FAMSVILLE

OVERVIEW OF THE FINANCE ACT 2023

The Finance Act 2023 (the "FA 2023") was signed into law by former President Muhammadu Buhari on 28 May 2023, before his leaving office. The FA 2023 takes effect on 28 May 2023, replacing the Finance Bill 2022 ("FB 2022"). The FA 2023 amends some provisions in 11(eleven) existing statutes.

The FA 2023 seeks to support funding the 2023 Budget of Fiscal Consolidation and Transition. The Act aims to balance financial stability and economic growth while addressing emerging challenges in the digital economy, sustainable economic growth, and improving the tax administration.

HIGHLIGHTS OF THE ACT

1. Capital Gains Tax (CGT) Act

a. Capital Gains Tax Act (CGTA) has been amended to include digital assets in the list of chargeable assets; a 10% CGT will apply to gains from the disposal of digital assets.

b. Losses that accrue from the disposal of a chargeable asset shall be deductible from gains accruing from disposing of that asset. This will allow taxpayers to offset capital losses from capital gains and mitigate the impact of CGT that should be payable on gains from the disposal of assets.

2. Companies Income Tax Act (CITA)

a. Non-resident Companies (NRCs) that carry out shipping or airline operations in Nigeria may file income tax returns without audited financial statements, provided the following documents are submitted with the tax returns.

b. Detailed gross revenue statements of the company's Nigerian operations, showing the amount of full sums receivable during the period, certified by one of the company's directors and external auditors; Copies of all invoices issued to the relevant customers.

c. The Act repeals reconstruction investment allowance on qualifying plants and equipment. However, companies that have incurred capital expenditure on plants and equipment on or before the effective date of FA 2023 are permitted to claim these allowances.

d. The Act repeals tax incentive on investment through reserved funds in tourism by hotels. However, previously set-aside reserved funds (before the effective date of FA 2023) shall continue to enjoy the tax exemption until the funds are fully utilized or for five years, whichever occurs first. This change will take effect on tax returns for accounting periods ending on or after July 01 2023.

e. The Act introduces an unrestricted capital allowance deductible from assessable profit for upstream and midstream gas operators.

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

The Act increases the rate of TET from 2.5% to 3%.

4. Customs, Excise Tariff, etc. (Consolidation) Act (CETA)

a. The Act introduces a 0.5% levy on all eligible goods imported into Nigeria from outside Africa. This levy will be used to fund capital contributions, subscriptions and other financial commitments to multilateral institutions such as the African Union, African Development Bank, African Export-Import Bank, ECOWAS Bank for Investment and Development, Islamic Development Bank, United Nations, and others as may be designated by regulation issued by the Minister of Finance.

b. The Act introduces excise duties on all services provided in Nigeria, including but not limited to telecommunication services at specific rates.

5. Value Added Tax (VAT) Act

a. The Act introduces an anti-avoidance transfer pricing rules to counteract artificial/fictitious agreements between related parties for VAT purposes.

b. The Act empowers the FIRS to appoint any person to withhold or collect VAT, and such person is obligated to remit the VAT withheld or collected in the currency of the transaction to the FIRS on or before the 14th day of the following month.

c. The Act was amended to remove the imposition of VAT at the point of clearance on imported goods purchased via electronic/digital platforms through a non-resident supplier appointed by the FIRS as a collection agent. This is to avoid instances of double taxation.

6. Petroleum Profit Tax Act (PPTA)

a. The Act provides that any money contributed to any fund, scheme, or arrangements approved by the Commission for decommissioning and abandonment is now tax deductible. The tax deductibility of this expense is subject to the provision of a statement of account for the decommissioning and abandonment fund.

b. The Act now requires a statement of account of profit or loss as one of the particulars for determining PPT.

c. PPTA has been amended to include a penalty for late filing of accounts. A sum of NGN10 million on the first day the failure occurs and NGN2 million for each subsequent day in which the failure continues as opposed to NGN10,000 for late submission and a further sum of NGN2,000 for every day the failure continued.

d. Persons who provide incorrect, false, or misleading information in their accounts which then affects his tax liability. Such a person, whether convicted or not, is liable to an administrative penalty of the higher of the sum of NGN15 million and 1% of the amount of tax undercharged and will still be liable to the appropriate tax which would have been charged.

e. Before the amendment, the penalty for providing incorrect accounts either through omitting or understating amounts quoted in the accounts submitted, was a fine of NGN1,000 and doubled the amount of tax that was to be paid under this Act for the accounting period during which the offense was committed, or to imprisonment for six months, or both the fine and imprisonment.

f. All the parties involved in the preparation and submission of false returns and willful neglect to pay tax will be liable to the newly introduced administrative penalty of the higher of the sum of NGN15 million and 1% of the amount of tax for which the person is liable.

Also, anyone who is convicted of a willful omission offense will be penalized in line with the provisions of the administrative penalty stated above, in addition to the appropriate hydrocarbon tax that would have been assessed and charged and/or face imprisonment for six months.

7. Personal Income Tax Act (PITA)

Premiums an individual paid to an insurance company for insurance or contracts for a deferred annuity on his/her life or the life of his/her spouse during the year preceding the year of assessment will be allowed as a deduction. Also, any portion of the deferred annuity withdrawn before the end of five years from the date the premium was paid shall be subject to tax at the point of withdrawal.

The premium an individual paid to an insurance company in respect of a contract for deferred annuity on his/her life or that of his/her spouse can now be granted as tax relief in the individual's income tax computation. However, it is important to note that any portion of the premium withdrawn within five years of payment will no longer be exempt from personal income tax.

8. Stamp Duties Act (SDA)

The SDA introduced a revised sharing formula for the revenue generated from Electronic Money Transfer Levy (EMTL) as follows:

a) 15% to the Federal Government and the Federal Capital Territory, Abuja

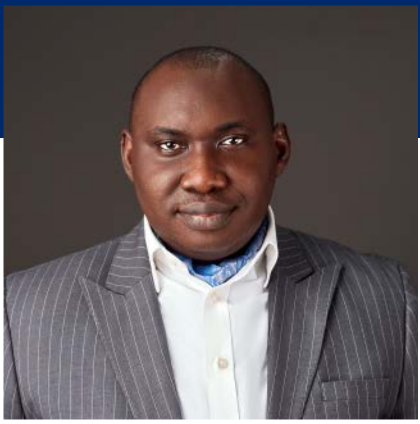
b) 50% to the State Governments

c) 35% to the Local Governments

Before the amendment, Section 89A (4) distributed the revenue from EMTL in the ratio of 15% to the Federal Government and the Federal Capital Territory, Abuja and 85% to the State Governments.

9. Public Procurement Act (PPA)

Under the repealed PPA, public procurement proceedings by a procuring entity are subject to an availability of funds to meet the obligations and the threshold made by the Bureau of Public Procurement (Bureau). However, FA 2023 provides that all public procurement proceedings by a procuring entity are subject to the availability of approved procurement plan, the threshold in the Bureau's regulations, as guidelines issued by the Minister of Finance.



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