



Finance Act 2020: Key changes and implications

President Muhammed Buhari, on 31 December 2020, signed the Finance Act 2020 ("the Act" or "FA20") alongside the 2021 Appropriation Act into law. This reaffirms the Federal Government of Nigeria's (FGN) commitment to enact fiscal policy annually, alongside the passage of the annual budget into law (i.e. enactment of Appropriation Act) and aligns with global best practice.

The Act, which took effect on 1 January 2021, amended the provisions of 14 tax and fiscal related legislation, namely:

- Capital Gains Tax Act (CGTA)
- Companies Income Tax Act (CITA)
- Industrial Development (Income Tax Relief) Act (IDITRA)
- Personal Income Tax Act (PITA)
- Tertiary Education Trust Fund (Establishment etc.) Act
- Customs and Excise Tariff, etc. [Consolidation] Act (CETA)
- Value Added Tax Act (VATA)
- Stamp Duties Act (SDA)
- Federal Inland Revenue Service (Establishment) Act (FIRSEA)
- Nigeria Export Processing Zones Act (NEPZA)
- Oil and Gas Export Free Zone Act (OGEFZA)
- Companies and Allied Matters Act (CAMA)
- Fiscal Responsibility Act (FRA)
- Public Procurement Act (PPA)

In addition to the above, the Finance Act 2020 created a Crisis Intervention Fund (CIF) and its sub-fund, Unclaimed Funds Trust Fund (UFTF).

Analysis of changes and implications

The amendments introduced by the Act are in connection with the FGN's tax policy reforms, financial management and public revenue goals. The Act also recognized the challenges experienced by the country during the first wave of COVID-19 pandemic and attempted to create a structure that ameliorates some of the effects.

Major amendments created by the Act are as follows:



Capital Gains Tax Act (CGTA)

Broad Area	Description	Commentary
<p>Due date for filing and payment</p>	<ul style="list-style-type: none"> ● The filing of capital gains tax (CGT) returns and the payment of CGT arising from the disposal of chargeable assets in a particular year is due on or before 30 June and 31 December of the same year. 	<ul style="list-style-type: none"> ● This provision is ambiguous, as it provides two due dates for the filing and payment of CGT. The logical interpretation is that CGT returns and payment of CGT, relating to disposals that occur before 30 June, should be made by 30 June, while CGT returns and payment of CGT relating to disposals that occur after 30 June should be made by 31 December. ● This provision creates confusion as there is an existing CGTA provision (i.e. Section 43 and the Schedule) that requires the filing of CGT returns based on the provisions of Personal Income Tax Act (PITA) and Companies Income Tax Act (CITA), as the case may be. Based on PITA and CITA, due dates of filing returns are 3 months and 6 months, respectively, after the relevant accounting year-end. Comparing the existing and new provision, there may be conflicting due date of filing in many cases.

Broad Area	Description	Commentary
<p>Location of ship and aircraft</p>	<ul style="list-style-type: none"> ● Ship and aircraft used in international traffic, and owned by a Nigerian resident, are deemed situated in Nigeria for CGT purposes. 	<ul style="list-style-type: none"> ● The amendment introduced the phrase 'used in international traffic'. The amendment suggests that ship and aircraft used solely for local traffic need not be owned by a Nigerian resident to be deemed situated in Nigeria.

Broad Area	Description	Commentary
<p>Compensation for loss of office</p>	<ul style="list-style-type: none"> ● CGT on compensation for loss of office is limited to an amount in excess of N10 million. The person paying such compensation for loss of office is required to deduct the CGT due and remit to the relevant tax authority under the Pay As You Earn (PAYE) regulations. 	<ul style="list-style-type: none"> ● Employers now have an obligation to deduct CGT when they make redundancy payments, and other similar payments, to exiting employees.

Companies Income Tax Act (CITA)

Broad Area	Description	Commentary
<p>Agricultural production</p>	<ul style="list-style-type: none"> ● Agricultural trade or business' has been replaced with 'Primary agricultural production'. ● The definition of 'primary agricultural production' clearly excludes the processing and manufacturing of all forms of agricultural products. 	<p>FA20 did not amend other aspects of CITA that referenced 'agricultural trade or business' to now reflect 'primary agricultural production'. For example, companies involved in agricultural trade or business are exempt from the minimum tax. The definition of agricultural trade or business no longer exists, and there may be no basis to exempt companies involved in primary agricultural production from the minimum tax.</p>

Broad Area	Description
<p>Interest on foreign and agricultural loans</p>	<ul style="list-style-type: none"> ● The moratorium for granting an exemption of tax for foreign and agricultural loans has been revised from 'not less than 18 months' to 'not less than 12 months'.

