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PERSONAL INCOME TAX (AMENDMENT) ACT, 2011



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PERSONAL INCOME TAX (AMENDMENT) ACT, 2011

ACT No. 20

AN ACT TO AMEND THE PERSONAL INCOME TAX ACT, CAP. P8 LAWS OF
THE FEDERATION OF NIGERIA, 2004; AND FOR RELATED MATTERS.

[14th Day of June, 2011]

Commencement.

ENACTED by the National Assembly of the Federal Republic of Nigeria—

1. The Personal Income Tax Act (in this Act referred to as "the Principal Act") is amended as set out in this Act.

Amendment
of Cap. P8
LFN, 2004.

2. Section 2 of the Principal Act is amended—

Amendment
of Section 2.

(a) by substituting for the word "impose" in the marginal note the word "collect" and wherever it occurs in the section;

(b) by inserting, immediately after subsection (1), a new sub-section "(1A)"—

"(1A) Notwithstanding anything in the Principal Act, the relevant tax authority in a State shall have powers to collect tax under this Act from itinerant workers." ; and

(c) in sub-section (8), by inserting immediately after the word "allowances" the words "including benefits in kind".

3. Section 3(1) of the Principal Act is amended by substituting for paragraph (b) a new paragraph "(b)"—

Amendment
of Section 3.

"(b) any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums as or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain".

Amendment
of Section
10.

4. Section 10 of the Principal Act is amended—

(a) in sub-section (1) (a) (i), by inserting immediately after the word "Nigeria", the phrase "and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria";

(b) in sub-section (1) (a) (ii), by inserting immediately after the word "amounting to", the phrase "an aggregate of " and also immediately after the phrase 183 days, the phrase (inclusive annual leave or temporary period of absence :

(c) in sub-section (1) (a) (iii), by inserting immediately after the word, "country", the phrase "under the provisions of the avoidance of double taxation treaty with that other country";

(d) in sub-section (1) by substituting for paragraph (b), a new paragraph "(b)" — "the employer is in Nigeria, or has a fixed base in Nigeria"; and

(e) by deleting subsection (5) and renumbering the subsequent subsections accordingly.

Amendment
of Section
33

5. Section 33 of the Principal Act is amended by—

(a) substituting for subsection (1) a new sub-section "(1)—

"(1) There shall be allowed a consolidation relief allowance of ₦200,000.00 subject to a minimum of 1 percent of gross income whichever is higher plus 20 *per cent* of the gross income and the balance shall be taxable in accordance with the Income table in the Sixth Schedule to this Act";

(b) inserting a new sub-section "(2)" before the existing subsection (2) as follows—

"(2) For the purposes of this section, "gross emoluments" means, wages, salaries, allowances (including benefits in kind), gratuities, superannuation and any other incomes derived solely by reason of employment"; and

(c) renumbering the existing sub-sections (2) and (3) as sub-sections (3) and (4) accordingly.

Amendment
of Section
36.

6. Section 36 of the Principal Act is amended by inserting a new sub-section "(6)" as follows—

"(6) Notwithstanding any of the provisions of this Act, where for all practical purposes the income of the taxpayer cannot be ascertained or records are not kept in such a manner as would enable proper assessment of income, then such a taxpayer shall be assessed on such terms and conditions as would be prescribed by the Minister in regulations by order of *gazette* under a presumptive tax regime".

Amendment
of Section
37

7. Section 37 of the Principal Act is amended by substituting for the figures "0.5" the figure "1" in lines 6 and 7 wherever it appears.

Amendment
of Section
38

8. Section 38 of the Principal Act is amended—

(i) by substituting for the existing marginal note, the following new Marginal Note—

"Avoidance of double taxation agreement";

(ii) by substituting for the existing sub-section (1), a new sub-section "(1)"—

"(1) Where the Government of the Federal Republic of Nigeria has entered into agreement with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act, any tax of a similar character imposed by the laws of that country, and that it is expedient that the agreement have effect, the Agreement shall have effect "upon ratification by the National Assembly" ; and

(iii) by substituting for the word "arrangement", the word "Agreement" anywhere it occurs in the section.

