

## TAX GUIDE: THE NEW AMENDMENTS OF THE PERSONAL INCOME TAX ACT 2011.

### 1. Introduction

The President of the Federal Republic of Nigeria in line with National Tax Policy signed into law the Bill for an Act to amend the provisions of the Personal Income Tax Act, Cap.P8 LFN 2004 and related matters connected therewith.

The Bill which was passed by the House of Representative on 25<sup>th</sup> May 2011 and by Senate on 1<sup>st</sup> June 2011 was finally signed into law by the President on the 14<sup>th</sup> of June 2011.

However, the commencement date of the Act was initially contentious considering the fact that the Act was signed into law on the 14<sup>th</sup> of June 2011 and was actually made public during the President's presentation of the 2012 budget on the 12<sup>th</sup> of December 2011.

Although, the publication of the official gazette in January 2012 finally laid the matter to rest by clearly stipulating the effective date of the law to be June 14<sup>th</sup> 2011.

Below are the highlights of the amendments of the Act:



### 2. Commencement date

As earlier stated the commencement date of the Personal Income Tax Amendment Bill as shown in the published official gazette is 14<sup>th</sup> June 2011.

### 3. Introduction of Consolidated Relief Allowance (CRA) - Section 33

Section 33, Subsection 1 of the Principal Act which grants personal relief of N5, 000 plus 20% of earned income to every individual has been substituted. This section is now replaced with a new Consolidated Relief Allowance which now replaces the Personal relief (allowance) in the Principal Act.

This new allowance is now to be given at N200,000 or 1% of the gross income (whichever is higher), plus 20% of the gross income. The new section also defines "gross income" as "wages, salaries, allowances, including Benefits in Kind (BIK), gratuities, superannuation and any other income derived solely by reason of employment."

The Principal Act was also amended by re-numbering sub-sections (2) and (3) as subsections (3) and (4), respectively. Therefore Section 33 Subsection 3 of the Principal Act which grants children allowance, dependant relative allowance, premium on life assurance and disability allowance was neither amended nor deleted; instead it was re-numbered as subsection 4. However section 33 subsection 1 has resolved this confusion by subjecting to tax directly the balance of the gross income after the CRA has been deducted. This sub-section inter-alia states:

*"(i) There shall be allowed a consolidation relief allowance of N200,000 subject to a minimum of 1 percent 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"***

#### 4. Minimum Tax - Section 37

The minimum tax rate has been increased from **0.5%** of gross emolument to **1%**. While the expectation from the amendment to the Sixth Schedule is a reduction in employees' tax, this is not the case for low income earners.

As a result of the increase in minimum tax rate, the tax to be paid by those who were hitherto paying minimum tax would double.

#### 5. Income Tax Rate - Sixth Schedule

The Income Tax Table in the Sixth Schedule to the Principal Act has been substituted with new Tax Income Rates. The progressive tax rate has now been widened from the initial base of N30, 000 at the rate of 5% to N300, 000 but now at the rate of 7% while the last band of above N160, 000 taxed at the rate of 25% has been replaced with N3, 200, 000 at a marginally reduced rate of 24%. Effectively, tax on the emoluments of some low and medium income earners would reduce while those in the high income bracket would pay more taxes.

Below is the comprehensive table of both the old and the new rate:

Taxable Income	New Rate	Taxable Income	Old Rate
First N300,000	7%	First N30,000	5%
Next N300,000	11%	Next N30,000	10%
Next N500,000	15%	Next N50,000	15%
Next N500,000	19%	Next N50,000	20%
Next N1,600,000	21%	AboveN160,000	25%
AboveN3,200,000	24%		

Furthermore, the sixth schedule specifies the following as tax exempt:

- National Housing Fund Contribution
- National Health Insurance Scheme Contribution
- Life Assurance Premium
- National Pension Scheme
- Gratuities

## 6. Chargeable Income - Section 3

Section 3 (b) has been amended to confirm that both temporary and permanent employees are taxable under the Act. Also there has been an amendment to this section to effectively exempt all forms of pension from tax.

