



# NEWSLETTER



## OVERVIEW OF THE FINANCE ACT 2023

The Finance Act, 2023 presented by the National Assembly seeks to support the ongoing implementation of the 2023 federal budget by proposing key reforms to specific taxation, customs, excise, fiscal, and other relevant laws. The Finance Act 2023 introduces changes to the Capital Gains Tax Act, Companies Income Tax Act, Personal Income Tax Act, Tertiary Education Trust Fund (Establishment, etc.) Act, Customs, Excise Tariff, etc. (Consolidation) Act, Value Added Tax Act, Stamp Duties Act, Petroleum Profit Tax Act, among others.

Tax item	Description	Sections	Amendment
<b>Capital Gains Tax</b>	Gain on the disposal of digital assets	Section 3(a)	Gain on the disposal of digital assets, including cryptocurrencies, will now be taxed at a rate of 10%
	Deduction of capital losses on assets for capital gains carried forward	Substitution for Section 5(2)	If there is any deduction of capital losses on assets for capital gains tax purposes, it may be carried forward for a maximum of 5 years
	Sales on shares and rollover relief	Section 31(6)	If there are any sales on shares and rollover relief benefits, there must be a reinvestment of the proceeds within the same assessment year.
<b>Companies Income Tax Act</b>	Investment allowance in plant and equipment	The second schedule of the Principal Act by deleting subparagraphs (3) and (7). Deletion of sections 32,34, and 37.	

<b>Custom, Exercise, Tariff ETC (Consolidation Act)</b>	Levy on goods imported from outside Africa	Section 13 (4)	A levy of 0.5% has been imposed on goods imported into Nigeria from outside Africa.
	Excise tax on all services, including telecom services	Section 21 (2)	All services, including telecommunication services, are now subject to excise tax at rates determined by the President.
<b>Personal Income Tax Act</b>	Tax deductions for life insurance premiums	Section 33 (3)	Tax deductions for premiums paid for life Insurance policies on your own life and your spouse have been reinstated
<b>Stamp Duties Act</b>	Electronic Money Transfer (EMT) levy distribution	Section 89A (4)	The Electronic Money Transfer (EMT) levy will be shared as follows: 15% to the Federal Government, 50% to State Governments, and 35% to Local Governments.
<b>Value Added Tax Act</b>	Transfer pricing rules on VAT for connected parties	Section 7 of the Principal Act by inserting after subsection (2) new subsection (3)	Transfer pricing rules will apply to Value Added Tax (VAT) on transactions between connected parties that are deemed artificial or fictitious
	VAT remittance by companies withholding at source	Section 14 (3)	Companies appointed to withhold VAT at the source must remit the VAT to the Federal Inland Revenue Service (FIRS) on or before the 14th day of the following month.
	VAT on goods via electronic platforms from nonresident suppliers	Section 16	VAT on goods purchased through electronic or digital platforms from nonresident suppliers acting as agents of the FIRS will be charged and paid by the importer unless they can provide proof of appointment and registration with FIRS.
	Redefinition of building for VAT	Section 46	The definition of a building for VAT purposes has been revised to exclude any structure not permanently affixed to land for all or most of its useful life.
<b>Tertiary Education Trust Fund (Establishment Act)</b>	Increase in Tertiary Education Tax rate	Section 1(2)	The Tertiary Education Tax rate has increased from 2.5% to 3% of assessable profits.

## **FURTHER ANALYSIS ON THE AMENDMENTS**

### **1. CAPITAL GAINS TAX ACT (CGTA)**

#### **1.1 Recognition of 'digital asset' as a form of chargeable asset.**

The Finance Act 2023 amends section 3(a) of CGTA by recognizing digital assets among chargeable assets for capital gains tax purposes, however, the Act did not provide clarity on what constitutes a digital asset. It is important for the Federal Inland Revenue Service (FIRS) to clarify the definition of digital assets through its circulars to prevent disputes with taxpayers.

The amendment above will have implications by widening the tax net for companies operating within the digital economy space. The introduction of the Significant Economic Presence Order in 2020 marked the beginning of the government's strive toward addressing the taxation of the dynamic digital economy business environment.

#### **1.2 Deduction of Losses.**

Before now, in the computation of capital gains, any loss that is incurred on the disposal of any asset is not deductible from gains on the disposal of such asset. The above amendment to section 5 of the CGT Act now allows taxpayers to deduct such losses. Furthermore, where the aggregate capital losses by any taxpayer in the tax year exceed the aggregate chargeable gains, such losses may be carried forward for deduction from chargeable gains arising from the disposal of the same type of asset for a maximum of five (5) years immediately succeeding the year in which the loss was incurred.

One of the implications of the above amendment is that companies will now be able to treat capital losses as temporary differences and recognize deferred tax assets, however, companies may need to show that it can generate enough chargeable gains in future years to cover the capital losses.

