



FINANCE ACT WORKSHOP



Solola & Akpana
(Law Firm)

OBJECTIVE

This Workshop is designed to provide our Clients with comprehensive materials and resources on the current Finance Act, 2023 (the “Act) in order to both drive compliance as well as contribute to the overall success and competitiveness of our Clients. It will also enhance the understanding and application of the Act, and will include the following:

- A detailed agenda outlining the key provisions of the Finance Act 2023 and how the new amendments, deletions and substitutions will affect the Company’s operations;
- The implications of the Act;
- The changes in tax laws, regulations and policies introduced by the Act;
- A practical guidance on the implementation of the Act; and
- The Implications of the Finance Act (Effective Date Variation) Order

Departments and personnel that will particularly find this instrumental are: the Legal and Compliance Team, the Senior Management and Decision Makers; the HR and Payroll Personnel; and Operational Managers.

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INTRODUCTION

- The Finance Bill was signed into law by the former President Muhammadu Buhari on May 29th 2023 as the Finance Act, 2023 (“the Act”).
- The Act introduces significant changes to the existing tax laws and regulatory framework, aiming to foster economic growth, enhance fiscal stability and promote sustainable development, while addressing emerging challenges in the digital economy.
- The Act seeks to provide support for the funding of the 2023 budget of Fiscal Consolidation and Transition through an improvement in the tax administration.

ANALYSIS AND COMPARISONS

CAPITAL GAINS TAX ACT

Capital Gains Tax Act - Section 3(a)

[chargeable assets to include digital assets]

Section 2 of the Act amended Section 3(a) of the Capital Gains Tax Act (CGTA), expanding the category of chargeable assets to include digital assets.

While the Act is silent on the definition of the term, digital assets simply refer to anything stored digitally that is uniquely identifiable and capable of being used to realise value. As such, digital assets include cryptocurrencies, non-fungible tokens (NFTs), music compositions available in digital form, etc.

The implication of this amendment is that Digital Assets are now CGT chargeable assets at the rate of 10%.

Capital Gains Tax Act (CGTA) - Section 5

[deduction of losses from gains accrued from the disposal of assets]

Section 3 of the Act amended Section 5 of the CGTA to allow for the deduction of losses from gains accrued from the disposal of assets of the same class. Where the aggregate capital losses exceed the aggregate chargeable gain, the losses may be carried over for deduction from chargeable gains for a maximum period of 5 years.

For example:

	Same-class Asset Purchase in 2020	Same-class Asset Sale in 2022
	N1,500,000	N1,000,000
Profit/Loss		(N500,000)

N500,000 loss will be deductible from the Company's chargeable gains for a maximum period of 2023, 2024, 2025, 2026 & 2027.

Capital Gains Tax Act - Section 31 (6)

[qualifying assets
for roll-over relief to
include shares and
stocks]

Section 4 of the Act amended Section 31 (6) of the CGTA to expand the qualifying assets for roll-over relief to include shares and stocks as Class 5. This implies that shares and stock transactions are exempted from CGT if the proceeds are applied to acquiring other assets or an interest in the other assets that are used for the purpose of the **same trade**. The **reinvestment**, whether by way of **shares** or **assets**, must occur **within the same year** of assessment and in the same or other Nigerian companies.

Thus:

Shares and stocks are part of Roll-over Relief, if:

1. reinvestment of the shares and stocks is done within the same year of assessment; and
2. in the same or other Nigerian companies of the same trade.

Remembering Capital Gains Tax Act - Section 31 (6)

[Exemption of restructuring by related entities]

It may be important to recall that the subsisting Section 49 of the Finance Act 2019 grants **CGT exemption on the sale or transfer of business assets to a Nigerian company, where such assets are for the purpose of restructuring and to a better reorganization of trade, business or transfer of management to Nigeria.**

The condition however is that the restructuring entities must be **related by common ownership and control** and such control and ownership must have been **maintained 365 days prior to such reorganisation**. The concession applied to the parties will be **rescinded** where the acquiring company makes a **subsequent disposal of the assets within the succeeding 365 days**.

