journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

# Legal Impact of the Finance Act 2019 on Taxation, Mergers and Other Business Combinations in Nigeria

**Dr. C. E. Halliday***

**G.C. Okara****

## Abstract
*The Finance Act 2019 sought to provide a boost to small and medium scale enterprises by reducing their tax burden, replaced existing tax incentives with more targeted incentives to stimulate economic activity in the capital market and infrastructure sectors. It also amended several onerous tax provisions which have impeded investment in Nigeria. In view of global economic and tax trends, the Finance Act 2019 also sought to modernize the Nigerian tax system by incorporating recommendations of the OECD on taxation of the digital economy and profits earned by non-resident companies. On the overall, the Finance Act 2019 incentivized economic activities to stimulate GDP growth and facilitated increase in the revenue generated. This paper which adopted the doctrinal research methodology analysed the impact of the Finance Act 2019 on mergers and other business combinations in Nigeria. Furthermore, this paper keenly discussed the output ratio of the Finance Act 2019 on direct and indirect taxes in Nigeria such as the: CITA, PPTA, CGTA, VATA and the PITA. Fundamentally, this paper recommended that in view of the provisions of section 35 of the Finance Act 2019, a specific duration should be imposed for a new business to register for VAT; the Federal government should take pragmatic steps to provide basic amenities in all nooks and crannies of Nigeria in order to cushion the biting effect of the increase in VAT. It was further recommended that affected entities should take urgent steps to review their commercial arrangements for the purpose of compliance and avoidance of penalties*.

**Keywords***:* Business Combinations, Finance Act 2019, Merger, Taxation.

**Word Count: 5057 words**

## Introduction
It is a fundamental fact that due to some perceived inadequacies in the tax regime in Nigeria, the Finance Act of 2019 was enacted with several modifications made to the Companies Income Tax Act[1] alongside other tax legislation in Nigeria. The Finance Act 2019 was an Executive Bill prepared by the Honourable Minister for Finance, Budget and National Planning, which was approved by His Excellency, the President, Muhammadu Buhari and presented together with the

*BSc (Hons) Benin, LL.B (Hons) Ibadan; BL, (Hons); LLM, Merit (UCL, UOL); PGD (Theology); PhD (NAU), Reader, Faculty of Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt, Email: halliday.chidi@ust.edu.ng.

**LLB (First Class), BL, LLM, Lecturer, Faculty of Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt; Email:goodtime.okara3@ust.edu.ng.

1. Cap C 21 LFN 2004 as amended (CITA).

2020 Budget proposals on 14 October 2019 to a joint sitting of the National Assembly. The Bill was subsequently reviewed by the National Assembly, passed by the Senate on Wednesday, 20 November 2019 and the House of Representatives on Wednesday, 27 November 2019, respectively, prior to assent by the President which culminated into the Finance Act, 2019.[2]

Essentially, the Finance Act 2019 underscores a significant milestone for Nigeria as it marks a return to an era of active fiscal supervision motivating regular review of the macro environment and stimulation of the economy on an annual or at least regular basis by means of such instruments as a Finance Act. It is noteworthy to state that the Finance (Miscellaneous Provisions) Act,[3] represents the last time Nigeria utilised this budgetary fiscal tool in moderating the tax environment for business.

It is imperative to note that the Finance Act 2019 does not contain a commencement date within which the legislation will come into force.[4] Regardless of this omission, succor can be found in *section* 2 (2)(a) of the Interpretation Act which provides that where there is no provision for the commencement date of an Act of the National Assembly, such Act shall come into effect on the date it was passed. Furthermore, flowing from the provision of *section* 2(1) of the Interpretation Act, an Act is passed when the president assents to the bill for the Act.[5] Thus, it can be logically inferred that the Finance Act came into force on 13 January 2020 being the day the president assented to it.

