

How Tax Reforms Affect M&A Transactions in Nigeria

OALP Mergers Acquisition and Private Equity Newsletter

INTRODUCTION

This article explores the changing tax landscape for Nigerian M & A and private equity transactions. On 26 June 2025, President Bola Ahmed Tinubu signed into law four landmark statutes collectively called the *Nigerian Tax Reform Acts* (“the Acts”). These are: the Nigeria Tax Act (NTA), Nigeria Tax Administration Act (NTAA), the Nigeria Revenue Service (Establishment) Act (NRSEA), and the Joint Revenue Board (Establishment) Act (JRBEA).

These reforms represent one of the most sweeping overhauls of Nigeria’s tax architecture in decades. The tax reforms could have far-reaching implications for the mergers, acquisitions and private equity (M & A & PE) transactions in terms of negotiations, due diligence and post-transaction integration.

KEY TAX CHANGES AFFECTING M & A AND PRIVATE EQUITY TRANSACTIONS

Capital Gains Tax – Increased Rate, Indirect Offshore Share Transfers and Exemptions

Increased CGT rate

Subject to the limited exemptions discussed below, Section 56 of the NTA increases the Capital Gains Tax (CGT) rate from 10% to 30% for any company that earns more than NGN50 million yearly and has total fixed assets in excess of NGN250 million and brings into the tax net all forms of assets including shares, rights, debts, digital or virtual assets and incorporeal property. The increased CGT rate is likely to be a material consideration for investors when making decisions on acquisitions and PE investments, as this could impact their

exit strategies.

Indirect transfer of shares in offshore transactions

Section 47 of the NTA introduces tax on the capital gains derived by any person from indirect disposal of shares by a foreign PE firm or investor if the sale results in a change in the ownership structure or group membership of a Nigerian company, or a change in ownership or interest in assets located in Nigeria.

This means that if a sale or acquisition occurred offshore it could still trigger taxation in Nigeria if it results indirectly in a change of control of a Nigerian company or asset.

Under section 46 of the NTA, shares in a foreign company is deemed to be located in Nigeria for tax purposes if within 365 days preceding the sale of the shares, 50% of the value of the shares is derived from business operations or assets located in Nigeria.

Foreign companies with their central and/or effective place of management or control in Nigeria can also be exposed to CGT in Nigeria on their direct or indirect disposals of equity interest in other foreign companies, considering that the NTA now brings the sellers into the category of “Nigerian companies”.

The above provisions on indirect share transfers in offshore transactions raise multiple taxation concerns for transaction parties as the same gain could be taxed in the country of the seller, the country of the target company and also taxed in Nigeria.

Exemptions for asset transferred in a merger

In the case of a merger of two or more entities, CGT will not be applicable to the transfer of assets to the surviving or newly formed entity.¹ The relief is unconditional — it does not require prior approval, control tests, or holding period requirements. In effect, the NTA recognises that mergers are primarily structural realignments rather than disposals that should attract capital gains tax. In contrast, Section 33 of the now repealed Companies Income Tax Act (CITA) provides a conditional exemption regime.

Under CITA, where a trade or business is reorganised by way of transfer to another Nigerian company for purposes such as better organisation or localisation of management, no tax applies to the sale or transfer of assets only if the companies are under common control (i.e., one controls the other, or both are controlled by a third party); and they have maintained this relationship for at least 365 days prior to the reorganisation. CITA also includes an anti-avoidance “clawback” provision: if the acquiring company disposes of any of the transferred assets within 365 days after the reorganisation, the concession is rescinded, and the companies are retrospectively treated as if they had never qualified for the exemption.

Exemptions for investments in startups

Under section 163(1)(m) of the NTA, capital gains arising from disposals made by angel investors, venture capitalists, private equity funds, accelerators, and incubators to labelled startups are exempted from CGT, provided the assets have been held within Nigeria for a minimum of 24 months. A labelled start up is defined as a startup labelled under the Nigerian Startup Act 2022 and issued a digital certificate by the Coordinator of the Startup portal. Where the investment in labelled startups has been held for less than 24 months CGT would be applicable.

Exemption Threshold for share disposals

Under section 34(1)(a) of the NTA, where investors realise less than NGN150 million from share disposals in Nigeria and the chargeable gain from share disposal does not exceed NGN10 million in any 12 consecutive months, CGT would not be applicable. Any disposal and chargeable gains above the thresholds stated above will attract CGT.

Exemptions for reinvestment of proceeds

Where proceeds of share disposals are reinvested in the shares of another Nigerian company within the same year of assessment, irrespective of whether the proceeds exceed the NGN150 million and NGN10 million thresholds, CGT would not be applicable.

The exemption from tax for gains made from share disposals when they are reinvested in shares of another Nigerian company within the same year was first introduced by the Finance Act of 2021, but the disposal proceeds was pegged at NGN100 million in the Finance Act and the NGN10 million threshold for chargeable gains was absent. Section 2 of the Finance Act 2021 provided that gains from the sale of shares in Nigerian companies are subject to CGT at the rate of 10% where the disposal exceeds ₦100 million within 12 consecutive months, except where the proceeds are reinvested within the same year in shares of the same or another Nigerian company.

The new provision under the NTA is likely to affect the exit strategies of investors as they may decide to reinvest the proceeds of any share disposal into other opportunities instead of exiting their investments from Nigeria. Investors may therefore structure their exits from investments into an entity-focused exit rather than a country-focused exit.



