

Finance Act 2021 – Major Highlights





The Finance Act 2021 ("FA 2021") was signed by President Muhammadu Buhari on the 31st of December 2021 and took effect on the 1st of January 2022. The primary objective of the Act is to implement the 2022 Federal Budget of Economic Growth and Sustainability by amending 13 (thirteen) laws and introducing significant changes to some of the major tax laws.

In this update, we bring you a summary of the changes introduced by the FA 2021 to the thirteen statutes listed below.

1. Capital Gains Tax Act, Cap C1 L.F.N 2004 ("**CGTA**").
2. Companies Income Tax Act, Cap C21 L.F.N 2004 ("**CITA**").
3. Customs, Excise Tariffs, Etc (Consolidation) Act, Cap C49 L.F.N 2004 ("**CETA**").
4. Federal Inland Revenue Service (Establishment) Act, No. 13 2007 ("**FIRSEA**").
5. Personal Income Tax Act, 2011 ("**PITA**").
6. Stamp Duties Act, Cap S8, L.F.N 2004 ("**SDA**").
7. Tertiary Education Trust Fund (Establishment) Act, No. 16 2011 ("**TETA**").
8. Value Added Tax Act, Cap V1 L.F.N 2004 ("**VATA**")
9. Insurance Act, No.1, 2004
10. Nigerian Police Trust Fund (Establishment) Act, 2019 ("**NPTFA**")
11. National Agency for Science and Engineering Infrastructure Act, Cap N3 L.F.N 2004 ("**NASENI Act**")
12. Finance (Control and Management) Act, Cap F26 L.F.N, 2004 ("**FCMA**"), and
13. Fiscal Responsibility Act, No. 31, 2007 ("**FRA**")

CAPITAL GAINS TAX ACT ("CGTA**"):**

The blanket tax exemption granted under the CGTA for the disposal of shares has now been modified. Gains accruing to a person or a company for the disposal of shares in any Nigerian Company registered under the Companies and Allied Matters Act 2020, are now subject to CGT at the rate of 10%. CGT will not apply in the following instances:

- i. where the proceeds of the disposal are reinvested in the acquisition of shares of the same company or any other Nigerian company within the same year of assessment. CGT will apply proportionately to the portions of the proceeds that are not reinvested.
- ii. where the total proceeds from the disposal of shares are less than ₦100 million in any consecutive 12-month period or
- iii. where the shares are transferred between an approved borrower and lender in a regulated Securities Lending Transaction as defined under CITA.



COMPANIES INCOME TAX ACT (“CITA”)

- i. The definition of dividend has been expanded to mean any form of compensating payment received by a lender from its approved agent in a Regulated Securities Lending Transaction. Before now, such compensating payments were only classified as dividends if the underlying transaction giving rise to the compensating payment is a receipt of dividends by a borrower on any shares or securities received from its approved agent or a lender in a Regulated Securities Lending Transaction.
- ii. Non-resident companies (“**NRCs**”) that have significant economic presence in Nigeria by virtue of providing digital services in Nigeria, whose actual taxable income cannot be ascertained, or whose income from the trade or business produces either no assessable profits or produces assessable profits which in the opinion of the FIRS are less than might be expected to arise from such trade or business, will henceforth be assessed on the basis of their turnover. The turnover assessment method gives the Federal Inland Revenue Service (“**FIRS**”) the discretion to adopt such fair and reasonable percentage of the turnover of the trade or business as the taxable base for the company.
- iii. Capital allowances granted with respect to qualifying capital expenditure incurred in generating tax-exempt income will no longer be deductible from the assessable profit of a company.
- iv. The Finance Act 2021 further provides that capital allowances with respect to qualifying capital expenditure for assets that are only partially utilised towards generating taxable income will now only be deductible in proportion to the taxable income generated. This restriction only applies where the non-taxable income exceeds 20% of the company’s income for that year of assessment. Therefore, where the non-taxable income does not constitute up to 20% of the company’s total income for that year of assessment, the company will be allowed to claim the full capital allowances and the restriction mentioned above will not apply.
- v. Small and medium sized companies are required to compute and claim capital allowances in each year of assessment, this is notwithstanding the fact that small companies are exempted from CIT.
- vi. The Finance Act 2021 has clarified an ambiguity in the Finance Act 2020 in relation to the reduced minimum tax rate. By way of background, the minimum tax rate was reduced by the Finance Act 2020 from 0.5% to 0.25% for tax returns prepared and filed for any *year of assessment* (“**YOA**”) falling due on any date between 1 January 2020 and 31 December 2021. However, at the time of the commencement of the Finance Act 2020 in January 2021, most companies had filed their 2020 YOA returns for the 2019 Financial Year (based on the preceding year basis for filing CIT returns). The Finance Act 2020 did not provide clarity on whether companies that have computed their minimum tax for the 2020 YOA using the 0.5% rate could recompute and file their taxes based on the reduced rate. The Finance Act 2021 has



now clarified that the reduced minimum tax rate will be adopted for tax returns prepared and filed with respect to *financial years ending* on any date between 1st January 2020 and 31st December 2021, both days inclusive. Taxpayers that previously paid minimum tax at 0.5% for the 2020 and 2021 YOAs may now elect to apply the reduced rate in preparing their tax returns for any two accounting periods ending on any date between January 2019 and December 2021.