Broad Area	Description	Commentary
<p>Incentive for agricultural production</p>	<ul style="list-style-type: none"> ● FA20 deletes the provision that grants companies involved in agricultural production a 5-year tax holiday, which was subject to a 3-year renewal. 	<ul style="list-style-type: none"> ● The removal of this incentive may not impact companies that have already earned the right to it. The right to the 5 years incentive has already accrued to companies involved in agricultural production under the existing CITA.

Broad Area	Description	Commentary
<p>Software</p>	<ul style="list-style-type: none"> ● Qualifying expenditure has been redefined to include capital expenditure incurred on the development and acquisition of software or electronic applications. 	<ul style="list-style-type: none"> ● FA20 did not prescribe capital allowances rate and whether or not investment allowance is applicable. The default expectation is to apply rates applicable to qualifying capital expenditure on plant and/or equipment.

CITA (cont'd)

<p>Broad Area</p> <p>Definition of gross premium and gross income of insurance business</p> 	<p>Description</p> <ul style="list-style-type: none"> Gross premium is defined as the total premiums written, received and receivable excluding unearned premium and premiums reinsured to the insured. Gross income is defined as total income earned by a life insurance business including all investment income (excluding franked investment income), fees, commission and income from other assets but excluding premiums received and claims paid by re-insurers. 	<p>Commentary</p> <ul style="list-style-type: none"> The introduction of these definitions removes the existing ambiguities and eliminates the risk of not paying the right amount of taxes. It also removes the need for uncertain tax disclosures in financial statements.
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<p>Broad Area</p> <p>Incidental income for international shipping/air transport companies</p> 	<p>Description</p> <ul style="list-style-type: none"> The specialized approach of calculating income tax for international shipping/air transport companies, under Section 14 of CITA, would apply only to shipping/transport/freight income. Non-freight income, leasing, containers and other incidental income will be taxed under Section 9 of CITA, as non-specialized income. 	<p>Commentary</p> <ul style="list-style-type: none"> Demurrage income, which is incidental to the primary shipping income of international shipping companies on their cargoes within Nigeria may now be subject to income tax. This creates a logical basis for charterers to claim demurrage expense as tax-deductible, as the shipowner would have accounted for income tax on the demurrage income.
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<p>Broad Area</p> <p>Deductibility of donations and definition of public character</p> 	<p>Description</p> <ul style="list-style-type: none"> Tax deductibility of COVID-19 crisis intervention fund donations. This deductibility is restricted to 10% of the assessable profit. <p>FA20 defines 'public character' with respect to organization or institution, which is exempt from tax and whose receipt of donation is deductible for the donors, to mean any organization or institution that is registered according to the relevant Nigerian law and does not permit the distribution of profits, in any manner, to its promoters or members.</p>	<p>Commentary</p> <ul style="list-style-type: none"> Companies limited by guarantee would typically fall under the organisation or institution of public character, as long as their objects ties to the scope of public character organisation, as defined by CITA.
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<p>Broad Area</p> <p>Non-deductibility of penalty and fine</p> 	<p>Description</p> <ul style="list-style-type: none"> Penalties and fines that are non-deductible for income tax purposes now specifically includes those imposed by laws of any State House of Assembly. 	<p>Commentary</p> <ul style="list-style-type: none"> Until this amendment was introduced, only penalties and fines imposed by an Act of the National Assembly were specifically non-deductible.
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<p>Broad Area</p> <p>Minimum tax</p> 	<p>Description</p> <ul style="list-style-type: none"> The minimum tax rate is reduced to 0.25% of gross turnover less franked investment income. This reduction, which is a COVID-19 incentive, is applicable to tax returns filed in respect of any year of assessment that is due on any date between 1 January 2020 and 31 December 2021. For non-life and life insurance businesses, the base of the minimum tax is gross premium and gross income, respectively
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<p>Broad Area</p> <p>Gas utilization incentives</p> 	<p>Description</p> <ul style="list-style-type: none"> Gas utilization incentives are only applicable to the trade or business of gas utilization of a company. Companies that claim the gas utilization incentives under CITA will not be entitled to similar incentives under the Petroleum Profits Tax Act or IDITRA.
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<p>Broad Area</p> <p>Incorrect returns</p> 	<p>Description</p> <ul style="list-style-type: none"> Penalty and interest are chargeable where a company pays less tax than it should have because it deliberately and dishonestly declared a wrong profit or tax payable. 	<p>Commentary</p> <ul style="list-style-type: none"> This puts to bed the notion that penalty and interest apply even where a taxpayer calculated and paid less tax in good faith.
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<p>Broad Area</p> <p>Non-resident companies filing</p> 	<p>Description</p> <ul style="list-style-type: none"> FA20 clarified that the income tax returns of non-resident companies include full audited financial statements of the companies and financial statements of the Nigerian operations certified by independent auditors in Nigeria. This requirement is not applicable to non-resident companies whose tax exposure in Nigeria is limited to Withholding Tax.
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<p>Broad Area</p> <p>Books of account</p> 	<p>Description</p> <ul style="list-style-type: none"> Companies exempted from incorporation and those not liable to pay tax under CITA are now required to maintain books of account in a format prescribed by FIRS. These accounts are required to be in English language and must kept for a minimum of 6 years. Where a taxpayer fails to produce any prescribed book or record, it is liable to a penalty of N100,000 in the first month of failure and N50,000 every month the failure continues. 	<p>Commentary</p> <ul style="list-style-type: none"> FIRS may be able to impose these penalties where a taxpayer does not provide requested information by a specified date.
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<p>Broad Area</p> <p>Notice of assessment</p> 	<p>Description</p> <ul style="list-style-type: none"> Services of notice of assessment can be done by courier, email or any other electronic means.
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<p>Broad Area</p> <p>Payment of assessed tax</p> 	<p>Description</p> <ul style="list-style-type: none"> The payment of any tax charged by any assessment with no objection has been revised to 30 days from 2 months.
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Industrial Development (Income Tax Relief) Act (IDITRA)

