HB. 423

FINANCE BILL, 2019

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A BILL

[EXECUTIVE]

FOR

AN ACT TO AMEND THE COMPANIES INCOME TAX ACT; VALUE ADDED TAX ACT; CUSTOMS AND EXCISE TARIFF, ETC. (~~CONSOLIDATION) ACT; PERSONAL~~ INCOME TAX ACT; CAPITAL GAINS TAX ACT; STAMP DUTIES ACT; AND PETROLEUM PROFIT TAX ACT, TO PROVIDE FOR THE REVIEW OF TAX ~~PROVISIONS AND MAKE THEM~~ MORE ~~RESPONSIVE TO~~ TAX REFORM AND FOR RELATED MATTERS

[ ] Commencement.

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows —

PART I — DIRECT TAXES

Companies Income Tax

Charge of tax.

1. Section 9 of the Companies Income Tax Act (CIT Act) is amended as follows:

(*a*) in subsection (1), by deleting "in respect" and inserting immediately after 'Nigeria' the words "that are not subject to tax under the Capital Gains Tax Act, Petroleum Profits Tax Act and Personal Income Tax Act. Such profits shall include, but shall not be limited to —"

(*b*) by inserting an expanded definition of interest and dividend in subsection (1) (*c*~~) of Section 9:~~

"for the purposes of this Bill:

(*i*) interest shall include compensating payments received by a Borrower from its approved agent or a Lender in a Regulated Securities Lending Transaction provided that the underlying transaction giving rise to the compensating payment is a receipt of interest by a Lender on the collateral it received from its approved agent or a Borrower in a Regulated Securities Exchange ~~Transaction.~~

(*ii*) dividend shall include compensating payments received by a Lender from its approved agent or Borrower in a Regulated Securities Lending Transaction 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"

(*c*) by inserting a proviso to Section 9 (1) (*g*) as follows:

"for the purpose of this section, securities or shares shall not be deemed to be disposed of by a Lender, Borrower or approved agent or acquired by a Borrower, approved agent or Lender if such securities or shares are transferred from a Lender and subsequently returned by a Borrower in a Regulated Securities Lending Transaction"

Identification of a company.

2. Section 10 of the CIT Act is hereby amended by introducing a new subsection (2) as follows:

(2) Every person engaged in banking in Nigeria shall require all companies to provide their tax identification numbers as a precondition for opening a bank account or, in the case of an account already opened prior to the 30 September 2019, the bank shall require such tax identification numbers to be provided by all companies as a precondition for the continued operation of their bank accounts.

Nigerian Companies.

3. Section 13 of the CIT Act is hereby amended:

(*a*) by inserting in the opening paragraph of subsection (2), after the phrase "shall be deemed to be derived from" the words "or otherwise be taxable in, Nigeria"

(*b*) in subsection (2), by inserting a new paragraph (*c*) as follows, and renumbering the existing paragraphs (*c*) and (*d*) as paragraphs (*d*) and (*e*):

"(*c*) if it transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to ~~such activity.~~

(*c*) by inserting a new paragraph (*f*) after paragraph (*e*) as follows:

(*f*) If the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity.

Provided that any withholding tax applicable under the Section 81 of this Bill shall be the final tax on the income.

(*d*) by inserting a new subsection (4) as follows:

"(4) For the purpose of subsection (2) (*c*) and (*f*) of this Section, the Minister may by Order determine what constitutes the significant economic presence of a company other than a Nigerian company.

Insurance Companies.

4. Section 16 of the CIT Act is hereby amended as follows:

(*a*) inserting a new subparagraph (ii) under Section 16 (5) (*b*) as follows:

"(*ii*) Investment income for the purpose of taxation of a life insurance company under this section means income derived from investment of shareholders' funds."

(*b*) deleting the phrase "... and, in all cases, the period of carrying forward of a loss shall be limited to four years of assessment" in ~~Section 16 (7).~~

(*c*) substituting the existing paragraph (*a*) of Section 16 (8) with a ~~new paragraph (*a*), as follows —~~

"(*a*) reserve for unexpired risks, calculated on a time apportionment basis of the risks accepted in the year."

(*d*) substituting the existing paragraph (*b*) of Section 16 (8) with a new paragraph (*b*), as follows —

"(*b*) for outstanding claims and outgoings, an amount equal to the total estimated amount of all outstanding claims and outgoings, with a further amount representing 10 per cent of the estimated figure for outstanding claims in respect of claims incurred but not reported at the end of the year under review, provided that any amount not utilised towards settlement of claims and outgoings shall be added to the total profits of the following year."

(*e*) subsection (9) (*c*), by deleting the phrase:

"except that after allowing for all the outgoing and allowance under the Second Schedule to this Bill as may be restricted under the provisions of this Bill for any year of assessment, not less than an amount equal to 20 percent of the gross incomes shall be available as total profit of the company for tax purposes."

Payment of dividend by Nigerian companies.

5. Section 19 of the CIT Act is hereby amended by inserting a new subsection (2) as follows:

"The provisions of subsection (1) of this section shall not apply to —

(*a*) dividends paid out of the retained earnings of a company. Provided that the dividends are paid out of profits that have been subjected to tax under this Bill, the Petroleum Profits Tax Act, or the Capital Gains Tax Act;

(*b*) dividends paid out of profits that are exempted from income tax by any provision of this Bill, the Industrial Development (Income Tax Relief) Act, the Petroleum Profits Tax Act, or the Capital Gains Tax Act or any other legislation;

(*c*) profits or income of a company that are regarded as franked investment income under this Bill; and

(*d*) distributions made by a Real Estate Investment Company to its shareholders from rental income and dividend income received on behalf of those shareholders;

whether such dividends are paid out of profits of the year in which the dividend is declared or out of profits of previous reporting periods."

