

## **FINANCE ACT, 2021**

### **EXPLANATORY MEMORANDUM**

This Act amends relevant tax, excise and duties statutes in accordance with macroeconomics policy reforms of the Federal Government, to amend and make further provisions in specific laws in connection with the public financial management of the Federation.

# **FINANCE ACT, 2021**

## **Arrangement of Sections**

### **Section:**

1. Amendment of Cap. C1, C21, C49, P8, S8, V1, I17, N3, F26, LFN, 2004; Act No. 13, 2007, Act No. 31, 2007, Act No. 16, 2011 and Act, 2019.

### **PART I – CAPITAL GAINS TAX ACT**

2. Amendment of section 30 of the Capital Gains Tax Act.

### **PART II – COMPANIES INCOME TAX ACT**

3. Amendment of section 9 of the Companies Income Tax Act.
4. Amendment of section 13 of the Companies Income Tax Act.
5. Substitution for section 16 of the Companies Income Tax Act.
6. Deletion of section 18 (b) (iii) of the Companies Income Tax Act.
7. Amendment of section 23 of the Companies Income Tax Act.
8. Amendment of section 30 of the Companies Income Tax Act.
9. Amendment of section 31 of the Companies Income Tax Act.
10. Amendment of section 33 of the Companies Income Tax Act.
11. Amendment of section 39 of the Companies Income Tax Act.
12. Amendment of section 55 of the Companies Income Tax Act.
13. Substitution for section 77 of the Companies Income Tax Act.
14. Amendment of section 78 of the Companies Income Tax Act.
15. Substitution for section 81 of the Companies Income Tax Act.
16. Amendment of section 105 of the Companies Income Tax Act.

### **PART III – CUSTOMS, EXCISE TARIFFS, ETC. (CONSOLIDATION) ACT**

17. Amendment of section 21 of the Customs, Excise Tariffs, etc. (Consolidation) Act.

### **PART IV – FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT**

18. Amendment of section 25 of the Federal Inland Revenue Service (Establishment) Act.
19. Amendment of section 28 of the Federal Inland Revenue Service (Establishment) Act.
20. Amendment of section 35 of the Federal Inland Revenue Service (Establishment) Act.
21. Amendment of section 50 of the Federal Inland Revenue Service (Establishment) Act.
22. Substitution for section 68 of the Federal Inland Revenue Service (Establishment) Act.

PART V – PERSONAL INCOME TAX ACT

- 23. Amendment of section 33 of the Personal Income Tax Act.
- 24. Amendment of section 47 of the Personal Income Tax Act.
- 25. Amendment of section 49 of the Personal Income Tax Act.
- 26. Amendment of section 94 of the Personal Income Tax Act.

PART VI – STAMP DUTIES ACT

- 27. Amendment of section 89A of the Stamp Duties Act.

PART VII – TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC.) ACT

- 28. Amendment of section 1 of the Tertiary Education Trust Fund (Establishment, Etc.) Act.
- 29. Amendment of section 2 of the Tertiary Education Trust Fund (Establishment, Etc.) Act.

PART VIII – VALUE ADDED TAX ACT

- 30. Substitution for section 10 of the Value Added Tax Act.
- 31. Amendment of section 14 of the Value Added Tax Act.
- 32. Amendment of section 15 of the Value Added Tax Act.

PART IX – INSURANCE ACT

- 33. Amendment of section 9 of the Insurance Act.
- 34. Amendment of section 10 (3) of the Insurance Act.
- 35. Amendment of section 102 of the Insurance Act.

PART X – NIGERIA POLICE TRUST FUND (ESTABLISHMENT) ACT

- 36. Amendment of section 4 of the Nigeria Police Trust Fund (Establishment) Act.

PART XI – NATIONAL AGENCY FOR SCIENCE AND ENGINEERING INFRASTRUCTURE ACT

- 37. Amendment of section 20 of the National Agency for Science and Engineering Infrastructure Act.

PART XII– FINANCE (CONTROL AND MANAGEMENT) ACT

- 38. Amendment of section 3 of the Finance (Control and Management) Act.
- 39. Amendment of section 4 of the Finance (Control and Management) Act.

PART XIII – FISCAL RESPONSIBILITY ACT

- 40. Amendment of section 41 of the Fiscal Responsibility Act.
- 41. Effective date.
- 42. Citation.

# FINANCE ACT, 2021

## A Bill

### For

**An Act to amend relevant tax, excise and duty statutes in accordance with macroeconomics policy reforms of the Federal Government, to amend and make further provisions in specific laws in connection with the public financial management of the Federation; and for related matters.**

[ ] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria—

1. The Capital Gain Tax Act, Cap. C1, Companies Income Tax Act, Cap C21, Customs and Excise Tariffs Etc. (Consolidated) Act Cap. C49, Personal Income Tax Act, Cap. P8, Stamp Duties Act, Cap. S8, Value Added Tax Act, Cap. V1, Insurance Act, Cap. I17, National Agency of Science and Engineering Infrastructure Act, Cap. N3, Finance (Control and Management) Act, Cap. F26, Laws of the Federation of Nigeria, 2004; Federal Inland Revenue Service (Establishment) Act, No. 13, 2007, Fiscal Responsibility Act, No. 31, 2007, Tertiary Education Trust Fund (Establishment) Act, No 16, 2011, and Nigeria Police Trust Fund (Establishment) Act, 2019. Amendment of Cap. C1, C21, C49, P8, S8, V1, I17, N3, F26, LFN, 2004; Act, No. 13, 2007, Act, No. 31, 2007, Act, No 16, 2011 and Act, 2019