#### **1.3. Inclusion of Stocks and Shares into the class of asset that qualifies for roll-over relief.**

Section 31(6) of the Capital Gains Tax (CGT) Act has been amended by the Act, to include stocks and shares in the class of assets that qualifies for roll-over relief. Roll-over relief is a relief that grants taxpayers the right to defer the CGT payable when it disposes of or exchanges any business asset used for the purpose of trade or business and replaces them with another asset of a similar class for the purpose of the same business.

However, for the stock and shares to qualify for this relief, proceeds from its disposal must be reinvested within the same year of assessment in the acquisition of eligible shares in the same or other Nigerian companies.

### **2. COMPANIES INCOME TAX ACT (CITA)**

#### **2.1 Introduction of other types of accounts to be submitted by Companies engaged in shipping or air transport.**

The Act provides for other types of documents that can be submitted by companies engaged in shipping and transport. The document shall be detailed gross revenue statements of its Nigerian operations, showing the amount of full sums receivable during the period for the purpose of filing its tax returns. Such statements must be certified by one of the company's directors as well as the company's external auditor and supported with all invoices issued to the relevant customers.

The Act also introduces a new section 6 which provides that all regulatory agencies within the above sectors must mandate all companies taxable under subsection 1 of this section to provide the following.

- a) Evidence of income tax filing for the preceding tax year; and
- b) Tax Clearance Certificate (TCC), showing income taxes paid for the three preceding tax years, in order to continue to carry on business in Nigeria or obtain any relevant approvals and permits.

## **2.2 Other changes to the Companies Income Tax Act (CITA)**

a) Deletion of sections 32 and 34 of the Act. This implies that companies will no more enjoy investment allowance on plants and equipment. Before the Finance Act, 2023 companies claimed investment allowance at the rate of 10% of the cost of the equipment. It should be noted that companies that have claimed the investment allowance before the enactment of the Act will continue to do so until it is fully utilized.

b) Furthermore, companies will henceforth not be able to claim Rural Investment Allowance on the cost incurred in providing social amenities to rural areas from the effective date of the Act.

c) Deletion of Section 37 of the Act. The implication of this deletion means that hotels that have enjoyed 25% of their incomes derived in convertible currencies from tourists as tax-exempt will no longer be able to do so. However, companies that have set aside a reserve fund will continue to enjoy the exemption until the funds are fully utilized or the five-year limit has elapsed, whichever occurs first as provided in the above section.

d) Deletion of paragraphs 3 and 7 of the second schedule. This means that a company that has incurred capital expenditure on plant and machinery via a finance lease agreement will no longer enjoy investment allowance from the effective date of the Act, however, any company that has claimed the investment allowance before the enactment of the Act will continue to do so until it is fully utilized. The amendment also applies to companies that have incurred capital expenditure on agricultural plants and equipment under a finance lease.

e) Companies engaged in Upstream and midstream gas operations have been included in the list of companies exempted from the restriction under Schedule 2 paragraph 7 which states that capital allowance to be deducted from assessable profit in any year of assessment shall not exceed sixty-six and two-thirds of a percent of such assessable profit of the company. It should be noted that the value of any asset on which the capital allowance is to be claimed under this section shall be reduced by the amount of any investment allowance claimable by such company.

## **3. CUSTOMS, EXCISE, TARIFF, ETC. (CONSOLIDATION) ACT**

### **3.1 Extension of Scope of Services liable to Excise Duties**

The scope of services liable to excise duty under the Act has been expanded to include telecommunication services provided in Nigeria. Also, a levy of 0.5% is now levied on all eligible goods imported into Nigeria from outside the Africa Union, Africa Development Bank, Africa Export-import Bank, and Other multilateral institutions as may be nominated by regulation issued by the Minister.

## **4. PERSONAL INCOME TAX ACT (PITA)**

### **4.1 Expansion of Personal reliefs to include insurance premiums.**

The Act amends section 33 (3) of the principal Act which now allows individuals to deduct any insurance premium paid in the preceding year of assessment to an insurance company for the purpose of arriving at his or her taxable income. The premium will be in respect of an insurance policy on his life or the life of his spouse. It can also be a contract for deferred annuity on his own life or the life of his spouse.

However, any portion of the deferred annuity that is withdrawn before the end of the five years from the date the premium was paid shall be subject to tax at the point of withdrawal.



## 5. PETROLEUM PROFIT TAX ACT (PPTA)

### 5.1 Contribution to any Abandonment or Decommissioning Fund is now an allowable expense.

Any contribution to a fund that is approved by the Nigerian Upstream Petroleum Regulatory Commission for the purpose of decommissioning and abandonment is now an allowable expense for petroleum profit tax purposes. However, any surplus or residue of the fund after decommissioning of the field shall be subject to tax.

