CHAPTER NINE

AN OVERVIEW OF THE TAX AMENDMENTS UNDER THE FINANCE ACT, 2020

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Abstract

On 31st day of December 2020, President Muhammadu Buhari, GCFR, assented to the Finance Bill 2020 which had earlier been passed by both the Senate and the House of Representatives respectively on 15th December 2020 and 17th December 2020. With this assent, the Finance Bill 2020 became known as the Finance Act 2020. The Finance Act, 2020 made some significant and fundamental amendments to various tax legislations in Nigeria. These amendments have various implications which must be noted by taxpayers in order to avoid sanction from the regulatory bodies. The objective of this article therefore is to provide an overview of the tax amendments introduced by Finance Act, 2020. This will go along way to assist taxpayers their obligations under the amended tax legislations

1. Introduction

On the 31st day of December 2020, President Muhammadu Buhari, GCFR, assented to the Finance Bill 2020 which had earlier been passed by both the Senate and the House of Representatives respectively on 15th December 2020[1] and 17th December 2020. With this assent, the Finance Bill 2020 became known as the Finance Act, 2020.

The Finance Act, 2020, which has a commencement date of 1st January 2021,[2] made some significant and key changes to existing tax laws in Nigeria such as Capital Gains Tax Act (CGTA), Companies Income Tax

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[1] Ayodeji Adegboyega, 'Buhari signs Finance Bill into Law' <https://www.premiumtimesng.com/news/headlines/372358-buhari-signs-finance-bill-into-law.html> accessed on 19 July 2021

[2] Section 80 of Finance Act, 2020

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Act ("CITA"), Personal Income Tax Act ("PITA"), Value Added Tax (VAT) Act ("VAT Act"),the Stamp Duties Act ("Stamp Duties Act"),Tertiary Education Trust Fund (Establishment, etc.) Act (TETFA) and Industrial Development (Income Tax Relief) Act (IDITRA).[3] The Finance Act, 2020 also made changes to regulatory laws such as the Federal Inland Revenue Service (Establishment) Act, Nigeria Export Processing Zones Act and Oil and Gas Export Free Zone Act.[4] In addition, in the wake of the COVID-19 pandemic, the Finance Act 2020 also introduced the COVID-19 incentives for taxpayers to relieve tax liability.

The Finance Act, 2020 appears as a short-cut to the wholesale amendment of various other tax legislations in Nigeria without the need to independently amend each of the tax legislation which might be time consuming.[5] This is therefore a commendable act on the part of the Nigerian government. This article provides a summary of the key amendments made by the Finance Act 2020 to tax laws in Nigeria.

2. Capital Gains Tax Act (CGTA)

a. Computation of tax, Filing of Self-assessment and payment of tax

The Finance Act 2020 made a significant amendment to Section 2 of the Capital Gains Tax Act (CGTA) by introducing a new subsection 4 which provide thus:

"(4) Subject to the provisions of Section 31 of this Act, every person having disposed a chargeable asset shall, not later than 30th June and 31st December of that year, compute the capital gains tax, file self-assessment return, and pay the tax computed in respect of the chargeable assets disposed in the periods."[6]

This implication of this amendment is that it is mandatory for taxpayers to compute capital gains tax, file self-assessment return, and pay the tax

[3] Section 1 of Finance Act, 2020
[4] Ibid
[5] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021
[6] Section 2 of Finance Act, 2020

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computed in respect of the chargeable assets disposed. The computation of the capital gains tax, filing of self-assessment return, and payment of the tax computed shall be done not later than 30th June and 31st December of the relevant year.[7]

It is important to note that before this amendment, there was no provision in the Capital Gains Tax Act with regard to the time within which a taxpayer is expected to compute tax, file self-assessment return and pay the tax computed. This created a lot of uncertainties on the administration of the Capital Gains Tax Act. Therefore, the amendment made by the Finance Act, 2020 is highly significant to the administration of Capital Gains Tax Act in Nigeria as there is now certainty as to when taxpayers are expected to file self-assessment return and pay their taxes in this regard.

b. Increment in the amount of money paid as Compensation for loss of office not chargeable to tax

Another significant amendment introduced by the Finance Act, 2020 to the Capital Gains Tax Act is that it increased the amount of money not chargeable to Capital Gains Tax in respect of money paid as compensation for loss of office.[8] In this regard, the Finance Act, 2020 amended the provision of Section 36 (2) of the Capital Gains Tax Act by substituting the previous subsection 2 with a new subsection 2 which provide thus:

"(2) Sums obtained by way of compensation for loss of office, up to a maximum of =N=10,000,000.00, shall not be chargeable gains and subject to tax under this Act. Provided that any sum in excess of =N=10,000,000.00 shall not be so exempt but the excess amount shall be chargeable gains and subject to tax accordingly."