## PART I – CAPITAL GAINS TAX ACT

2. The Capital Gains Tax Act is amended by substituting for section 30, a new section “30” – Amendment of section 30 of the Capital Gains Tax Act

“30. (1) Gains accruing to a person from a disposal by it of Nigerian government securities shall not be chargeable gains under this Act.

- (2) Without prejudice to any other applicable law, the gains accruing to a person on disposal of its shares in any Nigerian company registered under the Companies and Allied Matters Act shall be chargeable gains under this Act except where –

- (a) the proceeds from such disposal are reinvested within the same year of assessment in the

acquisition of shares in the same or other Nigerian companies:

Provided that tax shall accrue proportionately on the portion of the proceeds which are not reinvested in the manner stipulated in this subsection;

- (b) the disposal proceeds, in aggregate, is less than ₦100,000,000 in any 12 consecutive months, provided that the person making the disposals shall render appropriate returns to the Service on an annual basis; or
  - (c) the shares are transferred between an approved Borrower and Lender in a regulated Securities Lending Transaction as defined in the Companies Income Tax Act.
- (3) Without prejudice to the provisions of section 2 of this Act, the rate of capital gains tax on disposal of shares under this section shall be 10%.
- (4) The tax due in respect of a disposal under this section shall be paid for –
- (a) individuals, to the relevant tax authority in line with the provisions of the Personal Income Tax Act; and
  - (b) companies, to the Federal Inland Revenue Service.
- (5) In this section –
- “Nigerian government securities” include Nigerian treasury bonds, savings certificates, premium bonds issued under the Savings Bonds and Certificates Act or any other long-term security issued by the Nigerian government;
- “Regulated Securities Lending Transaction” shall have the meaning provided under the Companies Income Tax Act.”

## PART II – COMPANIES INCOME TAX ACT

Amendment of section 9 of  
the Companies Income Tax  
Act

3. Section 9 of the Companies Income Tax Act is amended by substituting for subsection (1)(d)(ii), a new subsection “(1)(d)(ii)” –

“(ii) dividends includes compensating payments received by a lender from its approved agent or borrower in a Regulated Securities Lending Transaction.”

4. Section 13 of the Companies Income Tax Act is amended by substituting for subsection (2), a new subsection “(2)” –

Amendment of section 13  
of the Companies Income  
Tax Act

“(2) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from or taxable in Nigeria where –

- (a) that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base;
- (b) it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profit is attributable to the business or trade or activities carried on through that person;
- (c) it transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence

in Nigeria and profit can be attributable to such activity;

- (d) that trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract;
- (e) the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has significant economic presence in Nigeria;

Provided that the withholding tax applicable to the income under this paragraph shall be the final tax on the income of a non-resident recipient who does not otherwise fall within the scope of subsection 2 (a) – (d); or

- (f) the trade, business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profit adjusted by the Board to reflect arm's length transaction.”

5. Substitute for section 16 of the Companies Income Tax Act, a new section “16”

Substitution for section 16 of the Companies Income Tax Act

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“16. (1) An insurance business shall be taxed as –

- (a) a general insurance company, whether proprietary or mutual, other than a life insurance company, or
- (b) a life insurance company:

Provided that the profits on which tax may be imposed for an insurance business shall be in accordance with section 13 of this Act.

- (2) For a general insurance company, the profit on which tax may be imposed, shall be ascertained by taking the gross premium and other income receivable, less reinsurance, and deducting from the balance so arrived at, a reserve for unexpired risks, determined in accordance with subsection (10)(a), of this section.
- (3) For a life insurance company, the profits on which tax may be imposed shall be the investment income less the management expenses, including commission.
- (4) Any amount distributed in any form as dividend from an actuarial revaluation of unexpired risks or from any other revaluation shall be deemed to be part of the total profits of the company for tax purposes.
- (5) Not more than three months after an actuarial revaluation of unexpired risks or any other revaluation has taken place, the company shall provide the Service with full particulars of the revaluation carried out, including a copy of the actuary's revaluation certificate.
- (6) The profits on which tax may be imposed –
  - (a) in a general Nigerian insurance company, shall be ascertained in accordance with the provisions of subsection (2) as though the whole premium and investment incomes of the company were derived from Nigeria; and
  - (b) in a Nigerian life insurance company, shall be ascertained in accordance with the provisions of subsections (3), (4) and (5) as though the whole investment and other incomes were received in Nigeria and all the expenses and other outgoings of the company were incurred in Nigeria.
- (7) Investment income for the purpose of taxation of a life insurance company under this section means income derived from investment of shareholders' funds.
- (8) Where an insurance company carries on a life class and a general or non-life class insurance business, the funds and

books of accounts of one class shall be kept separate from the other as though one class does not relate to the other class, and the annual tax returns of the two classes of insurance businesses shall be made separately.

