

Personal Income Tax (Amendment) Act, 2011.

EXPLANATORY MEMORANDUM

This Act amends the Personal Income Tax Act Cap. P8 Laws of the Federation of Nigeria to make it more responsive to the tax policies of the Federal Government and enhance its implementation and effectiveness.

PERSONAL INCOME TAX ACT (AMENDMENT) BILL, 2011

ARRANGEMENT OF SECTIONS

Section:

- 1 Amendment of Cap. P8 LFN, 2004.
- 2 Amendment of section 2.
- 3 Amendment of section 3.
- 4 Amendment of section 10.
- 5 Amendment of section 33.
- 6 Amendment of section 36.
- 7 Amendment of section 37.
- 8 Amendment of section 38.
- 9 Amendment of section 44.
- 10 Amendment of section 47.
- 11 Amendment of section 49.
- 12 Amendment of section 52.
- 13 Amendment of section 57.
- 14 Amendment of section 60.
- 15 Deletion of section 61-67.
- 16 Amendment of section 70.
- 17 Amendment of section 73.
- 18 Substituting for section 74.
- 19 Amendment of section 77.
- 20 Amendment of section 81.
- 21 Amendment of section 85.
- 22 Amendment of section 86.
- 23 Amendment of section 87.
- 24 Amendment of section 88.
- 25 Amendment of section 94.
- 26 Amendment of section 95.
- 27 Amendment of section 96.
- 28 Amendment of section 97.
- 29 Substituting for section 104.
- 30 Insertion of new section 106A.
- 31 Amendment of section 108.
- 32 Amendment of first Schedule.

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Amendment of third Schedule,
Substituting for 6th Schedule,
Citation—

PERSONAL INCOME TAX (AMENDMENT) ACT, 2011

A Bill

For

An Act to amend the Personal Income Tax Act, Cap. P8 Laws of the Federation of Nigeria, 2004; and for related matters.

Commencement

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

1. The Personal Income Tax Act (in this Act referred to as “the Principal Act”) is amended as set out in this Act. Amendment of Part I of P8 LFN, 2004

2. Section 2 of the Principal Act is amended— Amendment of section 2.
 - (a) by substituting for the word “impose” in the marginal note the word “collect” and wherever it occurs in the section;

 - (b) in subsection 2(c), by deleting the phrase “or any other Act” in line 2 of the Act.

 - (c) in subsection (8) by inserting immediately after the word “allowances” the words “including benefits in kind”.

3. Section 3 of the Principal Act is amended - Amendment of section 3
 - (a) in subsection (1)(b)-
 - (i) by substituting the word “perquisites” in line 4 of the Act with the word “pre-requisites”

 - (ii) by inserting the phrase “temporary or permanent” after the phrase “person to any” in line 5 of the Act.

 - (b) by substituting the existing subsection (1)(e) with a new paragraph (1)(e) –
“(e) any charge or annuity.”

4. Section 10 of the Principal Act is amended- Amendment of section 10.
 - (a) in subsection (1) (a) (i), by inserting immediately after the word “Nigeria”,

the phrase "and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria" ;

(b) in subsection (1) (a) (ii), by inserting immediately after the word "amounting to", the phrase "an aggregate of" and also immediately after the phrase 183 days, the phrase (inclusive annual leave or temporary period of absence);

(c) in subsection (1) (a) (iii), by inserting immediately after the word, "country", the phrase "under the provisions of the avoidance of double taxation treaty with that other country";

(d) in subsection (1) by substituting for paragraph (b), a new paragraph "(b)" - "the employer is in Nigeria, or has a fixed base in Nigeria"; and

(e) by deleting subsection (5) and renumbering the subsequent subsections accordingly.

5. Section 33 of the Principal Act is amended by-

Amendment of
section 33.

