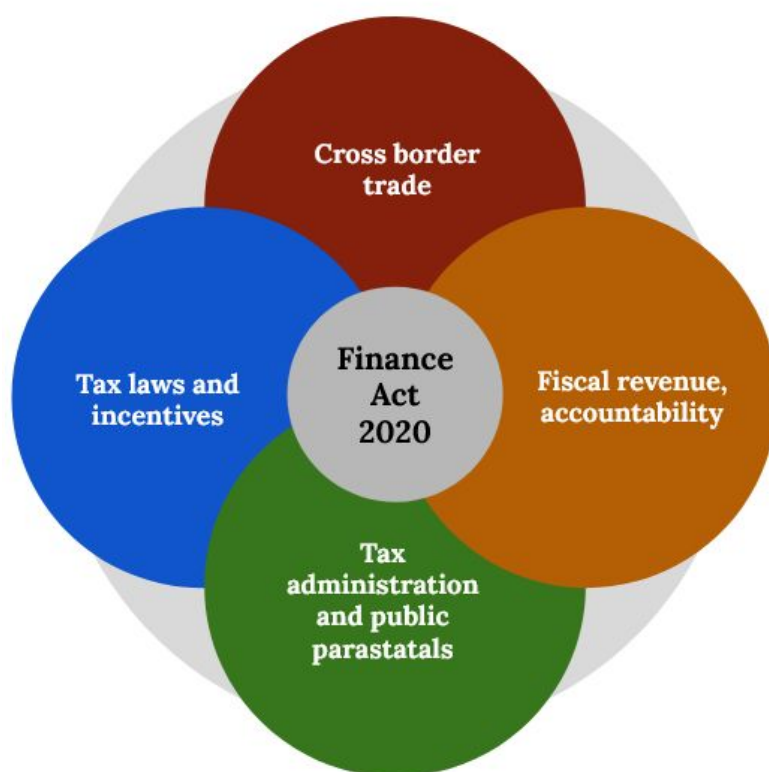


Overview of the new Finance Act 2020 signed into law

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Introduction

There's a recent update to fifteen laws covering tax as well as non-tax laws in Nigeria. On 31 December 2020, President Muhammadu Buhari approved the 2021 Appropriation Bill and Finance Act 2020. The Finance Act 2020 amends some provisions in fourteen laws and creates a new Act.



Types of laws covered in the Finance Act 2020

They are;

1. Capital Gains Tax Act
2. Companies and Allied Matters Act
3. Companies Income Tax Act
4. Customs & Excise Tariff (Consolidation) Act
5. Federal Inland Revenue Service (Establishment) Act
6. Fiscal Responsibility Act
7. Industrial Development (Income Tax Relief) Act
8. Nigerian Export Processing Zone Act
9. Oil and Gas Export Processing Free Zone Act
10. Personal Income Tax Act
11. Public Procurement Act
12. Stamp Duties Act
13. Tertiary Education Trust Fund Act
14. Value Added Tax Act
15. It also establishes a Crisis Intervention Fund and Unclaimed Funds Trust Fund.

The effective date for the Finance Act 2020 is 1 January 2021.

Changes in tax and non-tax laws

Here are 44 points to note in the 15 laws.

I - Capital Gains Tax (CGT) Act

- A. The due date for filing and payment of CGT is not later than 30th June and 31st December of that year.
- B. Compensation for loss of office, up to a maximum of NGN10,000,000 is exempt from CGT. However, any sum above NGN10,000,000 will be subject to CGT.
- C. Any person who pays compensation for loss of office to an individual will deduct and remit the tax to the relevant tax authority.
- D. The due date for filing compensation for loss of office will be in line with the Operation of PAYE regulations. At the moment, it is the 10th day of the following month of payment.

