

THE IMPACT OF THE 2020 FINANCE ACT ON THE OIL AND GAS INDUSTRY IN NIGERIA



INTRODUCTION

So, we've all heard about the trending Finance Act, 2020 (the "Act") signed into law by President Muhammadu Buhari on Monday 13th January, 2020. The Act has made sweeping changes to a number of existing tax laws namely: Companies Income Tax Act, Value Added Tax Act, Customs and Excise Tariff Act, Personal Income Tax, Capital Gains Tax Act, Stamp Duties Act and Petroleum Profits Tax Act. These changes come in the wake of the Federal Government's drive for increased revenue to fund its budget and to simultaneously amend certain aspects of our tax laws which are not in tandem with current international best practice as well as those which over the years have been the source of contention between tax authorities and affected corporate entities.

We will be focusing on the provisions that touch on the Petroleum Profit Tax Act.

The Implication of Section 24 of The Finance Act, 2020

Section 24 of the Finance Act provides as follows:

"Section 60 of the Petroleum Profit Tax Act is deleted."

For ease of reference, section 60 of the Petroleum Profit Tax Act, 2014 provides:

"No tax shall be charged under the provisions of the Personal Income Tax Act or any other Act in respect of any income or dividends paid out of any profits which are taken into account, under the provisions of this Act, in the calculation of the amount of any chargeable profits upon which tax is charged, assessed and paid under the provisions of this Act."

Generally, taxable profits of Nigerian companies paid out as dividends to shareholders are still subject to Withholding Tax at the rate of 10% save for certain types of ventures which are exempt. This of course is a type of double taxation employed to some degree by various countries. Double taxation occurs when individual shareholders pay taxes on dividends from profits which were already subject to tax by the corporate entity. One of the justifications usually given for this is that

the shareholder is a separate and different entity from the company and if the company as a separate entity is paying taxes on its income, the individual shareholder earning income from dividends should not be exempt from paying income tax. However, a question that a lot of scholars have asked is, "who actually pay and bear the burden of corporate taxes?" A company is a fictional person and at the end of the day, it is the shareholders, owners of capital, the employees and corporate customers of the company that bear the corporate tax burden in the form of reduced dividend earnings (i.e., reduced returns on investment), lower returns, reduced salaries or higher product prices. For Oil and gas companies in Nigeria, dividend pay-outs from taxable profits have hitherto been exempt from withholding tax to avoid the incidence of double taxation in that industry so as encourage foreign investors considering the high rates of taxes, including royalties and a plethora of contributions required to be made by oil and gas producing companies. That era is now in the past as shareholders would need to relinquish 10% withholding tax on dividends paid out to them.

Of course, countries enter into double taxation treaties in order to reduce the effect of such fiscal administration and Nigeria has entered into a few of such. Such tax treaties would usually seek to reduce non-resident withholding tax rates on payments on dividends, royalties and interest on loans. It appears that Nigeria is still in the clear with the 10% rate of withholding tax on dividends as most of these treaties provide for a higher maximum threshold.

CONCLUSION

To avoid investor fatigue in the sector, particularly with the uncertainty in our laws coupled with the recent passage of the Deep Offshore and Inland Basin Production Sharing Contract (Amendment) Act 2019 which although one might say was long overdue, significantly increases royalty rates for offshore operations, it would be left for each company to devise means of reducing their exposure to double taxation. One of the ways to achieve this might be through retained earnings. Legal and tax advice would need to be obtained to properly structure any tax arbitrage.

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