9. Section 44 of the Principal Act is substituted for a new section "44"—

"44. A taxable person required by this Act to file a return of income shall in the return calculate the amount of tax payable in the form as may be prescribed by the Minister by order of gazette".

10. Section 47 of the Principal Act is Amended—

(a) in the proviso to sub-section (1) (d) by deleting—

(i) the words "including a person charged with the administration of the FSB International Plc" ;

(ii) the commas (,) immediately before and after the deleted ; and

(b) in sub-section (3) by substituting the figure "5,000" and "500" in lines 2 and 3 the figure "500,000" and "50,000" respectively ; and

(c) by inserting a new sub-section "(5)"—

"(5) Any organization including governmental bodies, professional bodies, trade associations and any other organization shall provide any information demanded of them by any tax authority in a format as may be prescribed by the tax authority".

11. Section 49 of the Principal Act is amended—

(a) in sub-section (1), by deleting—

(i) the words "including a person charged with the Administration of the FSB International Plc" ; and

(ii) the commas (,) immediately before and after the deleted words ;

(b) in sub-section (2), by deleting—

(i) the words "and a person charged with the administration of the FSB International Plc" in lines 2 and 3 lines,

(ii) the commas (,) immediately before and immediately after the deleted words,

(iii) the words "including any person charged with the Administration of the FSB International Plc" in lines 1 and 2 in the proviso thereof ; and

Amendment
of Section
44.

Amendment
of Section
47.

Amendment
of Section
49.

Amendment
of Section
52.

(iv) the commas (,) immediately before and immediately after the deleted words ; and

(c) in sub-section (3) by substituting for the figures "5,000" and "500" with the figure "500,000" and "50,000" respectively.

12. Section 52 of the Principal Act is amended in sub-section (1) by substituting the existing sub-section (1) with the following new sub-section -

"(1) if a taxable person fails or refuses to keep books of accounts which, in the opinion of the relevant tax authority, are adequate for the purpose of the tax—

(a) Such a taxable person other than those in salary employment shall be liable on conviction to a penalty of ₦50,000 for individuals and ₦500,000 for corporate entities ; and

(b) the relevant tax authority may by notice in writing direct the person to keep such records, books and accounts, in such form and in such language as may be specified in the notice and, subject to the provisions of sub-section (2) of this section, the person shall keep the records, books and accounts as so directed."

Amendment
of Section
57.

13. Section 57 of the Principal Act is amended by inserting immediately after the words "registered post" in line 1, the words "or Courier Service or Electronic Mail".

Substitution
for Section
60.

14. Section 60 of the Principal Act is substituted for a new section "60" -

"ESTABLISHMENT OF BODY OF APPEAL COMMISSIONERS

60. The Tax Appeal Tribunal established pursuant to section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007 shall have the powers to entertain all cases arising from the operations of this Act".

Deletion of
Sections 61-
67.

15. Sections 61-67 of the Principal Act are deleted.

Amendment
of Section 70
(5).

16. Section 70 (5) of the Principal Act is amended by deleting the words, "the FSB International Plc" line 3.

Amendment
of Section
73(4).

17. Section 73(4) of the Principal Act is amended by substituting for the words "but only to the extent that the total of those deductions do not exceed the amount of the assessment" in line 3, the words "except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this Act shall be refunded by the relevant tax authority within 90 days except if it is a final tax after the assessment has been fully filed, with the option of setting off against future tax pay by the payer".

18. Section 74 of the Principal Act is substituted for a new section "74"—

Substitution
for Section
74.

"PENALTY FOR FAILURE TO DEDUCT TAX

74(1) Any person or body corporate who, being obliged to deduct tax under section 69, 70, 71 or 72 of this Act, fails to deduct, or having deducted, fails to remit such deductions to the relevant tax authority within thirty days from the date the amount was deducted or the time the duty to deduct arose, shall be liable to a penalty of an amount of 10 per cent of the tax not deducted or remitted in addition to the amount of tax not deducted or remitted plus interest at the prevailing monetary policy rate of the Central Bank of Nigeria.