- (9) Each class of insurance shall be assessed separately as “life insurance assessment” and “non-life (other) insurance assessment” and in respect of each class of insurance business where there are more than one type of insurance and in the same class, they form one type of business and shall not be allowed against the income from another type of insurance business but the loss shall be available to be carried forward against profits from the same class of insurance business.
- (10) An insurance company, other than a life insurance company, shall be allowed as deductions from its premium the following reserves for tax purposes –
  - (a) reserve for unexpired risks, calculated on a time apportionment basis of the risks accepted in the year; and
  - (b) for outstanding claims and outgoings, an amount equal to the total estimated amount of all outstanding claims and outgoings, provided that any amount not utilised towards settlement of claims and outgoings shall be added to the total profits of the following year.
- (11) An insurance company, in respect of its life insurance business shall be allowed the following deductions from its investment incomes and other incomes –
  - (a) an amount which makes a general reserve and fund equal to the net liabilities on policies in force at the time of an actuarial valuation;
  - (b) an amount which is equal to 1% of gross premium earned or 10% of profits (whichever is greater) to a special reserve fund and accommodation until it becomes the amount of the statutory minimum paid-up capital; and

- (c) all normal allowable business outgoings.
- (12) A reinsurance company shall be allowed the following deductions from its gross profit to be credited to a general reserve fund –
- (a) an amount not more than 50% of the gross profits of the reinsurer for the year where the general reserve fund is less than the initial statutory minimum authorised share capital; or
  - (b) an amount not more than 25% of the gross profits of the reinsurer for the year, where the fund is equal to or exceeds the initial statutory minimum authorised share capital.
- (13) An insurance company that engages the services of an insurance agent, a loss adjuster and an insurance broker shall include in its annual tax returns, a schedule showing the name and address of that agent, loss adjuster and insurance broker, the date their services were employed and terminated, as applicable, and payments made to each such agent, loss adjuster and insurance broker for the period covered by the tax returns.
- (14) The provisions on minimum tax in section 33 of this Act shall apply to insurance business, provided that “gross turnover” shall mean “gross premium and other income”, in the case of non-life insurance business and “gross income”, in the case of life insurance business.
- (15) For the purpose of subsection (14) –
- “gross premium” means the total premiums written, received and receivable, excluding unearned premium and premiums returned to the insured;
  - “gross income” means 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; and

“other income”, for the purposes of non-life insurance businesses means all the income of the non-life insurance business other than gross premium (excluding franked investment income).”

6. Section 18 of the Companies Income Tax Act is amended by deleting paragraph (b) (iii).

Deletion of section 18 (b) (iii) of the Companies Income Tax Act

7. Section 23 of the Companies Income Tax Act is amended by –

Amendment of section 23 of the Companies Income Tax Act

(a) substituting for subsection (1), a new subsection “(1)” –

“(1) There shall be exempt from tax –

- (a) the profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society;
- (b) the profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies, not being profits from any trade or business carried on by that company other than co-operative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority;
- (c) the profits of any company engaged in ecclesiastical or charitable activities of a public character in so far as such profits are not derived from a trade or business carried on by such company;
- (d) the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Service may prescribe;
- (e) the profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union;

- (f) dividend distributed by Unit Trust;
- (g) the profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any State in Nigeria;
- (h) the profits of any body corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria from the purchase and sale (whether for the purposes of export or otherwise) of that commodity;
- (i) the profits of any company or any corporation established by the law of a State for the purpose of fostering the economic development of that State, not being profits derived from any trade or business carried on by that corporation or from any share or other interest possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority;
- (j) any profits of a company other than a Nigerian company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria;
- (k) dividend, interest, rent, or royalty derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels, and for the purpose of this subsection, "Government approved channels", means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act;
- (l) the interest on deposit accounts of a foreign non-resident company:

Provided that the deposits into the account are transfers wholly of foreign currencies to Nigeria on

or after 1 January 1990 through Government approved channels;

- (m) the interest on foreign currency domiciliary account in Nigeria accruing on or after 1 January, 1990;
- (n) The profits of a small company in a relevant year of assessment:

Provided that such company shall, without prejudice to this exemption, comply with the tax registration and tax return filing stipulations of this Act and be subject to the provisions as regards time of filing, penalties for breach of statutory duties and all other provisions of this Act in all respects during the period which its profits are below the tax paying threshold;

- (o) dividends received from small companies in the manufacturing sector in the first five years of their operations;
- (p) dividend received from investments in wholly export-oriented businesses;
- (q) the profits of any Nigerian company (other than companies engaged in the Upstream, Midstream or Downstream Petroleum operations) in respect of goods exported from Nigeria, if the proceeds of such exports are used for the purchase of raw materials, plant, equipment and spare parts:

Provided that tax shall accrue proportionately on the portion of such proceeds which are not utilised in the manner prescribed;

- (r) the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplies;

