

An Overview of the FINANCE ACTS 2019 & 2020.

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Highlight of the key provisions of FA 2019 & FA 2020

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Objective

- 01** Discuss the evolution of the Finance Acts
- 02** Highlight salient provisions of the Finance Acts
- 03** Raise critical questions and identify possible gaps
- 04** Get the feedback of participants
- 05** Make recommendations for reform



Introduction

Primary objective of taxation – to generate regular, steady and sustainable revenue for public finance at all times

Taxpayers are the beasts of burden

Public servants including the participants are gate keepers of public purse & are directly or indirectly involved in formulation of the FAs 2019 & 2020

The administration of PBM broke a 20-year fiscal jinx after the Finance (Miscellaneous) Taxation Provisions Decree (No.32) 1999

Revised National Tax Policy 2017 had recommended that “The Ministry of Finance shall work with the Legislature to ensure that the requisite changes to tax laws are enacted together with the Appropriation Act of the same year. This would require the executive to timely present tax laws as executive bill for the timely consideration of the National and State House of assemblies. (P.16 RNTP 2017).

FA 2019 a product of National Tax Policy Implementation Committee (NTPIC)

FA 2020 a product of Fiscal Policy Review Committee (FPRC) – with broader membership base.
Need for participants to know the current fiscal policy thrust, laws and pathways for reform

Question

Will FA 2021 be undertaken by FPRC or another body?

Time to set the process in motion to avoid late hour rush. Need to work towards having a Standing Committee.



Finance Act 2019

Consists of 57 sections divided into 6 parts

Section 1 – Amendment Section	1
Part 1 – CITA	- Sections 2-23 = 21
Part 2 – PPTA	- Section 24 = 1
Part 3 – PITA	- Sections 25-32 = 7
Part 4 – VAT	- Sections 33-47 = 15
Part 5 – CETCA	- Section 48 = 1
Part 6 – CGTA	- Sections 49-51 = 2
Part 7 – Stamp Duties	- Sections 52-56 = 4

Finance Act 2020

The Finance Act 2020 has 81 sections.

1. Part I: CGT - Sections 2-5
2. Part II: CITA - Sections 6-22
3. Part III: IDITRA - Sections 23-24
4. Part IV: PITA Sections 25-33
5. Part V: TETFUND ACT Sections 34-36
6. Part VI: CETCA - Sections 34-36
7. Part VII: VAT Sections 40 -45
8. Part VIII: SDA Sections 46-48
9. Part IX: FIRSE ACT - Sections 49 - 57
10. Part X: NEPZA Section 58
11. Part XI: OGEFZA Sections 59
12. Part XII: CAMA Section 60
13. Part XIII: FISCAL RESPONSIBILITY ACT Sections 61- 62
14. Part XIV: PUBLIC PROCUREMENT ACT Sections 63-74
15. Part XV: ESTABLISHMENT OF CRISIS INTERVENTION FUND AND UNCLAIMED FUNDS TRUST FUND Sections 75-81

Question

What do you think of the widening scope of FA beyond fiscal legislations?
Good or bad policy?



Objectives of FA 2019

- Reformation of Nigeria's tax law to align with global best practices;
- Promote fiscal equity;
- Support MSMEs through the ease of doing business initiative;
- Encourage investments in infrastructure and capital markets; and
- Raising government revenues.

Objectives of FA 2020

- Enacting counter-cyclical measures and crisis intervention initiatives
- Providing fiscal relief for mass transit
- Implementing key procurement reforms
- Institutionalizing ease of doing business (EODB) reforms
- Ensuring fiscal responsibility

Question

To what extent have the Finance Acts achieved these laudable objectives?



Highlights of Finance Acts 2019 & 2020

CAPITAL GAINS TAX

FA 2019

Business Re-organisation - Exempts gains from sale or transfer of assets of a Nigerian company or transfer of its management for the purposes of better organisation of the trade or business subject to certain conditions. (s.49)

Compensation for loss of office - Increases exemption from N10,000,000 to N10m

FA 2020

Filing of Return - Obligation to file CGT self-assessment return and pay not later than 30 June and 31 December (s.2).

Provides rules on determination of location of assets (s.3)

Clarifies that compensation for loss of office up to a maximum of N10m is exempt while only the excess is taxable

Obligation of Employers - imposes obligation on the employer to deduct and remit within the time for the remission of PAYE. (s.4)

Highlights of Finance Acts 2019 & 2020

COMPANIES INCOME TAX ACT (CITA)

Classification of Companies and rate reduction – small < N25m (NIL), medium \geq N25m \leq N100m (20%) and large >N100m (30%).

Loss Relief – Abolition of the limit of four years (s. 13).

Minimum Tax - Simplifies the calculation with reference to only gross turnover though may result in heavier burden. (s. 14). (Minimum tax appears to have been entrenched)

Significant Economic Presence (SEP) - income of foreign IT and telecommunication companies will be liable to tax in Nigeria to the extent that they SEP in Nigeria.

