IMPACT OF THE FINANCE BILL 2019, ON NIGERIA BUSINESS ENVIRONMENT

1. INTRODUCTION

1.1 As part of the process to improve the Nigerian tax environment and promote fiscal equity and uniformity in line with global best practices, the Finance Bill 2019 ("**the Bill**") was presented to the National Assembly by President Muhammadu Buhari GCFR on 08 October 2019 and was passed by the House of Representative on 28 November 2019.

1.2 The Bill is intended to cure incidence of multiple taxation that exist under our tax framework. It seeks to do this by amending sections of our various Tax Laws to bring about uniformity and create an enabling environment to actualize the ease of doing business initiative of the Federal Government.

1.3 The Bill amongst others seek to curb Base Erosion and Profit Shifting (BEPS) as proposed by the Organisation for Economic Corporation and Development (OECD) whereby multinationals shift their profits from higher tax jurisdictions to lower-tax jurisdiction, thus eroding the tax base of the higher tax jurisdiction

1.4 The Bill also aims to widen the revenue generation of the government by curing incidence of under taxations and arbitrage used in taking benefits from deductions and make it more responsive to investment and economic growth by the introduction of zero taxes on small businesses to support the micro and small sized businesses in Nigeria.

1.5 In this Article, we would highlight significant changes that have been introduced by the Bill.

2. HIGHLIGHT OF SIGNIFICANT CHANGES MADE BY THE BILL

2.1 Increment of VAT rate

The Bill in Section 36 increased the rate of Value Added Tax ("**VAT"**) from 5% to 7.5% and also provided for the inclusion of services provided to a person in Nigeria regardless of whether the services are rendered within or outside Nigeria. This is deducible in the definition of "supply of goods and services in Nigeria" in the Bill. According to plenary discussion in the house the increase is justified by the fact that our existing 5% rate is one of the lowest in the world and the new

increase would help in the funding of the new minimum wage which was recently increased by the Federal Government.

Whilst the Increase would most certainly broaden revenue collection to fund the budget and reduce budget deficit; it poses the challenge of inflation in the cost of goods and services and decrease in disposable income of the general public.

The Fast moving consumer goods (FMCG) industry is most likely to feel the direct effect of the increase of VAT which would result in high cost of consumer goods. However, the pressure to remain competitive in the short term in terms of pricing would mean that the companies may likely absorb part or all of the new increase. Whilst this may be sustainable in the short term, the increased cost of goods and services would mean that the final consumer unilaterally bears the brunt due to increase in cost of production.

2.2 **Stamp Duty on Electronic Transactions**

Section 54 of the Bill puts the Point of Sale (POS) charges on stamp duty at N50 Naira on every transaction from N10,000 and above and expands the definition of receipt to electronic transactions. The implication of this is that when a person purchases an item worth above N10,000 such a person would be liable to pay N50 stamp duty.

In light of this, the Central Bank of Nigeria (CBN) released a directive for banks to charge a stamp duty charge of N50 on electronic transactions of N10,000 and above. This gives a legal basis to what is already been practiced by Nigerian banks and sales outlet who were already charging N50 on electronic purchase but raises the threshold to N10,000.

2.3 **Digital Taxation**

Non-resident companies with significant economic presence in Nigeria through digital/electronic services and services rendered outside Nigeria to a Nigerian beneficiary shall be subject to taxation. This is intended to tax foreign internet platforms deriving income from trading in the Nigerian fiscal and digital environment. According to Section 3(4) of the Bill the Minister is empowered to make an order to determine what constitutes significant economic presence of a Company other than a Nigerian Company.

By virtue of this provision, Nigeria would aim to benefit and gain more from Digital Companies which operate within the Nigerian fiscal environment. According to figures from the Nigerian Communications Commission in the 2018 report, over 98 million Nigerians have access to the Internet and a sizeable percentage of that number are users of various digital platforms such as Facebook, Skype, Google Services and Amazon. Taxing these companies would improve Nigeria's revenue generation and ensure parity and equity as some of the companies make significantly more in terms of profit from companies registered in Nigeria that are already subject to company income tax under the Company Income Tax Act, ("**CITA**") Cap C21 LFN.