(a) substituting for subsection(1) a new subsection"(1) -

"(1) There shall be allowed a consolidation relief allowance of N200,000.00 subject to a minimum of 1 percent of gross income whichever is higher plus 20 percent of the gross income and the balance shall be taxable in accordance with the Income table in the Sixth Schedule to this Act";

(b) inserting a new subsection "(2)" before the existing subsection (2) as follows-

"(2) For the purposes of this section, "gross emoluments" means, wages, salaries, allowances (including benefits in kind), gratuities, superannuation and any other incomes derived solely by reason of employment"; and

(c) renumbering the existing subsections (2) and (3) as subsections (3) and (4) accordingly.

6. Section 36 of the Principal Act is amended by inserting a new subsection "(6)" its follows-

Amendment of
section 36.

"(6) Notwithstanding any of the provisions of this act, where for all practical

purposes the income of the taxpayer cannot be ascertained or records are not kept in such a manner as would enable proper assessment of income, then such a taxpayer shall be assessed on such terms and conditions as would be prescribed by the Minister in regulations by order of gazette under a presumptive tax regime”

7. Section 37 of the Principal Act is amended by substituting for the figures “0.5” the figure “1” in line 6 and 7 wherever it appears. *Amendment of section 37.*

8. Section 38 of the Principal Act is amended- *Amendment of section 38.*

(i) by substituting for the existing marginal note, the following new Marginal Note -

“Avoidance of double taxation agreement”;

(ii) by substituting for the existing subsection (1), a new subsection “(1)” -

“(1) Where the Government of the Federal Republic of Nigeria has entered into agreement with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act, any tax of a similar character imposed by the laws of that country, and that it is expedient that the agreement have effect, the Agreement shall have effect “upon ratification by the National Assembly” ; and

(iii) by substituting, for the word “arrangement”, the word “Agreement” anywhere it occurs in the section.

9. Section 44 of the Principal Act is substituting for a new section “44” - *Amendment of section 44.*

“44. A taxable person required by this Act to file a return of income shall in the return calculate the amount of tax payable in the form as may be prescribed by the Minister by order of gazette”

10. Section 47 of the Principal Act is Amended- *Amendment of section 47.*

(a) in the proviso to subsection (1) (d) by deleting -

(i) the words "including a person charged with the administration of the FSB International Plc" ;

(ii) the commas (,) immediately before and after the deleted ;and

(b) in subsection (3) by substituting the figure "5,000" and "500" in lines 2 and 3 the figure "500,000" and "50,000" respectively; and

(c) by inserting a new subsection "(5)" -

"(5) Any organization including governmental bodies, professional bodies, trade associations and any other organization shall provide any information demanded of them by any tax authority in a format as may be prescribed by the tax authority"

11. Section 49 of the Principal Act is amended –

Amendment of
section 49.

(a) in subsection (1), by deleting –

(i) the words "including a person charged with the Administration of the FSB International Plc", and

(ii) the commas (,) immediately before and after the deleted words ;

(b) in subsection (2), by deleting –

(i) the words "and a person charged with the administration of the FSB International Plc" in lines 2 and 3 lines,

(ii) the commas (,) immediately before and immediately after the deleted words ,

(iii) the words "including any person charged with the Administration of the FSB International Plc" in lines 1 and 2 in the proviso thereof; and

(iv) the commas (,) immediately before and immediately after the deleted words ; and

(c) in subsection (3) by substituting for the figures "5,000" and "500" with the figure "500,000" and "50,000" respectively.

12. Section 52 of the Principal Act is amended in subsection (1) by substituting the existing subsection (1) with the following new subsection –

Amendment of section 52

“(1) if a taxable person fails or refuses to keep books of accounts which, in the opinion of the relevant tax authority, are adequate for the purpose of the tax –

(a) Such a taxable person other than those in salary employment shall be liable on conviction to a penalty of N50,000 for individuals and N500,000 for corporate entities; and

(b) the relevant tax authority may by notice in writing direct the person to keep such records, books and accounts, in such form and in such language as may be specified in the notice and, subject to the provisions of subsection (2) of this section, the person shall keep the records, books and accounts as so directed.”