Nigerian dividends received by companies other than Nigerian companies.

6. Section 20 of the CIT Act is hereby amended by deleting the existing paragraphs (*b*) and (*c*).

Profits exempted.

7. Section 23 (1) of the CIT Act is hereby amended by:

(*a*) repealing subsection (*n*) and replacing it with the following new subsection (*n*) ~~as follows:~~

"Nothing in this section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under sections 78, 79 or 80 of this Bill, such that the provisions of sections 78, 79 and 80 of this Bill shall apply to a dividend, interest, rent or royalty paid by a company exempted from tax under subsection 1 (*a*) to (*e*), (*h*) to (*l*), (*o*), (*q*), (*r*) and (*t*) of this section

(*b*) repealing subsection (*o*) and replacing it with the following new subsection (*o*) ~~as follows:~~

(*i*) "the profits of a small company in a relevant year of ~~assessment."~~

Provided that such company shall, without prejudice to this exemption, comply with the tax registration and tax return filing stipulations of this Bill and be subject to the provisions as regards time of filing, penalties for breach of statutory duties and all other provisions of this Bill in all respects during the period during which its profits are below the tax paying threshold.

(*ii*) dividends received from small companies in the manufacturing sector in the first five years of their operations.

(*c*) introduction of a new sub-section (*t*) ~~as follows:~~

"the dividend and rental income received by a Real Estate Investment Company on behalf of its shareholders provided that:

(*i*) A minimum of 75% of dividend and rental income is distributed; and

(*ii*) Such distribution is made within 12 months of the end of the financial year in which the dividend or rental income was earned.

Nothing in this section shall be construed to exempt:

(*i*) shareholders from tax on the dividend or rental income received from a Real Estate Investment Company;

(*ii*) a Real Estate Investment Company from tax on management fee, profits or any other income earned for and on its own account; and

(*iii*) a Real Estate Investment Company from tax on dividend and rental income that is not distributed after 12 months from the financial year end in which the dividend or rental income was earned.

(*d*) substituting the existing paragraph (*q*) under subsection (1) with the following new paragraph (*q*)~~, as follows:~~

"the profits of any Nigerian company in respect of goods exported from Nigeria, provided that the proceeds of such exports are used for the purchase of raw materials, plant, equipment ~~and spare parts~~

Provided that tax shall accrue proportionately on the portion of such proceeds which are not utilized in the manner prescribed above."

(*e*) introducing new paragraphs (*u*), (*v*) and (*w*)~~ as follows:~~

(*u*) "the compensating payments, which qualify as dividends under section 9 (1) (*c*) of this Bill, received by a Lender from its approved agent or a Borrower in a Regulated Securities Lending Transaction. Such payments shall be deemed to be Franked

Investment Income and shall not be subjected to further tax in the hands of the Lender.

(*v*) "the compensating payments, which qualify as dividends or interest under Section 9 (1) (*c*) of this Bill, received by an approved agent from a Borrower or Lender on behalf of a Lender or Borrower in a Regulated Securities Lending Transaction".

Deductions allowed.

8. Section 24 of the CIT Act is hereby amended —

(*a*) introducing in the opening paragraph of Section 24 after the word "in the production of those profits" the words "chargeable to tax"

(*b*) by re-enacting the existing paragraph (*a*) as —

(*a*) Subject to the provisions of the Seventh Schedule of this Bill, any sum payable by way of interest on debt borrowed and employed as capital in acquiring the profits of a company;"

(*c*) by inserting as subsection (*k*) and (*l*) the following provisions:

"(*k*) dividends or mandatory distributions made by a Real Estate Investment Company duly approved by the Securities and Exchange Commission, to its shareholders"

"(*l*) compensating payments, which qualify as interest under ~~section 9 (1) (*c*) of this Bill, made by a Lender to~~ its approved agent or a Borrower in a Regulated Securities Lending ~~Transaction".~~

Deductions not allowed.

9. Section 27 (1) of the CIT Act is hereby amended by:

(*a*) deleting subsections (*g*), (*h*) and (*i*) and inserting a new ~~subsection (*g*) as follows:~~

"(*g*) any expense whatsoever incurred within or outside Nigeria involving related parties as defined under the Transfer Pricing Regulations, except to the extent that it is consistent with the Transfer Pricing Regulations".

(*b*) introducing new subsections (*h*), (*i*) (*j*) and (*k*~~) as follows:~~

"(*h*) any expense incurred in deriving tax- exempt income, losses of a capital nature and any expense allowable as a deduction under the Capital Gains Tax Act for the purpose of determining chargeable gains"

"(*i*) any compensating payment made by a Borrower, which qualifies as dividends under section 9 (1) (*c*) of this Bill, to its approved agent or to a Lender in a Regulated Securities Exchange ~~Transaction"~~

"(*j*) any compensating payment made by an approved agent, which qualifies as interest or dividends under section 9 (1) (*c*) of this Bill, to a Borrower or Lender in a Regulated Securities Exchange Transaction".

(*k*) any penalty prescribed by in any Act of the National Assembly for violation of any statute.

(*l*) any taxes or penalties borne by a company on behalf of ~~another person.~~

Basis for computing assessable profits.