Insurance Companies – removal of discrimination against insurance companies in terms of 4 four years limit for loss relief and restriction on the expenses and capital allowances claimable... (s.6)

Abolition of Pre-Operational Levy – payable by companies that had not commenced business within 4 years as a pre-condition for TCC .

Highlights of Finance Acts 2019 & 2020

Investment Tax Credit - Abolition of 15% ITC for replacement of obsolete plants and machineries
Interim Dividends

Provisional Tax abolished

Incentive for Early Payment of Tax - Incentive of 2% for medium company and 1% for large companies for early filing and payment of tax.

REIC - Exemption of WHT on:

- interests paid to an approved agent in a RSLT (S.19)
- dividends paid to a REIC and a lender by an approved agent in a RSLT

Exemptions from Excess Dividend Tax - EDT will not apply to:

- dividends paid out of retained earnings that had been subject to tax thus overriding ***OANDO v FIRS*** - ***Eco Bank v FIRS***, etc
- dividends paid out of exempted profits
- dividends received by a foreign company from a Nigerian company.. (s.8)
- franked investment income and **REIC** - distributions by REIC and dividend income received by RIEC on behalf of its shareholders – S. 9

Highlights of Finance Acts 2019 & 2020

TIN - Obligation to include TIN in all business transactions and as a condition for opening business account with a bank.

Concessionary WHT Rate - Provides a statutory framework for reduced WHT rate of 2.5% for road, bridges, building and power plant construction. Minister cannot prescribe a higher rate by regulation. (s.21)

Foreign Loans:

Reduction of rate of interest allowed, moratorium and repayment period for deductible interest on foreign loans as follows:

Above 7 years.....	Not less than 2 years	70% (Formerly 100%)
5-7 years.....	Not less than 18 months	40% (Formerly 70%)
2-4 years.....	Not less than 12 months	10% (Formerly 40%)
Below 2 years	Nil	(Formerly Nil).

Limitation of deductible interest on foreign loan to 30 percent of gross turnover of the company with the exception of banks and insurance companies. Defined moratorium, repayment period and inserts Seventh Schedule.

(ss. 10 & 23B.)

Highlights of Finance Acts 2019 & 2020

Double Taxation - income already subject to tax under either PITA, CGTA, PPTA or SDA not liable to tax under CITA. (s.2)

Non-Allowable Deductions - Expressly makes the following non-deductible:

- Expenses incurred in making tax exempt income
- Penalty or fine imposed pursuant to a statute NOT deductible. (s.12)
- Dividends paid by borrower to an approved agent or lender in a Regulated Securities Lending Transactions.
- Dividends or interest paid by an approved agent to a borrower or lender a Regulated Securities Lending Transactions. (s. 11)

Simplification of Commencement & Cessation Rule – on determination of assessable profits of First, Second and Third Years

Cessation on account of reorganization – will not be deemed to be cessation unless the assets acquired under a sale or transfer of business is disposed within 365 days of acquiring such assets. (s.12)

Highlights of Finance Acts 2019 & 2020

Incentives for gas utilisation operations

- **Interest on loan** by company engaged in gas utilisation operations (whether or not approved by the Minister) is no longer deductible. **Comment: Inequity.**
- **Double Tax Reliefs** – foreclose possibility of double relief under IDITRA and CITA in respect of companies engaged in gas utilisation operations.

FA 2020

Limitation of Agricultural Relief to only companies involved in “Primary Agricultural Production” and reduction of the moratorium from 18 months to 12 months. (s.6) (What is the basis of the reduction - any form of disincentive should be removed?)

NRC engaged in TMCP Services with SEP - Withholding tax from the income of NRC engaging in Technical Management Consultancy and Professional (TMCP) services with SEP in Nigeria shall be a final tax. (s.7)

Incidental incomes of Non-Resident Shipping and Airline companies are liable to tax in Nigeria-not being income from international traffic exempted under Article 8 of DTA. (s.8).

Reduction of minimum tax from 0.5% to 0.25% in respect of 2020 and 2021 years of assessment. (ss.9 & 13)

Highlights of Finance Acts 2019 & 2020

A **REIC** will only enjoy tax free dividends and rental income if it meets the conditions in section 23(1)(s). (s.10).

COVID 19 or Natural Disaster Relief - Tax relief of maximum of 10% of assessable profit for COVID 19 or natural disaster donations to any fund of the Federal or State Government. (s.11).

Gas Utilization Relief restricted to only companies that engaged in trade and business of gas utilization. The tax-free period shall start on the day the trade or business commences production as certified by the Ministry of Petroleum Resources. (s.14)

Question

Does the avoidable bureaucracy of certification by the Minister advance the objective of ease of doing business?