(2) The Accountant-General of the Federation shall have power to deduct at source, from its budgetary allocation, un-remitted taxes due from any Ministry, Department or Government Agency and transfer such deduction to the relevant State upon request by such State".

19. Section 77 of the Principal Act is amended by inserting immediately after the word "interest" in line (1), the words "on annual basis".

Amendment
of Section
77.

20. Section 81 of the Principal Act is amended—

Amendment
of Section
81.

(a) by inserting immediately after the existing sub-section (1) the following new sub-sections "(2)-(4)"—

"(2) Every employer shall be required to file a return with the relevant tax authority of all emoluments paid to its employees, not later than 31st January of every year in respect of all employees in its employment in the preceding year.

(3) Any employer who contravenes the provisions of this section shall be liable on conviction to a penalty of ₦500,000 in the case of a body corporate, and ₦50,000 in the case of an individual.

(4) Income tax recovered under the provisions of this section by deduction from payment made to a person shall be set-off for the purposes of collection against tax charged on that person by an assessment except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this section of this Act shall be refunded by the relevant tax authority within 90 days after the assessment has been duly filed, with the option of setting off against future tax by the tax payer"; and

(b) re-numbering the existing sub-sections (2), (3), (4), (5) and (6) as sub-sections (5), (6), (7), (8) and (9) respectively.

21. Section 85 of the Principal Act is amended in—

Amendment
of Section
85.

(a) sub-section (2), by inserting immediately after the last word "assessment" in line 4, the words "and shall verify the genuineness by referring same to the issuing tax authority";

- (b) sub-section (3), by inserting a new paragraph "(ee)"—
 "(ee) tax payer identification number (T.I.N.)";
- (c) sub-section (4), by inserting immediately after the existing paragraph(s) the following new paragraph "(f)", "(u)", and "(v)"—
 "(f) for change of ownership of vehicle by the vendor;
 (u) application for plot of land;
 (v) any other transaction as may be determined from time to time";
and
- (d) in sub-section (7), by substituting for the figures "500" with the figures of "50,000".
- (e) by inserting the following new sub-section "(9)"—
 "(9) A person be it a government organization or corporate entity to whom section 85(2) applies who fails to comply with same is guilty of an offence and is liable on conviction to a fine of ₦5,000,000.00 or to imprisonment for 3 years or both fine and imprisonment."

Amendment
Section 86.

22. Section 86 of the Principal Act is amended—

- (a) in sub-section (2)(a), by substituting for the words "Section 1 of Companies Income Tax Act", the words "Section 11 of the Federal Inland Revenue Service (Establishment) Act, 2007";
- (b) by substituting for paragraph (b), a new paragraph "(b)"—
 "one member from each State, being a person appointed pursuant to section 87(2) (a) of this Act, and a nomination under this paragraph shall be evidenced by notice in writing delivered to the Secretary to the Board by the Governor"; and
- (c) in sub-section (3), by substituting for the words "Federal Civil Service Commission" in line 1 the words "Joint Tax Board".

Amendment
of Section
87.

23. Section 87 of the Principal Act is amended in sub-section (2) by substituting for paragraphs (a), (b) and (e) new paragraphs "(a)", "(b)" and "(e)"—

- "(a) the Chairman of the State Internal Revenue Service as Chairman of the State Board who shall be a person experienced in taxation and a member of a relevant recognized professional body, appointed by the State Governor, subject to confirmation by the State House of Assembly;
- (b) the Directors from within or outside the State Service"; and
- (e) three other persons appointed by the State Governor on their personal merit, one each representing a Senatorial District in the State; and

24. Section 88 of the Principal Act is amended in sub-section (1) (b) by—
(a) substituting for the semi-colon (;) at the end of the paragraph, a colon (:) ; and

(b) inserting immediately after the word "Commissioner" the words—

"Provided that an amount of not less than 5 per cent of revenue collected as may be approved by a State House Assembly shall be retained by the State Board of Internal Revenue to defray cost of collection and administration".