10. Section 29 of the CIT Act is hereby amended as follows:

(*a*) the existing subsection (1) is deleted and replaced with a new subsection (1) as follows:

(1) Save as provided in this section, the profits of any company for each year of assessment from such source of its profits (hereinafter referred to as ?the assessable profits) shall be the profits of the accounting period immediately preceding the year of assessment from each such source.

(*b*) Section 29(3) of the CIT Act is hereby deleted and replaced with a new subsection (3) as follows:

(3) The assessable profits of any company from any trade or business (or in the case of a company other than a Nigerian company) for its first year of assessment and the two following years of assessment (which years are in this subsection respectively referred to as "the first year", "the second year" and "the third year") shall be ascertained in accordance with the

following provisions:

(*a*) for the first year, the assessable profits shall be the profits from the date in which it commenced to carry on such trade or business in Nigeria to the end of its first accounting period;

(*b*) for the second year, the assessable profits shall be the profits from the first day after its first accounting period to the end of its second accounting period; and

(*c*) for the third year and for each subsequent year thereafter, the assessable profits shall be the profits from the day after the accounting period just ended.

(*c*) Section 29 (4) is deleted and replaced with a new subsection ~~(4) as follows:~~

(4) Where a company permanently ceases to carry on a trade or business (or in the case of a company other than a Nigerian company, permanently ceases to carry on a trade or business in Nigeria) in an accounting period, its assessable profits therefrom shall be the amount of the profits from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within six months from the date of cessation.

(*d*) by amending the opening provisions of the existing subsection ~~(9) as follows:~~

"Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, if the Board is satisfied that one company has control over the other or both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of reorganization, the board may in its discretion direct that —

(*e*) by including a new proviso under after the concluding paragraph of subsection (9) as follows:

Provided also that if the acquiring company were to make a subsequent disposal of the assets thereby acquired within the succeeding 365 days after the date of transaction, any concessions enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsection as at the date of initial reorganization."

~~Total profits~~ from all sources.

~~11. Section 3~~1 (2) (*a*) (*ii*) of the CIT Act is hereby amended by deleting the phrase "but such deductions shall not be made against the profit of the company after the fourth year from the year of commencement of such business"

Payment of minimum tax.

12. Section 33 of the CIT Act is hereby amended by:

(*a*) replacing the existing subsection (2) with the following new ~~subsection (2):~~

"(2) For the purposes of subsection (1) of this section, the minimum tax to be levied and paid shall be 0.5% of turnover of ~~the company.~~

(*b*) deleting under subsection (3), the existing paragraph (*b*) and replacing with a new paragraph (*~~b) as follows:~~*

(*b*) a company that earns gross turnover of less than twenty-five million naira in the relevant year of assessment.

Gas utilization (downstream operations).

13. Section 39 of the CIT Act is hereby amended by:

(*a*) replacing existing paragraph (c) in subsection (1) with the following new paragraph (*c*):

"Capital allowances on qualifying expenditure incurred during the pioneer period, shall be made in each of the years during which the company, which is engaged in gas utilization (downstream operations), is in pioneer period, such that only tax written down value of the Qualifying Capital Expenditure shall be carried forward to the post pioneer period, as follows, that is —

(*i*) an annual allowance of 90 percent with 10 percent retention, for investment in plant and machinery; (*b*) deleting the existing paragraph (*e*) in subsection (1)

(*c*) by inserting a new subsection (3) after the existing subsection (2) and renaming the existing subsection (3) as subsection (4). The new subsection (3) to read as follows:

"(3) This Section shall not apply with respect to —

(*i*) any com›any that has claimed or wishes to claim the incentives unde: the Industrial Development (Income Tax Relief) Act in respect of the same qualifying capital expenditure."

Rates of tax.

14. Section 40 of the CIT Act is hereby repealed and replaced with a new Section 40 as follows:

"There shall be levied and paid for each year of assessment in respect of total profits of every company, tax as follows. In the case of a —

(*a*) small company, tax as provided under Section 23 (1) (*o*) of this Bill;

(*b*) medium-sized company, tax at the rate of twenty kobo for every Naira; and

(*c*) large company, tax at the rate of thirty Kobo for every Naira. "

Replacement of obsolete plant and machinery.

15. Section 41 of the CIT Act is hereby repealed by this Bill.

Dividends and tax on interim dividends paid by Nigerian companies.

16. Section 43 of the CIT Act is hereby repealed by this Bill.

Self-assessment of tax payable.

17. Section 53 (1) of the CIT Act is hereby amended as follows:

(1) Every company filing a return under section 55 of this Bill or requested by notice of the Board to file a return under section 58 of this Bill shall —

(*a*) in the return, compute the tax payable by the company for the year of assessment; and

(*b*) forward with the tax return, evidence of payment of the whole or, in the case of a company making instalment payments, part of the tax due.

Returns and provisional account.

18. Section 55 of the CIT Act is hereby amended as follows:

(*a*) by amending paragraph (c) under subsection 1 as follows:

"(*c*) evidence of payment of the whole or, in the case of a company making instalment payments, part of the tax due."

(*b*) by amending subsection 3 as follows:

"(3) Any company which fails to comply with the provisions of subsection (2) shall be liable to pay a penalty for late filing —

(*a*) ₦50,000 for the first month in which the failure occurs; and

(*b*) ₦ 25,000 for each subsequent month in which the failure continues.

Time within which tax (including provisional tax) is to be paid.