13. Section 57 of the Principal Act is amended by inserting immediately after the words “registered post” in line 1, the words “or Courier Service or electronic mail”

Amendment of section 57.

14. Section 60 of the Principal Act is substituting for a new section “60”-

Amendment of section 60.

“ Establishment of body of Appeal Commissioners

60. The Tax Appeal Tribunal established pursuant to section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007 shall have the powers to entertain all cases arising from the operations of this Act ”

15. Sections 61-67 of the Principal Act are deleted.

Deletion of sections 61-67

16. Section 70 (5) of the Principal Act is amended by deleting the words, “the FSB International Plc” line 3.

Amendment of section 70 (5)

17. Section 73(4) of the Principal Act is amended by substituting for the words “but only to the extent that the total of those deductions do not exceed the amount of the assessment” in line 3, the words “except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this Act shall be refunded by the relevant tax authority within 90 days except if it is a final tax after the assessment has been fully filed, with the option of setting off against future tax pay by the payer”.

Amendment of section 73 (4)

18. Section 74 of the Principal Act is substituting for a new section "74" –

Substitution for
section 74

"Penalty for failure to deduct tax

74(1) Any person or body corporate who, being obliged to deduct tax under section 69, 70, 71 or 72 of this Act, fails to deduct, or having deducted, fails to remit such deductions to the relevant tax authority within thirty days from the date the amount was deducted or the time the duty to deduct arose, shall be liable to a penalty of an amount of 10 percent of the tax not deducted or remitted in addition to the amount of tax not deducted or remitted plus interest at the prevailing monetary policy rate of the Central Bank of Nigeria.

(2) The Accountant-General of the Federation shall have power to deduct at source, from its budgetary allocation, un-remitted taxes due from any Ministry, Department or Government Agency and transfer such deduction to the relevant State upon request by such State"

19. Section 77 of the Principal Act is amended by inserting immediately after the word "interest" in line (1), the words "on annual basis".

Amendment of
section 77

20. Section 81 of the Principal Act is amended –

Amendment of
section 81

(a) by inserting immediately after the existing subsection (1) the following new subsections "(2)-(4)" –

"(2) Every employer shall be required to file a return with the relevant tax authority of all emoluments paid to its employees, not later than 31st January of every year in respect of all employees in its employment in the preceding year.

(3) Any employer who contravenes the provisions of this section shall be liable on conviction to a penalty of N500,000 in the case of a body corporate, and N50,000 in the case of an individual.

(4) Income tax recovered under the provisions of this section by deduction from payment made to a person shall be set-off for the purposes of collection against tax charged on that person by an assessment except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this section of this Act shall be refunded by the

relevant tax authority within 90 days after the assessment has been duly filed, with the option of setting off against future tax by the tax payer"; and

(b) re-numbering the existing subsections (2), (3), (4), (5) and (6) as subsections (5), (6), (7), (8) and (9) respectively.

21. Section 85 of the Principal Act is amended in –

Amendment of
Section 85

(a) subsection (2), by inserting immediately after the last word "assessment" in line 4, the words "and shall verify the genuineness by referring same to the issuing tax authority;

(b) subsection (3), by inserting a new paragraph "(ee)" -

"(ee) tax payer identification number (T.I.N.)";

(c) subsection (4), by inserting immediately after the existing paragraph(s) the following new paragraph "(t)", "(u)", and "(v)" -

"(t) for change of ownership of vehicle by the vendor;

"(u) application for plot of land;

"(v) any other transaction as may be determined from time to time"; and

(d) in subsection (7), by substituting for the figures "500" with the figures of "50,000".

(e) by inserting the following new subsection "(9)" -

"(9) A person be it a government organization or corporate entity to whom section 85(2) applies who fails to comply with same is guilty of an offence and is liable on conviction to a fine of ₦5,000,000.00 or to imprisonment for 3 years or both fine and imprisonment."

