

THE EFFECT OF THE AMENDMENT OF THE NEPZ ACT AND THE OGEFZ ACT BY THE NIGERIA TAX ACT 2025



INTRODUCTION

Export processing zones were introduced in Nigeria as part of a broader industrialisation strategy to drive economic growth through the promotion of non-oil export business by way of provision of special incentives in terms of infrastructure, logistics, more enabling regulatory environment, and tax incentives to export-oriented businesses, following the model of south-east Asian countries. The Nigeria Export Processing Zones (“NEPZ”) Decree (now Act) was therefore promulgated in 1992 (repealing the NEPZ Decree, 1991) based on the report of the United Nations Industrial Development Organisation on the introduction of the export processing zone programme in Nigeria. After the NEPZ Act, the Oil and Gas Export Free Zone (“OGEFZ”) Act was enacted in 1996. Although the NEPZ Act and the OGEFZ Act were enacted to promote export-oriented businesses, the subsidiary legislation made pursuant to these legislation and the general application thereof did not appear to have followed this overarching legislative intent.

Although export processing zones (sometimes called free trade zones, export free zones, free zones, special

development zones, etc.) are generally part of the territory of the country in which they are located, they are for purposes of import duties and taxes regarded as being outside the country’s customs territory. This arrangement creates regulatory and jurisdictional challenges arising from (a) the supply of goods and services by businesses in the export processing zones to businesses in the customs territory and vice versa, and (b) the operation in the export processing zones of laws generally applicable in the customs territory – not being laws specifically excluded from application in the export processing zones.

On 26 June 2025 the Nigeria Tax Act 2025 (“NTA” or “Act”) became law with the assent thereto by President Bola Ahmed Tinubu. But the Act will become effective on 1 January 2026. One of the effects of the Act is the amendment of the NEPZ Act and the OGEFZ Act. The NTA also amended other provisions in other tax statutes, the provisions of which also apply to enterprises within export processing and export free zones established under the NEPZ Act and the OGEFZ Act or that carry on export-oriented business.

NEPZ ACT AND OGEFZ ACT AND OTHER STATUTORY PROVISIONS RELATING TO EXPORT ZONES

The NEPZ Act and OGEFZ Act

The NEPZ Act established the Nigeria Export Processing Zone Authority (“NEPZA”). NEPZA may, amongst other things, (a) manage or appoint an entity to manage an export processing zone (“zone”), (b) amend or extend the limits of a zone, (c) approve activities that may be carried on in a zone, and (d) register an enterprise to operate in a zone (“approved enterprise”). Section 8 of the NEPZ Act exempts an approved enterprise

operating within an export processing zone from all federal, state, and local government taxes, levies and rates. Section 18 thereof provides additional incentives, namely (i) repatriation of foreign capital investment in an export processing zone at any time with capital appreciation of the investment, (ii) remittance of profits and dividends earned by foreign investors in a zone, (iii) rent-free land at construction stage, (iv) up to 100% foreign ownership of business in a zone allowable, and

(v) foreign managers and qualified personnel may be employed by companies operating in a zone. An approved enterprise is also permitted to sell “up to 25% of [its] production” in the customs territory against a valid permit and on payment of appropriate duties (s. 18(1)). The NEPZ Act also exempts from customs duties all capital goods, consumer goods, raw materials, components or articles imported into an export processing zone intended to be used for the purposes of and in connection with an approved activity (s. 12(1)). However, dutiable goods sent from a zone to any part of the customs territory shall be subject to the provisions of the Customs, Excise Tariff, Etc. (Consolidation) Act and any regulations made thereunder (s. 12(7)). And any goods brought from the customs territory into a zone for the purposes of an approved activity shall be deemed to be exported (s. 12(9)), and the rules and regulations applicable to export from the customs territory shall apply to such exports. Approved enterprises and their customers and vendors in the customs territory are also entitled to receive payment for supply of goods and services made between them in foreign currency (s. 11).