Amendment
of Section
88.

25. Section 94(1) of the Principal Act is amended by—

(a) substituting for the figures "200" in line 4, the figures "5,000", and

(b) substituting for the words "forty naira for everyday in line 5, the words "one hundred naira ;"

Amendment
of Section
94(1).

26. Section 95 (1) of the Principal Act is amended by substituting for the phrase "10 per cent" the amount "20,000".

Amendment
of Section
95.

27. Section 96 (1) (b) of the Principal Act is amended by—

(a) substituting for the words "a fine of ₦5,000 or imprisonment for five years or to both such fine and imprisonment", the words a fine of ₦50,000 for individuals and ₦500,000 for corporate bodies or to imprisonment for not more than six months" ; and

(b) in line 3 of the proviso, by substituting for the figures "1,000.00" the figures "10,000"

Amendment
of Section
96(1).

28. Section 97 of the Principal Act is amended in the second to the last line by substituting for the figures "1,000" with the figures "100,000".

Amendment
of Section
97.

29. Substitute for section 104 of the Principal Act a new section "104".

"POWER TO DISTRAIN

104.(1) Without prejudice to any other power conferred on the relevant tax authority for the enforcement of payment of tax due from a taxable person that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the person in accordance with the provisions of this Part of this Act, or has been served upon the person, then, if payment of tax is not made within the time specified by the demand notice, the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of tax due—

(a) distress the taxpayer by his goods, other chattels, bond or other securities ; or

Substitution
for Section
104.

(b) distrain upon any land, premises or places in respect of which the taxpayer is the owner and, subject to the provisions of this section, recover the amount of tax due by sale of anything so distrained.

(2) The authority to distrain under this section shall be in the form prescribed by the relevant tax authority.

(3) For the purpose of levying any distress under this section, an officer duly authorized by the relevant tax authority shall apply to a Judge of a High Court sitting in Chambers, under oath for the issue of a warrant under this section.

(4) The Judge may, on application made ex-parte, authorize such officer, referred to in sub-section (3) of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.

(5) The distress taken pursuant to this section may, at the cost of the owner, be kept for 14 days, at the end of which time, if the, amount due in respect of tax and the cost and charges incidental to the distress are not paid, the same way be sold.

(6) There shall be paid out of the proceeds of sale, in the first instance, the cost or charges incidental to the sale and keeping of the distress and the residue, if any, after the recovery of the tax liability, shall be payable to the owner of the things distrained or to the appropriate court where the owner cannot be traced, within 30 days of such sale.

(7) In exercise of the powers of distress conferred by this section, the person to whom the authority is granted under sub-section (3) of this section may distrain upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.

(8) Nothing in this section shall be construed as authorizing the sale of any immoveable property without an order of a court of competent jurisdiction."

Insertion of
new Section
106 A.

30. The Principal Act is amended by inserting immediately after the existing section 106 the following new section 106A—

"POWER TO MAKE REGULATIONS

106A (1) The Minister may, on the recommendation of the Joint Tax Board, make regulations generally for giving full effect to the provisions of this Act.

(2) The National Assembly may, upon a proposal by the President, impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable

as specified in section 40 and Second Schedule of this Act and in accordance with Section 59 (2) of the 1999 Constitution."

31. Section 108 of the Principal Act is amended by substituting for the existing interpretation of the words "itinerant worker" the following new interpretation—

Amendment of section 108.

"*itinerant worker*" includes an individual irrespective of his status who works at any time in any state during a year of assessment (other than as a member of the armed forces) for wages, salaries or livelihood by working more than one State and work for a minimum of twenty (20) days in at least three (3) months of every assessment year.

32. The First Schedule to the Principal Act is amended in paragraph 1 by inserting a new sub-paragraph "(d)" after the existing paragraph (c)—

Amendment of First Schedule.