II - Industrial Development (Income Tax Relief) Act

- A. Small and medium-sized companies engaged in agricultural production will qualify for pioneer status, subject to a formal application. The tax holiday is an initial period of four years and an additional two years. The maximum total duration is six years.
- B. The definition of a small and medium-sized company now aligns with the one in CIT Act. A small company is one with an annual gross turnover of NGN25 million or less. In contrast, a medium-sized company is a company with an annual gross turnover above NGN25 million but below NGN100 million.

III - Companies Income Tax (CIT) Act

- A. Primary agricultural production for SMEs will be tax-exempt, subject to specific conditions. Primary agricultural production includes crops, livestock, forestry, and fishing.
- B. Withholding tax on the income of a non-resident person who is not taxable under Section 13 shall be the final tax.
- C. The provisions on companies engaged in shipping and air transport do not apply to the income from leasing, containers, non-freight operation, or any other incidental income liable to tax.
- D. The rate for minimum tax remains unchanged. However, there is a reduction in the rate for two years. The waiver to a lower rate of 0.25% applies to tax returns that have been filed (or will be due) for years of assessment starting from 1 January 2020 to 31 December 2021.
- E. A real estate investment company is not exempt from tax on dividends and rental income if it does not meet the conditions for the amount and timeline for distribution.
- F. Donations in cash or kind to a Government fund or any approved body of the Federal Government towards a health crisis, natural disaster, or related cause is an allowable deduction. The amount allowed will be subject to the WREN test and a limit of 10% of assessable profits after subtracting other allowable donations.
- G. Specific filing requirements for a non-resident company that is tax resident in Nigeria are;
 - the complete audited financial statements (FS) and the FS of the Nigerian operations, attested by an external qualified accountant in Nigeria;
 - tax computation on the profits attributable to its Nigerian operations;
 - an honest declaration, in writing, of the profits from all source(s) in Nigeria; and
 - duly completed CIT self-assessment forms.

However, a foreign company that earns income on which withholding tax is the final charge will be exempt from filing an income tax return.

- H. For small and medium companies, FIRS may indicate another type of accounts apart from audited FS.
- I. Incentives extend to companies engaged in the *trade and business* of gas utilization in downstream operations.
- J. Qualifying capital expenditure for capital allowances includes the cost of software or similar capital payments on electronic applications.
- K. Use of technology in tax administration: Federal Inland Revenue Service (FIRS) may issue a notice of assessment and objections via courier service or other electronic means. Tax Appeal Tribunal may resolve disputes virtually or technology platforms to ensure a fair hearing.
- L. The time frame to settle an amount due in the FIRS assessment notice is 30 days (Old duration: 2 months).
- M. Penalty and interest on outstanding tax liabilities shall accrue from the date of filing the incorrect return. Taxpayers should take note of the cash flow impact of keeping tax debts for a long time.
- N. New penalty: Failure to provide any record or book attracts a fine of NGN100,000 in the first month and NGN50,000 for each month of default.

IV - Personal Income Tax (PIT) Act

- A. Low-income earners are exempt from a minimum tax of 1%. A low-income earner is a person who earns the National Minimum Wage or less as employment income. The current Minimum Wage in Nigeria stands NGN30,000 per month or NGN360,000 per annum.
- B. A broader definition of gross income: Gross income is income from all sources minus all non-taxable income, income on which no further tax is payable, tax-exempt items, allowable business expenses, and capital allowance.

- C. Introduction of significant economic presence for chargeable persons under PIT. However, the withholding tax on income shall be the final tax on the income of a non-resident recipient for certain persons. The Minister of Finance may issue an Order to define the activities that constitute a significant economic presence of a non-resident person under PIT.
- D. Deduction allowed includes a contribution to a pension or other scheme, approved in the Pension Reform Act. It is no longer subject to the discretion of the Joint Tax Board or Fourth Schedule.
- E. Deletion of commencement rule for a new trade. New enterprises will file returns for the first three years according to the accounting year-end.
- F. Deletion of cessation rule. The assessable income in the last year will be the amount of income from the beginning of the accounting period to the date of cessation. The filing deadline is within three months from the date of cessation.
- G. Premium paid in the prior year of assessment for a life insurance policy of an individual or a spouse is an allowable expense.

