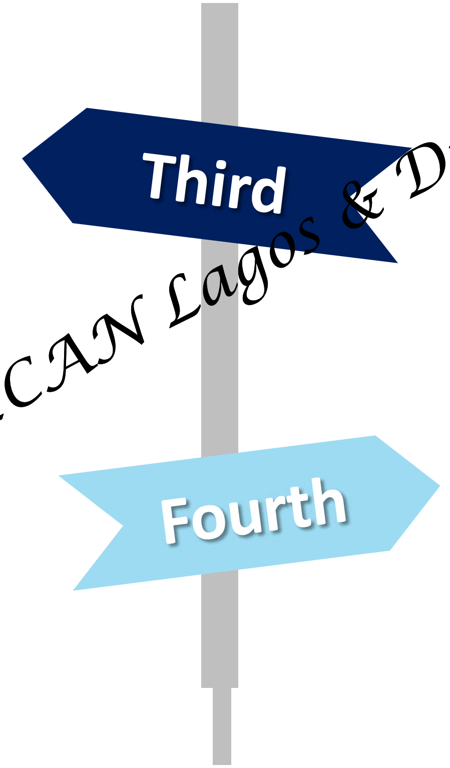
The Four Amendments made to the Value Added Tax Act

Removal of VAT on digitally imported goods from a NRC

The amendment eliminates the imposition of VAT during the clearance process for imported goods bought through digital/electronic platforms from a non-resident supplier, designated as a collection agent by the FIRS.

The importer of such goods must provide proof of the supplier's appointment as a collection agent, evidence of VAT charged on the invoice, and any other required documents to the Nigerian Customs Service (NCS) at the point of clearance. This will allow the NCS to avoid further subjecting the goods to tax.

Amendment seeks to avoid double taxation as the non-resident collection agent is deemed to have already withheld the VAT on the goods and remitted to the FIRS.

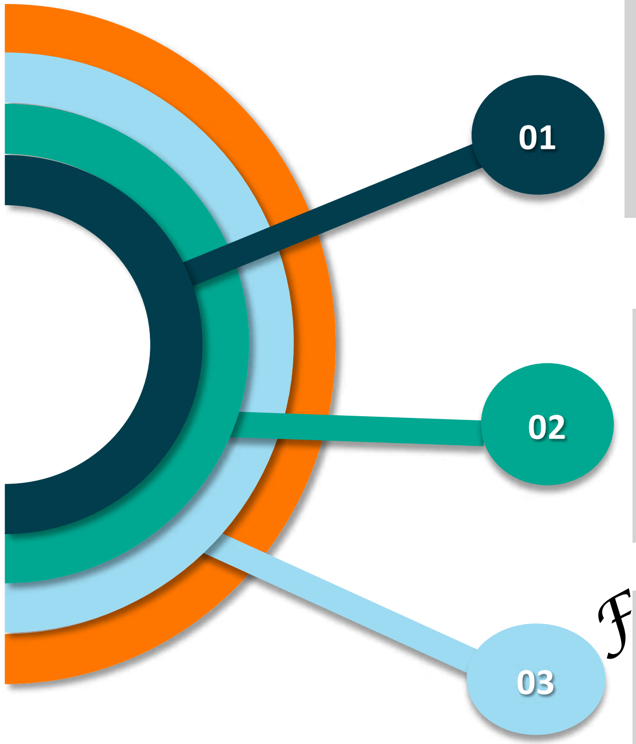


New Definition of 'Building'

The sale of buildings enjoy the benefit of VAT exemption. Prior to this Act, the definition of buildings, previously included items such as vehicles, masts and other moveable items which were not ordinarily listed as "VAT exempt." This led to a rift between taxpayers and the FIRS.

Building now means any structure permanently affixed to land for all or most of the useful life of that structure and shall include, without limiting the generality of the foregoing, a house, garage, dwelling apartment, hospital and institutional building, factory, warehouse, theatre, cinema, store, mill building and similarly fixed structure affording protection and shelter, but excludes any fixtures or structures that can easily be removed from such land, such as radio and television masts, transmission lines, cell towers, vehicles, mobile homes, caravans and trailers.

Petroleum Profits Tax (PPT) Act



ANNUAL PPT RETURNS:

All petroleum companies, as defined by PPT Act, are now required to render their annual PPT returns to the FIRS. Consequently, any upstream companies that are yet to commence petroleum operations, operating within their pre-production phase are obligated to submit their tax return. The timeline for submitting the return is either 18 months from the date of incorporation (for a new company) or five months after 31 December for other Companies.

Recognition of the Nigerian Upstream Petroleum Regulatory Commission ("NUPRC"):

The Petroleum Profits Tax Act ("PPTA") has been amended to recognise the Nigerian Upstream Petroleum Regulatory Commission ("NUPRC"), established under the Petroleum Industry Act, 2021 ("PIA"), as the regulator of the Nigerian upstream petroleum sector. In accordance with these amendments, the NUPRC has been empowered to determine the fiscal price of crude oil for tax purposes.

Tax Deductible Contributions:

PPTA is now aligned with the PIA on the tax treatment of contribution to decommissioning and abandonment fund. Previously, there existed ambiguity as to the deductibility of such expenses under the PPTA. The revised PPTA now provides that any amount contributed to a fund, scheme or arrangement approved by the NUPRC for the purpose of decommissioning and abandonment (D&A), may be deducted for petroleum profits tax assessment purposes, so long as same can be proved by the statement of account of the D&A fund, and that where there is surplus or residue of the fund after D&A of the field, such funds shall be subject to tax.

Petroleum Profits Tax (PPT) Act

Increased penalties for non-compliance:

01 Failure to file tax returns as at when due attracts a penalty of N10,000,000 in the first day, and N2,000,000 for every other day the failure continues.