The OGEFZ Act, which is in many ways similar to the NEPZ Act, established the Oil and Gas Export Free Zone Authority (“OGEFZA”) charged with the responsibility to (a) administer and manage the “Oil and Gas Export Free Zone” (“export free zone”), and (b) take over and perform the responsibilities of the NEPZA under NEPZ Act as they relate to the export of oil and gas from an export processing zone (s. 5(2)). (However, in practice, the powers of the OGEFZA are limited to the administration of export free zones established pursuant to the OGEFZ Act.) In addition to the incentives provided in the OGEFZ Act (which are similar to the incentives available under the NEPZ Act), para. 1 of the OGEFZ (Special Import Provisions) Order 2003 provides that any special product (i.e., any article or item imported into the export free zone on which value has been added without changing the essential character of the product after processing) imported into the zone under the OGEFZ Act and intended for the customs territory shall be granted import duty tariff rebate of 75%.

While the NEPZ Act clearly intends that export processing zones should be primarily for export-oriented business by limiting sales by approved enterprises to the customs territory to 25% of an approved entity’s production (s. 18(1)(e)), NEPZA however issued the NEPZ Investment Procedures, Regulations and other Operational Guidelines for Free Zones in Nigeria 2004 (“NEPZA Regulations”) by which it enabled approved enterprises to sell “Up to 100% of production” in the customs territory (para. 3(e), part 2).



The OGEFZ Act on the other hand appeared to have had a different intent by providing that “up to a minimum of 25 percent of production may be sold in the customs territory against a valid permit, and on payment of appropriate duties” (emphasis supplied), without stating the maximum or limit of the portion of the production of an approved enterprise that may be sold in the custom territory. Although the phrase “up to a minimum of 25 percent” appeared ambiguous (unless “minimum” is read as “maximum”), OGEFZA cleared the ambiguity in para. 6(8) of the OGEFZ Regulations 2019, which enabled approved enterprises in an export free zone to sell unlimited amounts of their production in the customs territory against a valid permit and payment of appropriate duties.

The Companies Income Tax and the Value Added Tax Act

Section 23(1)(v) of the Companies Income Tax Act (“CITA”) exempts from income tax the profits of a company established within an export processing zone or free trade zone that exports 100% of its production. But if the company exports only part of its production, tax shall accrue proportionately on the profits of the company. Further, s. 35(1) of the CITA grants to a company, which has incurred expenditure on qualifying building and plant equipment on an approved manufacturing activity in an export processing zone, 100% capital allowance in the relevant year of assessment. And para. 7 of the first schedule to the Value Added Tax (“VAT”) Act exempts from VAT the supply of plant, machinery and goods imported for use in an export processing zone or a free trade zone if the company exports 100% of its production. However, these CITA and VAT Act provisions shall cease to have effect when the NTA comes into force on 1 January 2026.

THE NTA

Amendments to the NEPZ Act and OGEFZ Act

The NTA subjects the business or trade carried on by an export processing or export free zone entity to the provisions of the second schedule thereto (“second schedule”) and further amended the NEPZ Act by deleting ss. 8 and 18(1)(a) thereof (ss. 60 and 197(2)). The NTA also amended the OGEFZ Act by deleting ss. 8

and 18(1)(a) thereof (s. 197(3)). (In addition to the exclusion in ss. 8 and 12 of the NEPZ Act (federal, state, and local government taxes, levies, and duties), s. 18(1)(a) of the NEPZ Act excludes the application of foreign exchange regulations in an export processing zone. A similar provision exists in the OGEFZ Act.) By para. 1 thereof the second schedule applies to (a) “export

processing and free trade zones” jointly defined as “zones”, and (b) approved export processing and free trade zone entities jointly defined as “entities” in the schedule. Paragraph 2 defines “export processing zone entity” as an approved and licensed enterprise under the NEPZ Act, and “export free zone entity” as an approved and licensed entity under the OGEFZ Act. (Except where the context otherwise requires, we will refer to “export processing zone entity” and “export free zone entity” jointly as “approved entity”.)

Paragraph 3 of the second schedule, which is made subject to para. 4 thereof and s. 57 of the Act, provides that the profits of “an export processing zone entity” are fully exempt from tax where –

- “its total sales arise from the export of goods or services, or serve as inputs into goods or services exclusively for export”; and
- “not more than 25% of its sales arise from the sale of goods or services to the customs territory in Nigeria”.

