Changes in Tax Laws and their Implications on Capital Market Activities.

A Presentation by the Executive Chairman

at the third

CAPITAL MARKET COMMITTEE (WEBINAR) MEETING.

INTRODUCTION

- Tax is an instrument of social engineering – can be used to stimulate general or sectoral economic growth. This is particularly true of capital market operations in Nigeria. Market economies require private savings to provide capital to establish new ventures and to expand existing enterprises.
- The capital market and its activities is important in mobilizing long term capital to stimulate economy. Thus, it is important that the operators keep track of the changes in the tax rules and laws, especially as they affect companies operating and listed companies.

TWO MAJOR TAX EVENTS DURING THE PERIOD

- Finance Act 2021
- Expiration of the Exemption Order on Bonds and Sort Term Federal Government Securities – this is equally important because of the effect of income yield of money market on capital market transactions

Finance Act 2021

1. Capital Gains Tax (CGT)on disposal of shares and securities

- Capital gains tax (CGT) now applies on disposal of shares and securities, where the disposal is in aggregate of N100 million and above, in any 12 consecutive months. The rate is 10% on the gains
- CGT applies only at the point of final exit from the market, as such CGT will not apply where the disposal proceed is re-invested in the same year of assessment
- Disposal of Nigerian Government Securities will continue to enjoy **exemption** from Capital Gains Tax (CGT).

When will Capital Gains Tax Not Apply?

- Where the gains relates to disposal of Nigerian government securities
- Where the aggregate proceeds from the disposals is lower than N100 million in a 12 consecutive period.
- Where the proceed from the disposal is re-invested in the shares of Nigerian companies within the same year of assessment.
- Where shares are transferred between an approved Borrower and a Lender in a Securities Lending transaction ("SEC Lending Transaction") i.e. shares and securities transferred under SEC lending will continue to enjoy CGT exemption to boost liquidities of securities in the capital market.

Instances Where Capital Gains will be chargeable despite the exemptions

- Where only a portion of the disposal procced is re-invested within the same year of assessment. CGT will apply on the portion not reinvested.
- Where the amount re-invested is not on shares of Nigerian companies (e.g. if not re-invested or re-invested in securities other than shares of Nigerian companies).
- disposal of shares by borrower or lender that is not covered under approved SEC Lending Transaction (e.g. disposal of shares by the lender or borrower to a third party or the disposal of the borrowed shares).

CGT Compliance Obligations

- Filing of annual CGT returns by any Companies/persons that have disposed securities,
  - Filing of CGT returns is not subject to threshold under the law
  - The CGT returns must be filed whether or not the aggregate proceed is up to N100 million in 12 consecutive months.

- Payment of the tax by Companies/persons that does meet the exemption conditions.

Relevant Amendment to Companies Income Tax

- Deletion of Section 18(c)(iii) CITA
- The implication is that:
  - aligns the provision of CITA with that of PPTA on the taxation of dividend distributed by upstream petroleum company.
  - As such, dividend distributed by upstream petroleum companies is no longer exempted from WHT deduction under Companies Income Tax.

CITA cont'd

- Amendment to Section 30 of CITA on turnover basis of assessment
- The amendment allows the Service to apply the turnover basis of assessment on non-resident digital companies that falls under the Significant Economic Presence rule
- By the amendment, the Service can tax companies that fall under the SEP rule using a fair and reasonable percentage of their turnover
- This aligns the taxation of Nigerian companies and non-resident companies with physical presence in Nigeria with non-resident digital companies under the SEP rule
- This provides level playing field for Nigerian companies and non-resident companies providing transactions through digital means

CITA cont'd

- The amendment to Section 33 of CITA provides clarification on the 0.25% reduced minimum tax rate
- Companies now has elective option to choose 2 consecutive years out of the 3 years 2019-2021 accounts
- Companies that file their returns late will pay penalty equivalent to the 0.25% reduction claimed

CITA Cont'd

- Amendment to Section 77 of CITA
  - there is no longer requirement for payment of provisional tax.
  - The implication of this is that tax is payable on the due date of filing returns.
  - Taxpayers can, at their discretion, pay their taxes by instalment, provided they pay up the tax instalment by the due date of payment.