<p>Broad Area</p> <p>Primary agricultural production</p> 	<p>Description</p> <ul style="list-style-type: none"> Introducing "primary agricultural (i.e. crop, livestock, forestry and fisheries) production" as pioneer industries. Small or medium-sized companies involved in these activities are eligible to apply for pioneer status incentive. 	<p>Commentary</p> <ul style="list-style-type: none"> Companies involved in these activities are only allowed to apply for incentives under IDITRA and not CITA.
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Personal Income Tax Act (PITA)

<p>Broad Area</p> <p>Significant Economic Presence</p> 	<p>Description</p> <ul style="list-style-type: none"> Introduction of Significant Economic Presence (SEP) rules to the taxation of certain categories of non-resident individuals, executors or trustees. The Minister of Finance will issue rules to define SEP from a PITA perspective. 	<p>Commentary</p> <ul style="list-style-type: none"> Non-residents subject to tax in Nigeria under this provision may have to pay tax twice on the same income – firstly in Nigeria and secondly in their country(ies) of residence. <p>Persons subject to juridical double taxation by virtue of this provision may be able to seek relief under the Mutual Agreement Procedure, where a double tax avoidance treaty exists between Nigeria and the person's home country.</p>
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<p>Broad Area</p> <p>Commencement and cessation rules</p> 	<p>Description</p> <ul style="list-style-type: none"> Revised commencement and cessation rules to prevent double tax. This is to align with the prior amendment to CITA in this regard. Tax will be applied on the basis of the individual's accounting year.
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<p>Broad Area</p> <p>Gross income definition</p> 	<p>Description</p> <ul style="list-style-type: none"> Introduction of a definition of gross income, which is the basis for calculating consolidated relief allowance. Gross income is defined as income from all sources, excluding non-taxable income, tax-exempt income, income on which no further tax is payable, allowable business expenses and capital allowances. 	<p>Commentary</p> <ul style="list-style-type: none"> This reduces the consolidated relief allowance claimable by taxpayers
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<p>Broad Area</p> <p>Exempt income tax</p> 	<p>Description</p> <ul style="list-style-type: none"> Minimum tax no longer applies to persons who earn National Minimum Wage or less under Section 37 of PITA. This category of employment income earners are also exempt from PIT under the Third Schedule to PITA. National Minimum Wage is currently N30,000 per month.
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PITA (cont'd)