### 5.2 Change in penalties for non-compliance.

Offenses	Penalties
Late filing of returns	NGN10,000,000 on the first day and NGN2,000,000 in subsequent days or as prescribed by the order published by the Federal Government Gazette
Failure to comply with any provisions of the Act	NGN10,000,000 on the first day and NGN2,000,000 in subsequent days or as prescribed by the order published by the Minister of Finance
Failure to comply with any of the provisions of the Act and no penalty is specifically provided	NGN20,000,000 or to imprisonment for six months or to both fine and imprisonment
Making of incorrect returns	An administrative penalty of the higher of sum of NGN15,000,000 and 1% of the amount of tax that has been undercharged in consequence of such incorrect returns
Offenses by authorized and unauthorized persons	Liable to a fine equivalent to 200% of the amount of tax unpaid, lost or recoverable or to imprisonment for a term not exceeding three years or both

The above amendments seek to ensure that the provision in the PPTA is at par with the provision of the Petroleum Industry Act (PIA) 2021 with respect to the penalty regime. This is important because some petroleum production companies still hold Oil Prospecting (OPLs) and Oil Mining (OMLs) licenses and continue to be taxed under the PPTA regime pending the expiration of their licenses. Hence, the need to amend the above section to ensure conformity.

## 6. STAMP DUTIES ACT (SDA)

### 6.1 Changes in the sharing formula of the Electronic Money Transfer (EMT) Levy.

The Act introduces new sharing formula of 15% due to the Federal Government and the FCT, 50% to the State Government, and 35% to the local government for EMT levy as against the old sharing formula which allocated a chunk of the revenue from the levy to the State Governments. This will provide the needed revenue required by the local government to prosecute its project rather than depending heavily on the State Governments.

## 7. VALUE ADDED TAX ACT (VATA)

### 7.1 Transfer Pricing Requirements on VAT

The Federal Inland Revenue Service (FIRS) now has the authority to review vatiable transactions between connected persons to ensure they are consistent with arm-length principles. Furthermore, FIRS can adjust any potential loss in VAT because of fictitious arrangements between related parties.

## 7.2 Changes in the Timeline for VAT Collection Agents to Render VAT Returns

The Finance Act 2023 further amends section 14 of the VAT Act to specify the timeline to remit VAT by any person appointed by the FIRS to withhold VAT from payments made to suppliers. Such agents include oil and gas companies, government parastatals, banks, and telecom companies. The due date to render the VAT returns is the 14th day of the subsequent month, from when the VAT was withheld.

## 7.3 Goods Imported into Nigeria via Digital Platforms

Where Vatable goods are imported into Nigeria electronically or through digital platforms operated by a Non-resident company (NRC) that has been appointed by FIRS as a VAT collection agent. Such goods will not be subjected to VAT at the point of clearance with the Nigerian Customs Service (NCS), however, the importer must provide the NCS with proof that the NRC has been appointed as a collection agent of FIRS and VAT has been charged on the sales invoice of the goods imported.

### 1.3 New Definition of 'Building'

Section 46 of the VAT Act has been amended by giving a new definition to the term 'building'. According to the Finance Act 2023, for anything to be categorized as a building, it must be a structure permanently affixed to land for all or most of the useful life of that structure and this includes a house, garage, dwelling apartment, hospital, and institutional building, factory, warehouse, etc. but excludes any fixtures or structures that can easily be removed from such lands such as radio and television mast, transmission lines, cell towers, vehicles, mobile homes, caravans, and trailers. This implies that all the items removed from the definition of building have become chargeable to VAT. Consequently, letting, trading in, or furnishing services with such items must charge VAT at the prevailing rate with effect from 1st September 2023.

One of the implications of the amendment to Section 46 of the VAT Act is its impact on network facilities companies that provide infrastructure sharing and colocation services to telecommunication companies. After the Finance Act was enacted in 2020, land and buildings were specifically removed from the definition of 'goods', this means any transaction involving land and buildings was not Vatable. Inclusive in the definition of the building are radio and television masts, towers, transmission lines, etc., these facilities are mostly used by companies providing colocation services. Consequently, removing these items from the definition of the building will make these companies liable to VAT from the date of commencement of the amendments to the Act.

## 8 Tertiary Education Trust Fund (Establishment ETC) Act

### 8.1 Increase in Tertiary Education Tax (TET) Rate

The Finance Act 2023 further amends Section 1(2) of the Tertiary Education Tax Trust Fund Act (TETF), to increase the tertiary education tax rate from 2.5% to 3% of assessable profits. The new rate of TET of 3% shall take effect for the TET becoming due in respect of the accounting period ending on or after 1st September 2023.

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