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NIGERIAN TAX ALERT

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NOTES ON PERSONAL INCOME TAX (AMENDMENT) ACT, 2011

The Personal Income Tax Amendment Bill passed by both houses of the National Assembly in June last year seeking to amend the Personal Income Tax Act CAP P.8,LFN 2004 ('the Principal Act') was signed into law by Mr. President on 14 June 2011 and made public in December 2011.

The Amendment Act has no commencement date. It is expected that the commencement date would be inserted in the official gazette publication. It is likely that the commencement date would be 1st January 2012, otherwise it would result to tax refund or arrears for some categories of employees if its implementation commences from the signing date, i.e. 14 June 2011.

HIGHLIGHTS

- **Introduction of Consolidated Relief Allowance (CRA)**
- **Widening of the tax band and adjustments to the rates**
- **Increase in minimum tax rate from 0.5% to 1%**
- **Computation of PAYE for temporary and casual workers.**
- **Removal of tax immunity enjoyed by the President, Vice President, Governors and their Deputies**
- **Disputes under the Act are to be referred to the Tax Appeal Tribunal.**
- **Increase in fines for offences committed under the Act**

Below are some of the amendments and our comments thereon:

1. Consolidated Relief Allowance

Subsection 1, Section 33 of the Principal Act which grants personal relief of N5,000 plus 20% of earned income to every individual has been substituted with a Consolidated Relief Allowance (CRA) of N200,000, subject to a minimum of 1% of gross income whichever is higher, plus 20% of the gross income. The amendment further states that the balance of the income after the deduction of the CRA and tax exempt deductions shall be assessed to tax at the rates specified in the Sixth Schedule.

Although CRA is referred to as consolidated, the following should be noted:

(a) Subsection 3, Section 33 of the Principal Act which grants children allowance, dependant relative allowance, premium on life assurance and disability allowance was neither amended nor deleted, instead it was re-numbered as subsection 4.

(b) also, Subsection 1(b), Section 3 of the Principal Act which grants non-taxable allowances on housing, transport, meal subsidy, utility, entertainment, leave grant, etc. to tax payers was neither amended nor deleted.

(c) (a) and (b) above imply that the reliefs and allowances can be claimed in addition to the Consolidated Relief Allowance.

However, paragraph 3 of the new Sixth Schedule is specific as to the deductions from gross income, i.e. CRA and tax exempt deductions (**NHF Contribution, NHIS, Life Assurance Premium, National Pension Scheme and Gratuities)**, after which the balance shall be taxed as specified in the tax income rates. This implies that no further deductions can be claimed from gross income apart from those listed in paragraphs 1 and 2 of the Sixth Schedule which is contrary to (c) above.

Pending further amendment to correct the above contradictions, taxpayers/employers may opt for complete compliance with the provisions in the Sixth Schedule as against claiming the additional allowances and reliefs mentioned in (a) and (b) above which may be subject of tax arrears, when further amendment is made to the Act.

2. Tax Income Rates

The Income Tax Table in the Sixth Schedule to the Principal Act has been substituted with Tax Income Rates. The first tax band has been widened from the initial base of N30,000 at the rate of 5% to N300,000 but now at the rate of 7% while the last band of above N160,000 taxed at the rate of 25% has been replaced with N3,200,000 at a marginally reduced rate of 24%. The tax on the emolument of some low and medium income earners would reduce while those in the high income bracket would pay more taxes.

The tax income rates are presented in the Table below:

NEW TAX INCOME RATES			
Band (Naira)	Rate (%)	Tax (Naira)	Cumulative Tax (Naira)
First 300,000	7	21,000	21,000
Next 300,000	11	33,000	54,000
Next 500,000	15	75,000	129,000
Next 500,000	19	95,000	224,000
Next 1,600,000	21	336,000	560,000
Above 3,200,000	24		

OLD TAX INCOME RATES			
Band (Naira)	Rate (%)	Tax (Naira)	Cumulative Tax (Naira)
First 30,000	5	1,500	1,500
Next 30,000	10	3,000	4,500
Next 50,000	15	7,500	12,000
Next 50,000	20	10,000	22,000
Above 160,000	25		

3. Minimum Tax

The minimum tax rate has been increased from **0.5%** of gross emolument to **1%.** While the expectation from the amendment to the Sixth Schedule is a reduction in employees' tax, this is not the case for low income earners. As a result of the increase in minimum tax rate, the tax to be paid by those who are hitherto paying minimum tax would double.

4. Filing of Annual Return

The deadline for the filing of annual return has been shifted backward to 31 January of the following year as against 31 March. The penalty for non-compliance by an individual and a corporate body is N50,000 and N500,000 respectively.