This amendment is highly significant bearing in mind that the amount of money not chargeable to Capital Gains Tax in respect of money paid as compensation for loss of office was previously =N=10,000.00.[9] It is

[7] Ibid
[8] Section 4(a) of Finance Act, 2020
[9] Section 36(2) of the Capital Gains Tax Act 2004

important to note that the Finance Act, 2020 further provides that any sum in excess of =N=10,000,000.00 shall not be so exempt and that such excess amount shall be chargeable gains and subject to tax accordingly.[10]

c. **Obligation to deduct tax**

In addition, it is to be noted that the Finance Act, 2020 introduced new subsections 3 and 4 to the provision of Section 36 of the Capital Gains Tax Act wherein an obligation is imposed on any person or entity who pays compensation for loss of office to an individual to, at the point of payment of such compensation, deduct and remit the tax due to the relevant tax authority.[11] The tax so deducted shall be remitted within the time specified under the Pay-As-You-Earn regulations issued pursuant to the Personal Income Tax Act.[12]

3. **Companies Income Tax Act (CITA)**

a. **Tax exemption on Interest on Loan of companies involve in primary agricultural production**

In line with the Federal Government's policy direction towards the promotion of primary agricultural production, the Finance Act, 2020 extended the existing tax exemption on interest income on bank loans under Section 11(2) to companies involve in primary agricultural production.[13] The Finance Act, 2020 further amended Section 11 (2) of the CITA by reducing the minimum moratorium period from 18 months to 12 months, with regards to the tax exemption on bank loans for companies involved in "primary agricultural production" and other local businesses. The reduction of the moratorium to period by six months further demonstrates the Government's commitment to support local businesses in Nigeria.[14]

[10] Section 4(a) of Finance Act, 2020
[11] Section 4(b) of Finance Act, 2020
[12] Section 4(b) of Finance Act, 2020
[13] Section 6(a) of Finance Act, 2020
[14] Ibid

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b. Definition of primary agricultural production

The Finance Act, 2020 replaced the existing definition of "agricultural trade or business" as provided for in Section 11(4) of CITA with a new definition of "primary agricultural production" as follows:

"primary agricultural production" means—

(a) primary crop production comprising the production of raw crops of all kinds,' but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop product;

(b) primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or rawpoultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock product;

(c) primary forestry production comprising the production of timbers of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and saplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber product; and

(d) primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate or final processing of any other manufactured or derivative fish product."[15]

This amendment narrows the application of the tax exemption on interest on bank loans granted to "primary agricultural production," unlike the broad exemption that was previously applicable to bank loans to mostly all agricultural businesses.

c. Correction of Listing Error

The Finance Act, 2020 amended Section 13(2)(e) of CITA by correcting the listing error made in the Finance Act, 2019.[16] The former provision had

[15] Section 6(b) of Finance Act, 2020
[16] Section 7 of Finance Act, 2020

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erroneously included sub-paragraph 'e' (i.e., the provision of management, consultancy, technical and professional services) as part of services to which withholding tax (WHT) was not the final taxon the income of a non-resident recipient.[17] The amendment has now corrected this error. Thus, WHT remains the final tax on the income of a non-resident recipient for these categories of services.[18]

d. **Companies Engaged in Shipping and Air Transport**

The Finance Act, 2020 amended the provision of Section 14 of the CITA to clarify that revenue earned from leasing, containers, non-freight operation or any other incidental income should be subject to tax under Section 9 of the CITA.[19] In this regard, the Finance Act, 2020 introduced a new Section 14(5) to specify that the special tax regime provided by the provision of Section 14 of CITA for shipping and air transport companies does not apply to income from leasing, containers, non-freight operations or any other incidental income liable to tax under Section 9 of CITA.[20]

With this amendment, a distinction is created between revenue from core shipping/freight operations and air activities that should be subject to tax under Section 14 of the CITA, and revenue from other incidental activities that should be subject to the general corporate income tax rate of 30%. This amendment resolves the issue with respect to the taxation of ancillary income of non-resident airlines and shipping companies.[21]

This is a significant amendment bearing in mind that there has been controversies on whether the tax regime under Section 14 of CITA applies strictly to income from carriage of passengers, mails, livestock or goods shipped or loaded in Nigeria or if it also applies to other income streams such as leasing, container sales, non-freight income or any other incidental income.[22]

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[17] Finance Act, 2019
[18] Section 7 of Finance Act, 2020
[19] Section 8 of Finance Act, 2020
[20] Ibid
[21] PricewaterhouseCoopers Nigeria, 'Nigeria's Finance Act 2020: Overview and general implications' <https://www.pwc.com/ng/en/assets/pdf/nigeria-finance-act-2020-insights-series-and-sector-analysis.pdf> accessed on 26 July 2021
[22] Ibid

e. **Modification of Minimum Tax Provision**

The Finance Act, 2020 introduced a new Section 16(12) to modify the minimum tax applicable for insurance companies and businesses. The new Section 16(12) provides that the tax payable by any insurance company for any year of assessment shall not be less than 0.5% of the gross premium for non-life insurance business and 0.5% of the gross income for life insurance business.[24]

The *proviso* to the new section however modified this minimum tax. In this regard the *proviso* stipulated that the applicable minimum tax shall be reduced to 0.25% for tax returns prepared and filed for any year of assessment falling due on any date between 1st January 2020 and 31st December 2021[25] both days inclusive. It is clear from the *proviso* that this reduced minimum tax rate is only applicable to tax returns prepared and filed for financial years ending on any date between 1st January 2020 and 31st December 2021. The reduction of applicable minimum tax in this regard was made considering the current economic realities occasioned by the COVID-19 pandemic.[26]

The Finance Act, 2020 also introduced a new sub-paragraph (sub-paragraph 13) to Section 16for the purpose of defining "gross premium" and "gross Income" for minimum tax purposes, with regards to insurance businesses.[27] In this new subsection, "gross premium" means the total premiums written, received and receivable excluding unearned premium and premiums returned to the insured while "gross income" means total income earned by a life insurance business including all investment income (excluding franked investment income), fees, commission and income from other assets but excluding premiums received and claims paid by re-insurers.[28] "This amendment provides further clarity on

[24] Section 9(a) of Finance Act, 2020
[25] Ibid
[26] KPMG, 'Finance Act, 2020-Impact Analysis' <https://home.kpmg/ng/en/home/insights/2021/02/finance-act-2020-impact-analysis.html> accessed on 19 July 2021
[27] Ibid
[28] Section 9(b) of Finance Act, 2020

relevant deductions that should be recognized in determining premiums and income subject to tax for insurance companies.