Incentives for Business Restructuring

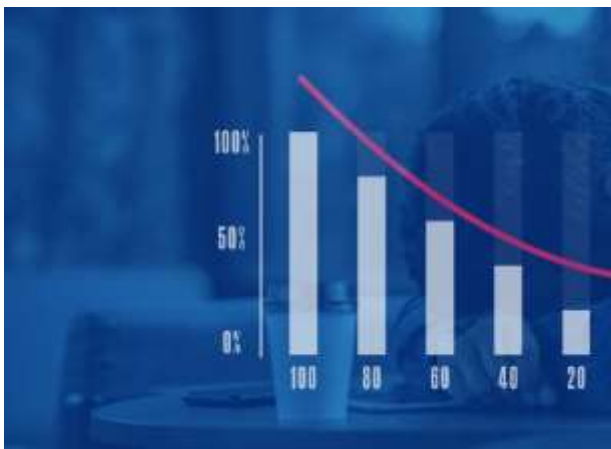
Unutilised capital allowances and accumulated tax losses

Before the enactment of the NTA 2025, the treatment of capital allowances and tax losses in mergers was governed mainly by Section 29 of the CITA and the Second Schedule to the Act. Under that framework, tax neutrality applied only where the merging companies were under common control for a continuous period of at least 365 days prior to the reorganisation, and the relief could be withdrawn if the assets were disposed of within another 365 days.

Under the NTA, unutilised capital allowances and accumulated tax losses of merging entities are transferable to the surviving or newly formed entity, provided the losses are incurred by the merging businesses.

1. Section 190(1)(a)(ii) of the NTA.

These provisions incentivize restructurings by maintaining tax continuity post-merger. In a merger of two or more businesses or trades, the unutilised capital allowance on the assets transferred shall be available for use by the new or surviving trade or business.² The NTA further provides that in the case of a merger of two or more trades or businesses, the unutilised capital allowances on transferred assets shall remain available for use by the new or surviving business. All qualifying capital expenditure are now eligible for capital allowance on a straight-line basis, that is, in equal annual instalments over the useful life of the asset. This reform replaces the previous mix of initial and annual allowances and the reducing balance method. The NTA also allows the carry-forward of tax attributes such as losses, unutilised capital allowances, and withholding tax credits for group restructurings.



Unabsorbed losses

The unabsorbed losses of the merging entities shall be available to the surviving trade or business, provided that such losses were incurred by the merged trade or business.³ Additionally, the taxes deducted at source relating to the merging entities shall be available for the surviving or new merger entity.⁴ The anti-avoidance provision in relation to the 365 days requirement for a tax neutral group reorganisation has been removed. This supports efficient group reorganisations and merger and acquisition activities, reducing the risk of tax leakage during restructuring.

Value Added Tax (VAT) Exemptions for Restructuring

VAT will not be imposed on business restructurings including mergers, transfers of businesses causing cessation, and transfers of business assets below the residual value of qualifying capital expenditure.⁵ Additionally, if a business or a

part of it that can operate separately is transferred as a going concern, and the purchaser continues to utilise the assets in the same business activities for which the assets were previously deployed by the seller, such a transfer will not be treated as a supply of goods or services liable to VAT. However, the exemption is applicable on the condition that the buyer is already registered as a taxpayer in Nigeria or becomes registerable due to the transfer.⁶

Except for exempted instruments,⁴³ documents first executed in Nigeria or executed outside Nigeria and relating to any property situated or to any matter or thing done in Nigeria are subject to stamp duties.⁴⁴ The Ninth Schedule to the NTA outlines rates and corresponding exemptions for stamp duties on documents, including documents for MAPE transactions such as conveyance or transfer on sale charged at 1.5% ad valorem rate, excluding a property with a value of NGN10,000,000 or less; or transfer between related companies holding at least 90% shareholding in each other or through a third party if such conveyance or transfer document of the property had been stamped in the prior purchase of the property.

CONCLUSION

The application of the new tax laws in Nigeria from January 2026 would affect how transaction parties approach MAPE transactions, especially in terms of dealing with tax liabilities, and structuring exit strategies. We expect that the Nigeria Revenue Service will issue tax regulations and guides on grey areas such as indirect transfer of shares in offshore transactions that affect Nigerian entities to provide further clarity on how such taxes will be administered. Early engagement with tax authorities (where necessary), thorough due diligence on tax histories, careful deal structuring, and meticulous documentation will continue to be crucial to managing tax risks and unlocking transaction value on M & A and PE transactions.

At Olaniwun Ajayi LP, we continue to guide clients through these transitions, leveraging our market-leading expertise in tax, mergers, acquisitions, private equity and regulatory advisory to help clients navigate this new era with confidence.

2. Section 190(1)(a)(v), the NTA.
3. Section 190(1)(a)(vi), the NTA.
4. Section 190(1)(a)(vii), the NTA.

5. NTA, section 190(6).
6. NTA, section 190(7).

FOR MORE INFORMATION, PLEASE CONTACT :



**Anuoluwapo
Balogun**

Partner

abalogun@olaniwunajayi.net



Olamide Obajimi

Partner

obajimi@olaniwunajayi.net



Mayowa Olusegun

Senior Associate

molusegun@olaniwunajayi.net



Terry Akaluzia

Senior Associate

takaluzia@olaniwunajayi.net



Elo Adhekpukoli

Senior Associate

eadhekpukoli@olaniwunajayi.net