There is also an amendment of the word "perquisites" used in line 4 of the principal Act to now read "prerequisites". However we are at a loss of what the change in name is intended to achieve.

## 7. Filing of PAYE Annual Return - Section 81

The deadline for the filing of PAYE annual return has been shifted backward to 31 January of the following year as against 31 March. The penalty for non-compliance by an individual and a corporate body is N50, 000 and N500, 000 respectively. Excess payment of PAYE is to be refunded to the taxpayer concerned, within 90 days of application. Alternatively, the excess can be used to offset future tax due from the person.

## 8. Fines and Penalties - Sections 94 - 97

Most of the fines imposed for offences under the Principal Act have been increased to reflect current realities and to serve as a deterrent to taxpayers who are deliberately not complying with the provisions of the Act. In most cases, the new fines are as high as N50, 000 and N500, 000 for offences committed by individuals and corporate bodies respectively.

## 9. Employment Income- Section 10

Employment income will now be chargeable in Nigeria if the salary expense is charged to the profits of a Nigerian fixed base/PE (subsidiary or branch) of the foreign employer. S. 10(1) a. (i)

Furthermore, in arriving at the 183 days of stay in Nigeria which determines whether an employee is liable to tax in Nigeria or not, annual leave or temporary period of absence from Nigeria shall be considered. S. 10 (1) (a)



Finally, the exemption of employment income from tax on the ground that the income has been taxed in another country, is now limited to countries with whom Nigeria has a Double Tax

Agreement and wherein it has been so provided.

### **10. Interpretation of Itinerant - Section 108**

The definition of the term "Itinerant worker" has been revised to expand its coverage, to include even high-earning persons, so long as they work in more than one state for more than 20 days in at least 3 months of an assessment year. The cap on earnings which hitherto was N600 with respect to itinerant worker has been removed.

It therefore appears that any person who works in more than one state tax jurisdiction within an assessment year can be liable to tax in more than one state if it can be ascertained that he worked in the state for more than 20 days in not less than 3 months of the year. This provision is further buttressed by the amendment to the definition of Principal Place of Residence.



### **11. Principal Place of Residence - First Schedule**

Definition of "Principal Place of Residence" has been expanded to include the place of work, for workers who usually work on sites (construction sites, oil platforms, flow stations, quarries, etc) with a minimum of 50 employees.

This means that it is possible for a person who is resident in a State, to be

held liable to tax in another state where he works on a site.

This is likely to create issues for companies in the upstream oil & gas sector that have workers shuttling between sites and head office, both located in different state tax jurisdictions

### **12. Tax Immunity for the President, Vice-President, Governors and Deputy Governors**

Holders of the offices of the President, Vice President, State Governors and their Deputies would no longer enjoy tax immunity because their official emoluments have been removed from the list of tax exempt incomes in the Third Schedule. Effective from the commencement date of the amendment Act, holders of these offices would henceforth pay tax on their official emoluments.

### **13. Tax Exempt Income**

Additions have been made to the list of tax exempt incomes in the Third Schedule. Henceforth, interests earned on the following instruments are tax exempt:

- (i) Bonds issued by the Federal, State or Local Governments and their agencies
- (ii) Bonds issued by corporate and supra-nationals
- (iii) Interest earned by holders of bonds and short term securities listed in (i) and (ii) above.

These exemptions would encourage investment in bonds and short term securities by individuals.

#### 14. Tax Clearance Certificates (TCC) - Section 85

The new Act states that Ministries, Departments and Agencies (MDAs) of Government and also banks who require presentation of TCC for certain transactions are now expected to send such to the issuing authority for verification. Apart from the list of transactions in the Principal Act (Section 85, subsection 4), new transactions that will require such verification are as follows:

- Change of ownership of motor vehicles by the vendor
- Application for plot of land
- Any other transaction as may be determined from time to time.

Penalty for transacting listed businesses without presentation/and verification of TCC is punishable with a fine of N5million, or to imprisonment for 3 years or both fine and imprisonment.