- (s) the dividend and rental income received by a real estate investment company on behalf of its shareholders provided that –
  - (i) a minimum 75% of dividend and rental income is distributed, and
  - (ii) such distribution is made within 12 months of the end of the financial year in which the dividend or rental income was earned.
- (t) the compensating payments, which qualify as dividends under section 9(1)(c) of this Act, received by a lender from its approved agent or a borrower in a Regulated Securities Lending Transaction, such payments are deemed to be franked investment income and shall not be subjected to further tax in the hands of the lender;
- (u) the compensating payments, which qualify as dividends or interest under section 9(1)(c) of this Act, received by an approved agent from a borrower or lender on behalf of a lender or borrower in a Regulated Securities Lending Transaction; or
- (v) the profit of a company established within an export processing zone or free trade zone:

Provided that 100% production of such company is for export otherwise tax shall accrue proportionately on the profits of the company”; and

(b) substituting for subsection (1A), a new subsection “(1A)” –

“(1A) Nothing in this section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under sections 78, 79 or 80 of this Act, such that the provisions of sections 78, 79 and 80 of this Act shall apply to a dividend, interest, rent or royalty paid by a company exempted from tax under subsection (1) (a) to (e), (h) to (l), (n), (p) to (s) and (v).”

8. Section 30 of the Companies Income Tax Act is amended by inserting after subsection (1)(b)(ii), a new paragraph (iia) –

Amendment of section 30 of the Companies Income Tax Act

“(iia) that company transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any commerce, trade or activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform or online payments, to the extent that the company has significant economic presence in Nigeria, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover attributable to that presence;”

9. Section 31 of the Companies Income Tax Act is amended by inserting after subsection (1), new subsections (1A) - (1D) -

Amendment of section 31 of the Companies Income Tax Act

“(1A) The deduction to be allowed in accordance with the provisions of the Second Schedule, referred to in subsection (1), shall be the amount relating to the qualifying capital expenditure incurred in generating the assessable profits.

(1B) Where the qualifying capital expenditure is in relation to an asset that is only partially utilised in generating the taxable income such qualifying capital expenditure shall be pro-rated and only the portion relating to the taxable income shall be allowable as a deduction:

Provided that the provisions of this subsection shall apply only where the proportion of non-taxable income constitutes greater than 20% of the total income of the company.

(1C) For the purposes of this section and the Second Schedule to this Act, the capital allowance for any assessment year in which a company is considered as a small company or a medium company shall be computed in accordance to the provisions of the Second Schedule, and the amount so computed together with any unabsorbed allowances brought forward from previous years shall be deemed to

have been made and consumed by such company in each such year of assessment and the residue carried forward into subsequent years.

(1D) The provisions of subsection (1A) - (1C) shall not apply to a company that enjoys pioneer status under the Industrial Development (Income Tax Relief) Act.”

10. Section 33 of the Companies Income Tax Act is amended by substituting for subsection (2), a new subsection “(2)” -

Amendment of section 33 of the Companies Income Tax Act

“(2) For the purpose of subsection (1), the minimum tax to be levied and paid shall be 0.5% of gross turnover of the company less franked investment income:

Provided that –

- (a) the applicable minimum tax is reduced to 0.25% for tax returns prepared and filed with respect to financial years ending on any date between 1 January 2020 and 31 December 2021, both days inclusive;
- (b) where the company had filed its relevant tax returns for any year of assessment falling on any date between 1 January 2020 and 31 December 2021, both days inclusive, the applicable minimum tax is reduced to 0.25% for tax returns prepared and filed for any two accounting periods ending on any date between 1 January 2019 and 31 December 2021, both days inclusive; and
- (c) for the purpose of this subsection, the application of the reduced rate shall be available for only two accounting periods either from 1 January 2019 to 31 December 2020 or from 1 January 2020 to 31 December 2021, as may be determined by the taxpayer.”

11. Section 39 is amended –

Amendment of section 39 of the Companies Income Tax Act

- (a) in subsection (1) by substituting for paragraph (a), a new paragraph “(a)”

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“(a) An initial tax-free period of three years which may, subject to the satisfactory performance of the business, be renewed for an additional period of two years;

Provided that:

(i) this incentive is claimable not more than once by the same company,

(ii) any company formed from reorganisation, restructuring, buy-back or other similar schemes out of a company which has already enjoyed this incentive shall not be entitled to it, and

(iii) this incentive shall not apply to any company that has claimed an incentive for trade or business of gas utilisation under any law in Nigeria, including the Petroleum Profits Tax Act or the incentives under the Industrial Development (Income Tax Relief) Act”; and

(b) by deleting subsection (3).

12. Section 55 of Companies Income Tax Act is amended by inserting after subsection (7), a new subsection “(8)” –

Amendment of section 55 of the Companies Income Tax Act

“(8) Any company which fails to comply with the provision of subsection (2) of this section and claims the minimum tax relief under section 33(2) of this Act shall be liable to pay as penalty for late filing, an amount equivalent to the relief sought.

