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COVID-19: RAISING FINANCE – A QUICK LOOK AT THE NEW TAX EXEMPTION REGIME ON INTEREST PAYABLE ON FOREIGN LOANS UNDER THE FINANCE ACT, 2019

In an earlier publication (read here), we posited that an important post-COVID-19 issue to be considered by businesses to ensure continuity is fund-raising and suggested that a post-COVID-19 crisis team should be constituted to start exploring business continuity strategies, including options for raising finance. We also suggested crowdfunding as a viable fund-raising option for businesses.

In this newsletter, we look at raising finance for post-COVID-19 business operations but from the perspective of the new provisions on tax exemption on interest payable on foreign loans as provided in the recently enacted Finance Act, 2019[1].

Without a doubt, a key source of finance for Nigerian companies is foreign loans. While there are generally no restrictions on the provision of foreign loans to Nigerian companies, some key points to note are the rules on foreign exchange controls as contained in the Foreign Exchange (Monitoring and Miscellaneous) Provisions Act[2] and the Central Bank of Nigeria Foreign Exchange Manual (Revised Edition) issued in March 2018 (the "**Forex Manual**").The Forex Manual provides that request for foreign loans by Nigerian incorporated companies from corporate bodies/institutions offshore are required to be processed through authorised dealers (usually commercial banks) who shall issue an electronic Certificate of Capital Importation ("**eCCI**") to the lender within 24 (twenty-four) hours of the receipt of loan supported with the appropriate documentation.

An eCCI provides evidence of capital importation into a Nigerian company and guarantees access to the official foreign exchange market. It guarantees the repatriation, through an authorised dealer and in freely convertible currency, the proceeds of the investment covered by the eCCI to the foreign investor in favour of whom the eCCI was issued. That is, proceeds in respect of:

[1] The Finance Act, 2019 has a commencement date of 13th January, 2020 – the day it was assented to by President Muhammadu Buhari, GCFR.
[2] Cap. F34 Laws of the Federation of Nigeria ("**LFN**") 2004.

- Dividends or profits (net of taxes) attributable to the investment;
- Payments for the service of loans where a foreign loan has been obtained; and
- The remittance of proceeds (net of all taxes) and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

As noted above, this newsletter is limited to a quick look at the new tax exemption framework on interest payable on foreign loans. Under the Companies Income Tax Act ("**CITA**")[3], interest payable on any foreign loan is granted tax exemption in relation to the deduction of withholding tax ("**WHT**") based on the duration of the moratorium provided to the borrower and the tenor of the loan. WHT is generally applicable on the interest payable on a loan at a rate of 10% on the amount payable or 7.5% if there is a double taxation agreement between Nigeria and the home country of the lender.

Prior to the enactment of the Finance Act, 2019, the tax exemption provisions were as follows:

Repayment period including moratorium	Grace period	Tax exemption allowed
Above 7 years	Not less than 2 years	100%
5 to 7 years	Not less than 18 months	70%
2 to 4 years	Not less than 12 months	40%
Below 2 years	Nil	Nil

However, the Finance Act, 2019 reduced the above tax exemption rates. Under the new provisions, the highest tax exemption rate on interest payable on any foreign loan is now 70% as against the 100% tax exemption previously allowed. The Finance Act also introduced definitions for "*repayment period*" and "*moratorium*" to ensure clarity in the computation of the applicable tax exemption by the Federal Inland Revenue Service.

The new tax exemption regime on interest payable on any foreign loan is as follows:

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

Although the Finance Act, 2019 was enacted prior to the business disruptions caused by the COVID-19 pandemic, it is necessary for the tax exemption provisions as noted above to be reconsidered in order to boost the chances of Nigerian companies obtaining foreign loans for their business operations and also reduce the costs of obtaining such foreign loans. This is particularly important given that foreign lenders would typically insist on tax gross-up provisions in their loan documentations.

As such, the Federal Government should consider introducing a Bill for the amendment of the tax exemption schedule on interest payable on foreign loans to provide favourable incentives for providers and borrowers of foreign loans as part of the measures to mitigate the adverse effects of the COVID-19 pandemic on businesses.

[3] Cap C21 LFN, 2004 (as amended).

Qualifications

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