Legal Alert – February 2012 – Personal Income Tax (Amendment) Act, 2011

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Introduction

Personal Income Tax ("PIT") is a tax imposed on the incomes of individuals, communities and families. It is also charged on the incomes due to a trustee or an estate.

The Personal Income Tax Act, 2004 is now amended by the Personal Income Tax (Amendment) Act, 2011. This follows many years of agitation for the Personal Income Tax Law in Nigeria to be brought in line with present-day economic realities; and also to assist to increase the compliance levels and the amount of tax voluntarily paid and or collected by the Nigerian government.

Some of the highpoints of this new Personal Income Tax legislation are highlighted in this Tax Alert for your enlightenment and necessary action.

Personal Income Exempted from Tax.

Contributions and incomes derived from the National Housing Fund ("NHF"), the National Health Insurance Scheme ("NHIS"), Life Assurance Policies, the National Pension Scheme and Gratuities, are now formally exempted in one legislation, to charge under the 2011 Personal Income Tax (Amendment) Act.

Consolidation of Personal Relief Allowances

The Personal Income Tax (Amendment) Act, 2011 ("PIT 2011") has consolidated all the personal income tax reliefs or allowances now allowed, when computing a person's individual tax, into a single Consolidated Tax Relief Allowance ("CTRA") of ₦200,000 (Two Hundred Thousand Naira) or a minimum of 1% of the person's annual gross income, whichever is higher of the two, plus 20% of the individual's annual gross income as CTRA.

The residue or remainder of an individual's income is liable to Personal Income Tax at an average graduating rate of between 7% to 24% of the individual's annual income. Thus, a higher PIT Tax rate is reserved for people earning above ₦1.6Million and ₦3.2Million per annum after making provision for CTRA.

In computing the gross emoluments of all employees, the employee's wages, salaries, allowances (including his or her benefits-in-kind), gratuities, superannuation and any other income derived by reason of employment shall be computed for purposes of arriving at the employee's Payee tax that will be remitted to the revenue authorities.

Taxation of Expatriate Income

The income, profit or gain of an individual shall be deemed to be derived from Nigeria and liable to personal income tax in Nigeria if the employer of the individual is in Nigeria or has a fixed base for doing business in Nigeria.

Also, where the duties of any employment are wholly or partly performed in Nigeria, the income, profit or gain of such employment or engagement shall be liable to personal income tax charge in Nigeria.

The exceptions to the above general rules, under this new Personal Income Tax legislation, are:-

i. Where the remuneration of the employee is not borne by a fixed business base of an employer in Nigeria; or
ii. The employee is not in Nigeria for a period or periods amounting to an aggregate number of 183 days or more (including the employee's annual leave or temporary periods of absence) in any twelve (12) month period; or
iii. The remuneration of the individual is liable to personal income tax in another country with whom Nigeria has a Double Tax Avoidance Treaty ratified by the National Assembly.

Barring repetition, Double Taxation Treaties ("DTT") relating to Personal Income Tax shall only now have effect once they are ratified by the National Assembly of the Federal Republic of Nigeria.

Duty to Keep Books of Account

A failure or refusal to keep adequate and proper books of accounts for purposes of computing Personal Income Tax is an offence, which on conviction carries a penalty of ₦50,000 for individuals and ₦500,000 for corporate employers.

Failure to deduct Personal Income Tax

Where a person, employer or corporation, obligated to deduct tax under the 2011 PIT Act, or having deducted PIT fails to remit the tax deducted to the relevant revenue authorities within thirty (30) days from the date the amount was deducted or the obligation to deduct the tax

arose, such a defaulter shall be obligated to pay (i) a penalty of an amount of 10% of the personal income tax not deducted or remitted in addition to (ii) paying the tax withheld or not remitted; and lastly (iii) paying interest at the prevailing monetary policy rate of the Central Bank of Nigeria on the latter two items.

Section 18 (2) of the 2011 PIT Act has now authorised the Accountant General of the Federal Republic of Nigeria to deduct directly from the budgetary allocation of any government agency, department or ministry any un-withheld and un-remitted taxes, and to transfer such deduction to the beneficiary State Government upon written request by such a State Government.

Conclusion and Comments

Nigeria remains a cash-driven economy where tracking direct income, especially for tax purposes, remains a very difficult task. The 2011 PIT Act however continues with the poor tradition of emphasising a direct taxation system in spite of our historical poor compliance records for direct tax legislations and administration in Nigeria.

Reductions in the direct tax rates and increases in the indirect tax rates especially on luxury items will increase the amounts collected in taxation in Nigeria.

Some Tax commentators have also made the argument that the 2011 PIT Act relatively imposes a higher tax rate on the lower and higher income earners with the middle class receiving a slightly reduced tax rate. This defeats one of the essential purposes of taxation, which is the equitable distribution of income among citizens to ensure some social harmony and peaceful co-existence.

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