

HIGHLIGHTS OF THE FINANCE ACT 2021

The Finance Act 2021 (Finance Act)¹ amends principal tax and financial legislation and introduces vital innovations in Nigeria’s business environment. It is a quintessential piece of legislation, as it plays an important role in the implementation of the budget for the 2022 financial year. The major highlights of the Finance Act include:

1. Introduction of Capital Gains Tax (CGT) on gains accruing from the disposal of shares in any Nigerian company registered under the Companies and Allied Matters Act.² Capital Gains Tax on the disposal of shares to be taxed at a rate of 10%.³
2. Expansion of the definition of Nigerian Government Securities to include other long-term securities issued by the Nigerian Government.⁴
3. Amendment of the term “dividend” to exclude the need for the underlying transaction giving rise to the compensating payment to be a receipt of dividends by a borrower on any shares or securities.⁵
4. Exemption of dividends received from investments in wholly export-oriented businesses from taxation.⁶
5. Exclusion of profits accruing to a company engaged in petroleum operations derivable from goods exported from Nigeria, which proceeds are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts, from tax exemption.⁷

¹ The Finance Act took effect from 1 January 2022.

² See section 2 of the Finance Act which amends section 30 of the Capital Gains Tax Act. The application of this provision is exempted where the proceeds are utilised to acquire shares in the same entity or other Nigerian companies within the same assessment year, the proceeds are less than ₦100,000,000.00 (one hundred million naira) in any 12 (twelve) consecutive months or where the shares are transferred to an approved borrower/lender in a regulated securities lending transaction.

³ Section 30(3) of the Capital Gains Tax Act (as amended by the Finance Act) is without prejudice to section 2 of the same Act

⁴ See section 30(5) of the Capital Gains Tax Act (as amended by the Finance Act)

⁵ See section 3 of the Finance Act which amends section 9(1)(d)(ii) of the Companies Income Tax Act

⁶ See section 7 of the Finance Act which amends section 23(1)(p) of the Companies Income Tax Act

⁷ See section 7 of the Finance Act which amends section 23(1)(q) of the Companies Income Tax Act

6. Permission of the Federal Inland Revenue Service (FIRS) to tax foreign companies that transmit, emit or receive signals, sounds, messages, images or data in respect of any commerce, trade or activity.⁸
7. Reduction of the minimum tax rate for companies from 0.5% of gross turnover to 0.25%, which is applicable between the accounting periods of 1 January 2019 and 31 December 2021. The taxpayer is allowed to choose the period to be taxed.⁹
8. Restriction of the incentive of a 3 (three) year tax holiday renewable for an additional period of 2 (two) years, accruing to companies engaged in the trade/business of gas utilisation in downstream operations. This incentive can only be claimed once by the same company and any company which emerges from a restructuring, reorganisation, buy-out etc, of/involving the former company, or any other company which has already claimed an incentive for trade/business of gas utilisation under any other law in Nigeria.¹⁰
9. Introduction of an additional penalty for companies that fail to file a return of their statement of accounts at least once a year and claim the minimum tax relief allowed under the Companies Income Tax Act.¹¹
10. Introduction of a 2.5% limit on rate of income tax recoverable from the payment of any person to a company regarding road, bridges, building and power plant construction contracts.¹²
11. Expansion of the definition of Real Estate Investment Companies to include Real Estate Investment Trusts duly approved by the Securities and Exchange Commission to operate as a Real Estate Investment Scheme in Nigeria.¹³

⁸ See section 8 of the Finance Act which introduces paragraph (ia) to section 30(1)(b) of the Companies Income Tax Act

⁹ See section 10 of the Finance Act which amends section 33 of the Companies Income Tax Act

¹⁰ See section 11 of the Finance Act which amends section 39(1)(a) of the Companies Income Tax Act

¹¹ See section 12 of the Finance Act which amends section 55 of the Companies Income Tax Act

