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FIRS PUBLIC NOTICE TO ENTERPRISES OPERATING IN THE FREE TRADE ZONE, EXPORT PROCESSING ZONE AND, OIL & GAS FREE ZONES TO FILE INCOME TAX RETURNS

The Federal Inland Revenue Service (FIRS) notice of 15 April, 2021 provides clarity and guidance on the tax obligations of approved enterprises as provided in the amended laws, to the effect that all approved enterprises operating in the Free Trade, Export Processing, Oil & Gas Zones are to file income tax returns.

Introduction

The Finance Act 2020, which came into effect on 1st January 2021, amended Sections 18(1) of the Nigeria Export Processing Zones Authority Act (NEPZA) and Oil and Gas Free Zone Authority Act (OGFZA) respectively.

In light of the above, the Federal Inland Revenue Service (FIRS) published a notice on 15 April, 2021, which serves to provide clarity and guidance on the tax obligations of approved enterprises as provided in the amended laws, to the effect that all approved enterprises operating in the Free Trade, Export Processing, Oil & Gas Zones to file income tax returns.

The public notice provides as follows:

1. The NEPZA and OGFZA (as amended) mandates all enterprises registered and operating in the zones to file income tax returns in accordance with the provisions of the Companies Income Tax Act (CITA).
2. As such, all enterprises registered and operating in the zones are required:
 - a) to file income tax returns for 2021 and subsequent years of assessment; and
 - b) to compute income tax and pay the tax due (if any).
 - c) The returns should be in the manner and time specified by CITA.

3. For ease of compliance, all approved enterprises are required to file their income tax returns at the following FIRS' tax offices:
 - a) Enterprises operating in the Zones located in South-South Geo-political region of Nigeria- MTO Port Harcourt;
 - b) Enterprises operating in the Zones located in South-East Geo-political region of Nigeria- MTO Enugu;
 - c) Enterprises operating in the Zones located in South-West Geo-political region of Nigeria- MTO Ibadan;
 - d) Enterprises operating in the Zones located in North-East and North-West Geo-political region of Nigeria- MTO Kano;
 - e) Enterprises operating in the Zones located in Lagos State- MTO Lagos Island; and
 - f) Enterprises operating in the Zones located in North-Central Geo-political region of Nigeria and FCT- MTO Abuja.

Remarks

Under the Nigerian law, Free Trade Zone is established to process and facilitate and co-ordinate easy export activities and provide incentives to exporters using the facility. Enterprises operating in the Free Zones enjoy several tax and other related incentives.

Sections 8 of the NEPZA and OGFZA respectively provide that approved enterprises operating within a Free Zone shall be exempt from all federal, state, and local government taxes, levies, rates, and duties in connection with operations carried on within such Free Zones.

The 3rd Schedule to the NEPZA provides for the activities that qualifies to be conducted in the export processing zone, and they are:

- a) Manufacturing of goods for export.;
- b) Warehousing, freight forwarding and customs clearance;
- c) Handling of duty-free goods (transshipment, sorting, marketing, packaging, etc.);
- d) Banking, stock exchange and other financial services, insurance and reinsurance;
- e) Import of goods for special services, exhibitions and publicity;
- f) International commercial arbitration services;
- g) Activities relating to integrated zones;
- h) Other activities deemed appropriate by the Nigeria Export Processing Zones Authority.

The amendment specifically prescribed mandatory filing obligation on the enterprises and penalties for failure to comply with the requirements of the law.

It must be noted that the amendments to the OGFZA and the NEPZA under the Finance Act, is now in consonance with section 55(1) of the CITA; which already provides that **“Every company** including a company granted exemption from incorporation, whether or not a company is liable to pay tax under the Act...file a self-assessment return with the Service.”

In line with the above cited section, it is mandatory for all approved enterprises operating within the Zones to file tax returns every year and such return shall contain:

- a. Duly certified Audited Accounts;
- b. Tax and Capital Allowances Computations;
- c. A true and correct statement in writing containing the amount of profit from each and every source;
- d. Duly completed Self-Assessment Form as prescribed by the Service and attested to by a Director or Secretary of the Enterprise;
- e. Evidence of payment of the whole or part of the tax due (if any), into a collecting or designated bank.

For clarity, the possibility of taxes payable for enterprises operating within the Zones arises when any goods produced within is sold outside the Zone.

Conclusion

In conclusion, the amendments will prevent enterprises operating in the Free Zone from abusing the tax exemption regime granted under the statutes, and enable the FIRS to effectively monitor the activities of Free Zone operators for the purpose of ascertaining their tax liability in respect of transactions done outside the Free Zones.

Tax and legal

FEDERAL INLAND REVENUE SERVICE INFORMATION CIRCULAR ON THE TAX TREATMENT OF NON-GOVERNMENTAL ORGANISATIONS (NGOs)

This circular replaces the previous circular, and seeks to clarify the applications of the Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Capital Gains Tax Act (CGTA), Valued Added Tax Act (VATA) on the income, operations and activities of NGOs in light of the Finance Act 2020.