Highlights of Finance Acts 2019 & 2020

Return - makes a new provision for filing of self-assessment, abolishes part payment, penalising a deliberate and dishonest declaration of untrue and incorrect amount of profit and making the outstanding tax liable to interest and penalty from the date the incorrect return was filed. (s. 15)

Non-Resident Company (NRC) - Obligation to file self-assessment returns and full audited financial statement (s.16)

Record Keeping -Imposes obligation on every company to maintain and keep books or records of accounting for at least 6 years, prescribes a penalty (N100,000 in the first months and N50,000 for subsequent month) for a breach. (s.17).

Service of Notice of assessment can be done via courier and electronic means (s18).

Service of Objection can be done via courier, e mail or electronic means provided that the Service has issued a Notice in this regard. (s.19)

Reduction of time for payment of tax from 2 months of receiving notice to 30 days. (s.20)

Definition of terms – ‘gross turnover’ – to encourage injection of inflow into the capital, ‘Nigeria company’ – to include statutory companies, ‘public character’ – for the purpose of enjoying tax exemption relief. (s.21)

Development and acquisition of software now qualifying assets for purposes of capital allowance. (s.22)

Highlights of Finance Acts 2019 & 2020

PETROLEUM PROFITS TAX ACT (PPTA)

FA 2019

Abolished the exemption of dividends paid to individual shareholders. (s.24)

FA 2020 – NIL

Question

Why Paucity of amendments on PPTA in 2019 and none in 2020? –
Apparently because of Deep Offshore Inland Basin (Petroleum Sharing Contract (Amendment) Act 2019 & pending PIB



Highlights of Finance Acts 2019 & 2020

PERSONAL INCOME TAX (PITA)

FA 2019

Definitions - Substitution of Board in section 2 PITA with FIRS (s.25)

“Deletion of certain reliefs - Deletion of alimony, children, dependant relatives and disability reliefs which already formed components of the Consolidated Relief Allowance (CRA)) but inadvertently retained in PITAM 2011. (s.27)

JTB Approval of Pension/Retirement Schemes - Abolishes JTB approval as a pre-condition for deductibility of pension contributions (s.26)

Tax Identification Number - Mandatory requirement of TIN for operation and opening of business account(s). (s.28)

Service of Objection – Service of Objection to assessment can now be effected by courier or e mail. (s.29)

Penalty - Extends the penalty for failure to withhold tax (fine of 10% of the tax due) to persons who fail to comply with the directive by the Board to deduct. (s.30)

Highlights of Finance Acts 2019 & 2020

Obsolete Provisions: Deletion of some of the obsolete provisions from the Third Schedule e.g interests on bonds non-existing banks, Income of employees of Ohio University of Athens, Ohio etc.(s.31)

Definition of Terms: Substitution of ‘Service’ for “Board” which technically redesignated, JTB and SBIR, albeit wrongly, as “The Service”. (s.32)

FA 2020

SEP - Tax withheld from the income of NRP engaging in Technical Management Consultancy and Professional (TMCP) services with SEP in Nigeria shall be a final tax. (s.25)

Contribution to pension - Makes deductible contributions to a pension, provident or other retirement benefit fund, society or scheme recognised under PRA. (s.26)

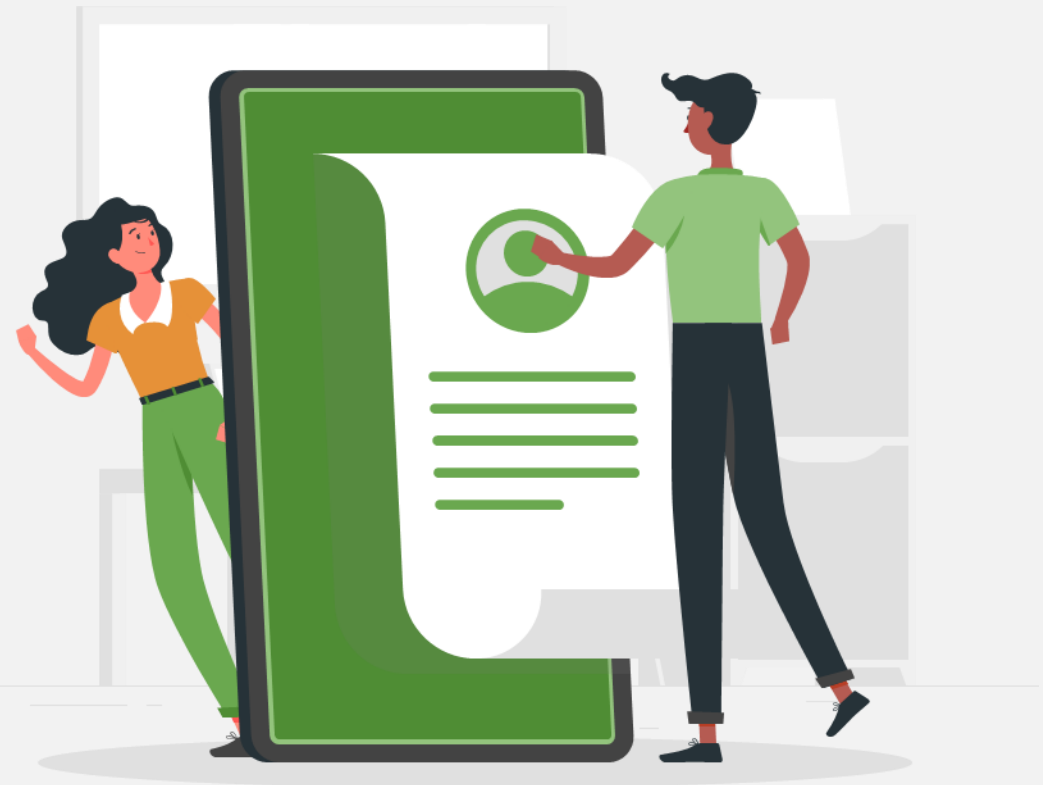
Simplification of Commencement& Cessation Rules (ss.27-28)