CITA Cont'd

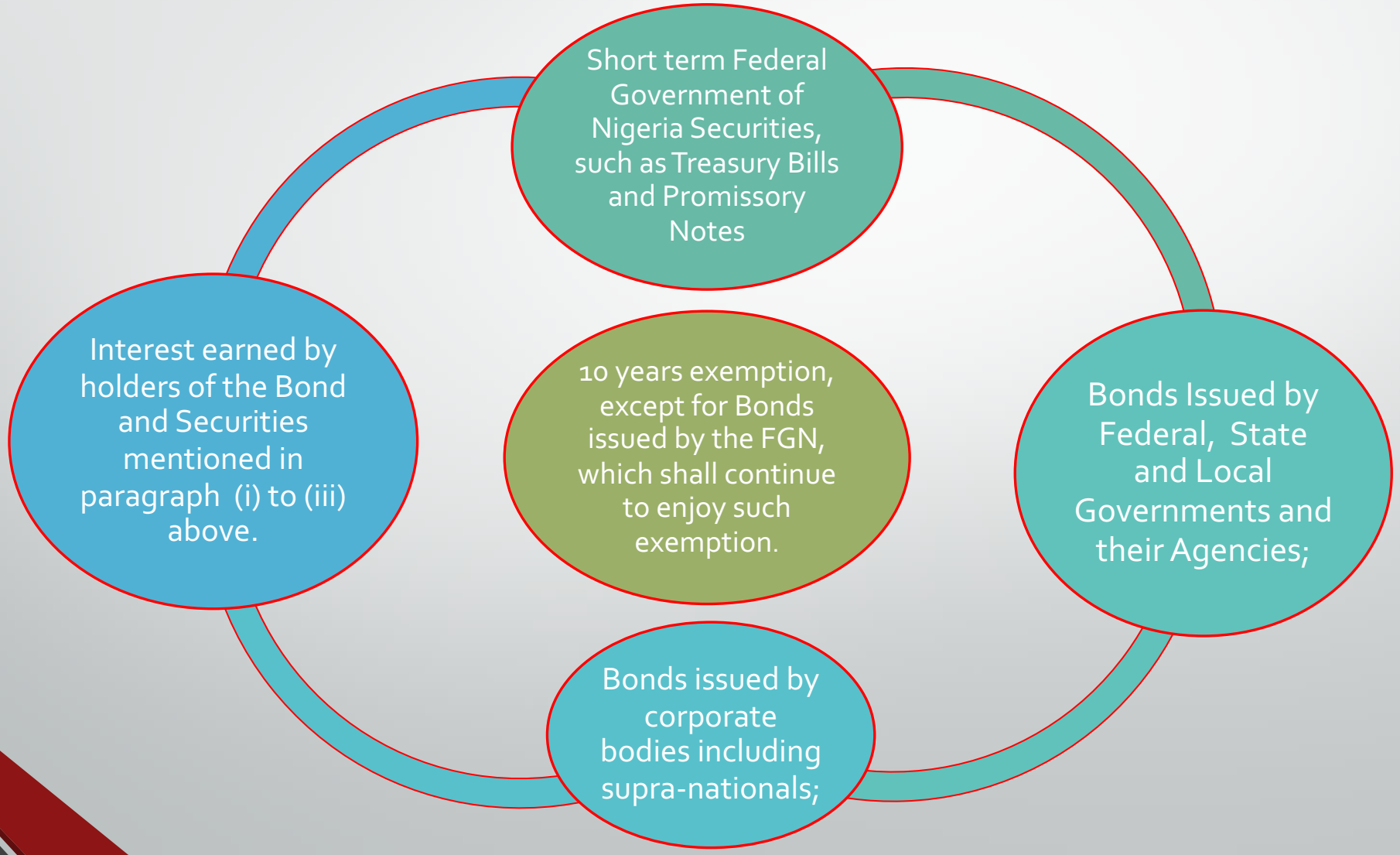
- Amendment to Section 78 of CITA with respect to WHT on interest paid to Unit Trust
  - This means that WHT on interest earned on unit trust is to be regarded as 'final tax'.
  - As such, interest earned by Unit Trust will not be subject to further tax in the hand of the Unit Trust
  - This benefit is limited to Unit Trust, to boost their activities

Deployment of Technology

- Amendment to Section 25 of the FIRS Establishment Act
  - FIRS has power to deploy technology to automate tax administration
  - Failure to grant access to FIRS for the connection of its tax administration technology, after 30 days of notice, attracts N25,000 penalties per day
  - The scope of the power covers all taxpayers, including companies in the Capital market and capital market operator itself.
  - FIRS is looking to 100% automation of its processes within the year
  - This will include the automation of the threshold on the N100 million threshold on capital gains and claim of re-investment of proceed of disposal

Expiration of Exemption Order

Scope of 2011 Exemption Order



Scope of Short term Securities Covered

Short-term debt instrument issued by Federal Government and its Agencies with a maturity of less than one year; includes:
treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.

Does not cover short-term debt instruments issued by State or Local Governments, their agencies, as well as corporate bodies; such as:
bankers' acceptance, commercial paper, bills discounted, promissory notes, discount paper, certificates of deposit, bonds with a remaining term of 12 months or less, and investment grade debt instruments with remaining maturities of 12 months or less.