V - Tertiary Education Tax (TET) Act

- A. A small company, as defined under the CITA, is exempt from TET.

VI - Value Added Tax (VAT) Act

- A. A revised definition of taxable supply of goods and services. Taxable goods do not include money, securities, land, and building.
- B. Commercial airline tickets, hire or lease of agricultural equipment for agricultural purposes are exempt from VAT.
- C. A non-resident person (NRP) that provides a taxable supply to Nigeria must comply with

the full VAT obligations. If necessary, the NRP may choose a representative in Nigeria to assist with the tax obligations.

VII - Customs and Excise Tariff, ETC. (Consolidation) Act

- A. A broader definition of goods liable to excise duties. It now includes telecommunication services provided in Nigeria as may be prescribed in the law or Presidential Order.
- B. A lower rate for import duty and levy from HS Headings 8701 to 8704, such as:
 - Duty on Tractors (HS Headings 8701) from 35% to 5%;
 - Duty on Motor Vehicles for the transport of more than ten persons (HS Headings 8702) from 35% to 10%;
 - Levy on Motor Vehicles for the transport of persons [cars] (HS Headings 8703) from 30% to 5%; and
 - Duty for Motor Vehicles for the Transport of Goods (HS Headings 8704) from 35% to 10%.

VIII - Stamp Duties Act

- A. Removal of electronic bank transfer as a liable transaction. The introduction of electronic money transfer levy of NGN50 on electronic transfer of money kept in any account in a bank or financial institution. The threshold will apply to e-transfer of NGN10,000 or more.

The derivation formula on the revenue is 15% for Federal Government and Federal Capital Territory while States will receive 85%.

IX - FIRS Establishment Act

- A. Time to respond to a request for information from FIRS shall not be less than 30 days from the date of service of such notice.
- B. A coordinated approach between the Accountant and FIRS for treating requests for a tax refund.

X - Nigeria Export Processing Zones Act (NEPZA)

XI - Oil and Gas Export Free Zone Act (OGEFZA)

- A. Every company registered and operating in either NEPZA or OGEFZA must file returns with FIRS; otherwise, penalties will apply.

XII - Companies and Allied Matters Act

- A. A new provision to add unclaimed dividends after 12 years to the profits available for distribution to other shareholders of the company.

XIII - Fiscal Responsibility Act

- A. Each corporation must complete a financial reconciliation between the quarterly direct deductions and aggregate annual deductions of operating surpluses within three months after the statutory deadline for publishing each account. Thereafter, the National Assembly will receive the reconciliation report.
- B. The balance of the operating surplus shall be paid to the Consolidated Revenue Fund of the Federation every quarter per statutory laws or regulations.

XIV - Public Procurement Act

- A. There are specific rules for competitive bidding, procedures, members of the Tenders Board.

XV - Crisis Intervention Fund And Unclaimed Funds Trust Fund

- A. Unclaimed dividends in a listed company and unutilized amounts in a dormant bank account that remain outstanding for six years or more should be transferred to the Unclaimed Funds Trust Fund as a special debt to the Federal Government.

- B. The provision excludes official bank accounts of the Federal Government, State Government, Local Government, and Ministries, Departments or Agencies.
- C. Non-compliance will attract a fine of not less than five times the value of the unclaimed dividends and unutilized funds in a dormant bank account plus interest at the Monetary Policy Rate. The Debt Management Office will supervise the Trust Fund while the fund and yield shall be accessible to the shareholder or account holder.

Closing remarks

The new Finance Act 2020 will affect tax residents and non-resident persons in Nigeria. Companies and individuals can review their current position and then consider the impact on their transactions. Stakeholders in the education, research, and public policy sectors should also take note of these changes. It is ideal to seek professional guidance where necessary.