Importantly, the Finance Act 2019,[6] introduces germane changes,[7] to the CITA, Value Added Tax Act,[8] Customs and Excise Tariff Etc. (Consolidation) Act,[9] Personal Income Tax Act,[10] Capital Gains Tax Act,[11] Stamp Duties Act,[12] and Petroleum Profits Tax Act.[13] In the same vein, it has been argued that the amendments made by the Finance Act 2019 are intended to raise necessary revenue required to defray public expenditure, support sustainable increase in public revenue and ensure that tax law provisions are consistent with the national tax policy objectives of the Federal Government of Nigeria as the amendments are staged across five broad thematic areas to: promote fiscal equity by mitigating instances of regressive taxation; reform domestic tax law to align with global best practice; introduce tax incentives for investment in infrastructure and capital markets; support small businesses in line with the ease of doing business reforms; and to raise revenue for government, by various fiscal measures, including, for

2. W. Obayomi, 'Finance Act 2019: Impact Analysis' [2020] *KPMG*, 3.
3. No.30 of 1999.
4. J. Dasun and Others, 'Nigeria: An Overview of the Major Changes Introduced by the Finance Act to Nigeria's Tax Regime', Aelex, <https:www.mondaq.com/Nigeria39s-Tax-Regime> accessed 8 July, 2020.
5. *Karumi v FRN* [2016] LPELR-40473 (CA); *Omatseye v FRN* [2017] LPELR-42719 (CA).
6. Finance Act 2019, introductory para.
7. C. Ikwuazom and Others, 'The Finance Act 2019: Significant Changes to Nigeria's Tax Landscape' *Aluko&Oyebode*, <ao@aluko-oyebode.com> accessed 8 July 2020.
8. Cap VI, LFN 2004, (VATA).
9. Cap 49, LFN 2004.
10. Cap P8, LFN 2004, (PITA).
11. Cap C1, LFN 2004, (CGTA).
12. Cap S8, LFN 2004, (SDA).
13. Cap P13, LFN 2004, (PPTA).

instance, increase in the VAT rate from 5% to 7.5%.[14] It is upon this backdrop that this paper seeks to examine the extra-territorial implications of the Finance Act 2019 on the tax regime in Nigeria.

**The Impact of the Finance Act 2019 on Mergers and Other Business Combinations in Nigeria**

It is abundantly clear that the CITA had hitherto provided special rules for determining the tax base of a company in the first three years of business and in the last two years of business. These rules, which were referred to as the "Commencement" and "Cessation" rules, respectively,[15] had often resulted in double taxation of profits earned in one or more financial years of the company during these periods. However, the Finance Act 2019 has now modified the onerous commencement and cessation rules such that companies pay taxes based on their accounting periods.[16]

The legal impact of this modification is that companies will now be allowed to prepare and file tax returns in their first, second and third years of assessment based on their first, second and third sets of financial statements thereby eliminating the double tax risk associated with application of the erstwhile commencement and cessation rules.[17]

Furthermore, the Finance Act 2019 introduces a time limit condition of 365 days for related companies to enjoy the commencement and cessation exemption in a merger, acquisition or any form of business combination and grants value added tax[18] exemption on assets sold or transferred in mergers and acquisition deals involving related companies.[19] In essence, where companies are related and there is a merger or an acquisition, the FIRS may direct, on application by the relevant parties that commencement and cessation rules should not apply. This envisages that the company being transferred will not be seen as having ceased business, and the company emerging in the case of a merger, or the company acquiring in the case of an acquisition, will not be deemed to be a new company that has just commenced business.[20] However, the Finance Act 2019,[21] and *section* 29 (9) of the CITA appears to be silent with respect to businesses sold or transferred by unrelated entities/companies, neither do the above legislation provide for the treatment of unrelieved loss and unutilized capital allowances.

