

# Finance Act, 2020: Tax Implications for Foreign Companies and Individuals Doing Business In Nigeria

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The Finance Act, 2020 came into force on 1st January 2021. A major objective of the Finance Act, 2020 is to generate increased revenue, provide tax incentives to stimulate economic growth, streamline existing tax incentive regimes, and to clarify ambiguities in various laws. The Finance Act, 2020 (coming on the heels of the Finance Act, 2019) is the second of such statutes in two consecutive years to be enacted by the Buhari administration. These statutes allow the Federal Government to undertake targeted amendments of several laws at the same time to achieve its fiscal objectives instead of having to amend each law separately.

The scope of the Finance Act, 2020 is very wide. However, we will examine only some of the provisions that affect foreign companies and individuals doing business in Nigeria:

## 1. Tax returns:

The Finance Act, 2020 amends Section 55 of the Companies Income Tax Act (CITA) by creating a special procedure and requirement for foreign companies that derive profit or are otherwise taxable in Nigeria to file tax returns with the Nigerian tax authorities. This is unlike the previous regime which imposed a one-size-fits-all filing procedure for both foreign and Nigerian companies. Now, foreign companies are required to file their tax returns in Nigeria by submitting the following:

- a. the company's full audited financial statements and the financial statement of the company's Nigerian operations, attested by an independent qualified or certified accountant in Nigeria;
- b. tax computation schedules based on the profits attributable to the company's Nigerian operations;
- c. a true and correct statement, in writing, containing the amount of profits from each and every source in Nigeria; and
- d. duly completed Companies Income Tax Self-Assessment forms.

However, where Withholding Tax (WHT) is the final tax in respect of all the transactions entered into by a foreign company, the company will not have any obligation to file any companies income tax return in Nigeria in respect of that year.



## 2. Significant economic presence is now the basis for taxing non-resident individuals who provide technical, management, consultancy or professional services in Nigeria:

The Finance Act, 2020 introduces a Section 6A into the Personal Income Tax Act (PITA) which provides that where a non-resident individual receives gains or profits as a result of carrying on a business in Nigeria which comprises of technical, management, consultancy or professional services, such profit or gain shall be deemed to be derived from and taxable in Nigeria only if that non-resident individual has a significant economic presence (SEP) in Nigeria. In essence, the new SEP rule will only apply where the business or trade involves the provision of technical, management, consultancy or professional services.

The new SEP rule in Section 6A PITA supersedes Section 6 of PITA where the non-resident individual provides technical, management, consultancy or professional services in Nigeria. In such circumstances, it will be immaterial that the non-resident individual does not have a fixed base or a dependent agent in Nigeria, or that the transaction is a single contract for surveys, deliveries, installation or construction.

The Finance Act, 2020 does not define SEP as it relates to individuals under the PITA and provides that the Minister of Finance may issue an Order to define what constitutes SEP for non-resident individuals, trustees and executors. As the Companies Income Tax (Significant Economic Presence) Order 2020 relates

only to companies, non-resident individual taxpayers will need to wait for an Order to be issued by the Minister. Nevertheless, this marks a significant extension of the application of the SEP rule in Nigeria and signifies the willingness of tax authorities in Nigeria to adopt it as a basis of taxation for non-resident entities doing business in Nigeria.

### 3. Clarification of what constitutes the supply of goods or services subject to Value Added Tax (VAT) in Nigeria:

The Finance Act, 2020 expands what constitutes the supply of goods or services for Value Added Tax (VAT) purposes in Nigeria as follows:

- (a) services rendered in connection with any existing immovable property situate in Nigeria:

services rendered in connection with any existing immovable property situate in Nigeria (including the services of agents, experts, engineers, architects, valuers, etc.), shall be deemed to be services supplied in Nigeria for the purposes of VAT. It is unclear whether this refers only to services rendered in respect of buildings which exist at the time of enacting the Finance Act, 2020 or also to services rendered in respect of immovable property created or built after the coming into force of the Finance Act, 2020.

- (b) incorporeal rights:

incorporeal rights are subject to VAT in Nigeria if any of the following conditions are satisfied:

- i. the incorporeal right is exploited by a person in Nigeria;
- ii. the incorporeal right is registered in Nigeria, assigned to or acquired by a person in Nigeria. It is immaterial whether payment to acquire the incorporeal right was made within or outside Nigeria;
- iii. the incorporeal right is connected with a tangible or immovable asset located in Nigeria.

### 4. Definition of Goods:

The Finance Act 2020 defines “goods” as *“all forms of tangible properties, movable or immovable, but does not include, land and buildings, money or securities.”* This

is a clear departure from the definition contained in the Finance Act, 2019 which limits the definition of “goods” to tangible properties which are movable at the point of sale. However, it must be noted that the new definition in the Finance Act, 2020 makes it clear that immovable properties does not include land or buildings.

### 5. Definition of Services:

The Finance Act, 2020 has specifically extended the definition of services to include “any intangible or incorporeal product, asset or property over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and buildings, money or securities. By providing this level of specificity, the Finance Act, 2020 has moved away from merely defining “services” as being anything which is not “goods” and has ensured a level of certainty in determining VAT liability.

### 6. Non-resident persons may appoint a representative for the purpose of complying with their VAT obligations in Nigeria:

The Finance Act, 2020 empowers a non-resident vendor or service provider to appoint a representative for the purpose of fulfilling its VAT obligations in Nigeria (i.e. registration for VAT and obtaining a tax identification number). The non-resident vendor is required to include VAT on its invoice, while the person receiving the goods or service is required to withhold and remit the same.

### Conclusion

Clients are advised to obtain expert tax advice when conducting business in Nigeria (whether physically or remotely). The constant changes to the tax landscape in Nigeria mean that businesses must keep track of opportunities available to them, changing obligations and the necessary adjustments they need to make.

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