



## **Nigeria's Finance Bill 2019** Key changes and implications

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### **Introduction**

The Finance Bill, 2019 (the Bill), presented alongside the 2020 Appropriation Bill to a joint session of the National Assembly on 8 October, 2019 by President Muhammadu Buhari, has been passed by the Senate. Submission of a "finance bill" or fiscal legislation with the

budget/Appropriation Bill is not new in Nigeria as past military regimes had, during budget pronouncements, amended various tax laws.

The Bill is an omnibus draft legislation, aimed at curing the deficiencies of major primary tax legislation by amending obsolete and contentious provisions. This

is a major aspect of the initiatives suggested by the President Enabling Business Environment Council (PEBEC)<sup>1</sup> and the National Tax Policy Implementation Committee.

This newsletter gives an overview of the Bill, analyses the key provisions vis-à-vis the changes to the primary taxing

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<sup>1</sup> A Presidential body set up to enhance ease of doing business in Nigeria

legislation, and highlights the potential tax implications for stakeholders. Other areas covered by this newsletter include implementation challenges, transitional arrangements and required actions by stakeholders.

## 1. Objectives of the Bill

In addition to setting the tone for Nigeria's fiscal policy for 2020, the Bill seeks to promote fiscal equity, align domestic laws with global best practices, and support Micro, Small and Medium-sized businesses.

Other major objectives of the Bill include increasing government revenues and stakeholder investments in investment/capital market through the introduction of incentives.

## 2. Analysis of proposed key changes and implications

### a) Companies Income Tax (CIT) Act:

- i. Wider base for taxing non-resident companies (NRCs)

The Bill introduces provisions that create a taxable presence for NRCs carrying on digital activities, consultancy, technical, management or professional services in Nigeria, **provided** that they have "**significant economic presence**" (SEP) in Nigeria; **and** profit can be attributable to such activity.

This provision is a welcome development as it seeks to ensure taxation of activities with an economic base in

Nigeria; however, it raises issues for further consideration as described below:

- The Bill did not define what constitutes SEP but gives the Minister of Finance (the Minister) autonomous power to determine this by an Executive Order.

Without such Order, the ambiguity surrounding this provision remains. Nonetheless, the Minister may **adapt** the interpretation and factors for SEP stated in the Organization for Economic Cooperation and Development (OECD) Base Erosion and Profit Shifting (BEPS) reports to suit the peculiarities of the Nigerian tax landscape.

- ii. Deletion of certain inhibitive rules for insurance companies

Under the proposed amendment, insurance companies would be able to carry forward losses indefinitely as opposed to the 4-year restriction currently in place.

**Life and non-life businesses** would no longer be liable to special minimum tax provision and all wholly, exclusively, reasonably and necessarily incurred expenses will be tax deductible.

Furthermore, "taxable investment income" would be limited to "*income derived from the investment of shareholders' funds*". This seeks to clarify taxable income and limits it to income accruing to the insurance company as against income accruing to the insurance fund.

Nonetheless, the Bill, when passed into law, would be a game-changer in ensuring the fair taxation of insurance companies.



- iii. Exceptions to Excess Dividend Tax (EDT) provisions

Currently, where a company pays dividend in excess of its taxable profits, such dividend is subject to CIT at 30% – whether or not the income from which such dividend is paid had been

taxed hitherto or whether the underlying income is altogether exempt from tax.

The Bill proposes to remove the Ministerial approval requirement for expenses incurred relating to management services between non-related parties before such expenses could be tax-deductible.

This framework – referred to as EDT, has generated many controversies in the Nigerian tax space. The Bill's proposed amendment removes the double taxation caused by EDT, thereby encouraging corporate savings and retention of profits.

Based on the Bill, EDT is inapplicable to, dividends paid out of retained earnings<sup>2</sup>, exempt profit and rental/dividend income of Real Estate Investment Company (REIC). The exemption also covers franked investment income<sup>3</sup> (FII). This gives further clarity on the application of EDT as opposed to the current

interpretation given to the provision.

- iv. Expansion of the categories of exempt income

The Bill seeks to expand categories of exempt income to include the profit of a small company and dividends declared from small manufacturing companies. The exemption also covers rental income/dividend of REICs<sup>4</sup> and secondary payments under "Securities Lending" transaction; thereby eliminating any potential double taxation on compensating payment mimicking interest/dividends.

- v. Expansion of the categories of allowable deductions and the introduction of thin capitalisation rules

**Thin capitalisation rules:** The Bill introduces thin capitalisation rules by disallowing "excess interest" on related-party lending (involving a foreign lender)<sup>5</sup>. Excess interest is any amount paid or payable as interest on a loan, which exceeds 30% of Earnings Before Interest Tax Depreciation and Amortisation (EBITDA). Furthermore, where the company is unable to fully enjoy the relief based on the excess interest limit, it may

carry forward such unabsorbed interest for a maximum of 5 years.