The Finance Act 2020 further amended Section 33 of the CITA by reducing the minimum tax rate from 0.5% to 0.25% of gross turnover less franked investment income, for tax returns prepared and filed for any year of assessment falling between 1st January 2020 and 31st December 2021 (both dates inclusive).[29] Based on the timeline provided for the reduced minimum tax, it would appear that affected companies can file amended returns for the period already past to claim a refund or at the least establish a credit to be utilized for future tax obligations in respect of minimum tax already paid for the year.[30] Thus, this provision is a response to the impact of the COVID-19 pandemic on businesses.[31]

f. **Amendment of Section 23(1) of CITA**

The Finance Act 2020 amended Section 23 (1) of the CITA to align the conditions for tax exemption of dividend and rental income received by real estate investment trust (REIT) companies from taxes as provided in section 23 (1) (b)(c), with the proviso in 23(1)(s).[32]

It is to be noted that under the Finance Act of 2019, there were two provisions (that is, Section 1(b)(c) and Section 1(s)), stipulating varying conditions for exempting dividends and rental income earned by REITs from taxes.[33] This instant amendment by Finance Act 2020 has now provided clarification that dividend and rental income received by a REIT should only be tax exempt where such REIT distributes a minimum of 75% of such dividend/rental income within 12 months of earning the income.

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[29] Section 13 of Finance Act, 2020

[30] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021

[31] Ibid

[32] Section 10(a) of Finance Act, 2020

[33] Finance Act, 2019

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The Finance Act, 2020 also deleted the provision of Section 23 (1) (C) of the CITA.[34] The implication of this deletion is that the Finance Act, 2020 rescinded the tax-free period incentive granted companies involve in agricultural production earlier introduced by the Finance Act, 2019.This deletion appears to address the duplication of income tax incentives granted to agricultural businesses in Nigeria.

g. Considerations for Donations in respect of any pandemic, natural disaster or other exigency

The Finance Act 2020 amended Section 25 of the CITA by introducing two new sub-paragraphs (i.e., "paragraphs 8 and 9").[35] By virtue of this amendment, donations in respect of any pandemic, natural disaster or other exigency are to become tax deductible.[36]

Accordingly, donations made to any Fund set up by the Federal Government or any State Government, or to any agency designated by the Federal Government or to any similar Fund or purpose in consultation with any Ministry, Department or Agency of the Federal Government, in respect of any pandemic, natural disaster or other exigency are deductible for tax purposes.[37] In this regard, the cost of in-kind donations made shall be allowed as deductions and where companies have either procured or manufactured items for contribution, the cost of purchase, manufacture or supply of such in-kind contributions shall be allowed as deductions.[38] In order to be entitled to such deduction, a company must provide requisite documentation evidencing the donation and the cost thereof to the relevant tax authority which must demonstrate to be wholly, reasonably, exclusively and necessarily incurred in relation to the procurement, manufacture or supply of the in-kind contributions.[39]

[34] Section 10(b) of Finance Act, 2020
[35] Section 11 of Finance Act, 2020
[36] Ibid
[37] Section 25(8) of Companies Income Tax Act 2020 (as amended)
[38] Ibid
[39] Ibid

The Finance Act, 2020however limit the amount of deductions that can be allowed in respect of donations in this regard.[40] Thus, the amounts allowable for deduction in respect of donation made by a company in any year of assessment shall be limited to 10% of assessable profits after deduction of other allowable donations made by the company.[41]

It is clear that this particular amendment provides an incentive to companies in respect of any donation made to the Government for COVID-19 pandemic or other future exigencies donations to the Government.[42] Such donations are now allowable deductions for tax purposes, subject to providing the requisite documentation evidencing same.[43]

h. **Expansion of scope of non-deductible penalties or fines for income tax purpose**

The Finance Act 2020 amended Section 27(k) of the CITA to expand the scope of non-deductible penalties or fines for income tax purpose.[44] This amendment alters the provision of section 27 (k) to include penalties or fines pursuant to legislations enacted by the State House of Assembly, as opposed to the former section which provided for only those legislated by the National Assembly.[45]

i. **Gas Utilization (Downstream Operations)**

Based on existing legislations, companies engaged in gas utilization in downstream operations are able to take advantage of incentives in the form of tax holidays in respect of the same qualifying capital expenditure under the CITA, Petroleum Profit Tax Act and the Industrial Development (Income Tax Relief) Act (IDITRA).[46]

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[40] Section 25(9) of Companies Income Tax Act 2020 (as amended)
[41] Ibid
[42] Ernst & Young, Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021
[43] Section 25(9) of Companies Income Tax Act 2020 (as amended)
[44] Section 12 of Finance Act, 2020
[45] Ibid
[46] Section 39 of Companies Income Tax Act 2004

The Finance Act, 2020 has however amended Section 39 of the CITA by providing that companies engaging in a trade or business of gas utilization in downstream operations cannot claim the tax-free period incentive provided under section 39 of the CITA, where such companies have already claimed any other incentives under any law in Nigeria, with respect to the trade or business of gas utilization in the downstream sector.[47] The implication of this amendment is that a limitation has now been put in place in respect of incentives that may be claimed by companies engaging in gas utilization businesses, downstream operation.