The implication: The transaction is CGT exempt, if:

1. such entities are related for at least 365 days;
2. the acquiring entity is a Nigerian entity embarking on the restructuring to aid its operations in Nigeria, i.e. to better place its trade and business in Nigeria; and
3. the acquiring Nigerian entity does not dispose of the acquired assets within at least 365 days after the restructuring.

COMPANIES INCOME TAX ACT

Companies Income Tax Act (CITA) - Sections 32 & 34

[certain deletions - Reconstruction Investment Allowance; Rural Investment Allowance]

- ❖ Section 32 CITA, which provides for **Reconstruction Investment Allowance on qualifying plants and equipment, has been deleted** by virtue of Section 6 of the Act. However, companies that have incurred capital expenditure on plants and equipment prior to May 1, 2023 (being the effective date of the Act) are permitted to claim these allowances, until it is full utilized.
- ❖ Section 34 of CITA by virtue of Section 7 of the Act, which provides tax incentives to taxpayers who invest in certain amenities/infrastructure in "rural" areas (**Rural Investment Allowance**), **has been deleted**. Similarly, previous investments will continue to enjoy the tax incentive, while subsequent investments in this category will no longer enjoy the tax incentive. This change will take effect on tax returns for accounting periods ending on or after 1 July 2023.
- ❖ To align the deletions of Section 32 and Section 34 to the Second Schedule of CITA, Paragraph 18(3) and Paragraph 18(7) were deleted by virtue of Section 9 of the Act - i.e. the hitherto 10% tax savings in capital expenditure on plants and machinery acquired wholly, exclusively, necessarily and reasonably for its trade or business.

The implication -

1. the Company will no longer enjoy investment allowance when it purchases new plants and equipment or provide certain amenities/infrastructure in "rural areas", from May 1, 2023 and July 1, 2023 respectively;
2. This is without prejudice to previous/subsisting tax deductibles in this regard.

Companies Income Tax Act (CITA) - Para. 24 (7) of Second Schedule

[subsisting of capital allowance on profit of companies in the Agro-Allied Industry and trade or manufacturing]

- Paragraph 24 (7) of the Second Schedule to CITA was amended by Section 9(b) of the Act by replacing the existing section with an unrestricted capital allowance deductible from assessable profit for upstream and midstream gas operators (as described in the Petroleum Industry Act, No. 6, 2021).
- **Note:**
 1. The unrestricted capital allowance deductible from assessable profit in the case of companies in the Agro-Allied Industry and those engaged in the trade or business of manufacturing as originally contained in CITA subsists;
 2. However, the value of any asset on which capital allowance is to be claimed is to be reduced by the amount of any Investment Tax Credits claimable by such company;
 3. Hence, a company involved in Manufacturing/Agro-Allied business should continue to benefit from this provision, subject to the above proviso.

Companies Income Tax Act (CITA) - Third Schedule

[tax exemption on interest on foreign loans]

- Importantly, by virtue of its conspicuous silence, the Act sustains the provisions of Section 23 of the 2019 Finance Act which had amended the third schedule to the CITA by establishing a maximum tax exemption on interest on foreign loans.
- The maximum tax exemption on interest on foreign loans are as follows:
 1. 70% - where the loan repayment period is above 7 years and the moratorium period is 2+ years.
 2. 40% - where the loan repayment period is 5+ years but less than 7 years and the moratorium period is 18+ months.
 3. 10% - where the loan repayment period is 2+ years but less than 4 years and the repayment period is 12+ months.
 4. 0% where the loan repayment period is less than 2 years.

As such,

1. inter-company loans or shareholder loans;
2. which are foreign and not structured as 'interest-free';
3. could take necessary advantage of the above tax incentives.

PERSONAL INCOME TAX ACT

Personal Income Tax Act (PITA) - Section 33

[Insurance Company Premiums]

- Insurance Company Premiums: Section 33 of the PITA was amended by Section 13 of the Act to provide that the treatment of premium paid by an individual to an insurance company during the year preceding the year of assessment in respect of a contract for deferred annuity on his/her life or that of his/her spouse, is an allowable deduction. This provision was previously eliminated by the Finance Act 2021.
- The amendment includes a condition that any portion of the deferred annuity withdrawn five (5) years from the date the payment was made, will be subject to tax. Transactions deemed to be 'artificial' or a 'sham' are equally excluded from this provision.