"(d) in the case of an individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational site is situate :

Provided that operational site shall include Oil Terminals, Oil Platforms, Flow Stations, Factories, Quarries, Construction Site with a minimum of 50 workers, etc."

33. The Third Schedule to the Principal Act is amended by—

Amendment of Third Schedule.

(a) deleting paragraphs 2 and 3 ;

(b) substituting for paragraph 7, a new paragraph "7"—

"7. Interest on any loan granted by a bank on or after 1st January 1997 to a person engaged in—

(a) agricultural trade or business ; and

(b) the fabrication of any local plant and machinery" ;

(c) by substituting for paragraph 14 a new paragraph "14"—

"14 (1) pension granted to any person pursuant to any enactment or law for the time being in force.

(2) wound and disability pensions granted to members of the armed forces or of any recognized national defense organisation or to a person injured as a result of enemy action."

(d) in paragraph 15, by substituting the words "Pensions Act" the words "Pensions Reform Act, 2004".

(e) by inserting after the existing paragraph 31, a new paragraph "31A"—

"31A. Income earned from—

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

(b) bonds issued by corporate including supra-nationals ; and

(c) interest earned by holders of the bonds, and short term securities listed in paragraphs (a) and (b) ;"

Substitution
for Sixth
Schedule.

34. The Sixth Schedule to the Principal Act is substituted for a new Sixth Schedule—

"SIXTH SCHEDULE"

INCOME TAX TABLE

(1) A consolidated relief allowance shall be granted on income at a flat rate of ₦200,000 plus 20 *per cent* of gross income.

(2) *Tax Exempt* : The following deductions are tax exempt—

(a) National Housing Fund Contribution

(b) National Health Insurance Scheme

(c) Life Assurance Premium

(d) National Pension Scheme

(e) Gratuities

(3) After the relief allowance and exemptions had been granted in accordance with paragraphs 1 and 2 of this Schedule, the balance of income shall be taxed as specified in the following tax table :

Tax Income Rates

Graduated Tax rates with consolidated allowance of ₦200,000 + 20 *per cent* of Gross Income, subject to a minimum tax of 1 *per cent* of Gross Income whichever is higher.

1. First ₦300,000 @ 7 *per cent*
2. Next ₦300,000 @ 11 *per cent*
3. Next ₦500,000 @ 15 *per cent*
4. Next ₦500,000 @ 19 *per cent*
5. Next ₦1,600,000 @ 21 *per cent*
6. Above ₦3,200,000 @ 24 *per cent*

Citation.

35. This Act may be cited as the Personal Income Tax (Amendment) Act, 2011.

I certify, in accordance with section 2 (1) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

SALISU ABUBAKAR MAIKASUWA, mni
Clerk to the National Assembly
2nd Day of June, 2011.

EXPLANATORY MEMORANDUM

This Act amends the Personal Income Tax Act Cap. P8 Laws of the Federation of Nigeria, 2004 to make it more responsive to the tax policies of the Federal Government and enhance its implementation and effectiveness.

SCHEDULE TO THE PERSONAL INCOME TAX (AMENDMENT) BILL, 2011

| (1) <i>Short Title of the Bill</i> | (2) <i>Long Title of the Bill</i> | (3) <i>Summary of the Contents of the Bill</i> | (4) <i>Date passed by the Senate</i> | (5) <i>Date Passed by the House of Representatives</i> |
|---|--|--|---|---|
| Personal Income Tax (Amendment) Bill, 2011. | An Act to amend the Personal Income Tax Act, Cap. P8 Laws of the Federation of Nigeria, 2004; and for Related Matters. | This Bill seeks to amend the Personal Income Tax Act, Cap. P8 Laws of the Federation of Nigeria, 2004. | 1st June, 2011. | 25th May, 2011. |

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

SALISU ABUBAKAR MAKASUWA, mini
Clerk to the National Assembly
2nd Day of June, 2011.

I ASSENT.



Dr. GOODLUCK EBULE JONATHAN, GCFR
President of the Federal Republic of Nigeria
14th Day of June, 2011.