However, the Bill is silent on the enforcement mechanism for the collection and remittance of Digital Tax. It is important to mention that considering that these Companies are not Nigerian Companies and most of them do not have base in Nigeria other than operating in Nigeria's Internet space, our existing tax framework would not be able to compel enforcement on payment of such tax. There is therefore an urgent need for a clear regulation or framework for the collection of digital tax for these companies. This is to avoid passing such obligation to Nigerian consumers.

Expansion of Non-Deductible Allowances

Expenses incurred within or outside Nigeria involving related parties inconsistent with the Transfer Pricing Regulations issued by the Federal Inland Revenue Service (FIRS) would be non-deductible for tax purposes.

Therefore for related party expenses to be tax-deductible, such expenses should be consistent with the Nigerian Transfer Pricing Regulations made by the Federal Inland Revenue Service.

The Transfer Pricing Regulation was intended amongst others to ensure that associated/related enterprise and companies pay tax on an appropriate taxable basis corresponding to the economic activities deployed by taxable persons in Nigeria. It aims to ensure that the prices at which related entities exchange goods and services are in conformity with the functions performed, the asset used and the risk assumed in generating the income to be taxed.

Under the provisions of Section 29(g) of CITA, the expenses to which the Transfer Pricing Regulations apply are expenses for the purpose of earning management fee unless prior approval of an agreement giving rise to such management fee has been obtained from the Minister. However with the deletion of that section and introduction of a new section which provides for "any expenses" and not solely management fee, the arbitrage that results in companies paying less taxes than they should would be eliminated.

With the expansion of this section, the controversy that normally arises from the application of Transfer Pricing Principles in computing non-deductible, would be eliminated and companies must ensure that their related party transactions are fully compliant with TP Regulations.

2.4 **Tax Exemption of Business with turnover of less than N25M from payment of tax.**

Section 14 of the Bill provides that small company with a turnover of less than N25 Million are now totally exempt from paying of Company Income Tax in Nigeria.

Furthermore small businesses with turnover of less than N25 Million are to be exempted from payment of minimum tax under the Companies Income Tax.

2.5 This is a commendable development as it portends that enterprises/sole proprietorship may register as limited liability companies and maintain proper books and documents. This eliminate the burden of tax payment from Nigerian Small and Micro Business enterprise and can serve as the catalyst for investment in this sector of the economy and also make Nigeria an attractive investment hub.

Payment of 20% tax for medium sized companies

Medium sized companies with a turnover between N25 Million to N100 Million shall be liable to a tax rate of 20% at 20 kobo for every Naira from the existing rate of 30% at 30 kobo for every Naira. This represents a progressive tax system where companies are taxed in accordance with their size. Under Section 40 of CITA, medium scale companies are taxed at the rate of 30% as any other large scale company which negatively impacts on investment income and profits as the

companies are left with little after tax. With this new provision, medium sized companies would have more liquidity available to them after tax.

Categorisation	Basis of Categorisation	Tax Rate
Small Company	Turnover of less than N25 Million	0%
Medium Company	Turnover > N25Million and less than 100 Million	20%
Large Company	Turnover > 100Million	30%

2.6 **Bonus for early payment of Tax**

Where a company pays its tax 90 days before the due date such a company shall be entitled to a bonus of:

a) 2%, if such company is a medium sized company
b) 1% for any other company.

Where there is any balance of taxes unpaid as at the due date it shall attract interest and penalties for failure to pay on the due date.

2.7 **Payment of Minimum Tax of 0.5%**

In any year of assessment where the ascertainment of total assessable profits from all sources of a company results in a loss or where a company's ascertained total profits results in no tax payable or tax payable is less than the minimum, the minimum tax to be levied and paid shall be 0.5% of turnover of the Company. With this provision, there would be uniformity in the applicable rate of minimum tax payable by companies. Therefore all companies with turnover of above N25Million shall be subject to a uniform minimum tax where the ascertainment of total assessable results in a loss.

It should be noted that small companies with a turnover of N25Million are not subject to the payment of minimum tax.

2.8 **Insurance- Equalization of Insurance Companies**

To ensure that insurance companies are taxed in a fair and equitable manner relative to other companies, the Bill provides for the deletion of the four year limitation on carry forward of losses such that insurance companies can carry

forward their losses indefinitely. The Bill also provides for the deletion of the provisions that restrict allowable deductions for insurance companies; so that insurance companies can deduct reserve for unexpired risk on time apportionment basis. Equally deleted are provisions which require an insurance company to have no less than an amount equal to 20% of gross incomes as total profit for tax purposes in a year.

