NNAMDI AZIKIWE UNIVERSITY LAW REVIEW

A Review of the Salient Tax Provisions in the 2020 Finance Act

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1.0 Introduction

The Finance Act 2020, was assented to, by President Muhammadu Buhari on the 31st day of December 2020 (the "Act"). The Act is a fiscal legislation recently introduced, to be updated annually, in a bid to help itemize and provide guidelines on some of the tax laws, regulations, rates, levies and incentives applicable to the business environment for the fiscal year. Some of the statutes amended by the Act include; Capital Gains Tax Act, Companies Income Tax Act, Personal Income Tax Act, Customs and Excise Tariff etc.(Consolidated) Act, Value Added Tax Act, Nigeria Export Processing Zones Act, Oil and Gas Export Free Zone Act, Industrial Development (Income Tax Relief) Act, Stamp Duties Act, Tertiary Education Trust Fund(Establishment) Act, Federal inland Revenue Service (Establishment) Act, Fiscal Responsibility Act, Public Procurement Act, and Companies and Allied Matters Act.

The Act reviews and amends several tax legislations and by so doing, it consolidates into one statute, several tax provisions from different tax statutes. The main thrust of the Act is to increase revenue of the Federal government and to curb avenues by which tax has been evaded and avoided over the years. One of the most controversial provisions of the Act is the provision of section 77 which authorizes the Federal Government to compulsorily acquire from companies and banks, any unclaimed dividend and unutilized funds in a dormant account which have been so unclaimed or unutilized for a period not less than six years. Some scholars have argued that this provision threatens the sanctity of contract and thus initiates a likely breach of contract between the customer and the bank on one hand and the shareholders and companies on the other hand to manage their funds. There is also a constitutional perspective to it; while the federal government has relied on their constitutional right of compulsory acquisition, it has been submitted that this provision of the Act infringes on the fundamental right of individual to own property and be adequately compensated in case of compulsory acquisition. Although the Act provides that, such funds compulsorily acquired by the federal government is to be claimed by their owners with interest, the act did not state with exactitude the percentage of interest accruable and time limit for payment of such interest nor are there any court order to that effect.

The Act is still nascent. It is hoped that the court would introduce or more preferably, certain policies would be put in place to bring more clarity to the provision.

The primary focus of this piece is to examine the tax provisions under the Act. To cushion the severe impact of the COVID-19 pandemic on businesses and individuals, the act provides a 50% reduction of minimum tax rate on gross turn-over of companies; exemption of low-income earners from tax liability; and capturing as tax deductibles, donations made by companies to governmental funds with respect to any pandemic. The Finance Act is also structured to generate revenue for the annual budget, not by increasing taxes but, by widening the tax net to capture more persons, goods or services like the telecommunication services. Ease of doing business contemplated under the Act confers pioneer status on Small and Medium scale Enterprises engaging in agricultural production and reduction of import duties on tractors, transit vehicles and levy on cars. However, most persons are unaware of these incentives; thus, there is a need to create a serious awareness on these incentives in order to achieve the purpose of the Act.

2.0. Highlights on the Amendments to the Provisions of Different Tax Legislations as Set out in the Finance Act 2020

1.	**Capital Gains Act**	
a.	Tax exemption on compensation for loss of office.	Section 36 of the Act exempts sums obtained from compensation for loss of office up to ₦10million from Capital Gains Tax (CGT). However, CGT remains chargeable on any sum in excess of the Ten Million Naira (₦10,000,000.00) deductible by the taxpayer.
2.	**Companies Income Act**	
a.	Substitution of agricultural trade or business with agricultural products.	Section 11 introduces 'agricultural products' in replacement of 'agricultural trade or business' and thus by express provision, excludes the processing or derivative of crop products.
b.	Donations made by companies to governmental funds to be tax deductible	Section 25(8)(9) is introduced to make donations made to funds set up by the federal or state government or any of their agencies in respect of a pandemic, natural disaster, or