13. Substitute for section 77 of the Companies Income Tax Act, a new section “77”–

Substitution for section 77 of the Companies Income Tax Act

“77. (1) Tax charged by any assessment which is not or has not been the subject of an objection or appeal by the company shall be payable (after the deduction of any amount to be set-off for the purposes of collection under any provision of this Act) at the place stated in the notice of assessment within 30 days after service of such notice upon the company:

Provided that the Service, in its discretion, may extend the time within which payment is to be made.

- (2) Subject to the provisions of section 69 (3) of this Act, collection of tax in any case where notice of an objection or appeal has been given by the company shall remain in abeyance until such objection or appeal is determined, save that the company shall have paid the tax which is not or has not been the subject of an objection or appeal as provided in subsection (1).
- (3) Upon the determination of an objection or appeal, the Service shall serve upon the company a notice of the tax payable as so determined, and that tax shall be payable within one month of the date of service of such notice upon the company.
- (4) Every Company shall make payment of tax due on or before the due date of filing, in one lump sum or in instalments:

Provided that the final instalments must be paid on or before the due date of filing.

- (5) Where a company pays its tax 90 days before the due date as provided under section 55 of this Act, such company shall be entitled to a bonus of—
  - (a) 2% if such company is a medium-sized company,  
or
  - (b) 1% for any other company,on the amount of tax paid, which shall be available as a credit against its future taxes.
- (6) Any balance of taxes unpaid as at the due date shall attract interest and penalties as provided in this Act or any other relevant law for failure to pay on the due date.
- (7) Notwithstanding anything to the contrary in any law, income tax payable under sections 52, 53 and 55 of this Act shall be paid to the Service in the currency in which

the income giving rise to the tax was derived and paid to the company making the return.”

14. Section 78 of the Companies Income Tax Act is amended by substituting for subsection (4), a new subsection “(4)” –

Amendment of section 78 of the Companies Income Tax Act

“(4) The tax, when paid over to the Service, shall be the final tax due from a –

(a) non-resident recipient of the payment; and

(b) unit trust recipient of the payment.”

15. Substitute for section 81 of the Companies Income Tax Act, a new section “81” –

Substitution for section 81 of the Companies Income Tax Act

“81. (1) Income tax assessable on any company, whether or not an assessment has been made, shall, if the Service so directs, be recoverable from any payments made by any person to such company.

- (2) Any such direction may apply to any person or class of persons specified in such direction, either with respect to all companies or a company or class of companies, liable to payment of income tax:

Provided that in the case of road, bridges, building and power plant construction contract, the rate shall not exceed 2.5%.

- (3) Any direction under subsection (1) shall be in writing addressed to the person or published in the Federal Government Gazette and shall specify the nature of payments and the rate at which tax is to be deducted.

- (4) In determining the rate of tax to be applied to any payments made to a company, the Service may take into account –

(a) any assessable profits of that company for the year arising from any other source chargeable to income tax under this Act; and

- (b) any income tax or arrears of tax payable by that company for any of the six preceding years of assessment.
- (5) Income tax recovered under the provisions of this section by deduction from payments made to a company shall be set off for the purpose of collection against tax charged on such company by an assessment.
- (6) Every person required under any provisions of this Act to make any deduction from payments made to any company shall account to the Service in such manner as the Service may prescribe for the deduction so made.
- (7) Any excess payment arising from compliance with sections 78, 79, 80 and 81 of this Act over the assessment under section 65 of this Act shall be refunded by the Service within ninety days of the assessment if duly filed with the option to set off against future taxes.
- (8) The provisions of this section shall not apply to compensating payments made under a Registered Securities Lending Transaction.
- (9) The Minister of Finance on the advice of the Service may make regulations for the carrying out of the provisions of this section.”

16. Section 105 of the Companies Income Tax Act is amended by substituting for the definition of Real Estate Investment Company, a new definition –

Amendment of section 105 of the Companies Income Tax Act

“Real Estate Investment Company” means for the purpose of this Act, a Company (including a Real Estate Unit Trust) duly approved by the Securities and Exchange Commission as a Real Estate Investment Scheme in Nigeria.”

### PART III – CUSTOMS, EXCISE TARIFFS, ETC. (CONSOLIDATION) ACT

17. Section 21 of the Customs, Excise Tariffs, etc. (Consolidation) Act is amended by inserting after subsection (2), a new subsection “(3)” –

Amendment of section 21 of the Customs, Excise Tariffs, etc. (Consolidation) Act

“(3) Excise duty on non-alcoholic, carbonated and sweetened beverages shall be charged at a specific rate of ₦10 per litre.”

PART IV – FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT)  
ACT

18. Section 25 of the Federal Inland Revenue Service (Establishment) Act is amended by – Amendment of section 25 of the Federal Inland Revenue Service (Establishment) Act

(a) substituting for subsection (4), a new subsection “(4)” -

“(4) The Service may deploy proprietary or third party technology to automate the tax administration process including tax assessment and information gathering provided it gives 30 days’ notice to the taxpayer”

(b) inserting after subsection (4), new subsections “(4A)” and “(4B)” –

“(4A) The Service may, upon written request from a taxpayer who has demonstrated good cause, withdraw or grant extension to the notice referred to in subsection (4).