19. Section 77 of the CIT Act is hereby amended as follows:

(*a*) by repealing the existing subsection (1) and renumbering subsections (2) to (8) as subsections (1) to (7).

(*b*) by deleting the existing provisions of Section 77(5) and replacing as follows:

(4) Every Company shall make payment of tax due on or before the due date of filing, in one lump sum or in instalments.

Provided that, where the taxpayer pays in instalments —

(*a*) the taxpayer shall first write, with evidence of payment of the first instalment, and obtain the approval of the Service to pay in such number of instalments as may be approved by

~~the Service.~~

(*b*) the final instalment must be paid on or before the due ~~date of filing.~~

(*c*) by introducing new subsections after the existing subsection 5 (now renumbered as 4) as follows:

"(5) Where a company pays its tax 90 days before the due date as provided under Section 55 of this Bill, such company shall be entitled to a bonus of —

(*a*) 2%, if such company is a medium-sized company; and

(*b*) 1% for any other company;

on the amount of tax paid, which shall be available as a credit against of its future taxes.

(6) Any balance of taxes unpaid as at the due date shall attract interest and penalties as provided in this Bill or any other relevant law for failure to pay on the due date in ~~accordance."~~

Deduction of tax from interest, etc.

20. Section 78 of the CIT Act is hereby amended by inserting a new subsection (6) as follows:

"the provisions contained in subsection (1) to (5) of this Section shall not apply to a Lender when making compensating payments, which qualify as interest under section 9 (1) (*c*) of this Bill, to an approved agent that is due to a Borrower in a Regulated Securities Lending Transaction.

Nothing in this subsection, shall be construed as exempting the approved agent from the provisions of subsection (1) to (5) when making the same payments to the Borrower or as exempting the Lender from deducting tax when making the payments directly to ~~the Borrower"~~

Deduction of tax from dividend.

21. Section 80 is hereby amended as follows:

(*a*) by inserting as subsection (5) the following provisions:

"(5) The provisions contained in subsection (1) to (5) of this

Section shall not apply to:

"(*a*) a company or person making any distribution or dividend payment to a Real Estate Investment Company;

(*b*) a Borrower making compensating payments to its approved agent or to a Lender, provided that such payments qualify as dividends under section 9(1)(c) of this Bill;

(*c*) an approved agent making compensating payments received from a Borrower, which qualify as dividends under ~~section 9 (1) (*c*) of this Bill; to a Lender.~~

Nothing in this section should be construed to exempt a Real Estate Investment Company from deducting tax at source from the dividend it distributes to its own shareholders"

Deduction of tax at source.

22. Section 81 of the CIT Act is hereby amended by introducing a new paragraph (9) as follows:

"(9) The provisions of this section shall not apply to compensating payments made under a Registered Securities Lending Transaction".

~~Interpretation~~ (CIT).

23. ~~Section 105~~ (1) of the CIT Act is hereby amended as follows:

(*a*) deleting the definition of "Board" and defining the term "Service" as follows:

"Service" means the Federal Inland Revenue Service as defined in the Federal Inland Revenue Service (Establishment) Act, 2007.

(*b*) replacing all references to "the Board" in the CIT Act with ~~"the Service"~~

(*c*) providing a definition for the following terms:

"Approved Agent" means any person approved by the Securities and Exchange Commission to function as an intermediary for the conduct of a Regulated Securities Lending Transaction

"Bank" means an establishment authorized by the government to accept deposits, pay interest, clear checks, make loans, act as an intermediary in financial transactions, and provide other financial services to its customers or any other such institution as defined under the Banking and Other Financial Institutions Act.

"Banking" means business conducted or services offered by a Bank

"Borrower" means an approved borrower in a Regulated Securities Lending Transaction

"Compensating Payments" means any payments made in lieu of interest or dividend pursuant to a Regulated Securities Lending Transaction

"Gross turnover" means the gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of a company, including sales of goods, supply of services, receipt of interest, rents, royalties or dividends

"Large company" means any company which is not a small or medium-sized company

"Lender" means an approved lender in a Regulated Securities Lending Transaction

"Medium-sized company" means a company that earns gross turnover greater than ₦25,000,000 but less than ₦100,000,000;

"Real Estate Investment Company" means for the purpose of this Bill, a Company duly approved by the Securities and Exchange Commission to operate as a Real Estate Investment Scheme in Nigeria

"Recognised group of companies" means a group of companies as prescribed under the relevant accounting standard";

"Regulated Securities Lending transaction" means any securities lending transaction conducted pursuant to rules made by the Securities and Exchange Commission from time to time".

"Small company" means a company that earns gross turnover of ₦25,000,000 or less;

24. The Third Schedule of the CIT Act on 'Tax exemption on certain interests' is hereby amended as: Third Schedule.

(*a*) updating the table of tax exemption on interest on foreign loans as follows:

Repayment Period including Moratorium	*Moratorium*	*Tax Exemption Allowed*
~~Above 7 years~~	~~Not less than 2 years~~	70%
5-7 years	Not less than 18 months	40%
2-4 years	Not less than 12 months	10%
~~Below 2 years~~	~~Nil~~	Nil

(*b*) by introducing a new paragraph 2 an interpretation section as follows:

"For the purpose of this Schedule:

"Moratorium" means a period at the beginning of a loan term during which the borrower is not expected to make any principal or interest repayments. Provided that where any principal or interest repayments are made during the period, the tax exemptions provided under this Schedule shall be adjusted by the Service in a proportionate manner.