Hence, despite the enactment of the Finance Act 2019, a buying company acquiring the assets of a vendor/ target company shall not be entitled to any allowances deemed to have been received by the vendor company. Any allowance deemed to be received by a vendor company although not utilized, may not go to the buyer company. In a similar vein, the surviving company in cases

14. (n 2).
15. (n 1), s. 29 (3)(4).
16. (n 6), s. 12(3)(4).
17. (n 15).
18. VAT.
19. (n 6), s. 12 (4)(c) (i)(ii).
20. (n 1), s. 29 (9); A. Olalere and M. Falohun, 'Insight: Tax Laws Governing M&A in Nigeria-in Need of Reform' <https://news.bloombergtax.com/daily-tax-report-international/insight-tax-laws-governing-m-a-in-nigeria-in-need-of-reform> accessed 9 July 2020.
21. (n 6).

of acquisition can only claim annual allowance on the residue of the qualifying expenditure for any outstanding year not claimed by the first/initial company.[22]

It is noteworthy to state that the Finance Act 2019 has immensely modified the commencement and cessation rules provided under the CITA, thereby having a tripling effect on the tax implications affixed to merger and other business combinations in Nigeria.[23]

## The Impact of the Finance Act 2019 on Taxation in Nigeria

As stated in the prelude to this paper, the Finance Act 2019 greatly impacts several direct and indirect taxes in the Nigerian economy, these taxes shall be considered *seriatim*:

### i) Capital Gains Tax Act (CGTA) Cap C1, Laws of the Federation of Nigeria (LFN) 2004

Capital Gain Tax (CGT) is a tax on the profit obtained from disposal or exchange of certain kinds of assets. In Nigeria, CGT is 10% of the profits from the sale of the qualifying assets[24] as provided in the CGTA.[25] However, the Finance Act 2019 limits the impact of this provision by exempting any capital sum of N10 million or less received as compensation for loss of office.[26]
The CGTA which provided for CGT concessions was evinced that chargeable gains on business reorganisations were exempted from CGT to the extent that the consideration for any shares disposed of pursuant to a business reorganisation is non-monetary. Similarly, no concessions were provided for assets transferred in a business reorganisation. Exemptions were also granted to gains on disposal of shares, regardless of whether the consideration for such disposal is monetary or non-monetary.[27] Nonetheless, the Finance Act 2019 now extends the exemption frontiers to cover assets transferred in a related-party business reorganisation, subject to passing the minimum holding requirement test.[28] Therefore operating assets transferred in the course of a related party business reorganisation will typically not give rise to the realisation of economic value for group of companies, as the benefits derived from utilising those assets will eventually devolve to the same persons who had hitherto benefited from those assets. Taxing the asset transfer would, therefore, result in a double taxation within the group on the same asset as opposed to taxing the synergies and other economic benefits derived from exploiting those assets.[29] It is upon this stead that *section* 49 of the Finance Act 2019 provides *inter alia*:

> *Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, no tax shall apply under this Act to*

---

22. A. Olalere and M. Falohun, (n 20).
23. (n 6), ss. 12(3)-(4); 12 (4)(c) (i)-(ii).
24. (n 11), s.36(2); Nairametrics, 'Beginners' Guide: How to Compute Capital Gains Tax in Nigeria' <https://numerics.com/2019/09/18/how-to-compute-capital-gains-tax-in-nigeria-beginners-guide/> accessed 9 July, 2020.
25. (n 11), ss.6-11.
26. (n 6), s.50.
27. (n 11), s. 32.
28. (n 6), s.49.
29. A. Olomola and N. James, 'Finance Act 2019: Impact on Business Re-Organisations' [2020] *KPMG*, 24.

> *sale or transfer of the assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognized group of companies and have been so far a consecutive period of at least 365 days prior to the date of reorganisation;*
> *Provided that if the acquiring company were to make a subsequent disposal of the assets acquired within the succeeding 365 days after the date of transaction, any concession enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsections as at the date of initial reorganisation.*

It therefore logically follows as a matter of inexorable logic that related-party business reorganisations can now be successfully completed in a tax-neural manner subject to passing the minimum holding requirement test.[30]

**ii) Companies Income Tax Act (CITA) Cap C4, Laws of the Federation (LFN) 2004 (as amended)**

Companies Income Tax is tax levied on the profits of incorporated entities in Nigeria. It also includes the tax on profits of non-resident companies who accrue or derive profits from Nigeria or bring or receive income in Nigeria.[31] Accordingly, the Finance Act modifies the provisions of *section* 13 of the CITA to create a nexus for the taxation of income earned by foreign companies from technical, management, consultancy or professional services that are remotely provided to a person resident in Nigeria. Thus, making the tax payable by such foreign companies to be limited to the Withholding Tax (WHT) deducted from them on such payments.[32]