The implication:

1. the premium an individual (i.e. employee of the company) paid to an insurance company;
2. in respect of a contract for deferred annuity on his/her life or that of his/her spouse;
3. can now be granted as tax relief in the individual's income tax computation;
4. however, any portion of the premium that is withdrawn within five years of payment, will no longer be exempt from personal income tax; and
5. The transaction must not be 'artificial' or a 'sham'.

CUSTOMS, EXCISE
TARIFF ETC.
(CONSOLIDATION)
ACT (CETA).

Customs, Excise Tariff, etc. (Consolidation) Act (CETA) - Sections 13, 21

[surcharge on airtime,
internet, ISPS and SUPs;
levy on imports from
outside of Africa]

- Section 21 of the CETA was amended by Section 11 of the Act to introduce excise duties on all services provided in Nigeria, including but not limited to telecommunication services at specific rates, which the President may by a Presidential Order prescribe pursuant to the Act. **The President has made an order prescribing:**
 - a) **5% surcharge on pre and post paid airtime and internet service providers (ISPS); and**
 - b) **10% surcharge on Single Use Plastics (SUPs) – plastics, containers, films and bags.**
- Similarly, Section 13 of the CETA was amended by Section 10 of the Act to impose a **0.5% levy on goods imported into Nigeria from outside Africa to finance capital contribution, subscriptions, and other financial obligations to the African Union, Africa Development Bank, etc. for investment and development, etc..** This is in addition to current customs duties and other approved charges.

The implication: Traverses areas of a Company's operations, such as:

1. **basic mobile telephone usage;**
2. **internet connections; and**
3. **importation from countries outside Africa.**

STAMP DUTIES ACT (SDA)

Stamp Duties Act (SDA) - Section 89A (4)

[revised sharing
formula - EMTL]

- Section 21 of the Act amends Section 89A (4) of the SDA by introducing a **revised sharing formula for the revenue generated from Electronic Money Transfer Levy (EMTL) as follows:**
 - a. 15% to the Federal Government and the Federal Capital Territory, Abuja**
 - b. 50% to the State Governments**
 - c. 35% to the Local Governments**
- Prior to the amendment, Section 89A (4) distributed the revenue from EMTL in the ratio of:
 - a. 15% to the Federal Government and the Federal Capital Territory, Abuja; and
 - b. 85% to the State Governments.

VALUE ADDED TAX (VATA)

Value Added Tax Act (VAT Act) - Sections 7 & 14

[artificial or fictitious
transactions - vatable]

Section 22 of the Act amended Section 7 of the VAT Act by inserting a new subsection (3) - (5) to provide that any artificial or fictitious transaction which seeks to reduce the amount of tax payable would still be subject to VAT.

The import of the above is to ensure that sham practices and arrangements by individuals and corporate organizations who seek to evade their tax obligations via trust, schemes, etc., that are fictitious and artificial are curtailed.

Value Added Tax Act (VAT Act) - Sections 14 & 16

[FIRS may appoint a
tax collection officer]

Sections 23 of the Act amended Section 14 of the VAT Act by providing that the FIRS may appoint a tax collection officer to remit taxes collected or withheld on or before the 14th day of the subsequent month in the currency of the transaction.

Section 24 of the Act amended Section 16 of the VAT Act by providing a new subsection (3), providing that importers, who purchase taxable goods on an online electronic or digital platform operated by a non-resident supplier (NRS) appointed by the Federal Inland Revenue Service, to charge and collect VAT, to provide proof of the NRS' registration or appointment as well as evidence that VAT was charged, on the sales invoice of the goods, as a condition for clearing the goods without paying VAT at the port of entry into Nigeria.

VAT on Automotive Gas Oil (Diesel) Importation.

The Federal Government has commenced operations to implement VAT on the importation of Automotive Gas Oil (Diesel), as Diesel was not exempted from the VAT Modification Order 2021 which was passed during the administration of President Muhammadu Buhari which grants VAT exemption on Petroleum Products such as aviation turbine kerosene, Premium Motor Spirits (PMS), household kerosene, locally produced liquified petroleum gas and crude petroleum oils.

Implication: this may impact on the price of Diesel, by extension, goods and services across board.