"Repayment Period" means the agreed tenor of the loan facility. Provided where the loan is repaid before expiration of this period, the tax exemptions provided under this Schedule shall be adjusted by the Service in a proportionate manner.

Seventh Schedule — Deductible Interest.

25. Introducing a new Schedule after the Sixth Schedule as follows:

(1) Notwithstanding any provisions of this Bill, where a Nigerian company, or a fixed base of a foreign company in Nigeria, incurs any expenditure by way of interest or of similar nature in respect of debt issued by a foreign connected person, the excess interest thereon shall be a disallowable deduction for the purpose of this Bill:

(2) For the purposes of sub-section (1), the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent (30%) of earnings before interest, taxes, depreciation and

amortization of the Nigerian company in that accounting period.

(3) Nothing contained in sub-section (1) shall apply to a Nigerian subsidiary of a foreign company which is engaged in the business of banking or insurance.

(4) Where for any assessment year, the interest expenditure is not wholly deducted against income, so much of the interest expenditure as has not been deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits, if any, of any business carried on by it and assessable for that assessment year to the extent permitted in accordance with sub-section (2):

Provided that no interest expenditure shall be carried forward under this sub-section for more than five (5) assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

(5) Any person who violates the provisions of this Section shall be liable to a penalty at 10% and interest at the central bank of Nigeria monetary policy rate plus a spread to be determined by the Minister on any adjustments made by the Service relating to excess interest charged in any year.

(6) For the purposes of this section, the expressions —

(*i*) "connected persons" shall mean:

(*a*) any person controlled by or under common control, ownership or management; or

(*b*) any person who is not connected but receives an implicit or explicit guarantee or deposit for the provision of corresponding or matching debt; or

(*c*) any related party as described under the Nigerian Transfer Pricing Regulations 2018.

(*ii*) "debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";

Petroleum Profit Tax

Restriction of effect of the Personal Income Tax Act and other Acts.

26. Section 60 of the Petroleum Profits Tax Act is hereby repealed.

Personal Income Tax

Persons on whom tax is to be imposed.

27. Sections 2 (2), 49 (1), 86 (2) (*a*) and (8), 102 (1), 104 (3) (*c*) (*ii*) and 108 (*f*)" of the Personal Income Tax Act, Cap. P8, Laws of the Federation of Nigeria 2004 as amended (in this Bill referred to as "the PIT Act") are amended by substituting the words "the Federal Board of Inland Revenue" with "the Federal Inland Revenue Service" where they appear.

Deductions allowed.

28. Section 20(1) of the PIT Act is amended by inserting a full stop after the word "scheme" on the second line of paragraph g. and deleting the remainder of the paragraph and proviso.

Personal relief and relief for children and dependents.

29. Section 33 of the PIT Act is amended by deleting section 33 (4), (5) and (6).

Information to be provided by bankers.

30. Section 49 of the PIT Act is hereby amended by introducing a new subsection (1) and renumbering the existing subsection (1) to (4) as (2) to (5). The new subsection 1 shall read as follows:

(1) Every person engaged in banking shall require that a person intending to open a bank account for the purposes of its business operations must provide a tax identification number as a precondition for opening such bank account or continued operation of a bank account.

Revision in case of objection.

31. Section 58 of the PIT Act is amended by inserting immediately after the words "in writing" in line 2 with the words "delivered in person, by courier service or via electronic mail"

Penalty for failure to deduct tax.

32. Section 74 of the PIT Act is amended by replacing the words "section 69, 70, 71 or 72" with the words "sections 69, 70, 71, 72 or 73".

Third Schedule.

33. The Third Schedule to the PIT Act is amended by:

(*a*) deleting the following provisions:

(*i*) the phrase "under the authority of the Railway Loan (International Bank) Act from paragraph 6 (1) (*b*);

(*ii*) the phrase "on or after 1 January 1990" from paragraph 7;

(*iii*) Paragraph 10, 15, 19, 20, and 24; and

(*iv*) the proviso to Paragraph 18.

Interpretation (PIT).

34. Section 108(1) of the PIT Act is hereby amended as follows:

(*a*) deleting the definition of "Board" and defining the term "Service" as follows:

"Service" means the "Federal Inland Revenue Service as defined in the Federal Inland Revenue Service (Establishment) Act, 2007"

(*b*) Replacing all references to "the Board" in the PIT Act with ~~"the Service".~~

PART II — INDIRECT TAX

~~*Value Added Tax*~~

Taxable goods and services.

35. Section 2 of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004 (in this Bill referred to as "the VAT Act") is hereby re-enacted as follows:

(1) The tax shall be charged and payable on the supply of all goods and services in Nigeria other than those listed in the First Schedule to this Bill.

(2) For the purpose of this Bill, goods and services shall be deemed to be supplied in Nigeria if:

(*a*) In respect of goods:

(*i*) the goods are physically present in Nigeria at the time of supply, imported into Nigeria for use by a person, assembled in

Nigeria, or installed in Nigeria; or

(*ii*) the beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right thereof is situated, registered or exercisable in Nigeria

(*b*) In respect of services:

(*i*) the services are rendered in Nigeria by a person physically present in Nigeria at the time of service provision; or

(*ii*) the services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria.

Rate of Tax.

36. Section 4 is hereby amended by substituting "5 per cent" with "7.5 per cent".

Registration and deregistration requirements.

37. Section 8 of the VAT Act is hereby amended as follows:

(1) A taxable person shall upon commencement of business register with the Service for the purpose of the tax.