In a similar vein, the Finance Act introduces the provisions to tax any foreign company that 'transmits, emits or receives signals, sounds, messages, images or data of any kind from cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity'.[33]

However, the Finance Act does not define what constitutes 'significant economic presence' but empowers the Minister of Finance to define the term.[34] It is upon this backdrop that the Companies Income Tax (Significant Economic Presence) Order,[35] was enacted on 29 May, 2020. Accordingly by *section* 1 of the Companies Income Tax (Significant Economic Presence)

30. (n 6), s.49; (n 29), 25.
31. A. Oyebowale, 'Nigeria: 12 Nuggets on Companies Income Taxation in Nigeria', <https://www.mondaq.com/nigeria/corporate-and-company-law/867586/12-nuggets-on-companies-income-taxation-in-nigeria> accessed 9 July, 2020.
32. (n 6), s. 4(b).
33. *Ibid.,* s. 4(a)(ii); Aelex, 'Finance Act, 2019: Tax Implications for the Private Equity Industry' <Finance-Act-2019_-Tax-Implications-for-the-Private-Equity-Industry.pdf> accessed 22 September, 2020.
34. (n 6), s. 4(c).
35. 2020.

Order,[36] a foreign company is deemed to have a SEP in Nigeria in any accounting year, where it derives 25 Million Naira annual gross turnover or its equivalent in other currencies from any or combination of the following digital activities such as:

i) streaming or downloading services of digital contents, including but not limited to movies, videos, music, applications, games and e-books to any person in Nigeria; or

ii transmission of data collected about Nigerian users which has been generated from such users' activities on a digital interface including website or mobile applications; or the provision of goods or services other than those under sub-paragraph 5 of the Order, directly or indirectly through a digital platform to Nigeria; or

iii) the provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria;

iv) uses a Nigerian domain name or registers a website address in Nigeria; or

v) has a purposeful and sustained interaction with persons in Nigeria by customizing its digital page or platform to target persons in Nigeria, including reflecting the prices of its products or services in Nigerian currency or providing options for billing or payment in Nigerian currency.[37]

Thus, where a foreign company that provides digital content/services is deemed to have a significant economic presence in Nigeria, its profits will be subject to companies' income tax of 30%. Where the foreign company provides technical, management, professional or consultancy services, it will suffer 10% withholding tax ("WHT") when it receives payment for these services from a person resident in Nigeria or a fixed base or agent of a foreign company in Nigeria.[38]

Therefore, with the enactment of the Finance Act 2019, Nigeria has joined countries, such as India and Israel that have codified the SEP rule into their income tax laws.[39] The SEP concept was first documented in the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion Profit Shifting (BEPS) Action 1 final report in October 2015. BEPS Action 1 seeks to address tax challenges of the digital economy. The 2015 report on BEPS Action 1 noted that beyond BEPS, digitalisation raised a series of broader direct tax challenges. These challenges mostly relate to the question of how taxing rights on income generated from cross-border activities in a digital transaction should be allocated among countries in order to secure and sustain the international income tax system and increase tax equity amongst traditional and digital businesses. However, as the world economies are at different stages of digitalization and development, there has been no consensus on the acceptable method of taxation of the digital economy. This led to the design of the programme of work to provide a

36. *Ibid.*
37. (n35), ord. 1(1)(a)-(c).
38. *Ibid,* ord. 2; (n 1), s.13(2)(e); Aelex (n 33).
39. W. Obayomi, 'Minister of Finance Issues Order on Significant Economic Presence by Non-Nigerian Companies' [2020] KPMG Advisory Services, 2.

consensus-based long-term solution that will address the challenges of the digitalisation of the economy.[40]

Although, it has been observed that the Order did not give any guidance on whether the CIT returns filed by qualifying companies will be based on actual or deemed income basis. This is very important given the recent disputes between the FIRS and non-resident companies (NRCs) since the FIRS' 2015 directive requiring NRCs to file their CIT on actual income basis just as Nigerian companies.[41]

