Introduction

The President of the Federal Republic of Nigeria recently signed into law, the Personal Income Tax (Amendment) Act (PITAM or ‘the Act’), 2011. The gazetted version of the Act was made available to the public in January 2012 (although 24 June 2011 was the date of publication stated on the Gazette).

The PITAM amends/deletes thirty-six sections of the Personal Income Tax Act, Cap P8, Laws of the Federation of Nigeria, 2004 (PITA). It also modifies the First, Third and Sixth Schedules to the PITA.

We have highlighted below the key provisions and implications of the PITAM:

1.1 Date of commencement of the PITAM

The date of commencement of the PITAM is 14 June 2011, based on the Federal Republic of Nigeria Official Gazette No. 115, Vol. 98. This date is the same as the date of assent of the Act by the President.

As a consequence, taxpayers and employers may be required to re-compute the personal income tax (PIT)/pay-as-you-earn (PAYE) tax due for the period June 2011 to January 2012. We envisage that many taxpayers will qualify for refund from relevant tax authorities (RTAs) by reason of their overpayment of tax under the old PIT regime.

Given the difficulties currently associated with claiming tax refund in Nigeria, our view is that PIT/PAYE tax overpayments would likely be recovered as credit from subsequent remittances to the RTAs.

1.2 Sections 2 and 108: Persons on whom tax is to be imposed / Interpretation

The main amendment to Section 108 of the PITA is the redefinition of itinerant worker to include “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 for a minimum of twenty (20) days in at least three (3) months of every assessment year”.

Based on the amendment, employees of service companies who migrate from state to state in providing services to clients may now qualify as itinerant workers. Similarly, entrepreneurs, company executives and other personnel who by virtue of their responsibilities work in multiple locations in different states, may qualify as itinerant workers.

The PITAM also amends section 2 of the PITA by inserting a new subsection (1A), that provides that “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”.

Following from the above, individuals who now qualify as itinerant workers may find themselves liable to tax in more than one state. Consequently, such individuals or their employers would need to set up adequate administrative processes to effectively track the duration of stay and income subject to tax in the different states.

1.3 Sections 3 and 33: Income chargeable / Personal relief

(a) Tax free allowances are no longer available: Section 3 of the PITA has been amended to highlight the fact that both temporary and permanent employees are liable to PIT. However, the more important implication of the amendment to this section is the effective deletion of section 3(1)(b)(ii)-(xii), which provides employees with tax free allowances such as leave allowance, housing allowance, etc.

With the amendment, PITAM has withdrawn all tax free allowances previously enjoyed by employees under the section, 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.

Footnote: Please refer to the comments in 1.15 for details.
(b) **Increase in statutory reliefs:** The PITAM replaces the personal relief of ₦5,000 plus 20% of earned income, that was hitherto available under section 33(1) of the PITA, with the consolidated relief allowance (CRA). The CRA is to be computed as the higher of ₦200,000 or 1% of gross income plus 20% of gross income.

‘Gross income’ is not defined by PITAM. Rather ‘gross emoluments’, which is not used anywhere in the Act, is defined as “wages, salaries, allowances (including benefits in kind (BIKs)), gratuities, superannuation and any other incomes derived solely by reason of employment”. Assuming that ‘gross income’ includes, at least, ‘gross emoluments’, the definition is more robust than that of ‘earned income’ under PITA, and therefore provides a larger base for the claim of CRA by taxpayers.

(c) **Applicability of the CRA to individuals other than employees:** Section 33(1) of the PITA allows ‘every individual’ to claim the personal relief of ₦5,000 plus 20% of earned income. The intention of the provision is further substantiated by the definition of ‘earned income’ as “income derived... from a trade, business, profession, vocation or employment” in the First Schedule to the PITA.

PITAM is however, not as specific as PITA on the applicability of the allowance “in the case of every individual”. It also replaces the reference to ‘earned income’ in section 33(1) of the PITA, with the term ‘gross income’ which is not defined. Rather, it defines ‘gross emoluments’, a term usually associated with employment income. But given that CRA is claimable on ‘gross income’ – which, based on a comparison between section 34 of PITAM and section 36 of PITA, is used synonymously with ‘total income’ – our view is that CRA is fully claimable by all individuals liable to income tax under the PIT regime, regardless of whether they are in self-employment or salaried employment.