**Other allowable deductions:** the Bill exempts dividends and rental income received by a REIC on behalf of its shareholders provided 75% of the income is distributed to shareholders within 12 months of earning the income. On the other hand, the proposed amendment to section 24 of CITA would allow, "*dividends or mandatory distributions made by REICs...*" for tax deductions.

These two proposed amendments appear to be irregular - why would an exempt income be allowed as a deduction when redistributed? The exemption (in the hands of the REIC) seeks to treat the income as pass-through; thus, the provision for the tax-deductibility of related expense upon

The existing commencement and cessation rules would be replaced with a new basis for computing the assessable profit of companies just starting or ending their business.

<sup>2</sup> Where tax had been paid on the underlying income under CIT, Capital Gains Tax or Petroleum Profit Tax Act

<sup>3</sup> Income in the form of dividends paid to a company from earnings on which

corporation tax has already been paid by the originating company

<sup>4</sup> Subject to distribution rules.

<sup>5</sup> The restriction does not apply to Nigerian subsidiaries of banks and Insurance Companies.

redistribution seems to be redundant or ambiguous and may create room for tax avoidance by way of double-dipping.

vi. Ministerial approval no longer required

The Bill proposes to remove the Ministerial approval requirement for expenses incurred relating to management services between non-related parties before such expenses could be tax-deductible. This implies that any entity who enters into a management service agreement with an unrelated entity would be able to claim tax deductions for management fees without Ministerial approval or the National Office for Technology Acquisition and Promotion’s (NOTAP) approval.

This would be a great relief for companies given NOTAP’s refusal to approve management services agreement in recent times. Albeit, where the agreement is with a non-resident company (NRC), companies would still battle with sourcing foreign exchange (forex) as NOTAP approval remains a major requirement for sourcing forex to pay management fees.

vii. Introduction of new commencement and cessation rules

The existing commencement and cessation rules would be replaced with a new basis for computing the assessable profit of companies just starting or ending their business. Under the existing system, the profits of a new or liquidating company are subject to double taxation. The proposed amendment would eliminate the risk of double taxation of such companies.

This is particularly commendable as it would encourage the growth of new companies as they would not incur excessive tax burden within their first three to four years of operation.

viii. New CIT rate in a graduating scale

The Bill seeks to introduce new CIT rates, based on companies’ revenue as shown below:

Categorisation	Bases of Categorisation	Tax Rate
Small Company	Turnover of up to N25 million	0%
Medium Company	Turnover > N25million < 100million	20%
Large Company	Turnover > 100million	30%

With this, Medium and Small Scale Enterprises in Nigeria would be able to focus on growing their businesses with minimal issues around taxes.

However, there is a possibility that investors may take advantage of this proposed provision. The same promoters could set up several companies carrying out similar businesses but earning just below ₦25million or ₦100million in order to avoid paying tax or paying at a higher rate accordingly. In this regard, proper administrative regulations that would discourage such practice has to be in place.

Furthermore, there is another band of tax rate that may have to be reflected – 5% or 10% for companies/income with withholding tax as the final tax.

ix. Introduction of early tax payment bonus

Under the Bill, taxpayers who pay their tax liability at least 90 days before

due date would be entitled to a bonus of 2% and 1% of the tax paid for medium and large companies respectively. While this is laudable, it may not

achieve its aim of timely payment of tax. This is because the proposed bonus may not be as beneficial to the taxpayer as the interest the tax payable would yield if



invested, even in risk-free securities.

**b) Personal Income Tax Act (PITA)**

- i. Deletion of provisions that grant certain personal reliefs

It is unclear if the amendment seeks to eliminate claim of child benefit or other surrounding provisions. In essence, the Bill maintains the child benefit deduction (still capped at N2500 per child with a maximum of 4 children).

One would have thought the amendment would be to eliminate the child relief in lieu of the consolidated relief allowance. If the desire is to retain the relief, its insignificance leaves little to be desired.

- ii. Deductibility of pension contributions

Contributions to pension, provident and other retirement benefits fund, society or scheme would

constitute allowable deductions for tax purposes. The deductibility of such contributions would not be contingent on its approval by the state revenue authorities. Companies that contribute to private pension funds and other private schemes would be able to enjoy maximum tax relief for such contributions in arriving at their tax payable.

- iii. Introduction of a requirement for banks to obtain tax identification number (TIN) from customers

Banks would be required to obtain TIN from corporate customers as a pre-condition for opening or maintaining bank accounts. While this is the practice, the proposed amendment is a welcome development, as it would give a legal basis to the practice.

**c) Value Added Tax Act (VATA)**

- i. Inclusion of the definition of "goods" and "services"

The Bill's proposed inclusion of the definition of "goods" and "services" in VATA is expected to eliminate ambiguity with respect to the application of VAT to certain transactions.

For instance, there have been issues around the liability of shares to VAT. The Bill, on one hand, defines "goods" as "*all forms of **tangible property** that are moveable...but does not include securities*".

It can be argued from this definition that shares should not be liable to VAT, being a security. However, are shares tangible?

On the other hand, "goods" is defined as "*any intangible.....**asset or property** over which a person has **ownership or rights...he derives economic benefits...can be transferred**...*".