Redefinition of gross income to exclude non-taxable and exempt incomes in a manner that will reduce the CRA(s.29). (Recommend: Not a good time to roll back incentives or introduce measures that will lead to higher tax exposure)

Insurance Premium Relief – premium paid on insurance of the life of taxpayer and spouse now deductible. (s.29)
Exempts earners of minimum wage or below from minimum tax and defines minimum wage (ss. 30-31)

Question

Why Paucity of amendments on PITA in view of many practical issues requiring amendment.



Highlights of Finance Acts 2019 & 2020

VALUE ADDED TAX ACT (VATA)

FA 2019

Rate Increment - from 5%” to 7.5%. (s.34)

Taxation of Intangible Goods – Definition of goods includes intangible goods. (s.46)

Territoriality - Introduces territoriality concept as a basis of liability for VAT in Nigeria

Supply of Good - Defines when goods are supplied, and services rendered. (s.33)

Registration - Obligation to register mandatory upon commencement of business (s.35)

Statutory Basis for Reverse Charge in Oil and Gas Sector - Provides a **statutory** basis for companies in oil and gas sector to deduct VAT at sources instead of paying to the supplier of goods and services (s.36)

Remittance in currency of Transaction - Remittance of VAT on transaction with NRCs will be in the currency of transaction (.37)

Obligation to Self-Account when dealing with NRC– Obligatory for a Nigerian company dealing with a NRC to self-account and remit VAT payable where the NRC fails to issue an invoice. (s.37).

Highlights of Finance Acts 2019 & 2020

Threshold for Filing Return - Exempts a taxable person whose turnover falls below N25m from filing returns. Accordingly no penalty for non-registration, failure to issue invoice and failure to collect tax. (s.38).

Excess Output as Credit - Entitles a taxable person to use excess output tax as a credit against remittance obligation of subsequent months. (s.39)

Technical Committee - Abolishes VAT Technical Committee. (s.41)

Business Reorganisation - Exempts sale or transfer of business for the purpose better organisation from VAT subject to certain conditions. (S.45)

Exempted goods - locally manufactured sanitary towels, tampons and pads, (s.47)

Exempted Services – Services rendered by community bank, now replaced with services by Microfinance Banks. (s.47)

Question

Are there still People' Bank?



Highlights of Finance Acts 2019 & 2020

Tuition relating to nursery, primary, secondary and tertiary education.(s.47)

Increased Penalties

Non-Registration - Increased the penalty for non-registration upon commencement of business to N50,000 (from N10,000) for the first month in which the failure occurs; and N25,000 (from N5,000 for each subsequent month. (s.35)

Increased the penalty for failure to remit tax from 5% to 10% plus interest. (s.40).

Increases penalty for failure to notify the Service of change of address or cessation of business to N50,000 the first month in which the failure occurs and N25,000 (from one off penalty of N5,000). (s.42)

Increased penalty for failure to submit return to N50,000 the first month in which the failure occurs and N25,000 (from penalty of N5,000 every month). (s.44)

Definitions - Defines certain terms including “commencement of business”, “basic food items”, “recognized group of companies”. (s.46)

Redefines the definition of certain terms including “exported services”, “Service”, “services”, “goods” to include tangible and intangible goods. (s.46)

Highlights of Finance Acts 2019 & 2020

FA 2020

Defines the time of supply on the basis of 3 criteria whichever first occurs. (s.41)

Provides four instances where supply is deemed to have taken place between connected persons and invoices are not issued. (41(2))

Effective date of the VAT increase rate – made 1 February 2020 the effective date of the VAT increase rate to 7.5% - thus giving it statutory basis instead of Circular.

Exempts airline transportation ticket by commercial airline registered in Nigeria.