(2) A taxable person who fails or refuses to register with the Service within the time specified in subsection (1) of this section shall be liable to pay as penalty an amount of —

(*a*) ₦50,000 for the first month in which the failure occurs; and

(*c*) ₦25,000 for each subsequent month in which the failure continues.

(3) Where a taxable person permanently ceases to carry on a trade or business in Nigeria, the taxable person shall notify the Service of its intention to deregister for tax purposes within 90 days of such cessation of the trade or business."

Registration by non-resident companies.

38. Section 10 of the VAT Act is renamed "Non-resident companies to include the tax on its invoices" and re-enacted as follows:

(*a*) a non-resident company shall include the tax on its invoice for the supply of taxable services; and

(*b*) the person to whom the services are supplied in Nigeria shall withhold and remit the tax directly to the Service in the currency of payment.

(*c*) where a person to whom taxable supplies is made in Nigeria is issued an invoice on which no tax is charged, such a person shall self-account for the tax payable and remit the output tax to the Service within the timeline prescribed under Section 15 of this Bill.

Taxable person to render returns.

39. Section 15 (1) is repealed and replaced with the following provisions:

(1) "A taxable person who in the course of a business has made taxable supplies or expects to make taxable supplies, the value of which, either singularly or cumulatively in any calendar year, is twenty-five million Naira (₦25,000,000) or more;

shall render to the Service, on or before the 21st day of every month in which this threshold is achieved and on or before the same day in successive months thereafter, a return of the input tax paid and output tax collected by him in the preceding month in such a manner as the Service may from time to time prescribe.

(2) In determining whether a person meets the threshold in (1) (*b*) above, the value of the following taxable supplies shall be excluded —

(*a*) a taxable supply of a capital asset of the person; and

(*b*) a taxable supply made solely as a consequence of the person selling the whole or a part of its business or permanently ceasing to carry on business:

Provided that any person that does not fall within the threshold in Section 15 (1) above shall be exempt from the provisions of Section 8 (2), 13A, 29, 34 and 35 of this Bill."

Remission of tax.

40. Section 16 of the VAT Act is hereby amended as follows:

(1) A taxable person shall, on rendering a return under subsection (1) of section 15 of this Bill —

(*a*) if the output tax collected exceeds the input tax paid, remit the excess to the Board;

(*b*) if the input tax paid exceeds the output tax collected, be entitled to utilize the excess tax as a credit against subsequent months:

Provided that the taxable person would be entitled to a refund from the Service, of excess tax not utilised as a credit, upon provision of such documents as the Service may, from time to ~~time, require.~~

Effect of non-remittance.

41. Section 19 of the VAT Act is hereby amended as follows:

"(1) If a taxable person does not remit the tax within the time specified in section 15 of this Bill, a sum equal to 10 per cent of the tax not remitted per annum and interest at the prevailing Central Bank of Nigeria minimum re-discount rate plus a spread to be determined by the minister, shall be added to the tax not remitted and the provisions of this Bill relating to collection and recovery of unremitted tax, penalty and interest shall apply.

(2) The Service should notify the taxable person or his agent of the tax due together with the penalty and interest and if payment is not made within thirty days of such notification, the Board may proceed to enforce payment as provided in section 15 of this Bill."

Value Added Tax Technical Committee.

42. Part IV (Sections 21 to 24) of the VAT Act is hereby deleted.

Failure to notify change of address.

43. Section 28 of the VAT Act is renamed "Failure to notify of change of address or permanent cessation of trade or business" and hereby re-enacted as follows:

A taxable person who fails to notify the Service of any change of address within 30 days of such change, or who fails to comply with the requirement for notification of permanent cessation of trade of business under Section 8 of this Bill, is liable to pay —

(*a*) ₦50,000 for the first month in which the failure occurs; and

(*b*) ₦25.000 for each subsequent month in which the failure continues

Failure to register.

44. Section 32 of the VAT Act is hereby repealed.

Failure to submit returns.

45. Section 35 of the VAT Act is hereby amended as follows:

"(35) A taxable person who fails to submit returns to the Service, is liable to a fine of ₦50,000 in the month of default and ₦25,000 for every month in which the default continues."

Business sold or transferred.

46. The VAT Act is amended by inserting the following new Section 42 immediately after the existing Section 41 of the Act.

"(42) Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, no tax shall apply under this Bill to the sale or transfer of the aforementioned assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of reorganization:

Provided also that if the acquiring company were to make a subsequent disposal of the assets thereby acquired within the succeeding 365 days after the date of transaction, any concessions enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsection as at the date of initial reorganization."

Interpretation.

47. Section 46 of the VAT Act is hereby amended as follows:

(*a*) deleting the definition of "Board" and defining the term "Service" as follows:

"Service" means the "Federal Inland Revenue Service as defined in the Federal Inland Revenue Service (Establishment) Act, 2007"

(*b*) Replacing all references to "the Board" in the VAT Act with "the Service".

(c) including the definition of "Goods" and "Services" as follows:

~~"Goods" means:~~

(a) "all forms of tangible properties that are movable at the point of supply, but does not include money or securities; and

(b) Any intangible product, asset or property over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another excluding interest in land".

"Services" means "anything other than goods, money or securities which is supplied excluding services provided under a contract of employment"

(d) Deleting the definition of "imported services"

(e) substituting the current provision on "exported service" with the following provision:

"Exported service" means "a service rendered within or outside Nigeria by a person resident in Nigeria to a person resident outside Nigeria.