This could also be interpreted to mean shares would become liable to VAT.

Consequently, the new definition may lead to further confusion if not well addressed.

ii. Clarification of exported services

The Bill defines "exported services" as "a service rendered within or outside Nigeria by a person resident in Nigeria to a person outside Nigeria". This would eliminate ambiguity in the application of the current definition.

iii. Increase in Value Added Tax rate to 7.5%

The Bill proposes an increase in the VAT rate from 5% to 7.5%. This

would increase government revenue generated from VAT while also increasing the financial burden on taxpayers.

Notwithstanding, the Bill seeks to cushion the effect of the increase in VAT rate by introducing more exemptions.

iv. Introduction of ₦25million revenue threshold for taxable persons required to register for VAT and file returns

Anyone who does not fall within the threshold above would be exempted from registering, remitting, issuing tax invoice and collecting VAT. The threshold of ₦25million within the calendar year will reduce the tax compliance burden for small companies. We expect that the revenue authorities would provide further guidance on the administration of this provision.

v. Exemption of assets sold in a restructuring exercise

The Bill exempts assets sold or transferred to a related party in a restructuring exercise provided such assets are not sold by the acquiring company within 365 days after the date of restructuring.

This welcome development will aid group restructuring in Nigeria.

Anyone who does not fall within the threshold above would be exempted from registering, remitting, issuing tax invoice and collecting VAT.

d) Customs and Excise Tariffs etc. (Consolidation) Act (CETCA)

Expansion of goods liable to excise duties to include imported goods. This eliminates any unfair advantage on imported products over local products. It ensures a level playing field between local producers and imported products.

e) Capital Gains Tax (CGT) Act, Cap. C1, Laws of the Federation of Nigeria (LFN), 2004 (CGTA)

i. Exemption on tax arising from re-organization

Transfer of assets during reorganization within a group of companies would be exempt from CGT. However, an anti-avoidance provision was included to ensure companies do not create fictitious group structures to take advantage of the exemption.



ii. Termination benefits

Compensation received for loss of employment of up to ₦10million would be exempted from CGT. This creates an incentive for payment of compensation for loss of employment below the ₦10million threshold as termination benefits rather than terminal benefits, which would have been subjected to PIT.

**f) Petroleum Profits Tax Act (PPTA)**

The Bill seeks to repeal the provision of PPTA that exempts dividends paid out of profits derived from petroleum operations from withholding tax. Taxpayers in this space would now be saddled with the responsibility of withholding tax when paying dividends.

**g) Stamp Duties Act (SDA)**

The Bill increases the stamp duty on receipts to ₦50 on every transaction from ₦10,000 and above; and

expands the definition of receipt to cover electronic transactions. This gives a legal basis to what is already being practised by Nigerian banks, but raises the threshold to ₦10,000 from ₦1,000. It, however, does not address the controversy on stamp duty administration by FIRS and NIPOST.

**3. Conclusion**

The proposed Bill is a welcome development in the tax landscape of Nigeria. It proposes provisions that have the capacity to boost the economy by stimulating the growth of small and medium scale enterprises and enticing foreign direct investment into Nigeria.

Nonetheless, we urge stakeholders to be aware of the underlying challenges and procedures to counter such challenges. For example, tax authorities and relevant government parastatals may commence preparation of administrative notes, enlightenment guides, effective compliance aid and other implementation guides. The

National Assembly should also include transitional provisions to aid movement from the old regime to the new one.

Ultimately, the proposed amendment is a good step towards achieving the objectives of PEBEC with respect to paying taxes. The 'GAME's rules' will change. Therefore, taxpayers cannot afford to be caught 'offside' in their tax planning and compliance efforts. As a matter of urgency, taxpayers are advised to evaluate how the Bill would impact their operations, review their tax compliance requirements and strategize for effective tax planning.

If you require further clarification on the subject, please reach out to [NGTaxPartners@DELOITTE.com](mailto:NGTaxPartners@DELOITTE.com).



## Contacts

### Yomi Olugbenro

#### West Africa Tax Leader

Mobile: +234 1 904 1724

Email: [yolugbenro@deloitte.com.ng](mailto:yolugbenro@deloitte.com.ng)

### Patrick Nzeh

#### Partner, Tax & Regulatory Services

Mobile: +234 805 209 0483

Email: [pnzeh@deloitte.com.ng](mailto:pnzeh@deloitte.com.ng)

### Olukunle Ogunbamowo

#### Partner, Tax & Regulatory Services

Mobile: +234 805 312 6804

Email: [oogunbamowo@deloitte.com.ng](mailto:oogunbamowo@deloitte.com.ng)

### Oluseye Arowolo

#### Partner, Tax & Regulatory Services

Mobile: +234 817 458 6604

Email: [oarowolo@deloitte.com.ng](mailto:oarowolo@deloitte.com.ng)

### Taiwo Okunade

#### Partner, Tax & Regulatory Services

Mobile: +234 805 659 8421

Email: [oogunbamowo@deloitte.com.ng](mailto:oogunbamowo@deloitte.com.ng)

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