(d) **Valuation of BIKs:** Based on the provisions of section 3 of the PITAM, all ‘benefits’ and ‘perquisites’ provided to employees are taxable, with the exception of meals generally provided in any canteen, non-assignable luncheon vouchers, protective clothing and reasonable removal expenses. BIKs are also to be considered in determining an employee’s gross emolument for CRA purpose (section 5 of PITAM).

It is important to note that sections 4 and 5 of the PITA contain explicit provisions on the bases for valuing BIKs for both tax and CRA purposes. Furthermore, not all expenses (aside from cash emoluments) incurred on employees qualify as ‘benefits’ or ‘perquisites’ to the employees.

(e) **Relocation allowance, life insurance premium deduction, interest on mortgage for owner occupied house, etc. are still available:** It is important to note that the provisions of sections 4, 20 and 33 on non-taxable BIKs, tax-deductible expenses and statutory reliefs (other than personal relief) were not amended by the PITAM.

1.4 **Section 10: Employment**

The PITAM amends the conditions under which the gains or profits derived from the exercise of employment duties in Nigeria will be exempt from Nigerian PIT. The key changes to this section are as follows:

(a) Inclusion of the phrase “and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria” in subsection 1(a)(i) of section 10.

(b) Definition of the period of residency in Nigeria to include period of annual leave or temporary period of absence.

(c) Expanding subsection 1(a)(iii) to include the phrase “under the provisions of the avoidance of double taxation treaty with that country”.

(d) Expanding the phrase “employer is in Nigeria”, as stated in subsection 1(b) to include “or has a fixed base in Nigeria”; and deleting the proviso “unless the duties of the employment are wholly performed... in a country other than Nigeria....”

(e) Deleting subsection 5 of the said section.

The above amendments will likely raise questions, especially with respect to employees whose duties of employment are wholly performed outside of Nigeria, but whose employer is in Nigeria or has a fixed base in Nigeria.

1.5 **Section 37: Charge of income tax (minimum tax)**

The minimum tax payable under the PITA has been increased from 0.5% of total income to 1% of total income².

1.6 **Section 57: Service of notice of assessment**

The amendment to this section now allows RTAs to send assessment notices to taxpayers via courier and e-mail. This is expected to enable taxpayers receive their notices of assessment promptly.

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2 Based on the provisions of section 34 of the PITAM, the minimum tax will be computed as 1% of Gross Income.
1.7 **Section 60: Establishment of Body of Appeal Commissioners (BAC)**

The amendment to this section essentially replaces the BAC with the Tax Appeal Tribunal, thus aligning the PITA with the provisions of the Federal Inland Revenue Service (Establishment) Act, 2007 on tax appeal process.

1.8 **Section 73: Refund of excess withholding tax (WHT)**

The amendment now empowers taxpayers to request for refund of excess WHT. The excess should be refunded within 90 days or granted as tax credits against future taxes.

1.9 **Section 74: Penalty for failure to deduct tax**

The key implications of the amendments to this section are as follows:

(a) A person who fails to deduct WHT on a qualifying transaction would no longer have to be convicted before being liable to a penalty of 10% of the tax not deducted or remitted.

(b) The interest payable for non-remittance/late remittance of WHT would now be based on the prevailing Central Bank of Nigeria monetary policy rate. This would ensure that the interest rate is more determinable.

(c) The Accountant-General of the Federation is now empowered to recover at source, taxes owed by Government ministries, departments and agencies (MDAs) from the budgetary allocations due to them. Hopefully, this will increase the tax compliance level of public institutions.

1.10 **Section 77: Interest for late payment of income tax**

Interest for late payment of PIT will now be computed on an annual basis. In effect, such interest would be compounded, as against the flat/simple interest basis that previously applied.

1.11 **Section 81: Pay-As-You-Earn (PAYE)**

Every employer is required to file a return with the RTA 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 will be liable on conviction to a penalty of ₦50,000 in the case of a body corporate and ₦50,000 in the case of an individual.

Based on the above provision, employers that have filed the returns relating to 2011 tax year may have to re-file such returns, to reflect the provisions of PITAM from 14 June 2011.