By restricting the tax exemption in para. 3 to only “profits” of an approved entity in an export processing zone, the blanket exemption from all taxes, including state and local government taxes in ss. 8 and 18(1)(a) of the NEPZ Act has been abrogated. Other than exemption of tax on profits, an approved entity in an export processing zone will therefore enjoy additional tax waivers and incentives, which are also available to entities in the customs territory under applicable taxing statutes.

If the sales of an export processing zone entity to the customs territory in any year of assessment exceeds 25%, the export processing zone entity shall pay tax on its profits derived from all of its total sales to the customs territory (para. 4, 2nd schedule). Paragraph 5 of the second schedule however sunsets para. 3(b) (erroneously referred to as para. 3(ii)) – and by implication para. 4 – on 1 January 2028; but the President may further extend the effective date to a date not later than 10 years from the commencement of the Act. Paragraph 5 however appears to be open to two plausible interpretations. First, by providing that “the profits of an export processing zone entity shall be fully subject to tax” (emphasis supplied) effective 1 January 2028, an approved entity in an export processing zone shall pay tax on all its profits if it sells any part of its goods or services in the customs territory, such that the phrase “in respect of its sales to the customs territory” is read as a trigger of the obligation to pay tax on all the profits of the approved entity – and not a qualifier of or limitation on the part of the profits of the approved entity that will be subject to tax. However, if the phrase “in respect of its sales to the customs territory” is read as a qualifier of or limitation on the part of the profits of the approved entity that will be subject to tax, then para. 5 will mean that if the sales by approved entity in the customs territory is less than 25%, tax will be paid only in respect of profits attributable to the sales to the customs territory (notwithstanding that the volume of sales is less than 25% of the total sales made by the approved entity) effective from 1 January 2028. The 1 January 2028 effective date in either case is however subject to the extension of the force of para. 3(b) by the President – which extension shall not exceed 31 December 2035. In our opinion, the possibility of two plausible interpretations of para. 5 presents ambiguity, which ought to be resolved in favour of the taxpayer (*Russel (Inspector of Taxes) v Scott* [1948] 2 All ER 1).

By deliberately referring to “export processing zone entity” (but not to “export free zone entity”), it would appear that paras. 3, 4 and 5 of the second schedule are not intended to apply to export free zone entities. This is notwithstanding that para. 2 of the second schedule extends the application thereof to both export processing zone entities and export free zone entities. This is more so since para. 6 thereof refers jointly to “export processing and export free zone” entities in requiring that they shall comply with the provisions of the Nigeria Tax Administration Act including the provisions requiring registration, filing of tax returns, and deduction of tax at source. The effect of the limited application of paras. 3, 4, and 5 to export processing zone entities, when read together with the deletion of ss. 8 and 18(1)(a) of the OGEFZ Act, means that the profits of an export free zone entity, i.e., an approved entity in an export free zone established under the OGEFZ Act, will be subject to tax. Thus, an approved enterprise under the OGEFZ Act will no longer enjoy any exemption of its profits from income tax in Nigeria under the NTA. This is so even where such an approved entity exports 100% of its production. All export processing and free zone entities are however entitled to exemption from VAT on supplies they consume in the zones, provided that the supplies are consumed on an approved activity (NTA s. 186(1)(i)).

Section 57 of the NTA operates to ensure the payment of “effective minimum tax” at the “effective tax rate” of 15% by a company (a) that is a constituent entity of a multinational enterprise (“MNE”) group, or (b) with an aggregate turnover of up to ₦20,000,000,000 in the relevant year of assessment. But it is not clear (i) whether the effect of s. 57 on para. 3 is to subject to tax all the profits of an export processing zone entity, which is thereby implicated, notwithstanding the general scheme of para. 3 to exempt such profits from tax, or (ii) whether s. 57 will apply with limited effect to the profits of an export processing zone entity implicated thereby but which comes under para. 4 of the second schedule. In our view, an interpretation that defeats the general scheme of the NEPZ Act (as amended by the NTA in the second schedule), i.e., to ensure that only enterprises that carry on export-oriented business operate in the zones and enjoy the related incentives, should be avoided. To argue otherwise will take away the attraction of the zones to MNEs and large indigenous corporates that intend to engage in export-oriented business and generate aggregate annual sales of up to ₦20,000,000,000. (Meanwhile, we are aware of a version of the NTA, which exempts the application of s. 57 to an approved entity operating in a “free zone” in respect of its approved activities except in respect of its sales to the customs territory. This provision is not contained in the NTA with the signature of the President, which we relied on for this newsletter.)