22. Section 86 of the Principal Act is amended-

Amendment of
Section 86

(a) in subsection (2)(a), by substituting for the words "Section 1 of Companies Income Tax Act", the words "Section 11 of the Federal Inland

Revenue Service (Establishment) Act 2007”;

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

“one member from each State, being a person appointed pursuant to section 87(2) (a) of this Act, and a nomination under this paragraph shall be evidenced by notice in writing delivered to the Secretary to the Board by the Governor” ; and

(c) in subsection (3), by substituting for the words “Federal Civil Service Commission” in line1 the words “Joint Tax Board”.

23. Section 87 of the Principal Act is amended in subsection (2) by substituting for paragraph (a),(b) and (c) new paragraph “(a)”,“(b)” and “(c)” -

Amendment of
section 87.

“(a) the Chairman of the State Internal Revenue Service as Chairman of the State Board who shall be a person experienced in taxation and a member of a relevant recognized professional body, appointed by the State Governor, subject to confirmation by the State House of Assembly;

(b) the Directors from within or outside the State Service”; and

(c) three other persons appointed by the State Governor on their personal merit, one each representing a Senatorial District in the State; and.”

24. Section 88 of the Principal Act is amended in subsection (1) (b) by –

Amendment of
section 88.

(a) substituting for the semi-colon (;) at the end of the paragraph, a colon (:); and

(b) inserting immediately after the word “Commissioner” the words-

“Provided that an amount of not less than 5 per cent of revenue collected as may be approved by a State House Assembly shall be retained by the State Board of Internal Revenue to defray cost of collection and administration”

25. Section 94(1) of the Principal Act is amended by—

Amendment of
section 94.

(a) substituting for the figures “200” in line 4, the figures “5,000”, and

(b) substituting for the words “forty naira for everyday” in line 5, the words “one hundred naira;”

26. Section 95 (1) of the Principal Act is amended by substituting for the phrase “10 per cent” the amount “20,000”.

Amendment of
section 95

27. Section 96 (1) (b) of the Principal Act is amended by -

Amendment of
section 96.

(a) substituting for the words “ a fine of N5,000 or imprisonment for five years or to both such fine and imprisonment”, the words a fine of N50,000 for individuals and N500,000 for corporate bodies or to imprisonment for not more than six months”; and

(b) in line 3 of the proviso, by substituting for the figures “1,000.00” the figures “10,000”

28. Section 97 of the Principal Act is amended in the second to the last line by substituting for the figures “1,000 with the figures “100,000”.

Amendment of
section 97.

29. substituting for section 104 of the Principal Act a new section “104” -

Substitution for
section 104

“Power to distrain

104. (1) Without prejudice to any other power conferred on the relevant tax authority for the enforcement of payment of tax due from a taxable person that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the person in accordance with the provisions of this Part of this Act, or has been served upon the person, then, if payment of tax is not made within the time specified by the demand notice, the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of tax due -

(a) distrain the taxpayer by his goods, other chattels, bond or other securities; or

(b) distrain upon any land, premises or places in respect of which the

taxpayer is the owner and, subject to the provisions of this section, recover the amount of tax due by sale of anything so distrained.

(2) The authority to distrain under this section shall be in the form prescribed by the relevant tax authority.

(3) For the purpose of levying any distress under this section, an officer duly authorized by the relevant tax authority shall apply to a Judge of a High Court sitting in Chambers, under oath for the issue of a warrant under this section.

(4) The Judge may, on application made ex-parte, authorize such officer, referred to in subsection (3) of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.

(5) The distress taken pursuant to this section may, at the cost of the owner, be kept for 14 days, at the end of which time, if the amount due in respect of tax and the cost and charges incidental to the distress are not paid, the same may be sold.

(6) In exercise of the powers of distress conferred by this section, the person to whom the authority is granted under subsection (3) of this section may distrain upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.

(7) Nothing in this section shall be construed as authorizing the sale of any immovable property without an order of a court of competent jurisdiction."

30. The Principal Act is amended by inserting immediately after the existing section 106 the following new section 106A-

Insertion of new section 106A

"Power to make regulations.

106A (1) The Minister may, on the recommendation of the Joint Tax Board, make regulations generally for giving full effect to the

provisions of this Act.