Provided, however, that a service provided to the fixed base or permanent establishment of a non-resident person shall not qualify as exported services".

(f) including the definition of "commencement of business" as follows:

"Business shall be deemed to commence in Nigeria on the date that an entity carries out its first transaction which shall be the earliest of the date it begins to market or first advertises its products or services for sale, or the date it obtains an operating license from a regulatory authority in Nigeria, or the date of its first sale or purchase, or the date it executes its first trading contract after incorporation, or the date it issues or receives its first invoice, or the date it delivers or receives its first consignment of goods, or the date it first renders services to its customers."

(*g*) Including a definition for "basic food items" as follows:

"Basic Food Items" means agro and aqua based staple food ~~described as:~~

Additives i.e. honey whether raw or semi- processed.

Bread (white and Brown).

Cereals e.g. maize, rice, wheat, millet, barley, sorghum, oats, fonio, finer milet and others of the same kind, however supplied in such form as grain, flour, crop, bulk or retail. Raw or semi-processed.

Cooking oils e.g. vegetable oil, soya oil, palm oil, groundnut oil, shea butter, beniseed oil, olive oil, coconut oil and others of the same kind. Provided that they are of a type and grade suitable for culinary purposes and do not contain any substance such as perfume that will make them unsuitable for culinary use.

Culinary herbs e.g. curry, thyme, onions, ginger, mint and others of the same kind, if raw and unprocessed for human consumption.

Fish of all kinds other than ornamental whether live, fresh, frozen, smoked or dried.

Flour and Starch e.g. corn flour, plantain flour, cassava flour, beans flour, wheat flour, rice flour, yam flour, garri and others of the same kind. Either bleached or unbleached, refined or unrefined provided that it is suitable for culinary purposes.

Fruits e.g. pineapples, oranges, mangoes, guavas, grapes fruit, banana, pawpaw and others of the same kind, whether it is fresh or dried.

Live or raw Meat and Poultry e.g. beef, goat, lamb, pork, chicken, and others of the same kind, whether live, butchered, complete, in parts, fresh, frozen, eggs and others of the same kind.

Milk, whether fresh, liquid and powdered milk.

Nuts, e.g. groundnut, walnut, cashew nut, hazelnut, kolanut, tigernuts, coconut and others of the same kind, if raw and unprocessed for human consumption. Also roasted, fried, boiled, salted or in their shells.

Pulses, e.g. beans, lentils, peas, chickpeas, tamarind and others of the same kind, if raw and unprocessed for human consumption. Also roasted, fried, boiled, salted or in their shells

Roots, e.g. yam, cocoyam, sweet & Irish potatoes, water-yam, cassava and others of the same kind. In raw and unprocessed form. Also, in form of flakes or flour for human consumption

Salt for culinary use only including fine salt and in retail packs but excluding industrial salt

Vegetables, e.g. pepper, melons, lettuce, okro, cabbage, carrots and others of the same kind, whether fresh, dried or ground.

Water, i.e. natural water and table water, i.e. spring water, rain water, pipe borne water, well water and all-natural water of the same kind. All table water other than sparkling or flavoured water.

(*h*) Including a definition for "Recognised group of companies" as follows:

Recognised group of companies means "a group of companies as prescribed under the relevant accounting standard"

(*i*) Including a definition for "taxable supplies" as follows:

"means any transaction for sale of goods or the performances of a service, for a consideration in money or money's worth;"

First Schedule (VAT).

48. The First Schedule of the VAT Act is hereby amended by:

(*a*) inserting the following items under Part I of the First Schedule ~~to the VAT Act:~~

"Locally manufactured sanitary towels, pads or tampons."

(*b*) repealing 'Services rendered by Community Banks, People's Banks and Mortgage Institutions' and replacing it with 'Services rendered by Microfinance Banks, People's Banks and Mortgage

~~Institutions.~~

(*c*) inserting immediately after item 4 under Part II of First Schedule to the VAT Act, a new item (5) as follows:

(5) Tuition relating to nursery, primary, secondary and tertiary education

Customs and Excise Duties

Goods Liable to Excise Duty.

49. Part III, Section 21 of the Customs and Excise Tariff, etc. (Consolidation) Act, Cap. C49, Laws of the Federation of Nigeria, 2004 (in this Bill referred to as "the CET Act") is amended by substituting the words "Goods manufactured in Nigeria and specified in the Fifth Schedule to this Bill shall be charged with duties of excise at the rates specified under the Duty Column in the said Schedule" with "Goods imported and those manufactured in Nigeria and specified in the Fifth Schedule to this Bill shall be charged with duties of excise at the rates specified under the Duty Column in the said Schedule"

PART III — CAPITAL GAINS TAX

Exemption of tax on gains arising from take-overs.

50. Section 32 of the CGT Act is hereby renamed "Business Reorganisation" and re-enacted as follows:

"Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, no tax shall apply under this Bill to the sale or transfer of the aforementioned assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of reorganization:

Provided also that if the acquiring company were to make a subsequent disposal of the assets thereby acquired within the succeeding 365 days after the date of transaction, any concessions enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsection as at the date of initial reorganization."

Personal Injury.

51. Section 36(2) of the CGT Act is hereby amended as follows:

"(2) Sums obtained by way of compensation for loss shall not, however be chargeable gains, except where the amount of such compensation or damages exceeds ₦10,000,000.

~~Interpretation~~ (CGT).