The second schedule also provides for the tax treatment of profits arising from services (a) procured by an approved entity from an entity in the customs territory, and (b) services provided by an approved entity to an entity in the customs territory. Profits arising from goods manufactured by an approved entity through manufacturing services provided by a related entity in the customs territory will be taxed in the hands of the entity in the customs territory except the transaction was conducted at arm’s length (para. 7). And in the case of other services, not being manufacturing services, transfer pricing regulations shall apply (para. 8). Further, services rendered to an approved entity by a person in the customs territory or

consumed by an approved entity in the customs territory shall be subject to applicable taxes (para. 9). Accordingly, taxes such as VAT and stamp duty may be chargeable on these transactions and or related instruments and payable by the approved entity.

Finally, para. 10 of the second schedule, which requires an approved entity to provide evidence of export proceeds, either by way of funds inflow or import of raw materials or equipment as a condition to claim the available incentives, suggests that an approved entity will be required to apply annually – perhaps at the time of filing its annual tax returns – to claim the incentives. It may also be the case that a certification/approval issued for each year of assessment would enable the approved entity to enjoy the available incentives, such as customs duty waivers, during the current year. (Meanwhile, there is no para. 10 in the version of the NTA, which does not have the President's signature we referred to earlier above.)

Other exemptions for export-oriented business

Apart from the tax incentives for approved entities in a zone, the NTA also provides incentives for export-oriented companies generally in Nigeria, most of

which existed in substance under the CITA and the VAT Act. Section 163(1)(v) exempts from income tax the profits of any Nigerian company (other than companies engaged in petroleum operations) in respect of goods or services exported from Nigeria, if the proceeds are repatriated through official channels. Further, s. 163(1)(q) of the NTA retains the tax exemption provided in the CITA on dividends received from investments in wholly export-oriented businesses. The NTA also provides that exported goods, exported services and exported incorporeal property shall be zero-rated for VAT (s.187(n)(o)(p)), while oil and gas exports are VAT exempt (s. 186(1)(a)). However, the NTA does not retain the income tax waiver in (a) s. 35(3) of the CITA in respect of profits from 100% export-oriented businesses, and (b) s. 23(1)(r) of the CITA for the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export. Whilst the non-retention of the tax waiver in s. 35(3) of the CITA is understandable given s. 163(1)(v) of the NTA, we hope that the legislature will reconsider the non-retention of the tax waiver granted in s. 23(1)(r) of the CITA given the need to create a sustainable domestic export-oriented business ecosystem and value chain.

CONCLUSION

The NTA has provided clarity and consistency regarding the tax regime for approved entities operating within the zones; and by so doing has restored the original legislative intent in enabling the creation of export processing zones. Although the NTA did not amend the provisions of the NEPZ Act that enable the NEPZA to determine “approved activities” and set the conditions for the registration of “approved enterprises” (“approved entities” in the NTA) in an export processing zone, not all approved entities located in the zones will enjoy income tax waiver available in the NTA: only approved entities located in an export processing zone that engage in export-oriented business in the manner specified in the Act will enjoy the applicable income tax waiver. And if our understanding of the new regime put in place by the NTA is correct, approved entities in an

export free zone established under the OGEFZ Act will not enjoy any income tax waiver. However, all approved entities located in the zones will continue to enjoy (a) the incentives provided in the NEPZ Act and OGEFZ Act (other than those in ss. 8 and 18(1)(a)) including exemption from custom duties on goods brought into the zones, and (b) exemption from VAT for supplies consumed by them in the zone in their approved activities.

Meanwhile, given the circulation of more than one version of the NTA (but with the same gazette number and date), there is a very urgent need for the Attorney General of the Federation to confirm the authentic version of the legislation to bring about certainty in the law.