(4B) Any person who fails to grant access to the Service after 30 days of receipt of the notice specified in subsection (4) or the extension granted under subsection (4A), is liable to an administrative penalty of ₦25,000 for each day that it fails to grant access.”

19. Section 28 of the Federal Inland Revenue Service (Establishment) Act is amended by – Amendment of section 28 of the Federal Inland Revenue Service (Establishment) Act

(a) substituting for subsection (3), a new subsection “(3)” –

“(3) Any bank that contravenes the provisions of this section is liable to a penalty of ₦1,000,000 for each of the returns or information not provided or incorrect returns or information provided.”

(b) inserting after subsection (3), a new subsection “(4)” –

“(4) For the purpose of subsection (3), the penalty shall be payable in respect of each quarterly return not filed by the bank.”

20. Section 35(4) of the Federal Inland Revenue Service (Establishment) Act is amended by substituting for the figure “48” in line three, the figure “47”. Amendment of section 35 of the Federal Inland Revenue Service (Establishment) Act

21. Section 50 of the Federal Inland Revenue Service (Establishment) Act is amended by substituting for subsection (1), a new subsection “(1)” – Amendment of section 50 of the Federal Inland Revenue Service (Establishment) Act

“(1) Every person in an official duty or being employed for the administration of this Act or otherwise, that has access to taxpayer information shall regard and deal with such information as secret and confidential.”

22. Substitute for section 68 of the Federal Inland Revenue Service (Establishment) Act a new section 68 – Substitution for section 68 of the Federal Inland Revenue Service (Establishment) Act

“68. (1) This Act and the laws listed in the First Schedule to this Act shall take precedence over any other laws with regards to the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federal Government or Federation in Nigeria, except in cases such tax or levy is a subject of litigation in a court of competent jurisdiction, and if the provisions of any other law, including the enactments in the First Schedule are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.

(2) Subject to subsection (1) and notwithstanding any other law imposing taxes or levies in Nigeria, the Service shall be the primary agency of the Federal Government of Nigeria responsible for the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federation and the Federal Government or any of its agencies, except as may be authorised by the Minister responsible for Finance by regulation as approved by the National Assembly.

(3) Subject to subsection (1), it shall be an offence for any person to carry out or authorise another to carry out the function of administering, assessment, collection,

accounting or enforcement of taxes and levies due to the Federation and the Federal Government of Nigeria, except as may be provided under this Act or any of the laws listed in the First Schedule to this Act or as authorised by the Minister responsible for Finance by regulation as approved by the National Assembly.

- (4) For the purposes of enforcing compliance with the provisions of the relevant tax laws and preventing tax revenue loss, the Service may collaborate with relevant Ministries, Departments, Agencies or institutions of the Federal Government.
- (5) Any person or agency of the Federal Government that becomes aware of any incidence requiring tax investigation, enforcement or compliance, in the course of the performance of its functions, shall refer same to the Service for necessary action and the Service may in accordance with the provisions of this Act collaborate with such person or agency in carrying out required investigation, enforcement or compliance measures.
- (6) Any person who commits an offence under this section or contravenes any of the provisions of the section is liable on conviction to imprisonment for a term not exceeding five years or to a fine of ₦10,000,000 or both.”

#### PART V – PERSONAL INCOME TAX ACT

23. Section 33 of the Personal Income Tax Act is amended by substituting for subsection (3), a new subsection “(3)” –

Amendment of section 33  
of the Personal Income Tax  
Act

“(3) Subject to section 17 of this Act, there shall be allowed a deduction of the annual amount of any premium paid by the individual during the year preceding the year of assessment to an insurance company in respect of insurance on his life or the life of his spouse.”

24. Section 47 of the Personal Income Tax Act is amended by –

Amendment of section 47  
of the Personal Income Tax  
Act

- (a) substituting for subsection (2), a new subsection “(2)” -

“(2) For the purpose of paragraphs (a) to (d) of subsection (1), the time limited by a notice shall not be less than seven days from the date of service of the notice, so however that an officer of the relevant tax authority not below the rank of a Senior Manager or Grade Level 14 equivalent may act in any of the cases stipulated in subsection (1) (c) or (d), without giving any of the required notices set out in this section”;

(b) substituting for subsection (3), a new subsection “(3)” -

“(3) Any bank that contravenes the provisions of this section is liable to a penalty of ₦1,000,000 for each of the returns or information not provided or incorrect returns or information provided”; and

(c) inserting after subsection (3), a new subsection “(3A)”

“(3A) For the purpose of subsection (3), the penalty shall be payable in respect of each quarterly return not filed by the bank.”

25. Section 49 of the Personal Income Tax Act is amended –

Amendment of section 49  
of the Personal Income Tax  
Act

(a) in subsection (2), by substituting for the words “a return at the end of each month” in line 2, the words “quarterly returns”;

(b) by substituting for subsection (4), a new subsection “(4)” -

“(4) Any bank that contravenes the provisions of this section is liable to a penalty of ₦1,000,000 for each of the returns not provided or incorrect returns provided”; and

(c) inserting after subsection (4), a new subsection (4A)

“(4A) For the purpose of subsection (4), the penalty shall be payable in respect of each quarterly return not filed by the bank.”

