

THE IMPLICATIONS OF THE FINANCE ACT FOR THE NIGERIAN MARITIME INDUSTRY

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1. INTRODUCTION

The Finance Act 2020 was enacted by the National Assembly of the Federal Republic of Nigeria to amend eight (8) tax legislations *viz* Companies Income Tax Act, Value Added Tax Act, Customs and Excise Tariff, etc (Consolidated) Act, Personal Income Tax Act, Capital Gains Tax Act, Stamp Duties Act, Petroleum Profit Tax Act and to provide for the review of tax provisions and make them more responsive to tax reform and for related matters. The amendments made by the Finance Act are intended to raise necessary revenue to defray public expenditure, support sustainable increase in public revenue and ensure that tax law provisions are consistent with the national tax policy objectives of the Federal Government of Nigeria.²

This article intends to consider the implications of the Finance Act on companies involved in the provision of maritime services.

2. IMPLICATIONS OF THE FINANCE ACT ON THE MARITIME INDUSTRY

Companies involved in the provision of maritime services in Nigeria (depending on whether the service is in the oil and gas sector) are usually liable to Companies Income Tax, Value Added Tax, Stamp Duties, Nigerian Content Development (NCD) levy, Cabotage surcharge and Withholding Tax. Of the tax legislations amended by the Finance Act, the Companies Income Tax Act, the Value Added Tax Act and the Capital Gains Tax Act are three such legislations with huge impact on companies involved in the maritime sector. The implications of these amendments on the companies and transactions in Nigerian Maritime Industry will be discussed below:

¹ **Brooks & Knights Legal Consultants (BKLC)** is a law firm established in Lagos, Nigeria to provide bespoke legal advisory and policy consulting services to individuals, corporates, government agencies and NGOs. BKLC consultants are qualified attorneys in their chosen fields of expertise.

² Wole Obayomi, Finance Act, 2020: Impact Analysis. Obtained from <https://home.kpmg/ng/en/home/insights/2020/01/finance-act--2020.html> accessed on 09 February 2020.



3. COMPANIES INCOME TAX

Taxation of companies in Nigeria is made pursuant to the provisions of the Companies Income Tax Act (CITA), LFN 2004. Companies Income Tax (CIT) is tax imposed on the profits of companies.³ For the purpose of taxation, CITA divides companies into two categories: Nigerian companies and non-Nigerian companies. While the term 'company,' is defined under CITA to mean any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere,⁴ a Nigerian company is a company whose control and management of its activities are exercised in Nigeria pursuant to section 13 of CITA 2004 (as amended, 2007).⁵ The income of a company which has been registered under the laws of Nigeria to operate in the maritime sector is therefore subject to the provisions of CITA.

Charge of tax

Based on the provisions of the Finance Act amending the provisions of CITA, CIT, shall for each year of assessment be payable at the rate specified in section 40 of CITA (discussed below) upon the profits of a maritime company which are accrued in, derived from, brought into, or received in Nigeria and which are not subject to tax under the Capital Gains Tax Act, Petroleum Profits Act and Personal Income Tax Act.

Such profits shall include: any trade, rent or business for whatever period of time such trade or business may have been carried on; dividends, interests, royalties, discounts, charges or annuities; any source of annual profits or gains not falling within the preceding categories; any amount deemed to be income or profits under a provision of this Act or, with the respect to any benefit arising from a pension or provident fund, of the Personal Income Tax Act; fees, dues and allowances (whenever paid) for services rendered; and any amount of profits or gains arising from acquisition and disposal of short term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.⁶

Following from the above, income derived from services provided and businesses engaged in by a maritime company is subject to a charge of CIT under the CITA, including the sale and hire of vessels, transportation of cargoes and persons, and other ship operation services.

Tax Identification Number

³ Abimbola Oyebowale (2019) 12 Nuggets on Companies Income Taxation in Nigeria. Retrieved from <https://www.mondaq.com/Nigeria/CorporateCommercial-Law/867586/12-Nuggets-On-Companies-Income-Taxation-In-Nigeria> accessed on 16 February 2020.

⁴ Section 105 of CITA (as amended).

⁵ Taofeeq Abdulrazaq (2016) Cases and Materials on Nigerian Taxation. *Eastern Book Company*. Pp 372.

⁶ Section 20 of the Finance Act.