NRP are obliged to have TIN and may appoint a representative for the purpose of its tax obligation (10(4))

Imposes obligation to withhold VAT due on the person to whom supply was made or or such other person as the FIRS may appoint

Vests the Service with power to issue a guideline for the purposes of giving effect to the provisions of section 10.

Highlights of Finance Acts 2019 & 2020

CUSTOMS & EXCISE TARRIF (CONSOLIDATION ETC) ACT (CETCA)

FA 2019

Excise duties on imported goods that are manufactured in Nigeria, excluding raw materials (s.48).

FA 2020

Imposes Excise duties on “Telecommunication services provided in Nigeria” at the rates which the President may by Order prescribe pursuant to section13 of CEMA. (s.37)

Comments:

It is strange to impose excise duties on “services”.

Telephone calls are already liable to VAT at the rate of .7.5%.

No Presidential Order has been made till date.

Question

Is it likely that the President will make such Order?



Highlights of Finance Acts 2019 & 2020

Duty Reduction on the following:

- (a) Tractors from 35% to 5%;
- (b) Vehicles for the transport of more than ten persons from 35% to 10%;
- (c) Cars from 30% to 5%
- (d) Vehicles for the Transport of Goods from 35% to 10%:

Duty Free for Commercial airlines registered in Nigeria are entitled to duty-free importation of their aircrafts and spare parts whether purchased or leased.

Highlights of Finance Acts 2019 & 2020

STAMP DUTIES ACT (SDA)

FA 2019

Relevant Tax Authority (RTA) - Replaces “State Government” with RTA in a State.

Electronic Receipt - Redefines receipts to include electronic receipt

N50 duty on electronic transfer - provides a statutory framework for a duty of N50 on electronic transfer of from N10,000 upwards.

Question: Was there a valid legal basis for this duty before FA 2019? What remedy exist for the unlawful collection.

FA 2021

Usage of NIPOST Adhesive Stamp - Defines stamp with a proviso that “the Service shall utilise adhesive stamp produced by the Nigerian Postal Service pursuant to its enabling Act. (s.46)

Questions

How is this working in practice?

Have this resolved any possibility of inter-agency dispute between FIRS & NIPOST?



Highlights of Finance Acts 2019 & 2020



Section 89 - Deletion of electronic receipt or transfer from s.89 (s.47)

Electronic Money Transfer Levy - Introduces EMTL, vests the Minister with power to make “regulations for the imposition, administration, collection and remittance of the Levy,” provides a revenue sharing formula of 85%:15 between the Federal Government and the Federal Capital Territory on one hand and the State Governments on the other hand.(s.48).

Questions

Has the Minister made the requisite regulations?

If the answer is in the negative, is the collection of EMTL lawful?



