



The Legal Luminary

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Editorial Board

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NEWS

Members of the Nigerian Medical Association (NMA), Oyo State branch, have said that they will be forced to "down tools" in the state if Governor Babatunde Fashola of Lagos State does not recall the sacked Lagos doctors

The immediate past governor of the Central Bank of Nigeria (CBN), Professor Chukwuma Soludo, has once again cautioned against the move by the National Assembly to tamper with the CBN autonomy as guaranteed by the CBN Act 2007, describing it as legislation in anger.

The Acting Vice Chancellor, University of Lagos, Prof. Rahmon Bello, on Tuesday described as a surprise the Federal Government's decision to rename the institution as Moshood Abiola University

From the Editor!

May is here and almost gone! Its funny how every year time seems to go by faster and faster, why it only seems like 2011 was a couple of months ago..

As we race toward the half mark of 2012 it's a good time to sit back and do a personal assessment. Which of your New Year resolutions have you been able to achieve? Are you still procrastinating about that plan of yours or have you implemented it. Remember time waits for no one, and its important that we leave our mark on the Corporation and indeed our community.

In this issue one of our in house counsel, Nonso Okonkwo shares his thoughts on the new Personal Income Tax Act It is quite interesting and we expect your usual questions and comments.

Q When does a mortgagee's power of sale become exercisable

The exercise of power of sale by a mortgagee can be either contractual or statutory. Contractual in the sense that the parties can by agreement make provisions as to when and how the power of sale will become exercisable

Generally, before a power of sale can be exercised any of the following conditions must be met:

1. Notice in writing requiring payment of the mortgage money must be served on the mortgagor, and there has been default in payment of all or part of the mortgage money, for three (3) months; or
2. Some interests under the mortgage is in arrears and unpaid for two (2) months or more in arrears; or
3. There has been a breach of some covenants contained in the mortgage deed by the mortgagor.

Thus, once the power has arisen and any of the above conditions is satisfied, the mortgagee will have absolute power of sale. But if the power sale has not arisen, the mortgagee has no right to sell.

But if the power sale has not arisen, the mortgagee has no right to sell. As earlier stated, the power of sale arises when the mortgage is due and payable at any time fixed for payment by the mortgage deed. But even if the power of sale has arisen, it only becomes exercisable upon the fulfillment of any of the three (3) aforementioned conditions.

The requirement of the law is that notice of intention to sell a mortgage property must be sent to the mortgagor. Consequently, any sale of any mortgage property without the requisite notice is invalid ab initio and cannot convey any title to a subsequent purchaser. The mortgagee has a duty to act in good faith in exercising his power of sale and in such a manner as not to recklessly disregard the interest of the mortgagors. Where the mortgagor challenges the sale on ground of bad faith or fraud—the sale of the mortgaged property can be impeached.

PERSONAL INCOME TAX ACT 2011 AND MATTERS ARISING

The Bill for amendment of the Personal Income Tax Act Cap. P8 L.F.N. 2004 was passed by the House of Representatives on 25th May, 2011 while the Senate passed it on 1st June, 2011 and the President assented to it on 14th, June 2011.

The news of the President's assent to the Bill to amend the Personal Income Tax Act, Cap. P8 LFN 2004 was made public on Tuesday, 13th December 2011, during the presentation of the 2012 Budget proposal by the President to a joint session of the National Assembly.

Some Highpoints of the amended Act

- Tax free allowances are no longer available under the Personal Income T(Amendment)Act, 2011 (PITAM) with the exception of reimbursement of expenses incurred by an employee in the performance of his duties, and from which the employee is not expected to derive any profit or gain. S.3

However, subsection S.33 (c) of the old tax Law (i.e Personal Income Tax Act Cap. P8 L.F.N. 2004) dealing on children and dependent relative allowances were not removed meaning that these allowances will continue to apply.