Every company involved in maritime related activities is mandated to have a tax identification number (**TIN**) which shall be displayed by the company on all its business transactions with other companies and individuals and on every document, statement, returns, audited account and correspondence with revenue authorities, including the Federal Inland Revenue Service, Ministries and all Government Agencies.⁷ In fact, the TIN, by virtue, of the provisions of the Finance Act, has been made a precondition for the opening of a bank account. In the case of an account already opened within three months of the passage of the Finance Act, maritime companies shall be required to provide their TIN as a precondition for the continued operation of their bank accounts.⁸

Non-Resident Maritime Companies

The profits of a maritime company other than a Nigerian maritime company (i.e. a maritime company that exercises control and management of its activities from Nigeria) from any trade or business shall be deemed to be derived from or taxable in Nigeria if, amongst others:

- (a) if 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 presence in Nigeria provided that the withholding tax applicable to income under this paragraph shall be the final tax on the income of a non-resident recipient who does not otherwise qualify as a Nigerian company under CITA.

The Finance Act therefore creates a tax liability for non-resident maritime companies who render services outside Nigeria to a person or client who is resident in Nigeria, however, the tax liability imposed in this case shall be the final tax on its income if it does not otherwise qualify as a Nigerian company under CITA.

This provision supplements the provisions of CITA for companies engaged in shipping or air transport, which states that where a company other than a Nigerian company carries on the business of transport by sea, and any ship owned or chartered by it calls at any port in Nigeria, its profits or loss shall be deemed to be derived from Nigeria where they arise from the carriage of passengers, mails, livestock or goods shipped in Nigeria; provided that this provision does not apply where the persons or items are brought into Nigeria for the purpose of transshipment.⁹

Profits of a company from certain dividends

The Finance Act excludes the provision of section 19 of the CITA (which subjects dividends paid by a Nigerian company to CIT) from applying to dividends paid out of the retained earnings of a company, provided that the dividends are paid out of profits that have been subjected to tax under CITA, the Petroleum Profits Tax Act, or the Capital Gains Tax Act.¹⁰

⁷ Section 3 of the Finance Act, section 10(1) of CITA (as amended).

⁸ Section 3 of the Finance Act, section 10(2) of CITA (as amended).

⁹ Section 14(1) of CITA (as amended).

¹⁰ Section 19(2)(a) of CITA (as amended); section 7(a) of the Finance Act.

In addition, the Finance Act also excludes dividends paid out of profits that are exempted from income tax by any provisions of CITA, the Industrial Development (Income Tax Relief) Act, the Petroleum Profits Tax Act or any other legislation;¹¹ profits or income of a company that are regarded as franked investments¹² under CITA;¹³ distributions made by a real estate investment company to its shareholders from rental income and dividend on behalf of those shareholders, whether such dividends are paid out of profits if the year in which the dividend is declared or out of profits of previous recording periods.¹⁴

Profits exempted

The profits of a small maritime company in a relevant year of assessment are exempted from taxation. However, this does not exempt such company from complying with tax registration requirements and filing its tax returns. A small maritime company is nevertheless subject to the provisions of CITA as regards the time of filing, penalties for breach of statutory duties and all other provisions of the Act during the period in which its profits are below the tax paying threshold.¹⁵ A small maritime company is defined as a company that earns gross turnover of twenty-five million Naira (N25,000,000.00) or less.¹⁶

Deductions Allowed

The Finance Act amends the provision of CITA relating to the deductions allowed for the purposes of ascertaining the profits or loss of any company for any period and from any source chargeable to tax. Thus, where a company is involved in the provision of maritime services in Nigeria, in determining its profits chargeable to tax, there shall be deducted all expenses for that period wholly, exclusively, necessarily and reasonably incurred in the production of those profits chargeable to tax.¹⁷ These deductions shall include any sum payable by way of interest on debt borrowed and employed as capital in acquiring the profits of a company;¹⁸ and compensating payments, which qualify as interest under section 9(1)(c) of CIT, made by a lender to its approved agent or borrower in a Regulated Securities Lending.¹⁹

Deductions not allowed

The Finance Act amended the provisions of section 27 of CITA (which provides for non-allowable deductions) by replacing certain clauses and adding others. Pursuant to the provisions of the

¹¹ Section 19(2)(b) of CITA (as amended); section 7(a) of the Finance Act.

¹² Dividend received after the deduction of tax shall be regarded as franked investment income of the company receiving the dividend and shall not be charged to further tax as part of profits of the recipient company. Please see section 80(3) of CITA (as amended).