j. Penalties for Inaccurate Self-Assessment Returns

The Finance Act 2020 amended Section 53 of the CITA by substituting the former provision with a new provision. The new provision of Section 53 of CITA introduces penalties and interest for deliberate filing of incorrect tax returns which were not provided for under the old provision of Section 53 of CITA.[48] By virtue of this amendment, where a company, by a deliberate and dishonest act, the returns filed fail to declare the true and correct amount of profits or tax payable by the company, the company is immediately liable to pay any outstanding tax so identified and assessed.[49] The outstanding tax shall be subject to penalty and interest which shall accrue from the date the incorrect return was filed.[50]

This amendment is meant to discourage and penalize deliberate misstatement of profit and taxes.[51] It is therefore important for companies to ensure that the information contained in tax returns filed is correct and in compliance with the relevant tax provisions, to avoid being deemed by the tax authority as deliberately filing incorrect returns and subjected to penalties and interests.

[47] Section 14 of Finance Act, 2020
[48] Section 15 of Finance Act, 2020
[49] Section 53(2) of the Companies Income Tax Act, 2020 (as amended)
[50] Section 53(3) of the Companies Income Tax Act, 2020 (as amended)
[51] KPMG, 'Finance Act, 2020-Impact Analysis' <https://home.kpmg/ng/en/home/insights/2021/02/finance-act-2020-impact-analysis.html> accessed on 19 July 2021

k. Filing of Tax Returns by Non-Resident Companies

The Finance Act, 2020 amended the provision of Section 55 of the CITA by making specific provisions regarding filing requirements for Non-resident Companies (NRCs) that have a taxable presence in Nigeria.[52] This amendment provide a framework for the filing of tax returns by non-resident companies.

By virtue of this amendment, where any non-resident company derives profit or is taxable in Nigeria, such non-resident company will be required to file a tax return with the Federal Inland Revenue Service (FIRS) consisting of its full audited financial statements and those relating to its Nigeria operations (attested to by an independent qualified and certified accountant); tax computations based on profit attributable to Nigeria, duly completed self-assessment forms, amongst others.[53] Thus, based on this amendment, non-resident companies are now required to file income tax returns, along with their global audited financial statements, and audited financial statements for their Nigerian operations.

However, for non-resident companies performing business activities in Nigeria, for whom WHT constitutes final tax (such as non-resident companies earning passive income or providing technical/professional management/technical services remotely), the requirement to file the tax returns (stated above) will not apply.[54]

The amendment to Section 55 of the CITA also empowered the FIRS to require small and medium companies to file income tax returns using a form of account that it may specify, other than audited financial statements.[55] The amendment further provide that the FIRS may, by a notice, specify a different form of account to be included in tax returns of small and medium companies, other than audited financial statements.[56] A

[52] Section 16 of Finance Act, 2020
[53] Section 55(1A) of Companies Income Tax Act, 2020 (as amended)
[54] Ibid
[55] Ibid
[56] Ibid

"medium sized company" means a company that earns gross turnover greater than =N=25,000,000 but less than =N=100,000,000 per annum, or as otherwise while "small sized company" means a company that earns gross turnover of =N=25,000,000 or less per annum, or as otherwise defined by the Companies Income Tax Act."

I. Penalty for failure to provide books of account

The Finance Act 2020 amended Section 63 of the CITA by substituting the provision with a new Section 63.[72] The new section provides that every company, including a company granted exemption from of incorporation, shall, whether or not the company is liable to pay tax maintain books or records of accounts, containing sufficient information or data of all transactions.[73] Such books and records shall be in the English language and shall, for the purposes of tax account, be consistent with the format that may be prescribed by the FIRS.[74] Where a record of a company is maintained in a language other than the English language, the company shall, on demand by the FIRS, produce, at its own expense, a translation in English language, which shall be certified by a sworn translator.[75] Any book or record required to be kept under this section shall be kept for a period of at least six years after the year of assessment in which the income relates.[76]

The amendment stipulated that failure to provide books of account on request by the FIRS attracts a penalty of =N=100,000.00 in the first month, and =N=50,000.00 for each subsequent month.[77] Where, in the opinion of the FIRS, a company fails or refuses to maintain books or records as required or adequate for the purposes of tax, the FIRS may, by notice in writing, require it to maintain such records, books and accounts

[72] Section 24 of Finance Act, 2020
[73] Section 17 of Finance Act, 2020
[74] Section 63(1) of Companies Income Tax Act, 2020 (as amended)
[75] Section 63(2) of Companies Income Tax Act, 2020 (as amended)
[76] Section 63(3) of Companies Income Tax Act, 2020 (as amended)
[77] Section 63(7) of Companies Income Tax Act, 2020 (as amended)
[78] Section 63(4) of Companies Income Tax Act, 2020 (as amended)

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as the FIRS considers adequate, in such form and language as may be specified in the notice.[64] A company has a right to object and appeal against any direction of the FIRS in this regard.[65]

m. Means of communication

The Finance Act, 2020 amended Section 68 of the CITA by introducing courier services and electronic means as valid means of correspondence between the FIRS and taxpayers.[66] This amendment is in line with international best practices and it is in response to restrictions on physical interactions imposed by the COVID-19 pandemic.[67]

Thus by virtue of this amendment, the FIRS may now correspond with companies and taxpayers via courier services, email or other electronic means for corresponding with taxpayers in respect of provisions of the CITA.