Broad Area	Description
Reinstating Life assurance as a deduction 	<ul style="list-style-type: none"> Annual premium paid during the year preceding the year of assessment to an insurance company in respect of insurance on the individuals' life or the life of his spouse shall be allowed as a deduction

Tertiary Education Trust Fund Act (TETFA)

Broad Area	Description	Commentary
Exemption for small companies 	<ul style="list-style-type: none"> Small companies are exempt from paying Tertiary Education Tax (TET) 	<ul style="list-style-type: none"> This gives legal backing to the current practice of exempting small companies from TET.

Nigeria Export Processing Zones Act (NEPZA) & Oil and Gas Export Free Zone Act (OGEFZA)

Broad Area	Description	Commentary
Incentives and related matters 	<ul style="list-style-type: none"> Approved enterprises operating within export processing or free zone (the Zone) will continue to enjoy exemption from taxes, levies, duties and foreign exchange regulations, except that these exemptions are now subject to the Banks and Other Financial Institutions Act, 2020 (BOFIA 2020). Companies/approved enterprises registered and operating within the Zone shall file a yearly self-assessment return as provided in Section 55(1) of CITA, to the FIRS. Failure to comply with the provisions of Section 55(1) of CITA will attract all relevant penalties stipulated in the CITA and FIRSEA. 	<ul style="list-style-type: none"> It is, however, unclear, what the exception to BOFIA 2020 seeks to achieve, as BOFIA 2020 is silent on export processing/free zone matters.

Customs and Excise Tariff Act (CETA)

Broad Area	Description
Excise duty: Exemption from excise duty 	<ul style="list-style-type: none"> Previous exemption from excise duty on imported goods that are not locally produced in Nigeria, and raw materials that are not locally available in Nigeria, will no longer apply.

CETA (cont'd)

Broad Area	Description
Excise duty: New item liable to excise duty 	<ul style="list-style-type: none"> Telecommunication services provided in Nigeria will now be liable to excise duties at rates to be specified by the President.

Broad Area	Description
Import duty and levy: Reduction in rates for duty and levy 	<ul style="list-style-type: none"> Reduction in import duties and levies on tractors and motor vehicles.

Broad Area	Description
Import duty: New item exempt from import duty 	<ul style="list-style-type: none"> Import duty-free importation of purchased or leased aircraft, engines spare parts and components by Nigerian registered airlines providing commercial air transport services.

Value Added Tax Act (VATA)

Broad Area	Description
Goods and services supplied in Nigeria 	<ul style="list-style-type: none"> Goods and services (including incorporeal property registered, located to an asset/immovable property, or exploited in Nigeria) consumed or otherwise utilized in Nigeria is deemed as supplied in Nigeria.

Broad Area	Description
Time of supply of goods or services 	<ul style="list-style-type: none"> Time of supply of goods or service is earlier of; the date of issuing invoice or receipt, or payment of consideration is due or received by the supplier. More specific rules to clarify how to determine the date of supply has also been introduced in the Act.

VATA (cont'd)

Broad Area	Description
The effective date of VAT rate increase 	<ul style="list-style-type: none"> Confirmation that the application of 7.5% VAT rate commenced on 1 February 2020.

Broad Area	Description
Registration by non-resident companies 	<ul style="list-style-type: none"> Trigger for an obligation to register for the tax purposes has changed from 'carrying on business in Nigeria' to 'makes a taxable supply of goods or services to Nigeria'.

Broad Area	Description
Invoicing by non-resident companies 	<ul style="list-style-type: none"> Non-resident companies to include tax in invoices for supply of taxable goods and services.

Broad Area	Description
Appointment of representatives by non-resident companies 	<ul style="list-style-type: none"> Non-resident companies may appoint tax representatives for the purpose of complying with tax obligations.

Broad Area	Description	Commentary
New definitions 	<ul style="list-style-type: none"> New definitions have been provided to clarify the scope of 'animal feeds', 'commercial aircraft spare parts and components', 'goods' and 'services'. In particular, interest in buildings has been added to money, security and interest in land, as items not classified as goods or services. 	<ul style="list-style-type: none"> This implies that the sale or transfer of interest in land and building, money and securities are not liable to VAT.