**iii) Petroleum Profits Tax Act, Cap C4 Laws of the Federation (LFN) 2004 (as amended)**

Under the erstwhile PPTA framework, dividends paid out of after-tax profits were exempted from tax under any other taxing legislation. Consequently, investors in upstream petroleum operations in Nigeria were allowed to enjoy tax free returns on investment.[42] The Finance Act revokes the Withholding Tax (WHT) exemption on income or dividends paid out of after-tax petroleum profits, provided for under *section* 60 of the PPTA.[43] It is important to note that the exemption under *section* 60 of the PPTA was introduced as a palliative to upstream oil and gas investors whose profits suffer tax at a higher rate of 85% for Joint Venture operations, and 50% for PSCs, compared to the 30% corporate income tax rate applicable to non-oil and gas businesses. Therefore, revoking the exemption will further aggravate the tax burden of the upstream oil and gas companies.[44]

Essentially, the worsening tax profile for upstream investors, combined with the uncertainties surrounding the Petroleum Industry Fiscal Bill (PIFB) and the impact of the recently enacted Deep Offshore and Inland Basin Production Sharing Contract (Amendment) Act, would make the Nigerian upstream sector less competitive and attractive to both foreign and local investors *vis-a-vis* other oil producing jurisdictions, such as Ghana, Mozambique and Angola, that have substantial oil and gas reserves with lower tax profiles than Nigeria.[45]

**iv) Value Added Tax Act, Cap V1, LFN 2007 (as amended)**

It is an undisputable fact that the Nigeria's National Tax Policy is a gradual shift from reliance on direct tax to indirect tax for economic growth. To achieve this, a progressive increase in the VAT rate and a gradual reduction in income tax rate were recommended.[46] According to the National Tax Policy, indirect taxes are more efficiently realised by the FIRS and, therefore, yield a higher rate of return, when compared to direct taxes.[47] First and foremost, it is worthy of note that the Finance Act 2019 introduced an amendment to section 8 of the VAT Act by reducing the registration period for a new business from the current six months to 'upon commencement' which suggests that the obligation to register for VAT is immediate upon commencement of

40. (n39)
41. *Ibid*, 3.
42. (n 13), s.60.
43. (n 6), s.24.
44. (n 13), s.60.
45. A. Ajayi and A. Salami, 'Oil and Gas Industry Impact Analysis' [2020] *KPMG*, 22.
46. A. Olomola, 'Indirect Taxes' [2020] KPMG, 11.
47. *Ibid.*

business.[48] Additionally, the penalty for delay in registration has been increased from N10,000 for the first month of default to N50,000 and from N5,000 for every subsequent month of default to N25,000.[49]

More so, the Finance Act provides for a VAT rate increase by 50% that is from 5% to 7.5%.[50] The rate increase, when combined with other VAT-related changes, is expected to increase VAT revenue significantly. However, in order to mitigate the impact of the revised VAT rate increase to 7.5% and facilitate economic growth and development through SMEs, the Finance Act introduces palliative measures for micro and small enterprises. One palliative measure is the introduction of a VAT compliance threshold. The threshold is to exempt companies with an annual turnover of N25,000,000 or less from registering for the tax, charging the tax, rendering a monthly return of its sales and purchases and from the penalties prescribed by the Act for non-compliance with the administrative provisions.[51]

The provisions of the VAT Act did not contain a definition of goods. Consequently, VAT-able goods had, in practice, been limited to tangible goods that are not exempted under the First Schedule to the VAT Act. Incorporeal property was generally accepted as non VAT-able, by taxpayers, on the basis that such properties neither constitute goods nor services and supply thereof cannot attract VAT.[52] The Finance Act seeks to expand the definition of 'goods' to include 'any intangible product, asset or property over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land'.[53] This expansive definition of 'goods' under the Finance Act 2019 is in tandem with the 2019 decision of the Lagos Tax Appeal Tribunal in the case of *ESS-AY Holdings Limited v Federal Inland Revenue Service (FIRS)*,[54] wherein the tribunal held that rent derived from the lease of real properties whether residential or commercial is not subject to the value added tax regime under the Value Added Tax Act being an incorporeal right.[55] Again, this amendment addresses the issue that was considered by the Court in *CNOOC v AGF & Others*[56] where the question of VAT over the disposal of an interest in an oil mining lease was disputed.