2.9 **Amendment of the Commencement and Cessation Rules**

The basis for computing assessable profit is now the accounting period immediately preceding the assessment from each such source. The rule is amended to eliminate overlaps in our tax laws and reduce the risk of double taxation which exists under the current framework.

2.10 **Amendment of Excess Dividend (EDT) Rules**

By virtue of Section 5 of the Bill, there will no longer be any additional tax payable on:

a) Dividends paid out of retained earnings, provided that the dividends are paid out of profits that have been taxed
b) Dividends paid out of profits that are exempted from income tax
c) Franked investment income
d) Rental and dividend income distributed by real estate investment companies to their shareholders.

The amendment of the EDT Rules eliminates the issue of double taxation and should encourage corporate savings/retention of profits to improve investors' confidence in the company.

2.11 **Introduction of Thin Capitalisation Rule**

With the introduction of thin capitalization rules on loans obtained from foreign connected persons, interest deductibility has been restricted to 30% of Earnings before interest, tax, depreciation and amortization (EBITDA) in any given tax year. Deductible interest expense not fully utilized can be carried forward for a maximum of 5 years.

Currently there are no thin capitalization rules in Nigeria; what obtains in practice is that on assessment the FIRS would seek to disallow interest

deductions which are considered excessive. However with the Bill, it introduces a specific benchmark of (30%) of EBITDA as the limit for interest deductions on loan by a foreign connected persons.

2.12 **Restriction on Tax Exemption on foreign loans**

The tax exemptions available for foreign loans have been modified, such that a 100% tax exemption no longer applies. Maximum exemption is now reduced to 70%.

This is to close tax loopholes for foreign loans to ensure that a 100% tax exemption no longer applies and increase the country's revenue generation prospect.

2.13 **Inclusion of Imported Goods as Goods Liable to Excise Duties**

The Bill includes imported goods as liable to excise duties by specifying that goods imported and those manufactured in Nigeria shall be charged with duties of excise at the rates specified under the Duty Column in the Custom and Excise Management Act, Cap C45 LFN 2004. . By the provisions of Section 21 of CEMA only goods manufactured in Nigeria were subject to excise duties. However, with the amendment of Section 21 of the Act, imported goods are now subject to excise charges.

With the inclusion of imported goods in the scope of goods liable to payment of excise duties, it eliminates any unfair advantage on imported products over local products. It would ensure a level playing field exist between local producers and imported products. However, while it levels the field, placing excise duties on imported goods would lead to double taxation as the importers would still be required to pay import duties on the goods.

2.14 **Exemption of Capital Gains Tax arising from Take-overs**

Where a trade or business carried on by a company is sold or transferred to a Nigeria company for the purpose of better organisation of that trade or business or the transfer of its management to Nigeria, and any assets employed in such trade or business is sold or transfer, no tax shall apply to such assets sale.

For the sale of the assets to be exempt from capital gains it must have resulted from a takeover of the company by a Nigerian Company.

However where the acquiring company make a subsequent disposal of the assets acquired from a takeover within the succeeding 365 days after the date of the transaction no capital gain tax exemption shall apply and the company shall be treated as if they did not qualify for an exemption as at the date of initial reorganization.

3. Conclusion

3.1 The need to introduce significant changes in the Nigerian Tax environment has been long overdue. Inconsistency and lack of uniformity have always been the major challenges with the Nigerian Tax Law which have led to incidence of multiple taxation and impact negatively on Nigerian Investment potential. Whilst the Finance Bill 2019 is commendable in bringing about uniformity in our tax laws, much is still needed to be done to create an optimal investment climate for businesses in Nigeria in terms of enforcement mechanism, sensitization and the cushioning effect of the proposed VAT on consumer incomes in Nigeria.

3.2 It is therefore important for the government and stakeholders to carry out massive sensitization and publicity in terms of Administrative notes, enlightenment guides and compliance aids to assist the tax payers in terms of strategic planning and compliance. An enforcement mechanism also needs to be put in place to ensure that the new provisions and innovations brought about by the Finance Bill are complied with to the letter.