Broad Area	Description
New items exempt from VAT 	<ul style="list-style-type: none"> Goods exempt from VAT was expanded to include commercial aircraft, engines and spare parts. Services exempt from VAT was expanded to include airline transportation tickets issued and sold by commercial airlines registered in Nigeria, and hired, rented or leased agricultural equipment for agricultural purposes

Stamp Duties Act (SDA)

<p>Broad Area</p> <p>New definition of stamp</p> 	<p>Description</p> <ul style="list-style-type: none"> The definition of stamp was amended to admit the utilization of adhesive stamp produced by the Nigeria Postal Service.
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<p>Broad Area</p> <p>Electronic Money Transfer Levy</p> 	<p>Description</p> <ul style="list-style-type: none"> Introduction of Electronic Money Transfer Levy which applies on electronic receipts or electronic transfer for money deposits in any deposit money bank or financial institution. The charge will remain N50 for receipts or transfers above N10,000. <p>The Minister of Finance shall make regulations for imposition, administration, collection and remittance of the Levy.</p>	<p>Commentary</p> <ul style="list-style-type: none"> This replaces stamp duty on electronic receipts or electronic transfer for money deposits. <p>The mandate for the administration of the Levy could be given to another government agency instead of the Federal Inland Revenue Service (FIRS).</p>
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Federal Inland Revenue Service (Establishment) Act (FIRSEA)

<p>Broad Area</p> <p>International tax assistance</p> 	<p>Description</p> <ul style="list-style-type: none"> FIRS may now provide/receive assistance to/from the government of another country or any other persons or bodies, concerning tax matters and revenue claims.
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<p>Broad Area</p> <p>Tax refunds</p> 	<p>Description</p> <ul style="list-style-type: none"> For the purposes of tax refunds, dedicated accounts for each tax-type shall be created by the Accountant-General of the Federation and shall be funded from the respective accounts of Government into which revenue from each tax-type is remitted.
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<p>Broad Area</p> <p>Administration of tax laws</p> 	<p>Description</p> <ul style="list-style-type: none"> FIRS is empowered to use technology to collect taxpayer information and ensure the confidentiality of information collected.
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Public Procurement Act

<p>Broad Area</p> <p>Scope of application of the PPA</p> 	<p>Description</p> <ul style="list-style-type: none"> The PPA would specifically apply to all 3 arms of government - Executive, Legislative And Judiciary - including national defence/security agencies, government ministries, parastatals, institutions, departments and agencies.
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<p>Broad Area</p> <p>Approving authority</p> 	<p>Description</p> <ul style="list-style-type: none"> The parastatal's Tender Board and Court's Tender Board are to approve procurements by the National Assembly and the Judiciary respectively. The Federal Executive Council, National Assembly Tender's Board and National Judicial Council Tender's Board for each respective arm of government will approve procurements above the Ministerial Tender's Board threshold. The PRA also stated the members that will constitute each Tender's Board.
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<p>Broad Area</p> <p>Invitation to Bid</p> 	<p>Description</p> <ul style="list-style-type: none"> Reduction in time before the deadline for submission from minimum of 6 week to a maximum of 4 weeks. This will help to ensure that public procurement processes are not unnecessarily delayed.
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<p>Broad Area</p> <p>Submission of bids</p> 	<p>Description</p> <ul style="list-style-type: none"> Electronic submission of biddings are now permitted.
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<p>Broad Area</p> <p>Mobilization fee</p> 	<p>Description</p> <ul style="list-style-type: none"> Increase in maximum mobilization fee from 15% to 30%.
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Fiscal Responsibility Act (FRA)

<p>Broad Area</p> <p>Aggregate expenditure ceiling</p> 	<p>Description</p> <ul style="list-style-type: none"> Expansion of the conditions where the President may exceed the aggregate expenditure ceiling. The conditions now include wars, breakdown of public order or public safety, pandemic, natural disaster and any other public danger threatening the existence of Nigeria.
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Companies and Allied Matters Act (CAMA)