- vii. Companies formed from any reorganization or reconstruction or similar schemes, that have previously enjoyed the downstream gas utilization incentive will not be entitled to enjoy the incentive again.
- viii. Withholding tax (“**WHT**”) on interests paid to unit trust recipients shall be the final tax.
- ix. A new definition has been introduced for Real Estate Investment Companies (“**REICs**”). This definition expands the definition of REICs to include Real Estate Investment Trusts (“**REITs**”) duly approved by the Securities and Exchange Commission (“**SEC**”) as a Real Estate Investment Scheme. Therefore, REITs are clearly taxable under CITA, thereby resolving ambiguities around the taxation of REITs.

VALUE ADDED TAX ACT (“**VATA**”)

- i. Where a non-resident company (“**NRC**”) supplies goods or services to a person resident in Nigeria, the primary obligation to account for the VAT from such transactions rests on the NRC, where such NRC has been appointed by the FIRS to withhold and remit VAT on such transactions. Further to Section 10(5), now Section 10(6) of the VATA, the FIRS issued a guideline on 11th October 2021 appointing certain categories of NRCs as collecting agents for VAT purposes. These NRC’s include non-resident e-commerce businesses, ride-hailing businesses, video streaming businesses, digital advertising businesses, etc.
- ii. The Finance Act 2019 exempted businesses that do not make a turnover of N25 million in an accounting period from registering for VAT and filing VAT returns. In determining a company’s turnover for purposes of ascertaining whether it meets the N25 million threshold, the Finance Act 2019 had exempted proceeds from taxable supplies of a capital asset of a person and taxable supplies made solely as a consequence of the person selling the whole or a part of its business, or permanently ceasing to carry on business. The Finance Act 2021 however, provides that the exemption does not apply to companies engaged in upstream petroleum operations as described in the Petroleum Industry Act 2021 and the Petroleum Profits Act. Therefore, such companies will have to comply with the relevant VAT obligations, whether or not they meet the N25 million threshold.



CUSTOMS, EXCISE TARIFFS, ETC (CONSOLIDATION) ACT (“CETA”)

Excise duties on non-alcoholic, carbonated, and sweetened beverages are now charged at a flat rate of ₦10 per litre.

FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT (“FIRSEA”)

- i. The Finance Act 2020 had empowered the FIRS to request access to taxpayers’ information stored in various forms of electronic devices. No opportunity was provided for taxpayers to object to the FIRS’ request for such access. The Finance Act 2021 now provides that the taxpayer may write to the FIRS, requesting a withdrawal of the request for access or seeking an extension of 30-day period within which such taxpayer is required to comply with the FIRS’ request.
- ii. The powers of the FIRS to administer, assess, collect, account, and enforce taxes and levies due to the Federation, the Federal government, and any of its agencies have been clearly provided for.

PERSONAL INCOME TAX (“PIT”)

Contracts for deferred annuity are no longer allowed as deductible reliefs when computing an individual’s personal income tax.

TERTIARY EDUCATION TRUST (ESTABLISHMENT) ACT. (“TETA”)

- i. The Finance Act 2021 now increases the tertiary education tax (“**TET**”) payable by Nigerian Companies, from 2% to 2.5% of assessable profits. Small companies remain exempted from this tax.
- ii. The timeline for payment of TET has been reduced from 60 days to 30 days, thereby aligning the timing of payment of TET with the CIT and the current practice of the FIRS.

NIGERIAN POLICE TRUST FUND (ESTABLISHMENT) ACT (“NPTFA”)

The Finance Act 2021 brings clarity on the agency responsible to assess, collect and enforce the payment of the Nigerian Police Trust Fund levy. This levy was introduced in 2019 to financially aid the reforms in the Nigerian Police Force. The FIRS now has the sole obligation of administering, collating, and enforcing the payment of this levy.



NATIONAL AGENCY FOR SCIENCE AND ENGINEERING INFRASTRUCTURE ACT (“NASENI ACT”)

A levy at 0.25% rate is now chargeable on profit before tax of companies engaged in banking, mobile telecommunication, ICT, aviation, maritime, and oil & gas. This only applies to companies and firms with a turnover of ₦100 million and above.

FISCAL RESPONSIBILITY ACT (“FRA”)

The Finance Act 2021 mandates all tiers of government to borrow only for critical reforms of significant national impact, human expenditure, and capital projects. Such borrowing must be based on concessional terms or must have a relatively low interest rate. Also, the level of public debt as a proportion of national income is to be held at a sustainable level.

CONCLUSION

The changes introduced by the Finance Act 2021 is reflective of government’s intention to enhance revenue generation by broadening the tax base across board. The Finance Act 2021 just like its predecessors raises questions about sustainability, especially from the perspective of advancing the ease of doing business and promotion of investment activities in Nigeria while ensuring that government meets its revenue objectives.

In our subsequent publications, we will consider the potential impact of the changes introduced by the Finance Act 2021 on some specific sectors of the economy.

This update is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on how this update could apply to you or your business or require litigation advice on any aspect of the Nigerian laws, please contact taxteam@uubo.org.