Highlights of Finance Acts 2019 & 2020

FIRS (ESTABLISHMENT) ACT

FA 2019 - NIL

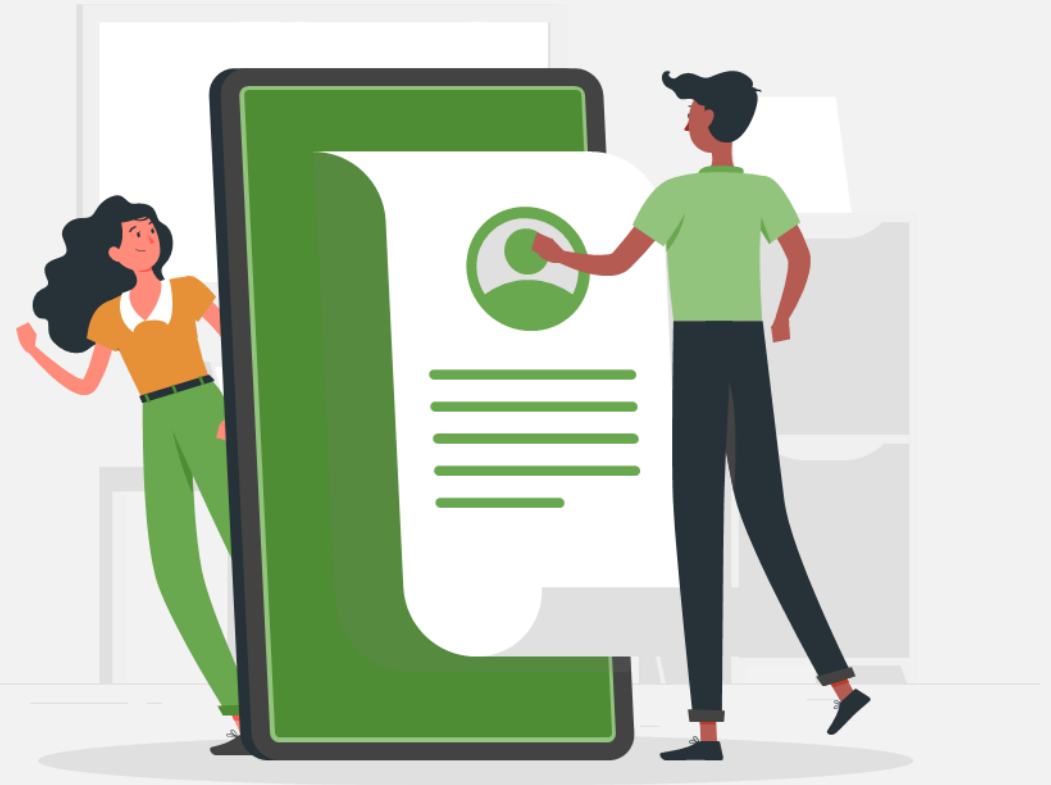
FA 2020

Provision of Assistance to Foreign Countries - in collection of revenue claims “pursuant to any agreement” between the FG and any other country. (s.49)

Separate Accounts for Refund Purposes - The Accountant General of the Federation shall establish separate accounts for each tax type for the purpose of refund which funded by the government. (s.50)

Question

Have the accounts been established?



Highlights of Finance Acts 2019 & 2020

Utilisation of Digital Service Platform for Collection - on international transactions in respect of supply of digital services.

Service may deploy technology for the purpose of tax administration provided the taxpayer is given 30 days' notice. (s.51).

Access to Electronically Stored Information – Service may require information stored in electronic devices. It introduces new penalties in the event of default. (s.52)

Obligation of Banks to Comply with Directives from the Service. (s.53)

Confidentiality of Taxpayer's Information Guaranteed (s.54) subject to circumstances in which tax information can be disclosed to authorized officers of the government of another country. (s.55)

Definition of Terms - "Taxpayer Information" and "Nigeria" (s.56)

Empowers Tax Appeal Tribunal (TAT) to conduct virtual hearing (s.57).

Highlights of Finance Acts 2019 & 2020

NIGERIA EXPORT PROCESSING ZONE ACT FREE TRADE ZONE ACT (NEPZA)

Imposes Obligation on approved enterprises to file tax return in a manner prescribed failing which they will be liable to penalties under CITA and FIRSEA. (s.58)

Questions:

Is this requirement consistent with best practice?

Has the FIRS prescribed the manner of the return?

OIL & GAS EXPORT FREE TRADE ZONE ACT (OGEFTA)

Ditto for NEPZA. (s.59)

Highlights of Finance Acts 2019 & 2020

COMPANIES & ALLIED MATTERS ACT (CAMA)

Unclaimed Dividends

Dividends are special debts and recoverable within 12 years.

Unclaimed dividends after 12 years should be included in the distributable profits of the company
Dividends of PLCs quoted on the NSE which have remained unclaimed for a period of six years or more shall be immediately transferred to the UFTF .

Dividends transferred to the Unclaimed Funds Trust Fund shall be a special debt owed by the Federal Government to the shareholders and shall be available for claim by the shareholder at any time, pursuant to the aforementioned perpetual trust.

Comments:

Creates a new source of (debt) revenue for the FGN.

Questions

How many participants believe that shareholders could claim from the UFTF?

Request for statistics of many people have claimed from the Fund since its establishment.



Highlights of Finance Acts 2019 & 2020

FISCAL RESPONSIBILITY ACT (FRA)

Margin of Budget Deficit – The President may exceed a 3 percent budget deficit ceiling during any pandemic or natural calamity. (s.61)

Tightening Financial Regulation of Statutory Corporations -

Prescribes a cost-to-revenue ratio of maximum of fifty per cent for each corporation unless approved (by the Minister & the National Assembly) by way of order published in the Official Gazette,

Mandates each corporation to establish a general reserve fund and put one-fifth of its operating surplus for each financial year

Pay balance of the operating surplus into the Consolidated Revenue Fund of the Federation on a quarterly basis and

Empowers the Minister to effect direct deduction from the Treasury Single Account, or other such relevant account, of a corporation to enforce due compliance. (s.62)

Reconciliation of Account

The Minister will cause reconciliation not later than three months after the statutory deadline for publishing each corporation's accounts and send a report of the reconciliation to the National Assembly.

Questions

How are the corporations fairing under the above order?

Any conflict with section 162 CFRN 1999?



Public Procurement Act Under the Finance Act 2020

SCOPE OF APPLICATION OF THE ACT

SECTION 63 of the Finance Act amends section 15 of the PPA by introducing a new section 15.

It provides that the Act applies to 4 categories of entities namely:

1. All public procuring and disposal entities under the three arms of the Federal Government.
2. The Federal Government of Nigeria and all procurement entities
3. Entities outside the first two who derive at least 35% of the funds appropriated or proposed to be appropriated for any type of procurement described under the Act from the federation share of the consolidated revenue fund.
4. The entities listed under sub(d) without limiting the generality of (a) and (b)

APPROVING AUTHORITY

SECTION 64 amends section 17 of the PPA by introducing a new section 17.