1.12 **Section 85: Tax clearance certificate (TCC)**

The PITAM requires MDAs and commercial banks to demand for an individual’s 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. These transactions are in addition to the nineteen (19) previously specified under the PITA. The PITAM also requires the MDAs and banks to verify TCCs submitted to them with the issuing RTA.

The above amendments are targeted at identifying taxable persons that are outside the PIT net. However, it remains to be seen if RTAs will effectively collaborate with MDAs and banks to achieve the objective of this amendment; or if the provisions would merely be an additional bureaucratic bottleneck in the processing of transactions for which TCC is a prerequisite.

1.13 **Section 88: Functions of the State Board**

The main amendment to this section seeks to introduce an efficient mechanism for funding State Boards of Internal Revenue (SBIRs) by allowing them to retain a percentage (not less than 5%) of the tax collected. The expectation would be that each State Government would fix the percentage at a level that would enable the SBIR meet its cost of collection and administration.

This provision, while encouraging SBIRs to increase their revenue collection, may result in aggressive revenue drive, without regard to due process, where an alleged tax liability is disputed by the taxpayer.

1.14 **Third Schedule: Income exempted**

The more significant amendments to this Schedule are as follows:

(a) President, Vice President, etc will now pay PIT: Based on the deletion of paragraphs 2 and 3 of this Schedule, the official emoluments of the President, Vice President, Governors and Deputy Governors will no longer be exempted from PIT.

(b) Tax exemption of income from bonds and short-term securities: The PITAM inserts a new paragraph which exempts income earned from bonds issued by Federal, State and Local Governments, as well as on bonds issued by corporates including supra-nationals, from income tax. The paragraph also exempts interest earned by holders of the bonds and short-term securities, from income tax.

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\(^3\) This requirement is in line with the provisions of section 10 of the PAYE Regulations.
1.15 Sixth Schedule: Income Tax Table

(a) Change in income tax table: The PITAM replaces the Sixth Schedule of the PITA with a new Schedule as follows:

First ₦300,000 taxed at 7%
Next ₦300,000 taxed at 11%
Next ₦500,000 taxed at 15%
Next ₦500,000 taxed at 19%
Next ₦1,600,000 taxed at 21%
Above ₦3,200,000 taxed at 24%

(b) Tax-exempt income and tax-deductible expenses: The new Sixth Schedule specifies the following as tax exempt:

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

(c) Inconsistency in the basis for computing CRA: Section 5 of the PITAM provides that CRA will be computed as the higher of ₦200,000 or 1% of gross income, plus 20% of gross income. Paragraph 1 of the new Sixth Schedule however, specifies that the CRA will be granted on income at a flat rate of ₦200,000 plus 20% of gross income.

1.16 General comments

(a) Increase in penalties for non-compliance: Generally, non-compliant taxpayers will be exposed to stiffer penalties under the amended PITA. Taxpayers are therefore advised to put effective processes in place to ensure full compliance.

(b) Amendment to the definition of principal place of residence (PPOR): PITAM amended the definition of PPOR to include "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 fifty (50) workers etc".

This amendment could potentially lead to conflicts between taxpayers/employers and RTAs, for individuals residing in one state, but working in a branch/operational site located in another state.

Conclusion

The amendments introduced by PITAM would lead to significant reduction of the income tax paid by low income earners (other than those liable to minimum tax), a minimal tax reduction in the middle to moderately high income bands, and a modest tax increase in the higher income bands.

Generally, it appears that the main objective of PITAM is to remove the flexibility that employers had under the old PIT regime to provide tax efficient compensation to their employees (through the use of leave allowance, housing allowance, etc). It is debatable whether the overall impact of the PITAM on taxpayers is consistent with the National Tax Policy of reducing direct taxes and increasing the disposable income of individuals, especially considering the impact of the recent removal of fuel subsidy, and the fact that PITAM increases the effective tax rate of the lowest bracket of income earners (i.e., minimum wage earners) by 100%.

With the amendments, employers would be well advised to review their compensation structures in order to optimize the benefits for their employees and ensure compliance with the new provisions. KPMG can assist companies to fully understand the impact of the changes introduced by PITAM on their employees’ compensation and in ensuring compliance with the provisions of PITAM.