¹² See section 15 of the Finance Act which amends section 81(2) of the Companies Income Tax Act

¹³ See section 16 of the Finance Act which amends section 105 of the Companies Income Tax Act

12. Introduction of excise duty on non-alcoholic, carbonated and sweetened beverages at the rate of ₦10 (ten naira) per litre.¹⁴
13. The FIRS being able to deploy third-party technology to automate the tax administration process, provided a notice of 30 (thirty) days is given to the tax payer.¹⁵
14. Authorisation of the FIRS, upon written request from a tax payer who demonstrates good cause, to withdraw or extend the 30 (thirty) day notice period in (13) and to penalise a tax payer to the tune of ₦25,000.00 (twenty-five thousand naira) for failing to grant access to the FIRS after 30 (thirty) days of receipt of the notice in (13) or the expiration of an extended period granted by the FIRS.¹⁶
15. Increase in the penalty imposed for a bank's failure to provide the FIRS with quarterly returns of information on transactions exceeding the sum of ₦5,000,000.00 (five million naira) and ₦10,000,000.00 (ten million naira) for individual and corporate customers respectively, when requested. There is also an increase in the penalty for contravening provisions of FIRS Act requiring returns on bank transactions from ₦50,000.00 (fifty thousand naira) and ₦500,000.00 (five hundred thousand naira) for individual and corporate customers respectively, to ₦1,000,000.00 (one million naira) for defaults relating to individual and corporate customers alike.¹⁷
16. Extension of the duty of secrecy and confidentiality to every person with access to taxpayers' information regardless of whether they are employees of the FIRS.¹⁸

¹⁴ See section 17 of the Finance Act which introduces sub-section 3 to section 21 of the Customs, Excise Tariff, etc. (Consolidation) Act

¹⁵ See section 18 of the Finance Act which amends section 25(4) of the Federal Inland Revenue Service (Establishment) Act

¹⁶ See section 18 of the Finance Act which introduces sub-sections 4A & 4B to section 25 of the Federal Inland Revenue Service (Establishment) Act

¹⁷ See section 19 of the Finance Act which amends section 28 of the Federal Inland Revenue Service (Establishment) Act

¹⁸ See section 21 of the Finance Act which amends section 50(1) of Federal Inland Revenue Service (Establishment) Act

17. Limitation on the scope of the FIRS' powers to preside over all matters relating to administration, assessment, collection, accounting, and enforcement of taxes and levies due to the Federal Government where the specified tax is subject to litigation in a competent court.¹⁹
18. Criminalisation of carrying out or authorising a person to carry out the functions of administering, assessing, collecting, accounting or enforcement of taxes due to the federation/Federal Government of Nigeria outside of the provisions of the FIRS Act or related laws/regulations.²⁰
19. Creation of an obligation on any person or agency of the Federal Government who becomes aware of an incidence requiring tax investigation, enforcement and compliance to refer same to the FIRS for necessary action.²¹
20. Restriction of the limit of allowable deductions in respect of Personal Income Tax for life insurance to premiums paid by an individual during the year preceding the year of assessment to an insurance company, in respect of an insurance policy on an individual's life or the life of an individual's spouse. This does not extend to payments made in respect of a contract for deferred annuity on an individual's life or that of their spouse.²²
21. Increase in the penalty imposed for a bank's failure to provide to the relevant tax authority, on demand and within the time prescribed, full (correct) information regarding the income or gain of a person. The penalty for contravening has been increased from ~~₦~~50,000.00 (fifty thousand naira) and ~~₦~~500,000.00 (five hundred thousand naira) for a defaulting individual and body corporate respectively, to a uniform ~~₦~~1,000,000.00 (one million naira) for defaulting individuals and corporations alike.²³
22. Substitution of the words 'return at the end of each month' with 'quarterly returns', with respect to the timeline for submission of the names and

¹⁹ See section 22 of the Finance Act which amends section 68(1) of the Federal Inland Revenue Service (Establishment) Act