5. Fines and Penalties.

Most of the fines imposed for offences under the Principal Act have been increased astronomically to serve as a deterrent to taxpayers who are deliberately not complying with the provisions of the Act. In most cases, the new fines are as high as N50,000 and N500,000 for offences committed by individuals and corporate bodies respectively.

6. Tax Immunity for the President, Vice-President, Governors and Deputy Governors

Holders of the offices of the President, Vice President, State Governors and their Deputies would no longer enjoy tax immunity because their official emoluments have been removed from the list of tax exempt incomes in the Third Schedule. Effective from the commencement date of the amendment Act, holders of these offices would henceforth pay tax on their official emoluments.

7. Tax Exempt Income

Additions have been made to the list of tax exempt incomes in the Third Schedule. Henceforth, interests earned on the following instruments are tax exempt:

(i) bond issued by the Federal, State or Local Governments and their agencies
(ii) bond issued by corporate and supra-nationals
(iii) interest earned by holders of bonds and short term securities listed in (i) and (ii) above.

These exemptions would encourage investment in bonds and short term securities by individuals.

8. Requirement for TCC

Under subsection 4, Section 85 of the Act, the following have been added to the list of transactions for which TCC would be required:

(i) Change of ownership of vehicle by the vendor
(ii) Application for a plot of land
(iii) Any other transactions as may be determined from time to time by the Tax Authority.

These would rake-in more revenue for the Tax Authority particularly with respect to application for a plot of land and change of ownership of vehicle.

9. Tax Disputes

Section 60 of the Act has been introduced to replace the old provisions whereby disputes under the Act were hitherto referred to the Body of Appeal Commissioners, which some State Tax Authorities have apparently failed to establish. Henceforth, such disputes would be adjudicated upon by the **Tax Appeal Tribunal** established under the Federal Inland Revenue Service Act, 2007.

10. Temporary Workers

Subsection 1(b) Section 3 of the Principal Act was amended to include temporary and casual workers amongst those whom employers should compute and remit PAYE. This is against the former practice whereby they were treated as contract staff and WHT of 5% was deducted from their wages. This would increase the net-pay of the low income temporary workers, who will now be assessed to tax at the minimum rate of 1% of their gross income.

11. Power To Make Regulations

Powers to make regulations for giving full effect to the provisions of the Principal Act is now vested in the Minister of Finance, on the recommendation of the Joint Tax Board. This would not only deter the State Tax Authorities from issuing guidelines that may not be consistent with the provisions of the Act but also ensure uniformity in the taxation of individuals in Nigeria.

12. Rate Of Tax, Duty or Fee Chargeable Under the Act

Power to impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable as specified in Section 40 and Second Schedule of the Act is now vested in the National Assembly, upon a proposal by Mr. President, in accordance with Section 59(2) of the 1999 Constitution. This is consistent with similar provisions on taxes collected by the Federal Inland Revenue Service.

13. Service of Notice of Assessment

The use of courier service and electronic media (emails) have been added to the mode of service of notice of assessment. The date of service in the case of delivery by courier would be evidenced by the proof of delivery while that of email would be the date it is sent. Therefore taxpayers are advised to be checking their emails regularly otherwise, assessments sent by the electronic media would be left unattended to.

14. Power to Distrain

A new Section 104 has been introduced to replace the old Section 104 of the Principal Act. Some of the salient points of the new provisions in the Section are as follows:

(i) It is mandatory for Tax Authorities to apply, under oath, to a High Court Judge sitting in Chambers, for the issuance of a warrant to distrain defaulting taxpayers of their properties.
(ii) The Tax Authority is empowered to keep the goods taken away for 14 days after which, if tax owed and the charges incidental to the distress are not paid, the goods may be sold.
(iii) An order of a court of competent jurisdiction is required before immovable properties can be disposed of by the Tax Authority.

15. Other New Introductions

Other new introductions are highlighted below:

- Empowerment of the Accountant General of Federation to deduct at source any unremitted State taxes by Ministries, Departments and Agencies (MDAs) from their budgetary allocation and remit same to the respective State Tax Authorities
- Refund of unutilized WHT to tax payers within 90 days with the option of setting the excess off against future taxes
- Retention of not less than 5% of revenue collected by Tax Authorities, subject to the approval of the State Assembly, for defraying cost of collection and administration.
- Redefinition of an itinerant worker as someone who worked in any State for a minimum period of 20 days in at least three months of every assessment year.
- Disclosure of Tax Identification Number (TIN) on TCC. This means that each employee would have a data base from where taxes paid on their behalf can be easily viewed.
- Before tax exemption would be granted for employment services carried out in Nigeria by a foreigner, there must be an evidence that the individual is liable to tax in his home country by provisions of the Double Taxation Agreement
- The 183 days or more hitherto used as a basis of assessment for an expatriate to be taxed in Nigeria shall include vacation and temporary period of absence.