n. Reduction of the timeline for payment of tax liabilities

The Finance Act 2020 amended Section 77 (2) of the CITA to reduce the timeline for payment of tax liabilities (not being the subject of an appeal) from 60 days to 30 days.[68] It is therefore important for Companies take note of the reduced timeline for payment of undisputed tax liabilities to avoid the imposition of penalties and interest on the principal amount.

o. Definition of Gross Turnover-Amendment of Section 105 of CITA

The Finance Act 2020 made an amendment to Section 105 of CITA by redefining "gross turnover" and "Nigerian company"; and also, the inclusion of the definition of "public character."[69]

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[64] Section 63(5) of Companies Income Tax Act, 2020 (as amended)
[65] Section 63(6) of Companies Income Tax Act, 2020 (as amended)
[66] Section 18 of Finance Act, 2020
[67] PricewaterhouseCoopers Nigeria, 'Nigeria's Finance Act 2020: Overview and general implications' <https://www.pwc.com/ng/en/assets/pdf/nigeria-finance-act-2020-insights-series-and-sector-analysis.pdf> accessed on 26 July 2021
[68] Section 20 of Finance Act, 2020
[69] Section 21(a) of Finance Act, 2020

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The amended definition of "gross turnover" under the Finance Act, 2020 is:

"gross turnover" means the gross inflow of economic benefits during the period arising in the course of the operating activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants, including sales of goods, supply of services, receipt of interest, rents, royalties or dividends"[70]

This amended definition of "gross turnover" under the Finance Act, 2020 is to clarify the ambiguity in the categories of income that qualify as turnover for minimum tax purposes. The previous definition of gross turnover under CITA included all economic benefits arising from operating activities.[71] However, the amended definition of "gross turnover" now provides that such economic benefits should result in an increase in equity, other than a capital injection from shareholders.

The Finance Act, 2020 defined a "Nigerian company" as any company formed or incorporated under any law in Nigeria".[72] The Finance Act, 2020 also inserted a definition for "public character".[73] The "public character" is defined to mean any organization or institution that is registered in accordance with relevant law in Nigeria and which does not distribute or share its profit in any manner to members or promoters.[74]

In the past, the CITA did not define what constitutes a "public character." This has resulted in controversies and public debates and even disputes in courts in the past. Thus, by virtue of this amendment, clarity has now been provided as to what constitutes public character and thus companies and taxpayers that should qualify for the tax exemption under the provisions of section 23 (1) (c) of the CITA.

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[70] Ibid
[71] Section 105 of Companies Income Tax Act 2004
[72] Section 21(a) of Finance Act, 2020
[73] Section 21(b) of Finance Act, 2020
[74] Ibid

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p. Amendment of sub-paragraph (1) (j) of the second schedule to the CITA

The Finance Act 2020 made an amendment to sub-paragraph (1) (j) of the second schedule to the CITA, to provide that capital expenditure on the development and acquisition of software or other such capital outlays on electronic applications is now a qualifying capital expenditure for capital allowance purposes.[75]

Prior to this amendment, the CITA did not provide for tax treatment with respect to costs of intangibles. However, in practice, companies mostly amortized such costs (in line with a circular issued by the tax authorities in this regard).[76] Although this amendment is a step in the right direction, it is unclear as to what the useful life of this intangible asset should be for tax purposes (i.e., the initial and annual allowance rates to be applied is not specifically provided for in the second schedule).[77]

3. Personal Income Tax Act (PITA)

a. Significant Economic Presence

The Finance Act, 2020 introduced the Significant Economic Presence (SEP) rules in a new Section 6(A) of PITA which applies to taxation of non-resident individuals, executors or trustees carrying on a trade or business comprising Technical, Professional Management or Consultancy (TPMC) services to persons resident in Nigeria.[78]

By this amendment, non-resident individuals, executors or trustees providing technical/ management/ consultancy/ professional services would also be subject to WHT at 5% as the final tax. The implication of this amendment is that Foreign persons earning business profits from

[75] Section 22 of Finance Act, 2020
[76] PricewaterhouseCoopers Nigeria, 'Nigeria's Finance Act 2020: Overview and general implications' <https://www.pwc.com/ng/en/assets/pdf/nigeria-finance-act-2020-insights-series-and-sector-analysis.pdf> accessed on 26 July 2021
[77] Ibid
[78] Section 25 of Finance Act, 2020

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Nigeria are taxed under Section 6 of PITA once a fixed base/taxable presence is created subject to existing treaties. This amendment corrects the oversight of the Finance Act, 2019 and aligns the relevant SEP provision of the CITA with the PITA.[79]

b. Pension contributions

The Finance Act 2020 amended Section 20(1) of PITA by including a new Section 20(1g) which specifically limit tax relief for pension contributions only to schemes, provident or retirement benefits fund that are recognized under the Pension Reform Act (PRA) 2014.[80]

The implication of this amendment is that any pension contribution made into a scheme not recognized under the PRA 2014 will not qualify for tax deduction.[81] Thus, individuals who contribute to foreign schemes will not be able to claim a deduction in Nigeria for such contributions. It is therefore important for employers to ensure that only contributions to approved pension schemes under the PRA are treated as an allowable deduction on payroll.[82]

c. Commencement and cessation rules

The Finance Act 2020 amended Sections 24 and 25 of the PITA to provide that the commencement and cessation rules for computing income tax payable by a new and liquidating business respectively, should reflect the business's actual accounting period and date of cessation.[83]

By this amendment, the Finance Act, 2020 aligns the provisions of the PITA with the current CITA provisions (as introduced by the Finance Act 2019). This simplifies the commencement and cessation rules for new and

