THE FINANCE ACT 2023 AND NIGERIAN BUSINESSES

Nigeria's new Finance Act (to be cited as Finance Act 2023), has been signed into law on 28 May 2023 by former President Buhari. With an effective date of 1 May 2023, the Act amends relevant tax, excise and duty laws in line with the macroeconomic policy reforms of the Federal Government and makes provisions in specific laws in connection with the public financial managementof the Federation.

Although the effective date of the provisions of the Finance Act is indicated in the law as 1st May 2023, the Federal Inland revenue Service (FIRS), through its Public Notice of 10 June 2023, has granted an extension of effective dates of certain provisions of the Act on taxes under its purview, to 1 July 2023 (or in respect of accounting period ending on or after 1 July 2023, where applicable). These are specifically, provisions that are not in favor of, or represent disincentive to taxpayers. This extension may have been granted to ameliorate the tax burden of these new provisions.

Changes to Eleven (11) tax (and related) laws were effected as follows:

01.

Capital Gains Tax Act:

(a) Gains from digital assets will now be subject to capital gains tax, at the tax rate of 10%. Although the Finance Act. 2023 did not define 'Digital Assets', dictionary definition includes: cryptocurrencies, digital currency, digital tokens, digital securities, digital data, digital documents, digital collectibles and intellectual property such as eBooks, music, videos, software, patents, trademarks or copyrights.

(b) Capital losses on chargeable assets will now be tax deductible against chargeable gains on the same class of asset. Aggregate capital losses not fully deducted/ absorbed in a particular year may now be carried forward for up to 5 years, to offset any capital gains accruing on the same class of asset.

(c) Stocks and shares will now qualify for roll-over relief, provided that the proceeds from disposals are reinvested within the same year of assessment in the acquisition of eligible shares in the same or other Nigerian companies.

02.

Companies Income Tax Act:

(a) Companies engaged in shipping or air transport will be required to provide either the separate financialstatement of their Nigerian operations while filing income tax returns, or detailed gross revenue statements of its Nigerian operations, showing the amount of full sums earned during the period as certified by one ofthe company's directors as well as the company's external auditor and supported with all invoices issued tothe relevant customers.

To continue business operations in Nigeria, or to obtain relevant regulatory approvals/ permits, such companies will also be required by the Regulatory agencies in the shipping and air transport and other relevant sectors, to provide evidence of income tax filing for the preceding tax year, and current tax clearance certificate.

(b) Investment allowance of 10% hitherto applicable on qualifying expenditure incurred on plant and equipment either through outright purchase or through lease (the terms of which provide for the transfer of ownership, risks and reward to the hirer or lessee) will no longer apply. However, such assets acquired on or before the effective date of the Finance Act 2023 (1 May 2023) will not be affected by this change. According to the FIRS' Public Notice of 10 June 2023, this stoppage is to apply only to tax returns becoming due in respect of accounting period ending on or after 1 July 2023. This means that all tax returns due from now to 31 December 2023 will still enjoy this allowance.

(c) The rural investment allowance on percentage of cost incurred by a company to provide facilities such as electricity, water and tarred road where such facilities have not been provided by the government within 20kms of the location will no longer apply.

However, such assets acquired on or before the effective date of the Finance Act 2023 (1 May 2023) will not be affected by this change.

According to the FIRS' Public Notice of 10 June 2023, this stoppage of allowance is to apply only to tax returns becoming due in respect of accounting period ending on or after 1 July 2023. This means that all tax returns due from now to 31 December 2023 will still enjoy this allowance

(d) The tax exemption on 25% of incomes in convertible currencies from tourists, granted to hotels when they put such incomes in a reserve fund to be utilised within five years for the building expansion of new hotels, conference centres and new facilities for the purpose of tourism development, will no longer apply. Acompany that had earlier set aside reserve funds will however continue to enjoy the exemption until thefunds are fully utilised or the five years limit has elapsed, whichever occurs first. *According to the FIRS' Public Notice of 10 June 2023, this is to apply only to tax returns becoming due in respect of accounting period ending on or after 1 July 2023. This means that all tax returns due from now to 31 December 2023 will still enjoy this exemption.*

(e) Capital allowance claim will not be restricted to 66 2/3% of assessable profits for companies engaged in upstream and midstream gas operations as described in the Petroleum Industry Act or the Petroleum ProfitTax Act just like companies engaged in Agriculture and manufacturing, provided that the value of any asset on which capital allowance is to be claimed will be reduced by the amount of any investment allowance claimable by such company.