<p>Broad Area</p> <p>Unclaimed dividends</p> 	<p>Description</p> <ul style="list-style-type: none"> Dividends are only actionable when declared and are recoverable by shareholders within a 12-year period, after which it should be included in the profits of the company for distribution to other shareholders. This provision is only applicable to companies not listed on the Nigerian Stock Exchange (NSE). 	<p>Commentary</p> <p>This provision was newly introduced by CAMA 2020. Where dividends are unclaimed after 12 years, including it in the profits of the company means including it directly in retained earnings.</p>
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<p>Broad Area</p> <p>Unclaimed Funds Trust Fund</p> 	<p>Description</p> <ul style="list-style-type: none"> All dividends declared by public limited companies (PLCs) on the NSE that have not been claimed for at least six years from the date of declaration of the dividend will be transferred to the UFTF. Upon transfer, the dividend becomes a debt owed by the Federal Government of Nigeria. The funds transferred to the UFTF may be claimed by the shareholder at any time. 	<p>Commentary</p> <ul style="list-style-type: none"> The company transferring unclaimed dividend to the UFTF will have to derecognize the dividend payable upon transfer.
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Finance Act 2020 (FA20)

<p>Broad Area</p> <p>Crisis Intervention Fund (CIF) and its sub-fund, Unclaimed Funds Trust Fund</p> 	<p>Description</p> <ul style="list-style-type: none"> A N50billion CIF was created out of the Consolidated Revenue Fund and Special Accounts to fund crisis-related expenditures and other exigencies. Similar to unclaimed dividend, any un-utilized amount in a dormant bank account maintained in or by a deposit money bank (DMB) which have remained unclaimed for a period of 6 years from the date of domiciling the funds in a bank are to be transferred to UFTF. The UFTF will be managed by the Debt Management Office. The funds will be made up of unclaimed dividends and dormant bank balances. The unclaimed dividend and unutilized bank amounts will be transferred by the PLCs, registrars or DMBs. Failure to remit the unclaimed dividend and unutilized balance would attract a penalty of 5 times of the unremitted amount plus interest at Central Bank of Nigeria's monetary policy rates. 	<p>Commentary</p> <ul style="list-style-type: none"> While FA20 was not specific on the party that bears the penalty imposed for failure to transfer unclaimed dividend and dormant bank balance to the UFTF, we expect that the registrar, in the case of unclaimed dividends and the DMB, in the case of dormant bank balance are the culpable parties, as they hold the funds.
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Conclusion

The Act reaffirms the commitment of the FGN to ensure that the tax and fiscal laws are up-to-date and reflect current economic realities. The revision of some tax provisions that were released less than a year ago alludes to the FGN's determination to ensure that tax laws remain relevant. The Act has the potential to support economic growth and recovery and promote fiscal transparency and accountability.

The changing tax and fiscal landscape demands that taxpayers constantly re-evaluate their tax planning and compliance strategies. As a matter of urgency, taxpayers are advised to evaluate how the Act will impact their operations, review their tax compliance requirements and strategize for effective tax planning.

If you require further clarification or seek to understand how this would impact your business, please reach out to NGTaxPartners@DELOITTE.com.



Contacts



Yomi Olugbenro

Partner & West Africa Tax Leader
+234 1 904 1724
yolugbenro@deloitte.com.ng

Yomi Olugbenro
 @YomiOlugbenro



Oluseye Arowolo

Partner, Tax & Regulatory Services
+234 1 904 1723
oarowolo@deloitte.com.ng

Oluseye Arowolo
 @oluseyeArowolo



Funke Oladoke

Partner, Tax & Regulatory Services
+234 1 904 1703
foladoke@deloitte.com.ng

Funke Oladoke
 @Foladoke



Olumide Esan

Partner, Tax & Regulatory Services
+234 1 904 1736
oesan@deloitte.com.ng

OlumideEsan
 @olumideEsan



Patrick Nzeh

Partner, Tax & Regulatory Services
+234 1 904 1714
pnzeh@deloitte.com.ng

Patrick Nzeh
 @pnzeh



Taiwo Okunade

Partner, Tax & Regulatory Services
+234 1 904 2134
tokunade@deloitte.com.ng

Taiwo Okunade
 @taiwookuns



Olukunle Ogunbamowo

Partner, Tax & Regulatory Services
+234 1 904 2133
oogunbamowo@deloitte.com.ng

OlukunleOgunbamowo
 @KunleBamowo

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