Nigeria's Finance Act 2019

Oluwole Adeyeye
oluwole.adeyeye@panafricancapitalholdings.com

Finance Act 2019

The Finance Bill presented by President Muhammadu Buhari to a joint session of the National Assembly on the 8th of October 2019, has been signed into law today. The Act, according to Mr President, would support the implementation of the 2020 Appropriation Act.

The strategic objectives of the Act

1. To promote fiscal equity
2. To align domestic tax laws to align with global best practices
3. To introduce tax incentives for investments in infrastructure and capital markets
4. To support Micro, Small and Medium Enterprises (MSME)
5. To raise revenues for government

Summary of the Key Changes/Features of the 2019 Finance Act

1. **Companies Income Tax (CIT) Act:**
   a. Wider base for taxing non-resident companies (NRCs): There is provisions for taxing NRCs carrying on digital activities, consultancy, technical, management or professional services in Nigeria, provided they have significant economic presence in Nigeria.

   b. Deletion of certain inhibitive rules for insurance companies: With the Finance Act, insurance companies would be able to carry forward losses indefinitely as opposed to the 4-year restriction currently in place.

   c. Exceptions to Excess Dividend Tax (EDT) provisions: Before now, when a company pays dividend in excess of its taxable profits, such dividend is subject to CIT at 30%. This applied whether or not the income from which such dividend is paid had been taxed hitherto or whether the underlying income is altogether exempt from tax. Based on the Act, EDT is inapplicable to; dividends paid out of retained earnings, exempt profit and rental/dividend income of Real Estate Investment Company (REIC). The exemption also covers franked investment income (FII)

   d. Expansion of the categories of exempt income: The Act expands categories of exempt income to include the profit of a small company and dividends declared from small manufacturing companies. The exemption also covers Rental income/dividend of REICs and secondary payments under "Securities Lending" transaction; thereby eliminating any potential double taxation on compensating payment mimicking interest/dividends.

   e. Expansion of the categories of allowable deductions and the introduction of thin capitalisation rules: The Act also exempts dividends and rental income received by REIC on behalf of its shareholders provided 75% of the income is distributed to shareholders within 12 months of earning the income.
   Also, the Act introduces thin capitalisation rules by disallowing "excess interest" on related-party lending (involving a foreign lender).

Excess interest is any amount paid or payable as interest on a loan, which exceeds 30% of Earnings Before Interest Tax Depreciation and Amortisation (EBITDA). Furthermore, where the company is unable to fully enjoy the relief based on the excess interest limit, it may carry forward such unabsorbed interest for a maximum of 5 years.

f. Ministerial approval no longer required: The Act removes the ministerial approval requirement for expenses incurred relating to management services between nonrelated parties before such expenses could be tax-deductible. This implies that any entity who enters into a management service agreement with an unrelated entity would be able to claim tax deductions for management fees without ministerial approval or the National Office for Technology Acquisition and Promotion's (NOTAP) approval.

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

h. Rescaling of Company Income Tax rate: With the Act, a small company with turnover of up to ₦25 million will have a 0% tax rate while a medium company with turnover that is greater than ₦25 million (but less than ₦100 million) will have a tax rate of 20%. However, a large company with turnover that is greater ₦100 million will be paying a tax rate of 30%.

i. Introduction of early tax payment bonus: The taxpayers who pay their tax liability at least 90 days before due date would be entitled to a bonus of 2% and 1% of the tax paid for medium and large companies respectively.

2. Personal Income Tax Act:

a. Deletion of provisions that grant certain personal reliefs

b. Deductibility of pension contributions: Contributions to pension, provident and other retirement benefits fund, society or scheme would constitute allowable deductions for tax purposes. The deductibility of such contributions would not be contingent on its approval by the state revenue authorities. Companies that contribute to private pension funds and other private schemes would be able to enjoy maximum tax relief for such contributions in arriving at their tax payable.

c. Banks to obtain tax identification number (TIN) from customers: Banks are to obtain TIN from corporate customers as a pre-condition for opening a new or maintaining an existing bank account. While this is the practice, the amendment is a welcome development, as it would give a legal basis to the practice.