(2) The National Assembly may, upon a proposal by the President, impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable as specified in section 40 and Second Schedule of this Act and in accordance with Section 59 (2) of the 1999 Constitution.”

31. Section 108 of the Principal Act is amended by substituting for the existing interpretation of the words “itinerant worker” the following new interpretation- Amendment of section 108.

“itinerant worker” includes an individual irrespective of his status who works at any time in any state during a year of assessment (other than as a member of the armed forces) for wages, salaries or livelihood by working more than one State and work for a minimum of twenty (20) days in at least three (3) months of every assessment year,”

32. The First Schedule to the Principal Act is amended in paragraph 1 by inserting a new sub-paragraph “(d)” after the existing paragraph (c) – Amendment of First Schedule

“(d) in the case of an individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational site is situate: Provided that operational site shall include Oil Terminals, Oil Platforms, Flow Stations, Factories, Quarries, Construction Site with a minimum of 50 workers, etc”

33. The Third Schedule to the Principal Act is amended by – Amendment of Third Schedule.

(a) deleting paragraphs 2 and 3;

(b) substituting for paragraph 7, a new paragraph “7” –

“7. Interest on any loan granted by a bank on or after 1st January 1997 to a person engaged in –

(a) agricultural trade or business; and

(b) the fabrication of any local plant and machinery”;

(c) by substituting for paragraph 14 a new paragraph “14” –

“14 (1) pension granted to any person pursuant to any enactment or

law for the time being in force”;

(2) wound and disability pensions granted to members of the armed forces or of any recognized national defense organisation or to a person injured as a result of enemy action.”

(d) in paragraph 15, by substituting the words “Pensions Act” the words “Pension Reform Act 2004”

(e) by inserting after the existing paragraph 31, a new paragraph “31A”

“31A. Income earned from -

(a) bonds issued by Federal, State and Local Governments and their agencies;

(b) bonds issued by corporate including supra-nationals; and

(c) interest earned by holders of the bonds and short term securities listed in paragraphs (a) and (b);”

34. The six Schedule to the Principal Act is substituted for a new Sixth Schedule

Substitution for Sixth Schedule

“SIXTH SCHEDULE”

Income Tax Table

(1) A consolidated relief allowance shall be granted on income at a flat Rate of N200,000 plus 20% of gross income.

(2) TAX EXEMPT: The following deductions are tax exempt -

(a) National Housing Fund Contribution

(b) National Health Insurance Scheme

(c) Life Assurance Premium

(d) National Pension Scheme

(e) Gratuities

(3) After the relief allowance and exceptions had been granted in, accordance with paragraphs 1 and 2 of this Schedule, the balance of income shall be taxed as specified in the following tax table:

Tax Income Rates

Graded Tax rates with consolidated allowance of ₦200,000 + 20% of Gross Income, subject to a minimum tax of 1% of Gross Income whichever is higher.

1. First ₦300,000 @ 7%
 2. Next ₦300,000 @ 11%
 3. Next ₦500,000 @ 15%
 4. Next ₦500,000 @ 19%
 5. Next ₦1,600,000 @ 21%
- Above ₦3,200,000 @ 24%

35. This Act may be cited as the Personal Income Tax (Amendment) Act, 2011.

Schedule to Personal Income Tax (Amendment) Bill, 2011

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
Personal Income Tax (Amendment) Bill, 2011	An Act to amend the Personal Income Tax Act, Cap. P8, Laws of the Federation of Nigeria, 2004; and for related matters.	This Bill seeks to amend the Personal Income Tax Act, Cap. P8, Laws of the Federation of Nigeria, 2004;	1 st June, 2011	25 th May, 2011

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.


SALISU ABUBAKAR MAIKASUWA, mni
 Clerk to the National Assembly
 2nd Day of June, 2011

I ASSENT.


DR. GOODLUCK EBELE JONATHAN, GCFR
 President of the Federal Republic of Nigeria
 4th Day of June, 2011