PETROLEUM PROFIT TAX ACT.

Petroleum Profit Tax Act (PPTA) - Sections 10

[decommissioning and abandonment - tax deductible]

- Section 15 of the Act amended Section 10 of the PPTA to include a new paragraph “1a” which provides that any money contributed to any fund, scheme or arrangements approved by the Commission (NUPRC) for the purpose of decommissioning and abandonment is now tax deductible.
- Based on the amendment, the conditions for tax deductibility can only be fulfilled if this is cash-backed, i.e., money is contributed to any fund, scheme, or arrangements in anticipation of when production is shut down in the respective field.
- Provisions for decommissioning and abandonment that are not cash-backed should therefore be disallowed for tax purposes.

TERTIARY EDUCATION TAX.

**Tertiary Education
Trust Fund
(Establishment, Etc.)
Act (TET Fund Act) -
Section 1 (2).**

**[increase in Education
tax rate; SLA]**

- Section 26 of the Act amended Section 1 (2) of the TET Fund Act by increasing the Education tax rate from 2.5% to 3%.
- It is important to recall that this rate had earlier been increased from 1% to 2% and then to 2.5% under the Finance Acts 2020 and 2021 respectively.
- On June 12, 2023, the Student Loan Act (SLA) gained Presidential Assent. The eligible applicants for student loan under the SLA are persons from households with an annual income of N500,000 (Five Hundred Thousand Naira) or less. Such applicants are required to provide a minimum of two guarantors such as a level 12 civil servant and a legal practitioner of 10+ years post call experience, judicial officer or justice of the peace. Guarantors shall bear personal liability for the loan repayment. Persons convicted of crimes involving dishonesty and defaulting debtors are not qualified to apply for same.

Finance Act (Effective Date Variation) Order

Finance Act (Effective Date Variation) Order

On July 6, 2023, President Bola Tinubu signed the Finance Act (Effective Date Variation) Order, 2023 (the “Order”).

The Order effectively changes the implementation date of the Finance Act 2023 from May 1, 2023 to September 1, 2023.

This implies that all the introductions and the provisions earlier stated can now take effect from September 1, 2023.

SUNDRY LEGISLATION

Electricity Act 2023 and the Electricity Tariff Increase Order

- The Electricity Act 2023 (ELA) empowers States, Companies and Individuals to generate, transmit and distribute electricity.
- The State Governments are required to issue licences and regulations to regulate electricity market within their States, failing which the Nigerian Electricity Regulatory Commission (NERC) will be the regulatory body for electricity within the State. At the moment, only Lagos, Edo and Kaduna have State Electricity Laws.

The implication:

1. a new value chain has opened up for;
2. especially for possible optimization of excess power generated;
3. more so, in light of the proposed increase to the electricity tariffs.

Central Bank of Nigeria's Operational Changes to the Foreign Exchange Market Directive

- On June 14, 2023 the Central Bank of Nigeria issued a directive to authorised dealers under Foreign Exchange Market in Nigeria. Here is the summary of the directive:
 - a. **The abolishment of all market segmentation.** All segments are now collapsed into the Importer and Exporter window. All medicals, school fees, BTA/PTA and SMEs will be processed through the deposit money banks.
 - b. **Reintroduction of the “willing buyer, willing seller” model and Cessation of the RT200 rebate scheme.**

Thus:

1. This provision is a tacit devaluation of the Naira.
2. The Company may review its foreign exchange funding and repayment options.
3. These fiscal policies are essentially geared towards ensuring a considerable level of stability, predictability and confidence in the Nigerian market, while also minimizing Government intervention.

TEAMS

Legal and Compliance Team

- The team should continue to note the compliance reporting requirements under the CITA, VAT, and CGT. They should continue to observe the statutory documentation, filings and updates necessary for company operations. As External Company Secretaries, we are poised to continue providing the requisite support for same.

Senior Management and Decision Makers

The Management should continue the strategic role of giving investment direction to the Company. The Management should kindly note the attitude of the Government via the imposition of taxes, limitation of benefits/incentives; new value chains and direct the Company to minimize any tax exposure whilst maximizing incentives/benefits under the extant laws.