~~**52.** Section 46~~ (1) of the CGT Act is hereby amended as follows:

(*a*) deleting the definition of "Board" and defining the term "Service" as follows:

"Service" means the "Federal Inland Revenue Service as defined in the Federal Inland Revenue Service (Establishment) Act, 2007"

(*b*) replacing all references to "the Board" in the CGT Act with ~~"the Service".~~

(*c*) introducing a definition for "Recognised group of companies" as follows:

"Recognised group of companies" means a group of companies as prescribed under the relevant accounting standard"

Part IV — Stamp Duty

~~Interpretation.~~

~~**53.** Section 2 of~~ the Stamp Duties Act is hereby amended by replacing the interpretation of the words, "stamp", "stamped" and "Instrument" as follows:

"stamp" means an impressed pattern or mark by means of an engraved or inked block die as an adhesive stamp or an electronic stamp or an electronic acknowledgement for denoting any duty or fee.

"stamped" with reference to instruments and material, applies to instruments and material impressed with stamps by means of an engraved or inked block die, adhesive stamps affixed thereto as well as to instruments and material digitally tagged with electronic stamp or notional stamp on an electronic receipt.

"Instrument" includes every written document including electronic documents.

Provisions as to duty upon receipts.

54. Section 89 of the Stamp Duties Act is repealed and substituted with a new Section 89 as follows —

(1) For the purpose of this Bill, the expression "receipt" includes any note, memorandum, writing or electronic inscription whereby any money, or any bill of exchange or promissory note for monies is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.

(2) The duty upon a receipt may be denoted by an adhesive stamp which is to be cancelled by the person by whom the receipt is given before he delivers it out of his hands or by a digital tag with electronic stamp or any acknowledgement of duty charged on an electronic ~~transaction.~~

(3) Notwithstanding the provisions of the Stamp Duties Act, electronic receipt or electronic transfer for money deposited in any bank or with any banker, on any type of account, to be accounted for and expressed to be received of the person to whom the same is to be accounted for of amounts from Ten Thousand Naira (₦10,000.00) upwards shall attract a singular and one-off duty of the sum of Fifty Naira (| 50.00); provided that monies paid into one's own account or transferred electronically between accounts of the same owner by the owner within the same bank shall not be chargeable to duty.

(4) Any duty paid pursuant to subsections (1) to (3) shall be applied as a credit against any duty applicable on an instrument denoted with and adhesive stamp

Certain forms of receipts not dutiable.

55. Section 90 of the Stamp Duties Act is hereby repealed.

Schedule (Stamp Duties).

56. The Schedule to the Stamp Duties is hereby amended by:

(*a*) Including under the category of exempt receipts, a new item as follows:

"receipts given by any person in a Regulated Securities Lending Transaction carried out pursuant to regulation issued by the Securities and Exchange Commission"

(*b*) Including under the category of general exemption from stamp duty new items (14), (15), (16)

"Shares, stocks or securities transferred by a Lender to a its approved agent or a Borrower in furtherance of a Regulated Securities Lending Transaction";

"Shares, stocks or securities returned to a Lender or its approved agent by a Borrower in pursuant to a Regulated Securities Lending Transaction"

"all document relating to a Regulated Securities Lending Transaction carried out pursuant to regulations issued by the Securities and Exchange Commission"

Citation.

57. This Bill may be cited as the Finance Bill, 2019.

EXPLANATORY MEMORANDUM

This bill is to among other things amend the following tax provisions and make them more responsive to the tax reform policies of the Federal Government and enhance its implementation and effectiveness.

(*a*) Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004 (as amended to date)

The Bill seeks to amend the provision of the Companies Income Tax Act to, amongst to other things, curb Base Erosion and Profit Shifting (BEPS) as proposed by the Organisation for Economic

Cooperation and Development (OECD) and thereby broaden the triggers for domestic taxation of income earned by non-resident companies in Nigeria through dependent agents and via online market platforms.

The Bill also seeks to address the taxation of industries, such as insurance, start-ups and the capital markets, evaluated by the Federal Government of Nigeria as critical to the growth and development of the Nigerian economy with a view to stimulating activities in those sectors and fostering overall economic growth.

(*b*) Value Added Tax Act, Cap. V1, LFN, 2007 (as amended)
In line with global best practice, this Bill proposes to improve the efficiency of the Nigerian VAT system taking into consideration recommendations from various l stakeholder groups. In addition to simplifying the VAT landscape, the Bill also seeks to expand VAT coverage by addressing some critical issues, such as taxation of the digital economy, VAT registration thresholds and intangibles.

(*c*) Customs and Excise Tariff, etc. (Consolidation) Act, Cap. C49, Laws of the Federation of Nigeria, 2004
In a bid to create a level playing field for local manufacturers, this bill wishes to subject certain imported goods to excise duties in similar manner as their locally manufactured counterparts.

(*d*) Personal Income Tax, Cap. P8, LFN, 2007 (as amended)
The Bill also seeks to provide clarity and efficiency in the administration of individual income taxes in Nigeria

(*e*) Capital Gains Tax Act, Cap. C1, LFN, 2007
The Bill also covers the taxation of business combination and seeks to prevent abuse of provisions of the Act on group restructuring.

(*f*) Stamp Duties Act, Cap. S8, LFN, 2007
The Bill also seeks to increase revenue generation from duties on electronic stamps.

(*g*) Petroleum Profit Tax
This Bill seeks to improve revenue by removing the tax exemption granted for dividends or income received from companies charged under Petroleum Profits Tax Act.