²⁰ See section 68(3) Federal Inland Revenue Service (Establishment) Act (as amended by the Finance Act)

²¹ See section 68(5) of the Federal Inland Revenue Service (Establishment) Act (as amended by the Finance Act)

²² See section 23 of the Finance Act which introduces a sub-section 3 to section 33 of the Personal Income Tax Act

²³ See section 24 of the Finance Act which amends section 47(3) of the Personal Income Tax Act

addresses of new customers to the FIRS by person's engaged in banking business. This means that where applicable, bankers have to prepare returns stating the names and addresses of new customers of the bank on a quarterly basis and no longer on a monthly basis.²⁴

23. Introduction of an obligation on the Minister of Finance to make regulations relating to the auditing, accounting, allocation and distribution of arrears of Stamp Duties and Electronic Money Transfer (EMT) levies collected between 2015 and 2019 fiscal years²⁵ and for subsequent EMT levies to be distributed with 30 (thirty) days of collection.²⁶

24. Increase in the rate of Education Tax payable by Nigerian companies (with the exemption of 'small companies' as defined under the Companies Income Tax Act) on assessable profits from 2% to 2.5%.²⁷

25. Removal of the requirement for tax withheld/collected by a taxable person from a non-resident person to be remitted in the currency of the transaction.²⁸

26. Substitution of the words 'paid-up share capital' with the words 'capital requirement' in sections 9 and 10(3) of the Insurance Act to clarify the capital requirements for various categories of insurance business.²⁹

27. Introduction of a definition and or description of what constitutes 'capital requirement' for new and existing insurance companies, respectively.³⁰

28. Authorisation of the FIRS to collect, assess, account and enforce the payment of the Nigerian Police Trust Fund levy. This is a 0.005% tax on the net profit of companies that operate in Nigeria. The FIRS (Establishment)

²⁴ See section 25 of the Finance Act which amends section 49 of the Personal Income Tax Act

²⁵ This is to be done within 30 (thirty) days from the effective date of the Act

²⁶ See section 27 of the Finance Act which amends section 89A(3) of the Stamp Duties Act

²⁷ See section 28 of the Finance Act which amends section 1(2) of the Tertiary Education Trust Fund (Establishment, etc) Act

²⁸ See section 30 of the Finance Act which amends section 10(3) of the Value Added Tax Act

²⁹ See sections 34 and 35 of the Finance Act which amends sections 9 and 10(3) of the Insurance Act

³⁰ See section 35 of the Finance Act which amends section 102 of the Insurance Act

Act equally applies to the administration, collection, assessment, accounting, returns and enforcement of the said levy.³¹

29. Imposition of a levy at the rate of 0.25% on commercial companies and firms engaging in the banking, mobile telecommunication, ICT, aviation, maritime and oil and gas sectors, with a minimum turnover of ₦100,000,000.00 (one hundred million naira) to constitute part of the funds for the National Agency for Science and Engineering Infrastructure to be collected by the FIRS.³²

30. Authorisation of the federal government to borrow to undertake 'critical reforms of significant national impact' in addition to capital expenditure and human development.³³

The amendments introduced by the Finance Act are intended to significantly complement the federal government of Nigeria's efforts at increasing non-oil revenue and reducing current deficit-to-GDP ratio. It is worth noting that the amendments cut across various key industries, including the banking, telecommunications, ICT, aviation, maritime and oil and gas sectors, as well as trade and education. It is hoped that the Finance Act will play a major role in the growth of the Nigerian economy in 2022, meaning that investors and stakeholders should be aware of the potential impact of the Act.

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³¹ See section 36 of the Finance Act which amends section 4 of the Nigerian Police Trust Fund Establishment) Act

³² See section 37 of the Finance Act which amends section 20(2)(b) of the National Agency for Science and Engineering Infrastructure Act.

³³ See section 40 of the Finance Act which amends section 41 of the Fiscal Responsibility Act