	subjects	other exigencies, tax deductible. However, this is limited to 10% of assessable profit after deduction of other allowable donations by the company.
c.	50% reduction of minimum tax rate on gross turn-over.	Section 33 reduces the minimum tax rate from 0.5% to 0.25% on tax returns less franked investment income for financial year ending between 1st January 2020 and 31st December 2021.
d.	Limitation on claim for Gas utilization incentive on downstream operations.	Section 39 restricts the incentives under the Companies Income Tax Act from applying to any company that has claimed the gas utilization incentive under any other law in Nigeria.
e.	Audited account not compulsory for small and medium companies.	Section 55(7) provides that the FIRS may prescribe the form of accounts other than audited financial statementsfor small and medium companies.
f.	E-Service of notice of assessment or objection.	Sections 68&69 are amended to introduce service of assessment by the FIRS or service of the objection to such assessment by courier service, email, or any other electronic means.
g.	Definition of public character with respect to organization or institution	Section 105 defines public character as organization or institution that is registered in Nigeria and does not share its profits in any manner to members or promoters.
h.	Capital expenditure on acquisition or development of software.	Part II, Paragraph 1 to the Second Schedule introduces acquisition or development of software as a qualifying capital expenditure.
3.	**Industrial Development Act**	
a.	Pioneer status for agricultural production.	Section 1 introduces a tax holiday of four years for small and medium sized companies engaged in primary agricultural production, which may be extended for two years or more subject to satisfactory performance.
4.	**Personal Income Tax**	
a.	Introduction of Significant	A new Section 6(A) provides for the taxation of an

	Economic Presence (SEP) to Personal Income Tax.	individual, executor or trustee outside Nigeria who offers certain services to a person resident in Nigeria, with the SEP rule
b.	Amendment of the rules on commencement and cessation of trade.	Sections 24&25 are amended to tax individuals carrying on new trades and individuals who have ceased to carry on trades based on their individual accounting year to avoid double taxation.
c.	Tax exemption for low-income earners.	Section 37 exempts persons who earn the national minimum wage or less from an employment from Personal Income Tax.
5.	**Tertiary Education Trust Fund Act**	
a.	Tax exemption for small companies.	The new section (1)(2) exempts small companies (as defined under the Companies Income Act) from the 2% tertiary education tax.
6.	**Custom and Excises Act**	
a.	Excise duties on Telecommunication services.	Section 21 expands goods liable to excise duties to capture telecommunication services provided in Nigeria.
b.	Reduction of import duties on tractors, transit vehicles and levy on cars	The first schedule is amended to reduce import duty on Tractors from 35% to 5%; duty on Mass transit vehicles for transport of more than 10 persons and Trucks from 35% to 10%; duty for motor vehicle for the transport of goods from 35% to10%; and levy on Cars from 30% to 5%.
7.	**Value Added Tax Act**	
a.	Effective date for the 7.5% tax rate.	Section 4 provides that tax shall be computed at the rate of 7.5% with effect from1 February 2020.
b.	Registration by non-resident companies	The new section 10 provides that a non-resident person that makes a taxable supply to Nigeria is required to obtain TIN, include VAT on its invoice, remit tax in the currency

		of the transaction and may appoint a representative in Nigeria for the purpose of its tax obligations. The FIRS may issue guidelines this purpose of giving effect to the section.
c.	VAT Exemption on Aircraft and Agriculture.	Part I&II of the First Schedule exempts commercial aircraft, airline tickets and hire, lease or rent of equipment for agricultural purposes from VAT liability.
8.	**Stamp Duties Act**	
a.	Introduction of Electronic Money Transfer Levy (EMTL)	Section 89 is amended to expunge stamp duty on electronic bank transfer. New section 89(A) is inserted to introduce levy of Fifty Naira (₦50.00) on electronic receipt or electronic transfer of money in sums of Ten thousand Naira (₦10,000.00) or more deposited in any bank or financial institution on any account. Revenue is to be shared based on derivation; 15% to FG & FCT and 85% to states.
9.	**Federal Inland Revenue Service Act**	
a.	Creation of a refund account by FIRS.	Section 23 provides that for the purposes of tax refund, the Accountant General for the Federation is to open dedicated accounts for each tax type into which money paid, is funded based on annual budgets, for settling tax refunds by the FIRS.
b.	Adoption of technology in certain areas of tax administration.	By section 25 and paragraph 20 of the Fifth Schedule to the Act, the FIRS is authorized to use technology in the collation of taxpayer information. Also, the Tax Appeal Tribunal can now conduct virtual hearings.
10.	**Nigerian Export Processing Zones Act**	
a.	Condition precedent for the exemption from taxes for companies in free trade	Section 18 exempts companies operating in the free trade zones from taxes subject to compliance with an obligation of tax filing and returns to the FIRS under section 55(1) of

	zones	CITA and all penalties provided will apply accordingly upon default.

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