Finance Act, 2023: Examining Shifts in Nigeria's Tax Landscape For compliance Planning

The Finance Act, 2023, was signed into law on May 28, 2023, with retroactive effect from May 1, 2023, ushering in significant transformations to Nigeria's tax regime. The Act strategically focuses on establishing a fairer tax system, reforming tax incentives, enhancing the efficiency of tax administration, and ultimately fostering macroeconomic growth. It introduced amendments to several existing legislations, including the Capital Gains Tax Act, Companies Income Tax Act, Customs and Excise Tariffs (Consolidated) Act, Personal Income Tax Act, Petroleum Profit Tax Act, Stamp Duties Act, Value Added Tax Act, Corrupt Practices and other related Offences Act, Tertiary Education Trust Fund (Establishment) Act, Public Procurement Act, and Ministry of Finance (Incorporated) Act.

In this overview, we highlight some key changes introduced by the Act.

Inclusion of Digital Assets as Chargeable Assets:

One of the significant changes of the Finance Act 2023 is the recognition of digital assets as chargeable assets for capital gains tax purposes, signifying Nigeria's disposition to leverage the revenue advantage of the rapidly expanding digital assets market. In defining chargeable assets and properties under the CGT, the Act expanded the ambit of qualifying assets to include digital assets. Accordingly, the profits on disposal of assets such as non-fungible tokens (NFTs), cryptocurrencies, and other virtual assets are subject to the 10% Capital Gains Tax rate.

Deduction of Capital Losses for Capital Gain Tax Purposes:

An amendment to the Capital Gains Tax Act now allows the deduction of capital losses against capital gains from the disposal of assets in the same class. Furthermore, if capital losses exceed the chargeable gain, taxpayers can carry forward such losses for up to five years for deduction against future capital gains, aligning Nigeria with global tax practices.

"Roll-over" Relief for Gains on the Disposal of Shares:

Company shares have now been included as assets eligible for "roll-over" reliefs. The Finance Act introduces a provision allowing the deferral of capital gains on the sale of company shares for Capital Gains Tax purposes. However, for this provision to be invoked, the proceeds from the disposal must be reinvested in acquiring shares in a Nigerian company within the same year of assessment.

New Compliance Requirement for Shipping and Air Transport Companies:

The Act creates new regulatory compliance requirements for companies involved in shipping and air transport businesses to file financial returns of their operations along with invoices issued to the customers to support the revenue statement. This statement must be certified by at least one director and the company's external auditor. Additionally, regulatory agencies in the shipping and air transport industries are mandated to request for tax clearance certificates before granting operators the necessary permits.

Repeal of Reconstruction and Rural Investment Allowance:

The CITA was amended to repeal both the Reconstruction and Rural Investment Allowances ("Investment Allowance"). Companies would no longer benefit from these incentives over the relevant qualifying capital expenditure (QCE) acquired from the effective date of the FA23. Investment Allowances provided an additional tax deduction at 10% of the cost of the relevant QCE. However, any unutilised Investment Allowances from previous tax years can continue to be enjoyed. The effect of this provision might adversely impact the productive sectors of the economy, as the removal of the incentive will effectively increase the cost of acquisition of plants, machinery, and equipment in Nigeria.

Withdrawal of Tax Exemption on Income Earned on Convertible Currency:

The tax exemption applicable on 25% of the income received in convertible currencies derived from tourists by a hotel, where such income is put in a reserved fund to be used within 5 (five) years for the building or expansion of the hotels, conference centres and new facilities for the purpose of tourist development.

The Customs and Excise Tariffs, etc. (Consolidated) Act - Increment of Levy and Expansion of Services Liable to Excise Duties: A levy of 0.5% has now been imposed in addition to Customs and Export Duties on all eligible goods, imported into Nigeria from outside Africa to finance capital contributions, subscriptions, and other financial obligations to the African Union, African Development Bank, African Export-Import Bank, ECOWAS Bank for Investment and Development, Islamic Development

Bank, United Nations, and other multilateral institutions as may be designated by regulation issued by the Minister of Finance. Also, the scope of services liable to excise duty has been broadened to include telecommunications services provided in Nigeria at rates that may be specified through a Presidential Order.