26. Section 94 of the Personal Income Tax Act is amended by substituting for subsection (1), a new subsection “(1)” –

Amendment of section 94  
of the Personal Income Tax  
Act

“(1) A person guilty of an offence under this Act, or a person who contravenes or fails to comply with any of the provisions of this Act or any rule or regulation made thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of ₦20,000 and where the offence is the failure to furnish a return, statement or information or to keep records required, a further sum of ₦2,000 for every day during which the failure continues, and, in default of payment, to imprisonment for six months, and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the Court may order.”

## PART VI – STAMP DUTIES ACT

27. Section 89A of the Stamp Duties Act is amended by substituting for subsection (3), a new subsection “(3)” – Amendment of section 89A of the Stamp Duties Act

“(3) The Minister of Finance shall, subject to the approval of the National Assembly, make regulations for the imposition, administration, collection and remittance of the Levy, including regulations relating to the auditing, accounting, allocation and distribution of arrears of the relevant stamp duties and Electronic Money Transfer Levies collected between 2015 and 2019 fiscal years, within 30 days of the date when this Act became effective:

Provided that Electronic Money Transfer Levies subsequently collected shall be distributed within 30 days following the month of collection.”

## PART VII – TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC.) ACT

28. Section 1(2) of the Tertiary Education Trust Fund (Establishment, Etc.) Act is amended by substituting for subsection (2), a new subsection “(2)”- Amendment of section 1 of the Tertiary Education Trust Fund (Establishment, etc.) Act

“(2) The tax, at the rate of 2.5%, shall be charged on the assessable profit of a company registered in Nigeria, other than a small company as defined under the Companies Income Tax Act.”

29. Section 2(2) of the Tertiary Education Trust Fund (Establishment, Etc.) Act is amended by substituting for the figure “60”, in line one, the figure “30”. Amendment of section 2 of the Tertiary Education Trust Fund (Establishment, etc.) Act

## PART VIII – VALUE ADDED TAX ACT

30. Substitute for section 10 of the Value Added Tax Act, a new section 10 -

Substitution for section 10  
of the Value Added Tax  
Act

- “10. (1) For the purposes of this Act, a non-resident person that makes a taxable supply to Nigeria, shall register for tax with the Service and obtain a Tax Identification Number.
- (2) A non-resident person shall include the tax on its invoice for all taxable supplies.
- (3) The taxable person to whom a taxable supply is made in Nigeria, or such other person as may be appointed by the Service shall withhold or collect the tax, as the case may be, and remit same to the Service.
- (4) Where a person appointed under subsection (3) has made a taxable supply to a taxable person in Nigeria, the taxable person shall not have the obligation to withhold the tax, except where the person so appointed has failed to collect the tax.
- (5) A non-resident person that makes a taxable supply to Nigeria may appoint a representative for the purpose of compliance with its tax obligations.
- (6) The Service may issue a guideline for the purpose of giving effect to the provisions of this section, including the form, time and procedure for filing returns and payment by non-resident suppliers appointed by the Service under subsection (3).”

31. Section 14 of the Value Added Tax Act is amended by substituting for subsection (3), a new subsection “(3)” –

Amendment of section 14  
of the Value Added Tax  
Act

- “(3) The Service may appoint any person to withhold or collect the tax, and the person so appointed shall, on or before the 21st day of the following month, remit the tax so withheld or collected to the Service in the currency of the transaction.”

32. Section 15 of the Value Added Tax Act is amended –

Amendment of section 15  
of the Value Added Tax  
Act

(a) in subsection (2) by substituting for the figure “13” in the proviso, the figure “13A”; and

(b) by inserting after subsection (2), a new subsection “(3)” –

“(3) The exemption provided for in subsection (2), shall not apply to companies engaged in upstream petroleum operations as described in the Petroleum Industry Act and Petroleum Profits Tax Act.”

## PART IX – INSURANCE ACT

33. Section 9 of the Insurance Act is amended by substituting for the words “paid-up share capital”, the words “Capital requirement” and wherever it appears.

Amendment of section 9 of  
the Insurance Act

34. Section 10 (3) of the Insurance Act is amended by substituting for the words “paid-up share capital”, the words “Capital requirement” and wherever it appears.

Amendment of section 10  
(3) of the Insurance Act

35. Insert in section 102 of the Insurance Act the definition of “Capital Requirement” –

Amendment of section 102  
of the Insurance Act.

“Capital Requirement” means –

(a) in the case of existing company –

- (i) the excess of admissible assets over liabilities, less the amount of own shares held by the company,
- (ii) subordinated liabilities subject to approval by the Commission, and
- (iii) any other financial instrument as prescribed by the Commission,

and for or the purpose of this paragraph, Admissible Assets are defined as Share Capital, Share Premium, Retained Earnings, Contingency Reserves, and any other admissible assets subject to the approval of the Commission,

(b) in the case of a new company –

- (i) Government Bonds and Treasury Bills,
- (ii) Cash and Bank balances, and
- (iii) Cash and cash equivalent.