¹³ Section 19(2)(c) of CITA (as amended); section 7(a) of the Finance Act.

¹⁴ Section 19(d) of CITA (as amended); section 7(a) of the Finance Act.

¹⁵ Section 23(1)(o)(i) of CITA (as amended); section 9(a) of the Finance Act.

¹⁶ Section 105(1) of CITA (as amended); section 22(c) of the Finance Act.

¹⁷ Section 24 of CITA (as amended); section 10(a) of the Finance Act.

¹⁸ Section 24(a) of CITA (as amended); section 10(b) of the Finance Act.

¹⁹ Section 24(a) of CITA (as amended); section 10(c) of the Finance Act.



Finance Act, no deduction shall be allowed for the purpose of ascertaining the profits of a maritime company in respect of –

- (a) any expense whatsoever incurred within or outside Nigeria involving related parties as defined under the Transfer Pricing Regulations, except to the extent that it is consistent with the Transfer Pricing Regulations;²⁰
- (b) any expense incurred in deriving tax-exempt income, losses of a capital nature and any expense allowable as a deduction under the Capital Gains Tax Act for the purpose of determining chargeable gains;²¹
- (c) any penalty prescribed by any Act of the National Assembly for violation of any statute;²²
- (d) and any tax or penalty borne by a company on behalf of another person.²³

Related Parties are defined under the Transfer Pricing Regulations as a relationship between persons where one person has the ability to control or influence the other person in making financial, commercial or operational decisions.²⁴

Therefore, while expenses are generally allowable deductions when computing assessable profits, where they are incurred as part of a related party transaction or as part of deriving any tax exempt income or they are the result of any penalty, they shall not be deducted from the assessable profits of a maritime company.

Basis for computing assessable profits

The profits of a company involved in the provision of maritime services for each year of assessment from such source of its profits shall be the profits of the accounting period immediately preceding the year of assessment from each source.²⁵ The assessable profits of any maritime company from any trade or business (or in the case of a maritime company other than a Nigerian maritime company) for its first year of assessment and the two following years of assessment (1st, 2nd and 3rd years) shall be ascertained as follows:

- (a) for the 1st year, the assessable profits shall be the profits from the date in which it commenced to carry on such trade or business in Nigeria to the end of its first accounting period;
- (b) for the 2nd year, the assessable profits shall be the profits from the first day after its first accounting period to the end of its second accounting period; and
- (c) for the 3rd year and for each subsequent year, the assessable profits shall be the profits from the day after the accounting period just ended.²⁶

²⁰ Section 27(1)(g) of CITA (as amended); section 11(a) of the Finance Act.

²¹ Section 27(1)(h) of CITA (as amended); section 11(a) of the Finance Act.

²² Section 27(1)(k) of CITA (as amended); section 11(b) of the Finance Act.

²³ Section 27(1)(l) of CITA (as amended); section 11(b) of the Finance Act.

²⁴ Regulation 12 of the Transfer Pricing Regulations 2018.

²⁵ Section 29(1) of CITA (as amended); section 12(a) of the Finance Act.

²⁶ Section 29(3) of CITA (as amended); section 12(b) of the Finance Act.



It is interesting to note that the Finance Act also provides the manner of calculating the assessable profits of a maritime company that permanently ceases to carry on a trade or business in Nigeria. In such a situation, such company's assessable profits shall be the amount of the profits from the date of cessation and the tax thereof shall be payable within six months from the date of cessation.²⁷

Payment of minimum tax

The amended CITA now prescribes a new minimum tax to be levied on maritime companies, where in any year of assessment, profits from all sources of such company results in a loss, or where the maritime company's ascertained total profits results in no tax payable or tax payable is less than the minimum tax. In this instance, the minimum tax to be levied and paid shall be 0.5% of gross turnover of the company, less franked investment.²⁸ Where a maritime company earns gross turnover of less than twenty-five million Naira (N25,000,000.00), such company is exempt from paying minimum tax.²⁹ This proviso replaces the section of the CITA that exempts a company with at least 25% of imported equity capital from minimum tax payment.