Introduction

The Federal Inland Revenue Service (FIRS) recently published an information circular on the tax treatment of Non-Governmental Organisation (NGO). This circular replaces the previous circular, and seeks to clarify the applications of the Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Capital Gains Tax Act (CGTA), Valued Added Tax Act (VATA) on the income, operations and activities of NGOs in light of the Finance Act 2020.

An NGO has been defined as a non-profit association, which is incorporated or registered with the object of advancing a public good and not to carry on business for the purpose of making profits for distribution to its members.

NGOs include organisations, institutions and companies engaged in ecclesiastical, charitable, benevolent, literary, scientific, social, cultural, sporting or educational activities of a public character.

What constitutes an NGO has been extended to include organisation registered under the laws of a foreign jurisdiction and approved as such in Nigeria. This means that the term NGO is no longer limited to organisations registered under Part A and Part C of the Companies and Allied Matters Act (CAMA) 2020.

Public Character

What constitutes 'public character' has been defined by section 105 of CITA (as amended) with respect to any organisation or institution to mean an organisation or institution:

- a. that is registered in accordance with the relevant law in Nigeria; and
- b. that does not distribute or share its profit in any manner to its members or promoters.

The circular also provides for the designated FIRS' Medium Tax Offices (MTOs) where NGOs are required to register in their respective geo-political regions.

Where to register for tax?

The offices are listed below:

- a. Lagos State, MTO Lagos Island;
- b. North-Central geo-political region of Nigeria and FCT, MTO Abuja.
- c. North-East and North-West geo-political region of Nigeria, MTO Kano;
- d. South-East geo-political region of Nigeria, MTO Enugu;
- e. South-South geo-political region of Nigeria, MTO Port Harcourt;
- f. South-West geo-political region of Nigeria, MTO Ibadan;



right people
right size
right solutions

Tax and legal

Tax obligations of NGOs

The taxability of NGOs has been one that has generated many controversies, and many have even argued that NGOs are exempt from Value Added Tax. This is however not the position of the law, and it is clearly stated in the circular.

Section 23(1)(c) of CITA, exempts the profits of any statutory, charitable, ecclesiastical, educational or other similar associations from Companies Income

Tax, provided that such profits are not derived from any trade or business carried on by such organisation or association.

However, where an NGO engages in any trade or business, or invests its assets in any institution, the profit or income derived (active or passive) is liable to tax appropriately.

What constitutes 'trade' has been judicially settled in the case of **Arbico Ltd. V. FBIR**. In that case, the court held that the word "trade" should be interpreted in its widest sense, in accordance with its common everyday meaning.

Income or profits liable to Companies Income Tax include the following:

- Profits derived from trade or business carried on by the organisation/institution such as proceeds from sale of goods or merchandise, provision of consultancy, professional or other services for a fee;
- Investment Income such as interest, rent, royalty, dividend or similar income;

Accordingly, the payer of these income to the NGOs has the obligation to deduct withholding tax (WHT) from the payments as stipulated in the WHT Regulations. Meanwhile, the NGOs have the obligation to deduct WHT on contracts awarded to suppliers and contractors, as well as other qualifying payments, and remit same to the relevant tax authorities in the currency of transaction.

Furthermore, nothing in the tax laws excludes an NGO from paying Capital Gains Tax (CGT) where the gains from the disposal of the chargeable assets is acquired in connection with any trade or business carried on by the institution or where the gains are not applied purely for the purpose of the organisation.

Value Added Tax

NGOs are not granted an exemption from VAT. The position of the law is that goods purchased by NGOs for use in humanitarian donor-funded projects are zero rated under the VAT Act.

This is to the effect that where an NGO procures contracts or purchases goods that are not directly used in humanitarian donor-funded projects, VAT shall apply at the prevailing rate. The incentive enjoyed is limited to goods, and as such, services procured or consumed by NGO is liable to VAT at the prevailing rate, except where such service is exempt under the relevant law.

Where an NGO procured goods or services from persons not liable to charge VAT or from non-resident suppliers, it shall self-account for the VAT and remit same to the FIRS as required of every other company. Pursuant to Section 15 of the VAT Act, VAT returns shall be filed with FIRS, on or before the 21st day of the month following that in which the purchase or supply was made.

Filing of returns

NGOs are also expected for file returns just same as every other company as provided under section 55(1) of CITA, and such return shall contain:

- Duly certified Audited Accounts;
- Tax and Capital Allowances Computations;
- A true and correct statement in writing containing the amount of profit from each and every source;
- Duly completed Self-Assessment Form as prescribed by the Service and attested to by a Director or Secretary of the Enterprise;
- Evidence of payment of the whole or part of the tax due (if any), into a collecting or designated bank.

Conclusion

The circular of the FIRS on the tax treatment of NGOs is commendable as it clarifies the position of the law on their status, and it is reasonably believed that this should put to rest all misconceptions surrounding the taxability or otherwise of NGOs.

The law is quite clear on the exemption and incentives applicable to NGOs, and where the law does not expressly exclude them from a tax, they are liable to pay the tax. This includes but not limited to local taxes and levies. NGOs are also expected to comply with the statutory obligations of maintaining accurate record of employees and proper books of account.



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Our aim is to **understand people**, the **organisations** they run, and what matters to them, so we can **simplify complexity** and help them **achieve their ambitions**.

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right people
right size
right solutions

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