#### PART X – NIGERIA POLICE TRUST FUND (ESTABLISHMENT) ACT

36. Section 4 of the Nigeria Police Trust Fund (Establishment) Act is amended by Inserting after subsection (2), a new subsection “(3)” -

Amendment of section 4 of the Nigeria Police Trust Fund (Establishment) Act

“(3) The Federal Inland Revenue Service shall assess, collect, account and enforce the payment of the levy imposed by subsection (1) (b) and the provisions of the Companies Income Tax Act Cap. C21, Laws of the Federation of Nigeria, 2004 and the Federal Inland Revenue Service (Establishment) Act No. 13, 2007 shall apply to the administration, assessment, collection, accounting, returns and enforcement of the levy.”

#### PART XI – NATIONAL AGENCY FOR SCIENCE AND ENGINEERING INFRASTRUCTURE ACT

37. Section 20 of the National Agency for Science and Engineering Infrastructure Act is amended by –

Amendment of section 20 of the National Agency for Science and Engineering Infrastructure Act

(a) substituting for subsection (2) (a) and (b), new subsection 2(a) and (b) -

- “(a) 1% of the Federation Account;
- (b) levy on profit before tax of commercial companies and firms with turn-over of ₦100,000,000 and above covering the banking, mobile telecommunication, ICT, aviation, maritime, oil and gas sectors which shall be-
  - (i) at the rate of 0.25%,
  - (ii) collected by the Federal Inland Revenue Service (FIRS), and
  - (iii) credited to the account of the Agency.

## PART XII – FINANCE (CONTROL AND MANAGEMENT) ACT

38. Section 3 of the Finance (Control and Management) Act is amended by inserting new subsections “(2)” and “(3)” -

Amendment of section 3 of the Finance (Control and Management) Act.

“(2) In the discharge of their powers to collect taxes, levies, fees and all other revenue accruable to the Federation, all Ministries, Departments, Agencies and other institutions of the Federal Government shall comply with sections 59, 80 and 81 of the Constitution of the Federal Republic of Nigeria to the effect that all revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under the Constitution of the Federal Republic of Nigeria as a Statutory Transfer or other such payment that is not required by any law to be first payable into any fund before being paid into the Consolidated Revenue Fund, and subsequently transferred into that other fund or account) shall be paid into and form one Consolidated Revenue Fund of the Federation.

(3) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation or any other public fund except to meet expenditure that is charged upon the Consolidated Revenue Fund or other public fund by the Constitution of the Federal Republic of Nigeria or where the issue of those moneys has been authorised by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 81 of the Constitution of the Federal Republic of Nigeria or authorised by any other Act of the National Assembly.”

39. Section 4 of the Finance (Control and Management) Act is amended by –

Amendment of section 4 of the Finance (Control and Management) Act.

(a) substituting for subsection (1), a new subsection “(1)” -

“(1) Every Ministry, Department, Agency, official or other persons concerned in or responsible for the collection, receipt, custody, issue or payment of public moneys, stores, stamps, investments, securities, or negotiable instruments, whether the property of Government or on deposit with or entrusted to Government or any public officer in his official capacity either alone or jointly with any public officer or any other person, shall

comply with all rules, regulations, guidelines and other instructions that may be issued by or under the direction of the Minister responsible for Finance in respect to the custody and handling of the same and accounting therefore.”

(b) inserting new subsections (1A) and (1B) -

“(1A) All taxes, levies, revenues or other moneys raised or received by the Federation, the Federal Government of Nigeria or any agency of the Federal Government of Nigeria shall be paid in gross into the Federation Account, the Consolidated Revenue Fund or relevant Special Purpose Account as provided by the Constitution of the Federal Republic of Nigeria or the enabling Act of the National Assembly as the case may be.

(1B) Any person, who being an officer of any Federal Ministry, Department or Agency or institution of Government to which this Section refers to, who fails to pay or authorise the payment of any part of any taxes, levies and other revenues collected on behalf of the Federation, Federal Government of Nigeria or any Ministry, Department, Agency or institution of the Federal Government of Nigeria to any person before the balance is paid into the Federation Account or the Consolidated Revenue Fund, as the case may be, except as authorised by the National Assembly or Minister responsible for Finance, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of ₦5,000,000 or both.”

### PART XIII – FISCAL RESPONSIBILITY ACT

40. Section 41 of the Fiscal Responsibility Act is amended by substituting for subsection (1), a new subsection “(1)” –

Amendment of section 41  
of the Fiscal  
Responsibility Act

“(1) The framework for debt management during the financial year shall be based on the following rules –

(a) Government at all tiers shall only borrow for capital expenditure, human development and to undertake

critical reforms of significant national impact, provided that, such borrowing shall be on concessional terms or at relatively low interest rates and with a reasonably long amortisation period subject to the approval of the appropriate legislative body where necessary; and

(b) Government shall ensure that the level of public debt as a proportion of national income is held at a sustainable level as prescribed by the National Assembly on the advice of the Minister.”

41. The provisions of this Act shall take effect from 1<sup>st</sup> January 2022 or such other date that shall be indicated by the National Assembly by law (or by the President of the Federal Republic of Nigeria by assent or order). Effective date

42. This Act may be cited as the Finance Act, 2021. Citation