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THE PERSONAL INCOME TAX (AMENDMENT) ACT 2011:
Some Changes

The Personal Income Tax (Amendment) Act 2011 ("the Act") was enacted as an amendment[i] to the Personal Income Tax Act, Cap. P8, Laws of the Federation of Nigeria, 2004 ("PITA"). Personal Income Tax ("PIT") is a tax imposed on the incomes of individuals, communities, and families; it is also charged on the income due to a trustee or an estate. In all, the Act amended thirty-five sections and three schedules (no fewer than 41 clauses) of PITA, to make it more relevant to the current economy. The Act is of great significance to virtually all income earners in Nigeria. The aim of this paper is to highlight a few issues emanating from the Act.

Operative Date

The Act became operational on April 1, 2012, notwithstanding that it became enforceable on 14 June, 2012, raising some questions regarding the computation of PIT for the period June 2011 – January 2012 as required under the Act - whether the commencement date can be effectively changed otherwise than through a legislative amendment.

Income Chargeable/Personal relief (sections 3 and 33 of PITA)

The most significant amendment is the effective prohibition of tax-free allowances to employees by removing sections 3(1) (b) (ii) – (xii). Prior to the amendment, employees enjoyed tax-free allowances on things such as medical, housing, transport.

According to the new tax table, high income earners are taxed higher than low/middle income earners. The Act also exempts the following income and deductible expenses: National Housing Fund Contribution; National Health Insurance Scheme; Life Assurance Premium; National Pension Scheme and Gratuities; this means that if an employer have any of the above deductions in any payroll month, the amount becomes part of its tax relief and the residue of a taxpayer's gross income is then liable to a graduating personal income tax rate of between 7% to 24%.

Income Exempted (Third Schedule of PITA)

The most significant amendments to the Third Schedule are as follows:

a) President, Vice President, etc.

Flowing from the deletion of paragraphs 2 and 3 of the Third Schedule by section 33 of the Act, the official emoluments of the President, the Vice President, Governors and Deputy Governors are no longer exempted from personal income taxation.

This is contrary to the previous position where the official emoluments of these political office holders were exempted from taxation. This is a positive development.

... all allowances and benefits-in-kind from the employer to the employee are tax deductible save for reimbursement of expenses incurred by an employee in the performance of his duties, and from which he is not expected to derive any profit or gain...

The amended Section 33(1) now provides - "*There shall be allowed a consolidation relief allowance of N200,000.00 subject to a minimum of 1 per cent of gross income whichever is higher plus 20 per cent of the gross income and the balance shall be taxable in accordance with the income table in the Sixth Schedule to this Act.*"

For the avoidance of doubt the amended Section 33(2) gives an unequivocal and expanded definition of "gross emolument" to include: "wages, salaries, *allowances (including benefits in kind)*, gratuities, superannuation and any other income derived solely by reason of employment". The effect of the definition is that all allowances and benefits-in-kind from the employer to the employee are tax deductible save for reimbursement of expenses incurred by an employee in the performance of his duties, and from which he is not expected to derive any profit or gain[ii]. However, it should be noted that sections 4, 20 and 33 of PITA on non-taxable benefits in kind, tax deductible expenses and statutory reliefs (other than personal relief) were not amended.

Charge of income tax (Sixth Schedule of PITA)

By the provision of section 34 of the Act, the minimum tax rate payable under PITA has been increased from 0.5% to 1% of the gross income since the threshold has increased from Twenty Thousand Naira (N20,000.00) to Three Hundred Thousand Naira (N300,000.00) by virtue of the new tax table in the Sixth Schedule to the Act.

b) Bonds issued by Federal, State and Local Governments

The Third Schedule is further amended by inserting after the existing paragraph 31, a new paragraph 31A, wherein income earned from bonds issued by Federal, State and Local Governments and their agencies, as well as those issued by corporate bodies, including supra-nationals, are exempted from income tax. Interest earned by holders of the bonds and short term securities listed in 31A (a) and (b) are also exempted. Prior to this, incomes earned from these bonds were taxable.