Amendment to Personal Income Tax Act (PITA):

The PITA now grants a deduction for amounts paid as life insurance premiums by an individual to an insurance company in respect of his life or the life of his spouse. However, any portion of the deferred annuity that is withdrawn before the end of five years from the date that the premium is paid will be taxable at the point of withdrawal

Petroleum Profit Tax Act (PPTA) Tax Deductible in Computation of Adjusted Profits:

PITA was amended to allow the amount contributed to an approved fund, scheme, or arrangement for the purpose of decommissioning and abandonment as a tax deductible in the computation of the adjusted profit. The remainder of the fund set aside after carrying out the decommissioning and abandonment will be subject to tax.

PITA requires every newly incorporated petroleum operator that is yet to commence the sales or disposal of chargeable oil to file their tax returns within 18 months from the date of incorporation. Also, existing operators are required to file their tax returns within 5 months after the accounting year-end. Failure to file before the due date will attract late filing penalties of a fine.

Value Added Tax (VAT) Act - 14-Day Timeline for Remittance of Tax and Redefinition of "Building":

Taxpayers that withhold or collect tax are now required to remit VAT on or before the 14th day of the month following the month of the transaction as against the previous deadline of the 21st day following the month of the transaction. The Federal Inland Revenue Service (FIRS) is now empowered to appoint persons such as non-residents that operate an online store or digital platform as collection agents to collect VAT on its behalf as it already applies to operators of the Oil and Gas sector as well as Ministries, Departments, and Agencies (MDAs) of the government.

In the new definition under section 46, a building is defined to mean: "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". In the past, interest in buildings was treated as out-of-scope for VAT purposes and on this basis rent on all structures considered as buildings was not subject to VAT. The amendment of this definition then means that rental income earned on radio and television masts, transmission lines, cell towers, mobile homes, or any structure that can be easily removed from land will now be subject to VAT.

Additionally, the Nigerian-law subject must verify that the recipient entity adheres to robust data protection standards. This entails a thorough assessment of the recipient's corporate rules, security measures, encryption practices, and an overall commitment to maintaining the confidentiality and security of the transferred personal data, as disclosed in its policies and processes. In a few exceptions, a data controller or data processor may conduct cross-border data transfers without the adequacy of protection if the data subject has provided and not withdrawn consent, being duly informed of the potential risks associated with such transfers without adequate protections. Transfer, in the absence of protection adequacy, is also permissible under certain conditions:

·where the transfer is necessary for the performance of a contract to which a data subject is a party or to take steps at the request of a data subject, prior to entering into a contract,

·where the transfer is for the sole benefit of a data subject, and obtaining consent is not reasonably practicable or if it were reasonably practicable to obtain consent, the data subject would likely give it.

Further exceptions apply in cases where the transfer is justified by public interest, required for the exercise or defence of a claim, or necessary to protect the vital interests of a data subject or other persons. These exceptions also extend to situations where a data subject is physically or legally incapable of giving consent.

Concluding Remark

The Finance Act, 2023 marks a pivotal moment in Nigeria's fiscal landscape, embodying a fresh commitment to fiscal responsibility and economic resilience. It underscores Nigeria's dedication to harmonizing the dual objectives of revenue generation and sustainable economic growth. As businesses, individual taxpayers, and companies navigate the complexities of these far-reaching amendments, a strategic approach to tax planning and compliance becomes imperative. This begins with a careful assessment of changes in rates, incentives, and deductions that may influence the overall tax liability. Strategic tax planning becomes a critical component in ensuring compliance while optimizing financial outcomes. Timely compliance planning can mitigate risks and contribute to a smoother transition into the new fiscal framework.

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