It provides for the approving authority for the conduct of public procurement in the entities listed under sub(d) of the new section 15.

Public Procurement Act Under the Finance Act 2020

ENTITY	APPROVING AUTHORITY
Government Agency, Parastatal or Corporation	A parastatal's tenders board
Ministry or Extra Ministerial Entity	The Ministerial Tender's Board
The National Assembly	The Parastatal's Tender's Board
The Judiciary	The Judicial Bodies Tender's Board and the Court's Tender's Board
The Executive Arm of Government	The Federal Executive Council
The Legislative Arm of Government	The National Assembly Tender's Board
The Judicial Arm of Government	The National Judicial Council Tender's Board

Public Procurement Act Under the Finance Act 2020

The new 17(b) provides that the last 3 on the above table will be applicable where the value of the Public Procurement exceeds the Ministerial Tender's Board threshold or any other threshold set by the Bureau and approved by council.

Subsections (2) – (5) provides for the chairman and secretary of the Tender's Board for each of the following entities as follows:

Public Procurement Act Under the Finance Act 2020

ENTITY	CHAIRMAN	SECRETARY
The Ministerial Tender's Board	The Permanent Secretary	Director of Procurement
Procuring Entity	The Chief Executive and Accounting Officer	Director of Procurement
The Federal Executive Council	The President or his Representative	Secretary to the Federation or his representative
The National Assembly Tender's Board	The Clerk of the National Assembly	The Secretary Directorate of Procurement Estate and Works
Parastatals under the N.A.	Accounting Officers of the Parastatals	
Boards of Judicial Bodies	Secretaries and Chief Registrars of the Bodies	Secretaries of the Judicial Bodies and their Registrars
National Judicial Council Tender's Board	The Chief Justice of Nigeria	Executive Secretary of the NJC or his representative

Responsibility of Accounting Officers

SECTION 65 of the FA replaces section 20 in the Act with a new section 20

20(1) outlines the persons charged with line supervision of the conduct of all procurement processes.

20(2) outlines the responsibilities of the accounting officer of every procuring entity as follows:

- a) Planning, organization and evaluation of tenders
- b) Execution of all procurements
- c) Ensure compliance with the provisions of the Act
- d) Constitute procurement committees
- e) Ensure adequate appropriation is made for procurement in the Budget
- f) Integrate Entity's procurement expenditure into yearly budget
- g) Prevent reduction of values or splitting of procurement
- h) Constitute evaluation committee
- i) Liaise with Bureau to ensure implementation of its regulations

20(3) empowers the accounting officer of each procuring entity to purchase or approve contracts without open competitive tendering where the value of the procurement does not exceed a threshold set by the Bureau and approved by Council

20(4) adverts for low-value procurement shall be one week on the Notice Board of the procuring entity

Responsibility of Accounting Officers

20(5) the Bureau is to prescribe the procedure and conditions applicable for different procuring entities as well as for different works, goods and services to be procured.

20(6) the Accounting Officer is to render a quarterly report to PTB

20(7) employees of a procuring entity and members of the Board of a public entity must ensure compliance with the Act within the areas of assigned responsibility under the Act.

20(8) Bidders for the procurement of goods, works and services for any public entity must comply with the provisions of the Act

20(9) penalizes any stakeholder under the Act who fails to comply with any of the provisions of the Act relevant to the area of assigned responsibilities under the Act.

Establishment of Tenders Board

SECTION 66 replaces section 22(1) and (5) with new subsections (1) and (5)

Section 22(1) establishes Tender's Board for in each of the following bodies

- a) Procuring entity under the Executive Arm of Government,
- b) Ministry and Extra Ministerial Department
- c) Federal Executive Council
- d) Procuring entity under the Legislature
- e) National Assembly
- f) Parastatal under the Judiciary and all Courts
- g) National Judicial Council

Section 22(5) subjects the decisions of the Tender's Board to the confirmation of the political heads of the procuring entities as long as the political heads are not the Chairmen of the Tender's Board.

METHOD OF BIDDING PROCESS

SECTION 67 substitutes section 24(1) and (2) with new subsections (1) and (2).

Section 24(1) makes it mandatory for all procurement to be conducted by open competitive bidding, however where a procuring entity applies a different procurement option prescribed under the Act, the Accounting Office of the entity must obtain the approval of the Bureau.

Section 24(2) defines Open Competitive Bidding

Advert Requirements for Bidding Process

SECTION 68 substitutes section 25(2) of the Act with a new subsection (2)

Section 25(2)a provides that any invitation to an open competitive bidding under international Competitive Bidding must be advertised as follows

- a) in at least 2 National Newspapers
- b) one relevant internationally recognized publication.
- c) Official website of the procuring entity
- d) Official website of the Bureau
- e) The procurement journal of not more than 4 weeks for contracts within the threshold of relevant Tender's Board and not more than 6 weeks for contracts above the threshold.
- f) Publication in the procurement journal must be made before the expiration of the deadline for submission of bids.