There is no doubt that this will be an incentive for those who wish to invest in government and/or corporate bonds.

c) ***Pensions***

Under PITA, incomes from pension are taxable only to the extent that they are either granted to a person under the provisions of the Pensions Act (now Pension Reform Act 2004) relating to widows and orphans only; or wound and disability pensions granted to members of the armed forces or any recognised national defence organisation or to persons injured as a result of enemy action (paragraphs 14 and 15 of the third Schedule). However, section 33 (c) of the Act amended paragraph 14 of the third Schedule by substituting it with a new paragraph 14.

It is evident that the new paragraph 14(1) of the 3rd Schedule has accommodated *every person* who receives Pension under any law, thereby making incomes earned therein tax-free. This is also reflected by the amendment in section 3 (b) of the Act which deliberately removed Pensions from chargeable income, by substituting the existing subsection (1) (e) of PITA with a new paragraph (1) (e) thus: "any charge or annuity".

This is a positive step amongst others, in view of the difficulties experienced by most pensioners in an effort to get the meagre pension due to them for service to the nation.

It appears that employees whose duties of employment are wholly performed outside Nigeria, but whose employer is in Nigeria or has a fixed base in Nigeria, will still be liable to tax under the Act. This is justified on the basis that the remuneration/income of such employee is nevertheless derived from Nigeria. However, this might increase the cost for services rendered by such expatriates and invariably affect the growth of local companies. Government must adopt a more practical approach to improve its revenue without adversely affecting the economy, as a result of the negative effect of this new tax regime.

It appears that employees whose duties of employment are wholly performed outside Nigeria, but whose employer is in Nigeria or has a fixed base in Nigeria will still be liable to tax under the Act

Taxation of Expatriate Income (section 10 of PITA)

Following the amendment of section 10 of PITA, expatriate income is now liable to personal income tax charge in Nigeria. The income, profit or gain of an individual shall be deemed to be derived from Nigeria and liable to personal income tax if the employer of the individual is in Nigeria or has a fixed base for doing business in Nigeria.

Also, where the duties of any employment are wholly or partly performed in Nigeria, the income, profit or gain of such employment or engagement shall be liable to personal income tax charge in Nigeria, save under the following circumstances: where the employer of the expatriate is not based in Nigeria; or does not have a fixed base for doing business in Nigeria; or where the employee does not reside in Nigeria for an aggregate period of 183 days or more in one calendar year inclusive of annual leave or temporary period of absence; or the remuneration of the individual is liable to personal income tax in another country with whom Nigeria has a Double Taxation Treaty, which has been ratified by the National Assembly. The 183 day threshold requirement is also called the *residency rule,* under which an expatriate becomes liable to tax regardless of other conditions, has been modified to include periods of temporary absence or leave.

Foreign companies planning to explore business opportunities in Nigeria or those employing expatriates should obtain proper understanding of this aspect of taxation in Nigeria in the course of planning for tax issues.

Conclusion

The amendments to the PITA are expected to ensure that high and low income earners pay taxes commensurate to their income and also bring personal income tax regime in Nigeria to reflect current economic realities. It is doubtful if these amendments are in line with the National Tax Policy of reducing direct taxes and increasing the disposable income of citizens looking at the fact that the minimum tax rate has been increased from 0.5% to 1% of gross income.

It is also expected that the Minister of Finance will issue guidelines with respect to the grey areas as soon as possible. Ministries, Departments, Agencies and corporate organisations are expected to cooperate fully with the relevant tax authorities to actualise this goal while employers will be well-advised to review their compensation models in order to improve the benefits for their employees and ensure compliance with the new amendments.

[i] The commencement date of the Act based on the Government Official Gazette No. 115, Vol. 98 is 14 June, 2011 (same as the date of assent) but was only announced during the Budget presentation by the President on 31 December, 2011.
[ii] Section 3 (b) (i) of PITA

Editor's Note

The June 3 Dana airplane crash into a Lagos suburb and the attendant debacle have once again exposed the infrastructural deficit and lack of capacity in many of the regulatory bodies in Nigeria, which is a pointer to the reality of the harsh business and social environment. The Lawan-Otedola bribe saga over the Oil Subsidy probe did more than enough to convince most on the endemic nature of corruption in Nigeria. Terrorism gained ascendancy, leaving a big question mark on the ability of the Federal Government of Nigeria to ensure the safety of life and limb in the country.

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