[79] KPMG, 'Finance Act, 2020-Impact Analysis' <https://home.kpmg/ng/en/home/insights/2021/02/finance-act-2020-impact-analysis.html> accessed on 19 July 2021

[80] Section 26 of Finance Act, 2020

[81] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021

[82] Ibid

[83] Sections 27 and 28 of Finance Act, 2020

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cessation businesses and eliminates the risk of double taxation for commencement and cessation of businesses.[84] Entities ceasing business are required to remit the tax liabilities due not later than three months from its date of cessation.[85]

This revision of commencement and cessation rules will prevent possible double taxation which previously applied to a new enterprise on its profits of at least 12 months within the first 3 years of assessment. Also, the possibility of any accounting period escaping taxation during cessation has been eliminated.[86]

d. Redefinition of Gross Income

The Finance Act 2020 amended Section 33(2) of PITA by providing the following definition of Gross Income:

"For the purposes of this Section, "gross income" means income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the sixth schedule and all allowable business expenses and capital allowances."[87]

This amendment redefined gross income for the purposes of determining the Consolidated Relief Allowance (CRA).This amendment has clarified what constitutes "gross income" for the purpose of computing Consolidated Relief Allowance (CRA). Thus by virtue of this new definition, CRA is no longer calculated on non-taxable income on which no further tax is payable and tax-exempt items listed in paragraph (2) of the Sixth Schedule to the PITA and all allowable business expenses and capital allowance. This amendment could result in an increase in tax payable by individuals.[88]

[84] KPMG, 'Finance Act, 2020-Impact Analysis' <https://home.kpmg/ng/en/home/insights/2021/02/finance-act-2020-impact-analysis.html> accessed on 19 July 2021
[85] Section 25 of Companies Income Tax Act, 2020 (as amended)
[86] Ibid
[87] Section 29 of Finance Act, 2020
[88] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021

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The implication of this amendment is that tax exempt items should now be deducted from gross emolument before computing the CRA. This means employees will no longer enjoy the additional 20% relief previously claimable on the portion of their income that relates to National Housing Fund, pension contribution, and other tax exempt items. The reduction in CRA would result in higher effective tax rate and lower disposable income. Employers need to update their payroll templates or applications to ensure compliance."[1]

Furthermore, the Finance Act, 2020 amended Section 33(3) of the PITA to reinstates the relief by way of deduction for the premium paid by an individual to an insurance company in respect of insurance for his life or that of his spouse or contract of deferred annuity for his own life or that of his spouse in the preceding year of assessment."[2] *This amendment reinstates treatment of life insurance premium as an allowable deduction which was previously eliminated by the Finance Act 2019 probably due to error. This means that individuals can now claim tax reliefs on premium payments on their life assurance or that of their spouse."*[3]

e. Tax exemption for minimum wage earners

The Finance Act 2020 amended Section 37 and Paragraph 33 of the Third Schedule of PITA to introduce a tax exemption for persons whose gross income is less or equal to the National Minimum Wage, as defined in the National Minimum Wage Act." Accordingly, employees who earn not *more than the National Minimum Wage (currently =N=30,000.00) are not liable to tax or deduction of monthly PAYE.*

In addition, the Finance Act 2020 amended Section 108 of the PITA to include the definition of "Board" under section 86 of PITA as the "Joint

[1] *Ibid*
[2] *Section 33(3) of Companies Income Tax Act, 2020 (as amended)*
[3] *Ibid*
[4] *Section 30 and 33 of the Finance Act, 2020*

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Tax Board" and "National Minimum Wage" as the existing National Minimum Wage pursuant to the National Minimum Wage Act.[91] Sections 23, 48, 73, 86, 89, 93 and 106A of PITA were also amended by substituting for the word, "Service", the word, "Board" wherever it appears in the sections.[92] This represents a correction of the drafting errors in the Finance Act 2019.[93]

4. Value Added Tax (VAT) Act Amendments

a. Inclusion of incorporeal properties

The Finance Act 2020 amended Section 2 of the VAT Act to include incorporeal right as a taxable supply of service.[96] Based on the amendment under the Finance Act 2019, incorporeal properties were classified as "goods," which created several controversies on the VAT treatment of incorporeal properties in Nigeria. However, this has been addressed such that incorporeal properties are now classified as "services" for VAT purposes.[97]

Consequently, where an incorporeal right is registered, assigned to, or acquired by, or exploited by a person in Nigeria, regardless of whether the payment for its exploitation is made within or outside Nigeria, such transaction would be regarded as a taxable supply of service.[98] Further amendments were made to section 2 of the VAT Act by providing a definition of time of supply. The definition of the time of supply for VAT purposes, provides clarity as to when VAT should become due and payable.[99]

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[91] Section 31 of the Finance Act, 2020
[92] Section 32 of the Finance Act, 2020
[93] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021
[96] Section 40 of Finance Act, 2020
[97] Ibid
[98] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021
[99] Section 2A of Value Added Tax, 2020 (as amended)

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b. Rate of tax.