3. Value Added Tax Act (VATA):

a. Inclusion of the definition of "goods" and "services": The Act introduced inclusion of the definition of "goods" and "services" in VATA is expected to eliminate ambiguity with respect to the application of VAT to certain transactions.

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

c. Increase in Value Added Tax rate to 7.5% from 5%

d. Introduction of ₦25million revenue threshold for taxable persons required to register for VAT and file returns: Anyone who does not fall within the threshold above would be exempted from registering, remitting, issuing tax invoice and collecting VAT. The threshold of ₦25million within the calendar year will reduce the tax compliance burden for small companies.

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

4. **Customs and Excise Tariffs etc. (Consolidation) Act (CETCA):**

Expansion of goods liable to excise duties to include imported goods. This eliminates any unfair advantage on imported products over local products.

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

a. Exemption on tax arising from re-organization: Transfer of assets during reorganization within a group of companies would be exempt from CGT. Termination benefits: Compensation received for loss of employment of up to ₦10 million would be exempted from CGT. This creates an incentive for payment of compensation for loss of employment below the ₦10 million threshold as termination benefits rather than terminal benefits, which would have been subjected to PIT.

6. **Petroleum Profits Tax Act (PPTA):**

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

7. **Stamp Duties Act (SDA):**

The Act increases the stamp duty on receipts to ₦50 on every transaction from ₦10,000 and above; and expands the definition of receipt to cover electronic transactions.

.

IMPORTANT DISCLOSURES

This research report has been prepared by the analyst(s), whose name(s) appear on the front page of this document, to provide background information about the issues which are the subject matter of this report. It is given for information purposes only.

Each analyst hereby certifies that with respect to the issues discussed herein, all the views expressed in this document are his or her own and reflect his or her personal views about any and all of such matters. These views are not necessarily held or shared by PanAfrican Capital or any of its affiliate companies. The analyst(s) views herein are expressed in good faith and every effort has been made to base our opinion on reliable comprehensive information but no representation is made as to its accuracy or completeness. The opinions and information contained in this report are subject to change and neither the analysts nor PanAfrican Capital is under any obligation to notify you or make public any announcement with respect to such change.

This report is produced independently of PanAfrican Capital and the recommendations (if any), forecasts, opinions, estimates, expectations and views contained herein are entirely those of the analysts. While all reasonable care has been taken to ensure that the facts stated herein are accurate and that the recommendations, forecasts, opinions, estimates, expectations and views contained herein are fair and reasonable, none of the analysts, PanAfrican Capital nor any of its directors, officers or employees has verified the contents hereof and accordingly, none of the analysts, PanAfrican Capital nor any of its respective directors, officers or employees, shall be in any way responsible for the contents hereof.

With the exception of information regarding PanAfrican Capital, reports prepared by PanAfrican Capital analysts are based on public information. Facts and views presented in this report have not been reviewed and may not reflect information known to professionals on other PanAfrican Capital business areas including investment banking. This report does not provide individually tailored investment advice. Reports are prepared without regard to individual financial circumstances and objectives of persons who receive it. The securities discussed in this report may not be suitable for all investors. It is recommended that investors independently evaluate particular investments and strategies. The appropriateness of a particular investment or strategy will depend on an investor's individual circumstances or objectives. Neither the analyst(s), PanAfrican Capital, any of its respective directors, officers nor employees accepts any liability whatsoever for any loss so ever arising from any use of this report or its contents or otherwise arising in connection therewith. Each analyst and/or any person connected with any analyst may have acted upon or used the information herein contained, or the research or analysis on which it is based prior to its publication date. This document may not be relied upon by any of its recipients or any other person in making investment decisions.

Each research analyst certifies that no part of his or her compensation was, or will be directly or indirectly related to the specific recommendations (if any), opinions, forecasts, estimates or views in this report. Analysts" compensation is based upon activities and services intended to benefit clients of PanAfrican Capital. As with other employees of PanAfrican Capital, analysts' compensation is impacted by the overall profitability of PanAfrican Capital, which includes revenues from all business areas of PanAfrican Capital.

PanAfrican Capital Holdings Ltd
8A, Elsie Femi Pearse Street
Victoria Island
Lagos, Nigeria
Tel: +234 (1) 2716899, 2718630
www.panafricancapitalholdings.com