- A failure or refusal to keep adequate and proper books of accounts for purposes of computing Personal Income Tax is an offence, which on conviction carries a penalty of N50,000 for individuals and N500,000 for corporate employers. 12(1)(a)
- The Accountant General of the Federation is to deduct directly from the budgetary allocation of any government agency, department or ministry any un-withheld and un-remitted taxes, and to transfer such deduction to the beneficiary State Government upon written request by such a State Government S. 18 (2)
- The minimum tax payable has been increased from 0.5% of total income to 1% of total income. S.34
- Taxpayers are now empowered to request excess withholding tax. This should be done within 90days or granted as tax credits against future taxes. S.73
- Interest for late payment of Personal Income Tax (PIT) will be computed on an annual basis and would be compounded as against the simple interest basis that previously applied. S.77
- The PITAM requires government ministries, departments and agencies (MDAs) and commercial banks to demand for an individual's Tax Clearance Certificate (TCC) in respect of change of vehicle ownership, application for plot of land and any other transaction as may be determined from time to time. The PITAM also requires the MDAs and banks to verify TCCs submitted to them with the issuing relevant tax authorities (RTAs). S.85

Pursuant to the amendments made in the 3rd Schedule, Vice Presidents etc wnow pay PIT based on the deletion of Par 2 and 3 of the 3rd Schedule, the official emoluments of the President, Vice President, Governors and Deputy Governors will no longer be exempted. All pensions made pursuant to any law in force in Nigeria are tax exempt.

Bonds issued by the Government or any of their agencies, corporations or supranational organizations and the interest earned are tax exempt.

The new tax table according to the Schedule are as follows:

- First N300,000 taxed at 7%
- Next N300,000 taxed at 11%
- Next N500,000 taxed at 15%
- Next N500,000 taxed at 19%

Next N1,600,000 taxed at 21%
Above N3,200,000 taxed at 24%

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SOCIAL DIARY

HAPPY BIRTHDAY

May is indeed a very special month as our very own Editor-in-chief Mr. B. A. Taribo added another year to his years on the 3rd May, 2012. We wish our indefatigable boss very many happy returns and success in his all endeavours. In the same vein, we wish Nneka and Nonso both members of the legal department who marked their birthdays in the month of May, Happy Birthday in arrears.

CALL TO GLORY

The Corporation received with deep sorrow the news of the passing of our amiable colleague Mr. David Basahuwa, a Deputy Director of the SDD. The sad event occurred on the 18th of May, 2012 after a brief illness. We pray that the Almighty God grants those he left behind the fortitude to bear this great loss.

WHEN I GROW UP I WANT TO BE.....

The 27th of May has been set aside to commemorate children the leaders of tomorrow, this year's childrens' day fell on a Sunday and parades were held in various parts of the country by the children. However, most of the events in honour of day took place on Monday, 28th of May, 2012

REPLY BRIEF

Thank you. Keep up the good work

Nasiru M. Garba (Research Department)

b. Tax exempt under the Schedule for:

- (i) National Housing Fund Contribution
- (ii) National Health Insurance Scheme Contribution
- (iii) Life Assurance Premium
- (iv) National Pension Scheme
- (v) Gratuities.

One of the fundamental changes introduced by PITAM is the introduction of a new Consolidated Relief Allowance (CRA) that replaced the old Personal Relief. Based on the Old law, Personal relief was N5,000 plus 20percent of earned income. S.5 of PITAM which amended S.33 of the Principal Act (i.e PITA) replaced the old basis for computing personal was relief with the new CRA.

Nevertheless, there is some inconsistency regarding the basis of computing the CRA.

S.5(a) PITAM provides that CRA is to be computed as N200,000 subject to a minimum of 1% of gross income whichever is higher, plus 20% of the gross income and the balance taxed in accordance with the income table in the sixth sched to the Act.

Para 1 of the sixth schedule however specifies that the CRA will be granted on income at a flat rate of N200,000 plus 20percent of gross income.

Whilst opinion will be divided on the correct basis for calculating CRA, It is a trite law that the provisions of a Schedule to an Act cannot override the provisions in the main body of the Act.

Consequently, any inconsistency between the provisions of the main Act and its accompanying Schedule would have to be resolved in favour of the former. To that extent, I am of the view that the provisions of Section 5(a) of PITA will prevail.

In conclusion, the amendment will reduce tax rate for low income earners with a marginal increase for the middle class especially with reductions in the direct tax rates and increases in the indirect tax rates.

Overall, the new act contains significant provisions that align with global best practices of effective taxation. However, a large swathe of the country, especially the informal sector is still largely untaxed making the burden of financing public expenditure to be disproportionately placed on the shoulders of a few. It is for this reason that I think that a comprehensive tax reform, built around a balanced and healthy tax culture, is an imperative for national economic growth and sustainable human development.

I suggest that Nigeria should emulate advanced economies like the United States, which uses a graduated tax system linking tax returns to Social Security which in turn is linked to employment. Employers hereby face stiff penalties and sanctions if found employing undocumented workers.