Finance, Accounting and Tax Team

- The team should continue to focus on the slightly changing tax regime and continue to explore tax benefits/incentives available to the Company, especially as related to related party transactions, capital gains tax exemptions and company income tax exemptions.
- The team should kindly continue the practice of keeping close track of related party documentation and customer invoices for ease of tax audits and the enjoyment of any tax incentive/benefit.

Operational Managers

The team should continue to observe the regulatory attitude via newly imposed taxes, withdrawn exemptions or newly granted benefits. This way, the Managers can take advantage of any new value chain and cut down on any area the government has imposed taxes or withdrawn benefits. The foreign exchange laws is a major factor for the company's assessment and consequent response.

The Finance Act, 2023 represents a significant milestone in Nigeria's fiscal and economic landscape, introducing key changes to tax laws and regulations. It demonstrates the government's commitment to driving economic growth, promoting investment, and enhancing fiscal sustainability.

The Act has the potential to stimulate various sectors of the economy, including but not limited to oil and gas, by introducing measures such as tax incentives, adjustments in tax rates, and amendments to deductions and royalty rates. However, the true impact on individual companies and industries will depend on the specific circumstances, business models, and compliance practices, as highlighted by us in our slides.

CONCLUSION

WHO WE ARE

Abimbola Odunaike

- Mr. Odunaike is a lead partner in charge of the Firm's Taxation/Corporate Governance Practice Group. He has considerable experience in providing litigation, company secretarial services and transactional advisory services to both local and international companies engaged in the Oil and Gas, Telecommunications, and Banking and Finance industries. Mr. Odunaike has also provided expert legal advice concerning regulatory compliance, legislative monitoring and statutory reviews and is also known for his skills in alternative dispute resolution procedures.
- He obtained his LL.B. from the Olabisi Onabanjo University (formerly, Ogun State University) Ago-Iwoye, Nigeria and was admitted to practice as a Barrister and Solicitor in Nigeria in 2003.
- He is a member of the Chartered Institute of Arbitrators, UK (Nigerian Branch); a fellow of the International Bar Association/the College of Law of England and Wales; an associate-member of the Chartered Institute of Taxation of Nigeria; an accredited Mediator of the Centre for Effective Dispute Resolution (UK); an Associate Mediator (NCMG/ABC Group); a listed Mediator of the Lagos Multi-Door Court House and the Lagos State Judiciary under the ADR Initiative; and a member of the Nigerian Bar Association.

Blessing Isijola, ACA, ACTI.

- Mr. Isijola is the Finance Manager responsible for the management of the finances of the three offices of the law firm. He provides advice on several tax matters, financial support services and business regulatory issues in various commercial transactions.
- He is an Associate member of The Chartered Institute of Accountancy (ICAN), The Chartered Institute of Taxation (CITN) as well as a licensed Tax practitioner.
- He obtained his Bachelor of Science Degree in Accounting from the Rivers State University, Port Harcourt in 2006, one of the most prestigious and oldest institutes of higher learning in Nigeria. His insatiable quest for knowledge also drove him back to Rivers State University where he obtained his M Sc. in Accountancy.

Allen Amadi.

- Mr. Amadi is a Technology, Media, and Entertainment (TME) lawyer in our Corporate/ Commercial Practice Group. He also heads the Data Protection Practice Group. Allen has conducted *circa* 30 data protection audits for multinationals and conglomerates operating in the Oil and Gas, Finance, and other Sectors. He has facilitated data protection and FOI trainings for the Central Bank of Nigeria, Corporate Affairs Commission and other Oil and Gas industry players. Allen is a representative of the firm on the Association of Licenced Data Protection Compliance Organisations (ALDAPCON). He has extensive experience acting as a Fintech and Anti-Money Laundering Compliance Officer and has advised multiple times on the intersection of Law and Technology. He has authored several articles on data protection, fintech, Freedom of Information in Nigeria.
- He obtained his LL.B. from University of Nigeria, Nsukka, Enugu Campus in 2013, and was admitted to the Nigerian Bar in 2014. He possesses several online certifications in different areas including a Foundation and Practitioner certification from Nigeria Data Protection (NDP) Academy. He is a member of the Nigerian Bar Association.

Q & A



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Feedback Session



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