Rates of tax

The Finance Act amends the CITA and prescribes a new rate of tax. If the maritime company is classified as medium-sized company, tax shall be levied on the profits of such company for each year of assessment at the rate of 20 Kobo for every Naira, i.e. 20% assessable profits. Where the maritime company is classified as a large company, tax shall be levied on the profits of such a company at the rate of 30 Kobo for every Naira, i.e. 30% of assessable profits.³⁰ A medium-sized maritime company is defined as a company that earns gross turnover greater than twenty-five million Naira (N25,000,000.00) but less than one hundred million Naira (N100,000,000.00) and a large maritime company refers to any maritime company which cannot be classified as either a small maritime company or a large maritime company.³¹

Time within which tax is to be paid (including provision tax) is to be paid

Ordinarily, a maritime company operating in Nigeria should not later than three months from the commencement of each year of assessment, pay provisional tax of an amount equal to the tax paid by such company in the immediately preceding year of assessment in one lump sum. The Finance Act, in amending the CITA repealed this provision.³² From the commencement of the Finance Act, every maritime company is now required to make payment of tax due on or before the due date of filing, in one lump sum or in instalments.³³ Where the taxpayer pays in instalments, the taxpayer is required to first write, with evidence of payment of the first

²⁷ Section 29(4) of CITA (as amended); section 11(b) of the Finance Act.
²⁸ Section 33(2) of CITA (as amended); section 14(a) of the Finance Act.
²⁹ Section 33(b) of CITA (as amended); section 14(b) of the Finance Act.
³⁰ Section 40 of CITA (as amended); section 16 of the Finance Act.
³¹ Section 105(1) of CITA (as amended); section 22(c) of the Finance Act.
³² Section 18(a) of the Finance Act.
³³ Section 77(5) of CITA (as amended); section 18(b) of the Finance Act.



instalment and obtain the approval of the Federal Inland Revenue Service (**FIRS**) to pay in such number of instalments as may be approved by the FIRS³⁴ and the final instalment must be paid on or before the due date of filing.³⁵

Where a maritime company pays its tax 90 days before the due date, the company shall be entitled, on the amount of tax paid, which shall be available as a credit against its future taxes, to a bonus of 2% in the case of a medium-sized maritime company and 1% for any other company.³⁶ Any balance of taxes unpaid as at the due date shall attract interest and penalties as provided in accordance with the provision of CITA or any other relevant law for failure to pay on the due date.³⁷

Tax exemption on certain interests

The table of tax exemption on foreign loans is also amended by the Finance Act as follows:³⁸

<i>Repayment period</i>	<i>Grace period including Moratorium</i>	<i>Tax exemption allowed</i>
Above 7 years	Not less than 2 years	70%
5-7 years	Not less than 18 months	40%
2-4 years	Not less than 12 months	10%
Below 2 years	Nil	Nil

Moratorium has been defined to mean a period at the beginning of a loan term during which the borrower is not expected to make any principal or interest repayments. However, where any principal or interest repayments are made during the moratorium period, the tax exemptions provided in the table above shall be adjusted by the FIRS in a proportionate manner.

Repayment period means the agreed tenor of the loan facility. Where the loan is repaid before expiration of this period the tax exemptions provided in the table above shall be adjusted by the FIRS in a proportionate manner.³⁹

³⁴ Section 77(5)(a) of CITA (as amended); section 18(b) of the Finance Act.

³⁵ Section 77(5)(b) of CITA (as amended); section 18(b) of the Finance Act.

³⁶ Section 77(5A) of CITA (as amended); section 18(c) of the Finance Act.

³⁷ Section 77(5B) of CITA (as amended); section 18(c) of the Finance Act.

³⁸ Third Schedule of CITA (as amended); section 23(a) of the Finance Act.

³⁹ Paragraph 2 of the Third Schedule of CITA (as amended).

4. VALUE ADDED TAX

Value Added Tax (VAT) is a tax on spending, borne by the final consumer of goods and services because it is included in the price paid for the goods. It is regarded as a consumption tax.⁴⁰ In Nigeria, the VAT system is administered by the FIRS. VAT in Nigeria is charged and payable on the supply of all goods and services although there are certain goods and services which are granted exemption under the provisions of the VAT Act.⁴¹ To prevent ambiguity, the VAT Act defines “supplies” to mean any transaction, whether it is the sale of goods or the performance of a service for consideration, that is, for money or for money’s worth.⁴² The implication of this is that maritime companies, essentially involved in the provision of maritime services are liable to pay VAT on their transactions.⁴³

Taxable goods and services

The Finance Act amends the VAT Act to remove ambiguity by providing that the VAT shall only be charged and payable on all goods and services in Nigeria other than those listed in the First Schedule to the VAT Act.⁴⁴ Goods and services shall be deemed supplied in Nigeria if: the goods are physically present in Nigeria at the time of supply, imported into Nigeria for use by a person, assembled in Nigeria or installed in Nigeria, or the beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right is situated, registered or exercisable in Nigeria. In the case of services, services shall be deemed supplied in Nigeria if the services are rendered in Nigeria by a person physically present in Nigeria at the time of service provision, or the services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria.