Under National Competitive Bidding, the advertisement shall be as follows

- a) Notice Board of the procuring entity
- b) Official websites of the procuring entity
- c) 2 National Newspapers
- d) The procurement journal of not more than 4 weeks for contracts within the threshold of relevant Tender's Board and not more than 6 weeks for contracts above the threshold.
- e) Publication in the procurement journal must be made before the expiration of the deadline for submission of bids

Requirement for Response to Invitation to Bid

SECTION 69 amends section 27 of the Act by replacing subsection (1) with a new subsection (1)

Section 27(1) mandates every bid in response to an invitation to open competitive bidding to be in writing, either electronic or in any other format stipulated in the tender documents and can be signed either physically or electronically by an officer empowered to bind the bidder to a contract.

PROCEDURE AT BID OPENING


SECTION 70 amends section 30 of the Act by substituting subparagraph (e) with a new (e)

Section 30 provides generally for deadline for submission of bids, and responsibility of the procuring entity at the opening of bids. 30(e) specifically provides that the Procuring Entity shall call to the hearing of all present at the bid opening the following

- a) Name and address of bidder
- b) Total amount of each bid
- c) Bid currency

The new 30(e) introduces 2 new items which must be called out at the bid opening

- a) The Validity period of the Bid
- b) The Completion period of the bid.



Section 70 also inserts a new subsection (2) which mandates that the exercise carried out at the opening of bids must be done in the presence of the legal officer or any other relevant official of the procuring entity. It also introduces a proviso which allows the procurement entity adopt any other regulations in lieu of 30(a) to (e) made by the Bureau for electronic and virtual procurement under the Act.

CAP ON MOBILISATION FEE AND PROHIBITION OF PAYMENTS ABOVE THRESHOLD

SECTION 71 of the FA amends section 35 of the Act by substituting subsection (1) with a new subsection (1)

Section 35(1) caps the mobilization fee payable to local contractors at 30% which should be supported by an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity.

It also inserts a new subsection (3) which prohibits the release of funds from the treasurer or Federation Account or any bank account of any procurement entity for any procurement which falls above the threshold set by the Bureau in the procurement regulations except where such request for payment is accompanied by a “certificate of no objection” issued by the Bureau.



CONDITION PRECEDENCE TO AWARD OF CONTRACT WHERE MOBILISATION FEE IS PAYABLE

SECTION 72 of the FA replaces section 36 with a new section 36

Section 36(1) makes the provision of a performance guarantee or an unconditional insurance bond a condition precedence for the award of any procurement contract where mobilization fee is to be paid, the performance guarantee or insurance bond must not be less than 10% of the contract value.

Section 36(2) contracts approved by a Tender's Board which requires the opening of irrevocable letter of credit must state so explicitly in the contract agreement and the procuring entity must liaise with CBN for further guidelines

JURISDICTION OF THE FEDERAL HIGH COURT AND TRIBUNAL SET UP BY CJN

SECTION 73 amends section 58 of the Act by substituting subsection (2) with a new subsection (2). It gives the Federal High Court or any Tribunal set up by the Chief Justice of Nigeria jurisdiction to try any offence created under the Act.



DEFINITION SECTION

SECTION 74 amends section 60 (interpretation section) by replacing the definitions of the following terms with new definitions

- Contract
- Procuring Entity
- Public Procurement

Recommendations



Stakeholder should set agenda for far reaching changes they may desire in subsequent amendments (FAs) based on Revised National Tax Policy 2017.

Avoiding mismatch in the title and commencement date of future FA by ensuring that gazetted copy is signed and made public simultaneously in the year of the FA.

Participants should take advantage of insurance premium relief

Need to fast track PIB – the longer the passage is delayed, the more the nation is short-changed.

SBIRs/JTB should take ownership of the desired reform on PITA, CGTA, SDA on diverse practical issues requiring amendment for far reaching reform.

FIRS Should be consistent in ensuring that statutory framework is given to aspects of Information that are inconsistent with tax laws.

Service should make requisite guidelines on the operation of NRC, service of assessment by e mail or other electronic means, etc

Recommendations



Noting that the President is yet to make such a requisite Order to give effect to excise duties on telecommunication services, with due sense of administration, I advise the President not to make such an Order being ill-timed and ill-advised.

The Minister should make the requisite Order for Electronic Money Transfer Levy

The Accountant General of the Federation should open for each tax type for the purpose of refund, if not already done.

TAT should commence virtual hearing ASAP

Work should start earnestly on FA 2022 by a standing committee to avoid ad hocism

Thanks for Listening.