02 Failure to comply with the provisions of PPTA attracts an administrative penalty of N10,000,000 and if it continues beyond the stipulated time, a further penalty of N2,000,000 daily.

03 If found guilty of any offence under the PPTA, except otherwise stipulated, a person shall be fined N20,000,000, or 6 months imprisonment, or both fine and imprisonment.

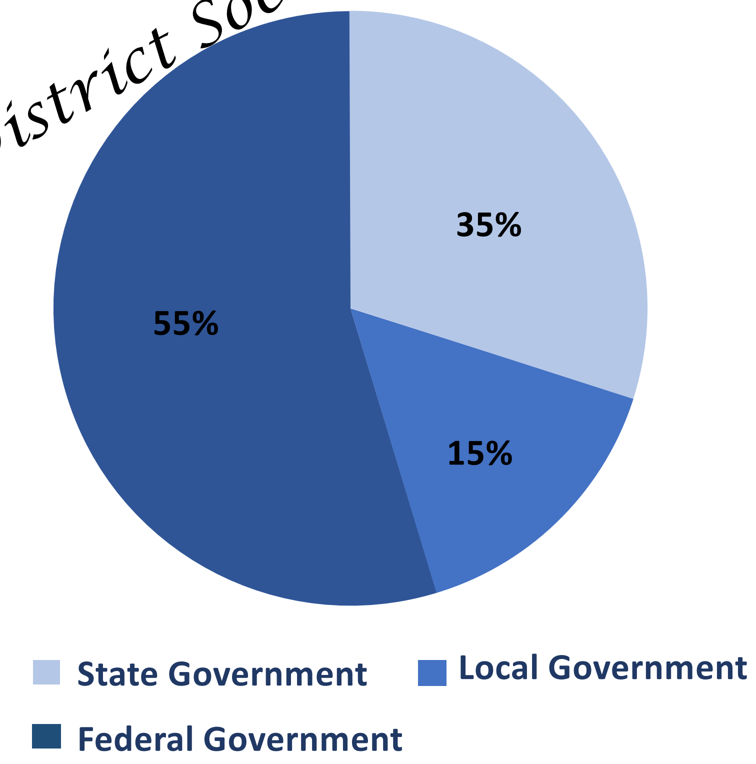
04 The provision of false or misleading information or false tax liabilities or forging statements or tax returns attracts a penalty of the higher of N15,000,000 and 1% of the understated amount.

Stamp Duties Act

Revised Formula for Revenue Distribution

- Section 21 of the Finance Act 2023 amended Section 89A (4) of the Stamp Duties Act, providing an adjustment to the allocation of the Stamp Duty levy paid through Electronic Money Transfer to be inclusive of the Local Government.
- The new sharing formula allocates 15% of the levy revenue to the Federal Government, 55% to the State Government, and 35% to the Local Government.
- Before the modification, Section 89A (4) allocated the revenue derived from EMTL in a manner where 15% was allocated to the Federal Government and the Federal Capital Territory, Abuja, while 85% was allotted to the State Governments.
- The clarity is expected to mitigate the chances of disagreements among the three branches regarding the distribution of the revenue.

New Revenue Sharing Formula



Customs, Excise Tariff, etc. (Consolidation) Act

Imposition of Levy on all Eligible Goods From Outside Africa

1 Prior to the Amendment

The FA 23 introduced a new import levy of 0.5% on all eligible goods imported into Nigeria from outside Africa. Prior to this Act, there were other duties paid on the importation of goods and services. The addition of this levy will inevitably lead to a higher cost of importation and a higher price for the final consumer.

2 Amendment

Section 10 of the Finance Act amended Section 13 of the Principal Act by introducing a levy of 0.5% in addition to extant customs duties and other charges. This levy is imposed on all eligible goods imported into Nigeria from outside Africa to finance capital contributions, subscriptions and other financial obligations to the African Union and other trade organizations as may be designated by regulation issued by the Finance Minister.

3 Implication

The imposition of a levy on an eligible good imported from outside Africa would have a resultant impact on the cost of goods and services imported, causing an increase in the price of these products.

The Act failed to provide a distinct definition on the goods that qualify as 'eligible'. As a result of this, abuse is possible from imposition of the levy on all goods, of which some may turn out to be 'illegible'.

Customs, Excise Tariff, etc. (Consolidation) Act

Introduction of Excise Duties on all Services Provided in Nigeria

Prior to the Amendment

- No levy was placed on all services, including telecommunication services in Nigeria.

The Amendment

- Section 11 of the Finance Act, amended Section 21 of the Principal Act by including a new subsection that subjects all services, including telecommunication services, provided in Nigeria to excise duties which the president may by a Presidential Order prescribe pursuant to the Act.

Implication of the Amendment

- Amendment will lead to a higher cost of services and inevitably an increase in the cost of purchasing these services. Imagine
- An indefinite suspension has been placed on this legislation with respect to the telecommunication sector. Could this action be temporary?

Finance Act 2023 and beyond

What does the future hold?

- Yet another amendment?
- Coalesce of taxes (from 52 to 18) vs expansion of tax bases?
- How does government achieve the annual budgets given the annual shrink in crude oil revenue?
- Tax rate increases? What taxes?
- New taxes (e.g., the current windfall tax in Italy)?
- Taxes on luxury goods – the courage or lack of it?
- More tax incentives/encouragement of taxpayers?
- Enforcement of payments of outstanding tax liabilities by tax payers – another “Adekaola style”?
- Output from the current presidential committee on fiscal policies – another “Orasanye report”?
- Balance between government’s social responsibility, taxes and perception of taxpayers.

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Thank you