

TAX UPDATE ON THE 2019 FINANCE BILL



The 2020 Appropriation Bill was signed into law by the President on the 17th of December, 2019. This is a precursor to the passing and signing into law of the 2019 Finance Bill, which was presented by President Buhari to the National Assembly on the 14th of October 2019. The Finance Bill amends some sections of seven major tax laws and affects companies operating in the financial sector, real estate, petroleum exploration, energy and utilities, consumer products etc. It also impacts Micro Small and Medium Enterprises (MSMEs) and addresses the challenge of digitalization. The Finance Bill was passed into law separately by both the House of Representatives and the Senate and we understand that both chambers have now harmonised the versions of the Finance Bill passed by them into one as required by the Constitution. The harmonised Finance Bill will now be presented to the President for assent.

This update looks at the highlights of the proposed amendments to the existing tax laws in relation to areas that are considered to be of top-priority. This is because the need for the government to address these issues has been long overdue. We also highlight, changes that will affect non-resident companies as well as proposals that are sector-specific.

I. Areas of Top-Priority

- Amendment of the “excess dividend tax rule” to exclude dividends paid from retained earnings provided tax was paid on the profits when it was earned, dividends paid out of profits that are exempted from tax; franked investment income; and distributions made by a Real Estate Investment Company (“REICo”).
- Repeal of the need for ministerial (or National Office for Technology Acquisition and Promotion’s) approval for the deductibility of expenses incurred by a Nigerian company as management fee. Deductibility of management fee expenses will now be determined by transfer pricing rules.
- Tax regime for digitalized businesses. Profits attributable to provision of goods and services through digital platforms will be subject to tax
- The introduction of a special tax regime for micro, small and medium sized enterprises.

Petroleum exploration and production companies now required to withhold tax on dividend payments to their shareholders.

II. Banking, Finance & Collective Investment Vehicles

- Services provided by microfinance banks are to be exempt from Value Added Tax (“VAT”).
- Tax exemption of interest on foreign loans will be reduced to 70%; 40% and 10% on loans with a repayment (including moratorium) period above

7 years; between 5-7 years; and between 2-4 years respectively.

- New tax regime for Regulated Securities Lending Transactions (“Securities Lending”) that includes exemption from stamp duty.
- Stamp duty now expressly imposed on electronic documents. Threshold for Stamp Duty on bank transfers has been increased to N10,000 and above. No stamp duty charges will apply to transfer own accounts.
- Distributions made to a REICo will not be subject to withholding tax.
- New tax regime for REICo that includes a tax exemption from dividend and rental income received by a REICo provided 75% is distributed within 12 months from the end of the financial year in which the dividend or rental income was earned.
- Dividend paid to shareholders by a REICo will be taxable; the REICo will pay tax on income earned as management fees, profit or earned on its own account.

III. Insurance

- The Companies Income Tax regime for insurance business has been aligned with the provisions of the National Insurance Act.
- Minimum tax will no longer apply to life insurance business.
- Taxable income of life insurance businesses will be limited to income derived from the investment of shareholder funds.
- The 25% restriction on tax deductibility of claims by general insurance business been removed.
- Insurance companies can now carry forward losses indefinitely.

IV. Micro Small & Medium Enterprises

- Total exemption from Companies Income Tax (including minimum tax) for small businesses with turnover of less than NGN25 million;
- 20% tax rate will apply to medium-sized companies with turnover of between NGN25 million – NGN100 million;
- MSMEs to enjoy indefinite loss relief; and
- 2% tax credit will be granted to medium sized companies with turnover of between NGN25 million – NGN100 million as a bonus for early tax payment (i.e. 90 days before due date).



V. Oil & Gas Sector

- Dividends paid from profits from upstream petroleum operations will no longer be exempted from withholding tax.
- The incentives for gas utilization projects will be consolidated to comprise 5 years tax holiday and an accelerated capital allowance that will be claimed during the tax holiday.
- Loans for gas utilisation projects will be subject to transfer pricing and thin capitalisation rules.
- Companies engaged in gas utilization projects will not be eligible for tax holiday under the Industrial Development (Income Tax Relief) Act in addition to the proposed consolidated incentives regime.
- Companies operating in the oil & gas sector will have an obligation to withhold tax on technical, management and consultancy fees paid to Nigerian and non-resident providers of such services.

VI. Non-Resident Companies

- The source rules for the attribution of profits of non-resident companies to tax under the Companies Income Tax Act will be modified to include income attributable to digitalised activities of a non-resident company to the extent that the non-resident company has a significant economic presence in Nigeria.
- Income from the provision of technical, management, consultancy or professional services by a non-resident company shall also be taxable to the extent that the foreign company has significant economic presence in Nigeria.
- The criteria used to determine what constitutes significant economic presence will be by ministerial order.
- Non-resident companies are now required to register for VAT and charge VAT on invoices issued to Nigeria consumers. The Nigeria Consumer is required to deduct the VAT and remit it to the Federal Inland Revenue Service. This reverse charge method will now apply regardless of the existence of contract between the non-resident company and the Nigeria consumer.

VII. Miscellaneous Provisions (applicable to all sectors)

- Introduction of thin capitalization rules – interest that can be claimed will be limited to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA).

- Modification of the commencement and cessation rules.
- 1% tax credit as bonus for early payment of tax by companies other than small and medium sized companies.
- Uniform excise duty rates on imported and locally manufactured goods.
- Investment Allowance on capital expenditure incurred to replace “obsolete” plant & machinery has been withdrawn.
- VAT rate will increase to 7.5%, however, basic food items (described as agro and aqua based staple foods”) and sanitary products have been exempted from VAT.
- VAT will apply to intangibles excluding interest in land.

IX. Conclusion

The proposed changes made by the Finance Bill, once signed into law by the President, along with intensified efforts to implement the minimum standards of the OECD Base Erosion and Profit Shifting action plan, will have a significant impact on local businesses and cross border transactions and investments in Nigeria. Significant implications also exist for High Networth Individuals. The compliance risks involved require that taxpayers seek tax advice early.

This tax update is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on how the Finance Bill may affect you or your business, please contact: taxteam@uubo.org.



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