03.

Customs, Excise, Tariff Etc. (Consolidation Act)

(a) An additional levy of 0.5% will now be imposed on all eligible goods imported into Nigeria from outside ofAfrica, to finance capital contributions, subscriptions and other financial obligations to the African Union, African Development Bank, African Export-Import Bank, ECOWAS Bank for Investment and Development, Islamic Development Bank, United Nations and other multilateral institutions as may be designated by the finance minister.

(b) Excise duties will now apply on all services provided in Nigeria, in addition to telecommunication services. The duty rates are to be prescribed by the President.

04.

Personal Income Tax Act:

Any amount paid as premium by an individual during the preceding year of assessment in respect of own life or the life of a spouse, or contract for a deferred annuity will be tax deductible provided that any portion of a deferred annuity withdrawn within 5 years of paying the premium will be taxed at the point of withdrawal.

05.

Petroleum Profits Tax Act:

General changes were made to align the Petroleum Profit Tax Act with the provisions of the Petroleum Industry Act. These include:

(a) Period of filing of tax returns, for companies that are yet to commence bulk sales or disposal of chargeable oil and increases in late returns penalty.
(b) Increases in penalty for unspecified offences, incorrect returns and false statements and returns.
(c) Definition of the term 'Commission' (the body established to regulate the activities of companies in the Upstream petroleum industry sector), to correspond with the provisions of the Petroleum Industry Act.
(d) Tax deductibility of decommissioning and abandonment cost.
(e) Determination of chargeable oil (for additional tax purposes, where applicable) for both the export and domestic markets.

06.

Stamp Duties Act:

The national sharing formular for revenue from Electronic Money Transfer levy will now be: 15% to the Federal Government and the Federal Capital Territory; 50% to the State Governments and 35% to the Local Government. No allocation was made to local government before now.

07.

Value Added Tax Act:

(a) Section 7 of the Value Added Tax Act has now been amended to provide for tax adjustments where Value Added Tax (VAT) liabilities are presumably reduced by transactions deemed by the tax authority to be fictitious or not at arm's length.

(b) Agents appointed by the Federal Inland Revenue Service (FIRS) to collect VAT will now be required to remit such withheld taxes on the 14th day (instead of the hitherto 21 days) following the month of transaction. *According to the FIRS' Public Notice of 10 June 2023, this is to take effect from 14 July 2023.*

(c) Where taxable goods imported into Nigeria were purchased through an online electronic or digital platform, operated by a non-resident supplier that has been appointed as agent of the FIRS for the collection of VAT, the importer in Nigeria will need to present at the point of clearing such goods, proof of such registration or appointment of the non-resident supplier as a Nigerian VAT agent, and such other document as may be required by the FIRS, to avoid being subjected to further VAT before clearing the goods.

(d) The definition of 'Building' for VAT exemption purposes has now been revised to buttress the fact that it refers only to structures permanently affixed to land for all or most of the useful life. Fixtures or structures that can easily be removed from the land, such as radio and television masts, transmission lines, cell towers, vehicles, mobile homes, caravans and trailers will no longer qualify as 'Buildings' for VAT exemption purposes. *According to the FIRS' Public Notice of 10 June 2023, this provision is to become effective from 1 July 2023.*

08.

Tertiary Education Trust (TET) Fund (Establishment Etc.) Act

(a) Rate of Tertiary Education Tax has now been increased from 2.5% to 3%. According to the FIRS' Public Notice of 10 June 2023, this is to apply only to TET becoming due in respect of accounting period ending on or after 1 July 2023. This means that all tax returns due from now to 31 December 2023 will apply TET at 2.5%.

