

What you should know and do about the Personal Income Tax (Amendment) Act 2011

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As many people already know, the President on Tuesday 13 December 2011 while presenting the 2012 Federal Budget proposal to the joint session of the National Assembly confirmed that the Personal Income Tax (Amendment) Bill has been signed into law. Based on the amendment dated 14 June 2011, the key changes include introduction of a consolidated tax free allowance of N200,000 or 1% of gross income, whichever is higher, plus 20% of the gross income including benefits in kind, gratuities, superannuation and any other incomes derived solely by reason of employment.

Principal place of residence has been redefined to include places where branch offices and operational site of companies are situated. Operational sites are defined to include oil terminals, oil platforms, flow stations, construction sites, etc with a minimum of 50 workers. Also, any individual irrespective of status who works in more than one state for at least 20 days in at least 3 months of every assessment year will be liable to tax in such states. Although the minimum tax rate was increased from 0.5% to 1% of gross income, the taxable income bands have been increased while the top tax rate was reduced marginally from 25% to 24%.

Temporary staff are now specifically liable to tax so this will include casual workers, interns and other contract staff. Conditions for exemption from personal income tax for any employment wholly or partly performed in Nigeria have been modified to require evidence that such individuals are liable to tax in another country under the provisions of a double tax treaty. Also where the remuneration is borne by a fixed base of the nonresident employer in Nigeria, the individual will be deemed to be liable to tax in Nigeria. In addition, the 183-day residency rule under which a foreigner becomes liable to tax regardless of other conditions has been modified to include periods of temporary absence or leave.

A minimum of 5% of revenue collected is to be retained by relevant tax authorities for administrative purposes. It is however not clear whether this would also cater for tax refunds which including the refund of excess withholding tax stated in the amendment.

Employers are to file annual returns in respect of their employees not later than 31 January of the following year while the 1% bonus available for early filing of assessment by individuals has been removed. To ensure compliance, interest on default in payment of tax will now be imposed on an annual basis from the date when the tax becomes due until it is paid. This means simple interest will now be charged as against the current practice of a flat rate (one-off)

interest. In the same vein, individual tax clearance certificates (TCC) to be demanded for change of ownership of vehicles and application for land title transfer or perfection. Any appeal against unresolved assessments will now be handled by the Tax Appeal Tribunal but tax officers are required to apply to the High Court for a warrant of distraint before exercising their powers to distraint for failure by taxpayers to pay final and conclusive tax liability under the law.

Tax exemption has been granted for individuals on interest income earned from debt instruments including corporate bonds. This exemption was previously limited to income on government bonds.

With respect to the possible implications of the amendment, this will actually mean different things to different people, possibly with some unintended consequences. Many may have to pay more while some will pay less and a few will be indifferent. Investors will enjoy 100% exemption on interest income while landlords will pay less on rental income due to personal allowance now available on gross income as against earned income under the old law. Ironically the poorest of the poor such as those who earn minimum wage (and are liable to minimum tax) will suffer 100% increase in their taxes. Highly paid individuals who earn over N12 million per annum and whose compensation under the old personal income tax act is structured for tax efficiency will also pay more under the new amendment. On the contrary persons who earn higher income than the level which is liable to minimum tax but below N12 million per annum will enjoy a reduction in their taxes. However where the compensation under the old law was not structured for tax efficiency the new amendment will result in a decrease in tax liability for all individuals except the poorest of the poor who will suffer 100% increase in their tax liabilities.

There are some contentious issues with the amendment including the commencement date given that it was signed on 14 June 2011 but only announced during the budget presentation by the president on 13 December 2011 and yet to be officially gazetted. Technically the amendment should become effective from the date it was signed into law and gazetted unless a specific commencement date is indicated in the act. In addition, it is not clear if existing tax free allowances such as housing and transport allowances etc will continue to apply along with the consolidated allowance given that the section on these allowances was not deleted in the amendment. However, Schedule 6 contained in the amendment states specifically that the remainder of income after deducting the consolidated allowance, personal relief and specified exempt deductions is taxable.

Expatriates who meet all the conditions for tax exemption including being liable to tax in another country may now be exposed to tax in Nigeria if the other country does not have a double tax agreement with Nigeria. The place of residence rule which has been modified to include location of branch office or similar presence with a minimum of 50 staff means that an individual (regardless of status) may become liable to tax in more than one state for a given year of assessment. It may however be difficult to track the movement of employees between different states for tax purposes in order to implement the modifications to the place of residency rule.

There is no doubt that the personal income tax amendment will have implications for all taxpayers - employers and employees. Employers should therefore review their employee tax compliance structures and processes including review of employment contracts, expatriate arrangements, staff policies, pay structure and component, payroll software etc to align with the new amendments and optimize their tax positions. Employers must bear in mind possible impact of any compensation restructuring on statutory contributions such as national housing fund, pension contribution etc and other benefits especially post employment benefits which are linked to certain components of salary such as basic pay.

It is advisable for employers to carry out a tax health check for open periods and consider remediating any identified non compliance. This will reduce the risk of higher penalty and accumulating interest on annual basis pending audit by the tax authority. Overall, the amendment will reduce the income tax rate for many individuals in line with the National Tax policy objective of reducing direct tax and increasing indirect tax.

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