The Finance Act, 2020 amended the rate of tax to be charged on taxable goods and services.[100] The new tax rate chargeable is 7.5% with effect from 1st February 2020, on the value of all goods and services, except that goods and services listed under Part III of the First Schedule to the VAT Act shall be taxed at zero rate.[101]

a. VAT Registration by Non-Resident Person

The Finance Act 2020 amended Section 10 wherein tax registration obligation is imposed for non-resident companies that supply taxable goods and services to Nigeria.[102] The former provision appeared to be applicable to only taxable services.[103] Thus, the amendment under the Finance Act 2020 clearly states that both taxable goods and services provided by non-resident companies should be subject to the provisions of section 10 of the VAT Act.[104]

This amendment should potentially increase the administrative burden of non-resident companies who are now subject to VAT in Nigeria. Although the amendment also provides that the affected non-resident companies may appoint a representative to assist in fulfilling their tax obligation, and thus lessen such administrative burden. The amendment also provides that the FIRS may issue further guidelines to give effect to the provisions of section 10 of the VAT Act.[105]

c. Immovable Properties

The Finance Act, 2020 amended definition of goods in Section 46 of the Act. By this amendment, goods means all forms of tangible properties,

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[100] Section 42 of Finance Act, 2020
[101] Section 4 of Value Added Tax, 2020 (as amended)
[102] Section 43 of Finance Act, 2020
[103] Section 10 of Value Added Tax, 2004
[104] Section 10 of Value Added Tax, 2020 (as amended)
[105] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020' <https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021

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movable or immovable, but does not include, land and building, money or securities to include immovable properties.[106] This amendment clarified the controversy that resulted from the definition of goods provided under the Finance Act 2019 upon the FIRS issued a circular following wherein it was stated that buildings should qualify as a "good" for VAT purposes.[107] Thus, the Finance Act 2020 has now expressly clarified that goods for VAT purpose, should not include land and buildings.

d. New definitions and interpretations

Section 46 of the VAT Act introduces new definitions for animal feed and commercial aircraft spare parts and components while the definition of goods and services has been revised as follows;

i. animal feed; means any raw, semi-processed, processed and otherwise enhanced animal feed that is fed to domesticated and other animals raised and slaughtered for human consumption to provide beef, goat, lamb, pork, chicken, fish and other kinds of meat, as well as other animals cultivated and raised for the production of milk, eggs as well as other sources of protein and nutrients edible by humans.

ii. commercial aircraft spare parts and components; means parts, engines, propellers, radio apparatus, instruments, appliances, furnishing, parts of any of the forgoing, and generally any other article of whatever description maintained for installation in a commercial aircraft in substitution for parts or articles removed.

iii. goods; all forms of tangible properties, movable or immovable, but does not include land and building, money or securities.

iv. service; a) anything, other than goods, or services provided under a contract of employment; and b) includes any intangible or incorporeal

[106] Section 44 of Finance Act, 2020
[107] Section 46 of Value Added Tax, 2020 (as amended)

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(product, asset or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security.[108]

e. Amendment of the first schedule to the VAT Act

The Finance Act 2020 amended the first schedule to the VAT Act to expand the list of VAT-e empt goods and services to include airline and agricultural businesses as follows:

i. Commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts;

ii. Airline transportation tickets issued and sold by commercial airlines registered in Nigeria;

iii. Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.[109]

This expanded list of exempt goods under the VAT Act in favour of airline and agricultural businesses is expected to reduce the cost of air transportation and further encourage investment in agricultural in Nigeria.[110]

5. Stamp Duties Act (SDA)

The Finance Act 2020 amended Section 2 of the SDA to provide for the use of the adhesive stamps, produced by the Nigerian Postal Service (NIPOST)) by the FIRS.[111] This amendment constitute a clarification regarding the approved "Stamp" to be utilized by the FIRS, for the

[108] Ibid
[109] Section 45 of the Finance Act, 2020
[110] PricewaterhouseCoopers Nigeria, 'Nigeria's Finance Act 2020: Overview and general implications' <https://www.pwc.com/ng/en/assets/pdf/nigeria-finance-act-2020-insights-series-and-sector-analysis.pdf> accessed on 26 July 2021
[111] Section 46 of the Finance Act, 2020

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purpose of administering the SDA. This will have the implication of generating more revenue for the NIPOST and clearly define its responsibilities as the body responsible for "stamping" in Nigeria.[112]

The Finance Act 2020 amended Section 89 of the SDA by deleting the use of electronic inscription or any acknowledgement of duty charged as modes of denoting duty on electronic transaction.[113] Further amendments were made to section 89, expunging the payment of Stamp duty on the electronic receipt/transfer of money and replacing the same with the Electronic Money Transfer Levy (EMTL).[114]

Additionally, matters regarding the imposition, administration, collection and remittance of the Levy shall be by Regulation issued by the Minister of Finance, subject to the approval of the National Assembly.[115] Section 89 of the SDA was also amended to introduce a distribution formula, with regards to revenue generated from the EMTL as follows: 15% to the Federal Government and Federal Capital Territory, Abuja., while 85% should be remitted to the State Governments.[116] This is an attempt at centralizing the collection of the levy and also to address any controversy that could result between the FIRS and the relevant SIRS as to the collecting agent for EMTL purposes.[117]

6. Tertiary Education Trust Fund (Establishment, etc.) Act (TETFA)

The Finance Act 2020 amended Section 2 of the Act to exempt small companies (as defined under the Companies Income Tax Act)from Education tax.[118] The exemption of small companies from Tertiary Education further affirms the Federal Government's commitment to

[112] KPMG, 'Finance Act, 2020-Impact Analysis' <https://home.kpmg/ng/en/home/insights/2021/02/finance-act-2020-impact-analysis.html> accessed on 19 July 2021
[113] Section 47(a) of the Finance Act, 2020
[114] Section 48 of the Finance Act, 2020
[115] Ibid
[116] Ibid
[117] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 July 2021
[118] Section 34 of Finance Act, 2020

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promote the growth of small businesses in Nigeria.[119] The amendment stipulated that the tax rate of two percent shall be charged on the assessable profit of a company registered in Nigeria.[120]

The Finance Act 2020 deleted the provision of sections 10 and 11(3) of the Act relating to provisions governing offenses and penalties.[121] With this deletion, there is now a restriction on penalties for the contravention of provisions of the Act.