Rate of tax

VAT shall from the commencement of the Finance Act be computed at the rate of 7.5% on the value of all taxable goods and services.⁴⁵ This amounts to an increase of 2.5% from the former VAT rate 5%. This means that all services provided by the maritime company shall attract VAT at the new rate of 7.5%.

Registration and deregistration requirements

A newly incorporated maritime company is required to, upon the commencement of business, register with the FIRS for the purpose of tax.⁴⁶ Failure or refusal to register within the specified time, makes such company liable to pay as penalty the sum of ₦50,000.00 for the first month in which the failure occurs and the sum of ₦25,000.00 for each subsequent month in which the

⁴⁰ Taofeeq Abdulrazaq (2016) Cases and Materials on Nigerian Taxation. *Eastern Book Company*. Pp 520.

⁴¹ Section 2 of the VAT Act (as amended).

⁴² Section 46 of the VAT Act (as amended).

⁴³ Provision of maritime services (unless where the service is an exported service) is not exempted from VAT.

⁴⁴ Section 2(1) of the VAT Act (amended); section 33 of the Finance Act.

⁴⁵ Section 4 of the VAT Act (as amended); section 34 of the Finance Act.

⁴⁶ Section 8(1) of the VAT Act (as amended); section 35 of the Finance Act.



failure continues.⁴⁷ In addition, where a maritime company permanently ceases to carry on business in Nigeria, such maritime company is required to notify the FIRS of its intention to deregister for tax purposes within 90 days of such cessation of trade or business.⁴⁸

Registration by non-resident maritime companies

A non-resident maritime company that carries on business in Nigeria required to register for VAT with the FIRS using the address of the person with whom it has a subsisting contract as its address for the purposes of correspondence relating to VAT.⁴⁹ The non-resident maritime company is further required to include the VAT on its invoice for the supply of taxable services⁵⁰ and the person to whom the services are supplied in Nigeria shall withhold and remit the tax directly to the FIRS in the currency of payment.⁵¹

5. CAPITAL GAINS TAX

Business re-organisation

The Finance Act amends the Capital Gains Tax Act to the extent that where a trade or business carried on by a company is sold or transferred to a Nigerian company (whether maritime or not) for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, no tax shall apply to the sale or transfer of the assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of re-organisation. However, if the acquiring company were to make a subsequent disposal of the assets acquired within the succeeding 365 days after the date of transaction, any concession enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concession stipulated in this subsection as at the date of initial re-organisation.⁵²

In the case of a maritime company, this means that where a Nigerian maritime company acquires another company, any assets employed in its maritime business (e.g. vessels) which is transferred as part of the acquisition shall not be subject to capital gains tax where the companies are subject to the same ownership or control or are members of the same group.

⁴⁷ Section 8(2) of the VAT Act (as amended); section 35 of the Finance Act.

⁴⁸ Section 8(3) of the VAT Act (as amended); section 35 of the Finance Act.

⁴⁹ Section 10(1) of the VAT Act (as amended); section 36 of the Finance Act.

⁵⁰ Section 10(3) of the VAT Act (as amended); section 36 of the Finance Act.

⁵¹ Section 10(4) of the VAT Act (as amended); section 36 of the Finance Act.

⁵² Section 32 of the Capital Gains Tax Act (as amended); section 49 of the Finance Act.



In addition, sums obtained by way of compensation for loss of office, shall not be chargeable gains except where the amount of such compensation or damages exceeds ten million Naira (N10,000,000.00) in any year of assessment.⁵³

6. CONCLUSION

In line with the new Finance Act, it is important for companies involved in the provision of maritime services to understand the extent of the implications of the Act on their business. This article has therefore successfully set out the new developments in the Finance Act as are applicable to the maritime industry.

⁵³ Section 36(2) of the Capital Gains Tax Act (as amended); section 50 of the Finance Act.