Furthermore, the Finance Act 2019 seeks to have resolved the controversial issue of the VAT-ability (in Nigeria) of services provided outside Nigeria by a non-resident company (NRC) to a Nigerian company. Despite the bipolar arguments to this issue,[57] the Finance Act 2019 seeks to

48. (n 6), s. 35.
49. *Ibid.;* (n 8), s.8(2).
50. (n 6), s.34; Deloitte Nigeria, 'Nigeria: Nigerian Government Proposes 50% Increase in VAT Rate' <https://mondaq.com/nigeria/tax-authorities/847174/nigerian-government-proposes-50-increase-in-vat-rate> accessed 22 September, 2020.
51. (n 6), s.38.
52. (n 46).
53. (n 6), s.43.
54. TAT/LZ/VAT/029/2019.
55. Sale of Goods Act 1893, s.62; U. Chioma, 'Tax Appeal Tribunal Declares FIRS Information Circular Illegal, says Rent Derived from Lease of Real Properties, Residential or Commercial not Subject to VAT' <https://thenigerialawyr.com/tax-appeal-tribunal-declares-firs-information-circular-illegal-says-rent-derived-from-lese-of-real-properties-residential-or-commercial-not-subject-to-vat/> accessed 22 September, 2020.
56. [2013] NTLR 88.
57. *Vodacom Business Nigeria Limited v FIRS*, Appeal No. CA/L/556/2018.

resolve this ambiguity by introducing 'place of supply rules' for services.[58] By virtue of the Finance Act 2019, a service would be deemed to be supplied in Nigeria if the 'services are rendered in Nigeria by a person physically present in Nigeria at the time of service provision, or the services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria'.[59] It is therefore logically inferred that every service supplied (either locally or imported) to a Nigerian-based customer and enjoyed in Nigeria becomes VAT-able in Nigeria.

In a similar vein, prior to its amendment by the Finance Act 2019, the VAT Act defined an exported service as a 'service performed by a Nigerian resident or a Nigerian company to a person outside Nigeria'.[60] As exported services were (and still are) exempt from VAT, one view widely held in practice was that a Nigerian entity marketing funds to Nigerian residents on behalf of a non-resident fund manager was not required to include VAT in an invoice for that service or to include such transactions in its VAT returns for the relevant period.[61] However, in *Allan Gray Investment Management Nigeria Limited v Federal Inland Revenue Service (FIRS)*,[62] the Tax Appeal Tribunal took the ruled that a South African investment manager was carrying on business in Nigeria because its Nigerian subsidiary marketed investment funds to Nigerian residents on its behalf. That finding was used to support a decision that services rendered by the local subsidiary were in fact rendered to a fixed base of the non-resident company and, therefore, could not be considered to be exported services. Essentially, by virtue of *section* 43 of the Finance Act 2019 a redefinition has been given to the term 'exported services' to exclude services provided to the fixed base or permanent establishment of a non-resident person. Implicatively, Nigerian companies or individuals that are engaged to market foreign funds to local investors on behalf of non-resident fund managers will now be required to issue VAT invoices in respect of such services. In the same vein, the Finance Act 2019 expanded the definition of 'basic food items' to include a long list of staple foods, food additives, water including mineral water etc.[63] Hence, this ends the long time controversy over the scope of the VAT exemption on food items.[64]

**v) Personal Income Tax Act Cap P8, LFN 2004 (as amended)**

Prior to the enactment of the Finance Act 2019, banks were not obligated to require tax identification number for the opening of any business account. However, by virtue of *section* 28 of the Finance Act 2019 banks are now obligated to require the tax identification number for the opening of any business account. It has been observed that this amendment will facilitate the data collection for sole proprietorship businesses which will aid the expansion of the tax net.[65] It is upon this back drop that as part of the Ease of Doing Business Initiative, the Corporate Affairs Commission now works with the Federal Inland Revenue Service to issue tax identification