Penalty for TCC offences relating to falsification, impersonation, etc. is now N50, 000 (previously N500), plus twice the tax payable.



#### 15. Penalty for failure to deduct tax - Section 74 and 77

The amendment to this section brings to an end the controversy as to the power of the tax authority to impose interest and penalty for non-deduction or remittance of WHT. The benchmarking of interest on tax underpayment against the CBN monetary policy rate is welcome, as tax authorities can no longer use arbitrary "commercial" interest rates, which are usually excessive.

The following are the specific amendments to the section;

- a. Penalty for non-deduction/non-remittance of WHT is no longer dependent upon conviction.
- b. Interest on underpayment now to be at CBN monetary policy rates and no longer on prevailing commercial rates.
- c. Tax underpayment by government departments and ministries can now be recovered at source from allocations, through the office of the Accountant General of the Federation
- d. Interest on tax underpayment is to be computed on annual basis - S. 77

#### 16. Joint Tax Board (JTB) - Section 86

The Act was also amended with regards to the appointment and the composition of the JTB. The amended includes;

- a. Appointment of JTB Chairman now to be guided by S. 11 of FIRS Act instead of S. 1 of CITA.



- b. State representative JTB now to be nominated by Governor and no longer the State Commissioner for Finance
- c. JTB now to appoint its own Secretary and no longer the Federal Civil Service Commission

### **17. States Board of Internal Revenue (SBIR) - Sections 87 & 88**

The above section of the Act opens up the way for appointment of competent and seasoned professional into the SBIR. The new criteria as per the amendment is as stipulated below;

- a. Chairman and directors of State BIR can be appointed from outside civil service, but they must be professionally qualified and experienced in taxation.
- b. Three other board members are also to be appointed on their personal merit, but representing each of the 3 Senatorial Districts of the State
- c. State BIRs are now to be funded at 5% of their revenue collection

### **18. Body of Appeal Commissioners - Section 60 – 67**

The Body of Appeal Commissioners has been removed from the PITA as the above stated section has been totally deleted. This function is now to be performed by the Tax Appeal Tribunal (TAT) as enshrined in the Fifth Schedule of the FIRS (Establishment) Act, 2007.

Disputes between State tax authorities and taxpayers are now to be resolved by a more neutral federal body.

It is hoped that taxpayers will be more willing to challenge tax assessments and see all disputes to a logical conclusion.

### **19. Service of Notice of Assessment – Section 57**

The use of courier service and electronic media (emails) has been added to the mode of service of notice of assessment. The date of service in the case of delivery by courier would be evidenced by the proof of delivery while that of email would be the date it is sent. Therefore taxpayers are advised to be checking their emails regularly otherwise; assessments sent by the electronic media would be left unattended to.

### **20. Penalty for various offences - Sections 94 – 97**

These sections adjust upwards the various monetary penalties for various offences under the Act thereby reflecting current realities.

### **21. Power to Distrain - Section 104**



A new Section 104 has been introduced to replace the old Section 104

of the Principal Act. Some of the salient points of the new provisions in the Section are as follows:

- (i) It is mandatory for Tax Authorities to apply, under oath, to a High Court Judge sitting in Chambers, for the issuance of a warrant to distrain defaulting taxpayers of their properties.
- (ii) The Tax Authority is empowered to keep the goods taken away for 14 days after which, if tax owed and the charges incidental to the distress are not paid, the goods may be sold.
- (iii) An order of a court of competent jurisdiction is required before immovable properties can be disposed of by the Tax Authority.

This includes the authority of the Revenue Authority's to enter and search the tax payer's premises under section 53.

## Conclusion

In all, the new PITA 2011 as amended is aimed towards lowering the income liability as envisioned in the National Tax Policy; this we think might be in preparation for higher rates for indirect taxes.

Companies and employers of labour would need to review their current payroll structures to ensure optimum compliance with the new amendments. The importance of this cannot be over-emphasized, especially with the now stringent penalties for contraventions.

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