Scope of Bonds Covered in the Exemption

Bonds Issued by:

- Federal Governments
- State Governments
- Local Governments; and
- Their Agencies

Bonds issued by:

- corporate bodies; including
- supra-nationals (multinationals)

Expiration of Exemption Order

- The 10 years exemption expired on 1st January, 2022
- The implication is that income tax would now apply from 2nd January, 2022
- However, the Exemption Order does not have expiration date for Bonds issued by Federal Government, which shall continue to enjoy tax exemption.
- The implication is that:
  - income received in respect of Bonds issued by the Federal Government will continue to be exempted from tax
  - But income received in respect of Short term Federal Government securities, such as Treasury Bills, Promissory Notes etc. will be taxable

Expected Income to be subject to tax

Short-term Securities:

- Interest, including upfront interest
- Charges, fees etc.
- Discounts
- Capital gains

Bonds:

- Interests – monthly, quarterly, semi-annual or annual
- Discounts
- Charges, fees
- Capital gains

Tax Implication Under CITA

CITA

CIT is chargeable on interests, discounts, fees, charges and annuities received in respect Bonds of all types;

CIT is also chargeable on income earned on Federal Government securities, including treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates,

debenture certificates or treasury bonds

WHT

In line with Section 78(1) of CIT, WHT is deductible on interests (which may sometimes be called discounts, charges or annuities, depending on the instrument or transaction)

The WHT should be deducted at the date when payment is made or credited, whichever first occurs

The obligation is on the company or person effecting the payment or credit

Fees and other income are also subject to WHT under Section 81 of CITA

Tax Implication Under PITA & CGTA

PITA:

In line with Paragraph 31A of Third Schedule, the income earned is exempt from tax under PITA, including WHT

The exemption covers interest on:

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

(b) Bonds issued by corporate including supra-nationals;

However, interest earned on **short-term securities is not exempt under PITA. It is thus taxable**

CGTA:

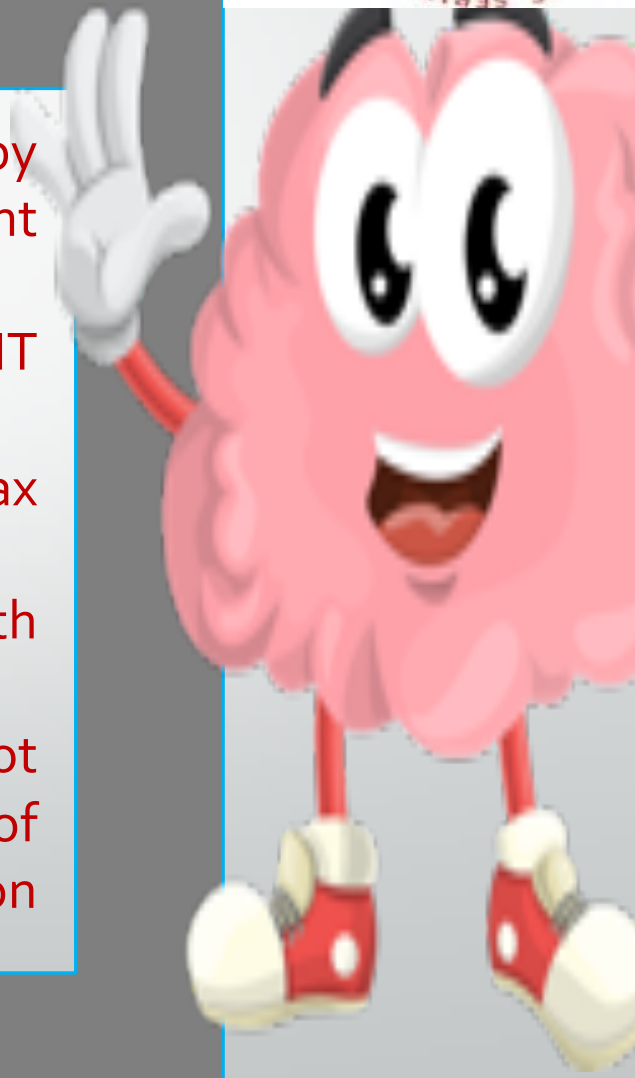
Gains from disposal is chargeable to CGT, except Federal Government Bonds

Section 30 provides that:

"Gains accruing to a person from a disposal by it of Nigerian government securities shall not be chargeable gains under this Act."

Compliance Obligations

- Deduction of withholding tax at the point of payment or credit by payers – including banks, custodians, registrars, government agencies etc.
- Remittance of WHT so deducted and filing of required WHT returns
- Inclusion of income (interest, discounts, fees etc.) for tax purposes – self-assessment returns, tax computations etc.
- Submission of necessary documents and compliance with procedures to claim refund, where necessary
- Payment of outstanding taxes on short-term securities not covered within the scope of the exemption and payment of penalties and interests for failure to withhold or pay tax on income on such short term securities

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