58. (n 6), s.33 (2)(b).
59. *Ibid.*
60. (n 8), s.46.
61. Aelex (n 33).
62. TAT/LZ/VAT/019/2018.
63. (n 6), s. 43.
64. *MonamerKhod Enterprises Nig. Ltd. & Anor v FIRS & 2 Ors*, Suit No. FHC/S/CS/1/2004.
65. Aelex (n 33).

numbers along with the certificate of incorporation.[66] Thus, saving companies and small business owners the troubles of applying separately to the FIRS for their tax identification numbers.

Similarly, the Finance Act 2019 amends various references to the Federal Board of Internal Revenue or the Board to the Federal Inland Revenue Service.[67] Essentially, this amendment brings the Finance Act 2019 in accordance with the practical realities.[68] In a similar vein, the requirement for the approval of the Federal Inland Revenue Service with respect to pension schemes has now been deleted.[69] Therefore, the requirement to obtain approval from the FIRS as a precondition for claiming contributions made to a pension, provident and other retirement benefits fund as a tax-deductible expense is no longer part of *corpus juris*.

Additionally, the provisions relating to the grant of children, dependent relative allowances and life assurance premium relief has been deleted by the Finance Act 2019.[70] This amendment seeks to resolve the controversies surrounding the entitlement of chargeable persons to children and dependent relative allowances in addition to the consolidated relief allowance granted under the PITA.[71]

Again, the Finance Act 2019 introduces an amendment to *section* 58 of the PITA by permitting notices of objection to be delivered by courier service and electronic mail.[72] This amendment seeks to bring taxpayers at par with the tax authorities who are already permitted to serve notices of assessment by courier and electronic mail.[73]

**Conclusion**

The Finance Act 2019 heralds a giant stride by the Federal Government of Nigeria to reform Nigeria's tax laws in alignment with global best practices, support MSMEs in line with the Ease of Doing Business reforms, incentivize investments in infrastructure and capital markets and raise government revenues. Accordingly, the Finance Act 2019 is a right step in the right direction as it seeks to decentralize the Nigerian economy, reinforce investor confidence, and provide the long overdue clarity on hitherto controversial tax issues.

Furthermore, it is not in doubt that the Finance Act 2019 seeks to raise revenues for the Government through various fiscal measures. Nonetheless, while these amendments may increase government revenue in the very short run, the resulting reduction in investors' returns in the short to long term may lead to diversion of the much-needed foreign direct investment to more competitive jurisdictions in Africa. Essentially, this paper recommends as follows:

66. R. Okwumbu, 'Business Owners will Now Get CAC Certificate with TIN' <https://nairametrics.com/2020/06/29/business-owners-will-now-get-cac-certificate-with-tin/> accessed 23 September, 2020.
67. (n 6), ss. 25, 32.
68. *Ibid.*
69. *Ibid.*, s. 26.
70. (n 6), s.27.
71. (n 2), 10.
72. (n 6), s.29.
73. (n 10), s.57.

1. In view of the increased penalty provided under *section* 35 of the Finance Act 2019, it is recommended that a specific duration should be imposed for a new business to register for VAT as such a specification will accord with the objective of fairness and clarity in tax statutes;
2. In order to assuage the negative effect of *section* 34 of the Finance Act 2019 which increased VAT from 5% to 7.5%, the Federal Government should take pragmatic steps in ensuring that basic amenities such as: electricity, health care facilities; accessible road networks and access to potable water are effortlessly provided to citizens/ inhabitants in all strata of Nigeria;
3. Similarly, due to the anticipated significant impact of the amendments, affected businesses are enjoined to review their commercial arrangements for the purpose of compliance, restructuring and avoidance of penalties;
4. The government should develop policies that will boost investment industry such as the iron and steel industry which has not witnessed any significant exploration and development funding in the last decade.