7. Industrial Development (Income Tax Relief) Act (IDITRA)

The Finance Act 2020 amended Section 1 of the IDITRA to include small or medium sized companies engaged in primary agricultural production, under the list of pioneer industry.[122] The tax incentive is for an initial tax-free period of four years and an extension, subject to a satisfactory performance by the business of a maximum of two years.[123] It however restricts such companies from claiming any similar tax holiday or incentive in Nigeria thereby curbing possible duplication of tax incentives claim.[124] The inclusion of small and medium agricultural companies, under the IDITRA further shows the efforts of the Government in encouraging agricultural production in Nigeria and the role of small and medium sized firms.

The Finance Act 2020 amended Section 25 the IDITRA to include definition of small and medium sized companies under the IDITRA, as defined under the CITA. For clarity, the definition of small and medium sized companies under the CITA, has been replicated in the IDITRA for tax incentive purposes.[125] Further amendment was made to section 25 to

[119] KPMG, 'Finance Act, 2020-Impact Analysis' <https://home.kpmg/ng/en/home/insights/2021/02/finance-act-2020-impact-analysis.html> accessed on 19 July 2021
[120] Section 34 of Finance Act, 2020
[121] Sections 35 and 36 of Finance Act, 2020
[122] Section 23 of Finance Act, 2020
[123] Ibid
[124] Ibid
[125] Section 24 of Finance Act, 2020

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provide clarity as to the scope of agricultural companies that are eligible for the tax holiday incentive.[126] Only primary agricultural companies, as defined under the CITA are eligible for the tax holiday incentive.[127]

8. Federal Inland Revenue Service (FIRS) Establishment Act

The Finance Act 2020 amended Section 8(1) of the Act to include that the FIRS is responsible for providing assistance in the collection of revenue on agreements and arrangements between Nigeria and a foreign government other persons/bodies.[128] The expansion of the FIRS functions to include revenue collection from foreign governments and persons should further encourage transparency in that regard.

The Finance Act 2020 amended Section 23 of the Act for the purpose of establishing dedicated accounts for settling tax refunds.[129] This will improve the tax refund administration in Nigeria. The Finance Act 2020 amended Section 25 of the Act to introduce the use of technology for tax administration purposes.[130] This is in line with international best practices and standards and further reduces tax administrative burdens.

The Finance Act 2020 amended Section 26 to provide an extended period of at least 30 days, for the provision of taxpayer information required upon a notice by the FIRS.[131] This provides ample time for companies to provide adequate information to the FIRS.

The Finance Act 2020 amended Section 28 of the Act to provide for information exchange between financial institutions and the FIRS.[132] Failure to provide such information in due time results in an administrative penalty of =N=25,000.00 for the first month of failure, and =N=10,000.00 for every month in which the failure occurs.[133] This should assist in curbing tax evasion and avoidance. The information received can also aid the FIRS during tax audits.

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[126] Ibid
[127] Ibid
[128] Section 49 of Finance Act, 2020
[129] Section 50 of Finance Act, 2020
[130] Section 51 of Finance Act, 2020
[131] Section 52 of Finance Act, 2020
[132] Section 52 of Finance Act, 2020
[133] Ibid

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The Finance Act 2020 made amendment to section 39 of the Act to introduce penalties for breach of confidentiality of data by tax officials.[134] This aligns with international standards and best practices on data protection.

9. Nigeria Export Processing Zone Act (NEPZA) and Oil and Gas Export Free Zone Act (OGEFZA)

The Finance Act 2020 amended Section 18 (1) of the NEPZA and the OGEFZA wherein companies in Free Trade Zones (FTZs) are mandated to file their returns in compliance with section 55 of he CITA.[135] Also, penalties as prescribed in the CITA and the FIRS (Establishment) Act will be applicable for non-compliance with the provisions of section 55.[136] This will go a long way to ensure transparency in activities being performed by companies in an FTZ.

10. Conclusion

The article provides an overview of the tax amendments made by Finance Act, 2020 to various tax legislations in Nigeria. The finding of the article revealed that the Finance Act, 2020 made some significant and fundamental amendments to tax legislations such as Capital Gains Tax Act (CGTA), Companies Income Tax Act ("CITA"), Personal Income Tax Act ("PITA"), Value Added Tax (VAT) Act ("VAT Act"), the Stamp Duties Act ("Stamp Duties Act"),Tertiary Education Trust Fund (Establishment, etc.) Act (TETFA) and Industrial Development (Income Tax Relief) Act (IDITRA), Federal Inland Revenue Service (Establishment) Act, Nigeria Export Processing Zones Act and Oil and Gas Export Free Zone Act. The article further revealed that the Finance Act, 2020 also introduced the COVID-19 incentives for taxpayers to relieve tax liability in the wake of the COVID-19 pandemic. The Finance Act, 2020 introduced certain penalties for non-compliance. It is therefore important for taxpayers to take note of these amendments in order to avoid sanction for non-compliance. The article therefore recommend that taxpayers should as a matter of urgency to take necessary steps to proactively examine the potential gaps that may arise from tax amendments and as well as perform an in-house review to help mitigate potential tax risk exposures and sanctions.

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[134] Section 53 of Finance Act, 2020
[135] Sections 58 and 59 of Finance Act, 2020
[136] Ibid

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