09.

The Corrupt Practices and Other Related Offences Act; the Public Procurement Act and the Ministry of Finance (Incorporated Act)

These laws have respectively been amended with provisions that would drive responsible /accountable public procurement process and use of public funds.

Overall Implications of the Finance Act 2023 for Nigerian Businesses

The tax law changes in Nigeria can have several implications for businesses in the country, regardless of their size or industry. Here are some potential implications for Nigerian businesses:

1. **Increased Tax Compliance Burden:** The changes in tax laws may result in an increased tax compliance burden for businesses. They will need to familiarize themselves with the amended regulations, update their tax processes and systems, and ensure accurate calculations and reporting. This can place an additional administrative burden on businesses, requiring them to allocate more resources to tax compliance.

2. **Cash Flow Impact:** Changes in tax rates, such as the increase in the Tertiary Education tax rate for companies, can directly impact the cash flow of businesses. Higher tax rates can reduce funds available for investment, expansion, or day-to-day operations. Businesses need to carefully assess the impact of the tax law changes on their cash flow and make necessary adjustments to their financial planning.

3. **Review of Pricing Strategies:** The changes, such as the introduction of excise duty on certain services and the imposition of import levies, may require businesses to review their pricing strategies.

Businesses will need to assess the impact of the revised tax rates and charges on their pricing structures. Adjustments to pricing strategies may be necessary to account for the new tax regulations while remaining competitive in the market.

4. **Technology and System Updates:** Businesses that rely on tax technology solutions may need to update their software or systems to incorporate the changes in tax rates, deductions, and reporting requirements. This may involve investing in new tax software, upgrading existing systems, or seeking support from tax technology service providers. Updating technology and systems can help ensure accurate tax compliance and streamline tax-related processes.

5. **Transfer Pricing Compliance:** The introduction of general anti-avoidance transfer pricing rules and increased scrutiny on transfer pricing practices may require businesses to review their intercompany transactions and ensure compliance with the arm's length principle. Robust transfer pricing documentation, adherence to the new rules, and compliance with reporting requirements are essential for businesses engaged in transactions with related parties.

6. **Strategic Tax Planning:** The changes in tax laws provide opportunities for businesses to engage in strategic tax planning. They may need to evaluate their overall tax positions, identify potential tax optimization strategies, and take advantage of available deductions and incentives. Seeking professional tax advice can help businesses navigate the complexities of the amended regulations and make informed tax planning decisions.

7. **Compliance with Reporting Requirements**: The amendments have introduced certain reporting requirements to existing reporting obligations. Businesses need to stay updated on the changes and ensure compliance with the revised reporting requirements. This includes timely filing of tax returns, proper record-keeping, and accurate reporting of financial information to tax authorities.

8. **Impact on Business Competitiveness:** Depending on the industry, the tax law changes can have an impact on the overall competitiveness of businesses. Adjustments in tax rates, incentives, and compliance requirements can create a differential effect on businesses within the same sector. Businesses should evaluate the implications of the changes on their competitiveness, adjust their strategies accordingly, and explore available tax planning opportunities to maintain their market position.

Considering that the Finance Act has become a yearly occurrence in Nigeria, and a fiscal tool of choice for the Federal Government to fund its annual budgets, it is crucial for Nigerian businesses and investors to allocate resources (if not already done) to continuously proactively assess the implications of the yearly tax law changes, seek professional advice when needed, and ensure compliance with the amended regulations. Adapting to the changes may require careful financial planning, leveraging tax technology solutions, and considering the potential impacts on various aspects of their business operations.

Click here to view or download the full copy of the Finance Act 2023.

For enquiries about how these changes might affect your business, tax strategies and risk mitigation plans to adopt or the tax technology updates your business may require in order to proactively align with or manage the new changes, do not hesitate to contact us via email – clients@vi-m.com.