



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA
(Established by Act of Parliament No.15 of 1965)

TAXATION & FISCAL POLICY FACULTY

Newsletter



Welcome to Taxation & Fiscal Policy Faculty Newsletter

“The year 2020 will go down in history as one many people would rather forget but for many reasons will remain unforgettable. To some, the year started with high hopes and great expectations but everything changed as the COVID-19 pandemic spread across the world.

In Nigeria the impact of the pandemic has resulted in significant economic challenges including rising unemployment and inflation, naira devaluation, and the worse recession in decades.

The IMF has forecasted a long slow recovery for 2021 while the business outlook will, to a large extent be dependent on COVID-19 vaccine. With news of vaccines rolling out, we can expect some improvement in economic growth in the new year. However, as we think about recovery we need to build back better, in an inclusive manner.

One thing we have learnt from this year, is that nothing is certain, and the uncertainties surrounding the business environment is endless. But we have also learnt that every challenge presents opportunities and our ability to adapt is endless if we keep an open mind and continue to learn, unlearn and relearn. It is in this regard that the Taxation and Fiscal Policy Faculty Board of the Institute has published this newsletter which complements our various capacity building webinars organised during the year. This is expected to be a regular feature going forward.

Kindly share your feedback with us to enable us design our future programmes to better suit the needs of our members.

On behalf of the Faculty Board, I wish all our members a happy holiday.

Taiwo Oyedele
Chairman, Taxation and Fiscal Policy Faculty Board”

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FIRS grants further tax palliatives to businesses in Nigeria

The Federal Inland Revenue Service (FIRS) in a recent public notice communicated further palliative measures to businesses in view of the disruptions caused by the 'EndSARs' protests in major cities in Nigeria in October 2020.

In the Notice, FIRS provided additional window of penalty and interest waiver for taxpayers that fully settle the principal portion of their tax liabilities from the date of the release of the notice to 31 December 2020. These liabilities could have resulted from self-assessments filed, assessments from tax audit and investigation or other reviews.

It is important to note that FIRS had earlier in the year granted some tax palliative measures to cushion the effect of disruption to businesses occasioned by COVID-19. Some of those palliatives which are still in force include extension of filing deadlines for withholding tax and value added tax and the option of taxpayers to settle their tax liabilities in Naira irrespective of the currency of transaction.

The action of FIRS at this time businesses are struggling to keep afloat is a welcome development and demonstrates FIRS' readiness to respond to evolving business environment. We encourage taxpayers to take advantage of the opportunity provided by FIRS to regularize their tax records before the end of the year and manage their cash flows.



NATIONAL PENSION COMMISSION

National Pension Commission kicks off the Retirement Savings Account Transfer System

On 16 November 2020, the National Pension Commission (PenCom) launched the Retirement Savings Account (RSA) transfer system. By this arrangement, contributors under the contributory pension scheme can transfer their accounts from one Pension Fund Administrator (PFA) to the other, once in a year. This initiative accords with section 13 of the Pension Reform Act 2014 (PRA). Section 13 of PRA provides that subject to the guidelines issued by the Commission, a holder of retirement savings account may not more than once in a year transfer his account from one PFA to another.

The implication is that going forward, contributors who are not satisfied with the services provided by their chosen Pension Fund Administrators can transfer their savings to another Administrator but this can only be done, once in a year. PenCom has assured the public of putting in place a transfer application platform to ease the transfers. However, the Commission is yet to come up with the detailed guidelines to ease the transfers. We expect that this would be released in no distant time to ensure seamless transfer as envisaged in the PRA.

Currently there are twenty-two (22) PFAs in Nigeria. While performance could be the major driver for Contributors to transfer their accounts, the following additional reasons could be drive transfers:

- a.** quality of service and timely responses to issues;
- b.** accessibility of information to contributors;
- c.** returns on investment;
- d.** historical performance;
- e.** investment portfolio;
- f.** Management team.

The implementation of the transfer scheme provided in the PRA is a welcome development and will usher in a new era of service delivery by the PFAs. We encourage contributors to take advantage of the transfer windows to access improved services.



DRAFT FINANCE BILL, 2020

Finance Bill 2020 – Commencement of stakeholders' consultations

The Federal Ministry of Finance Budget and National Planning has released the draft 2020 Finance Bill for public consultation. The essence of the consultation is to get input from stakeholders and ensure the bill achieves its objective. The Finance Bill is the vehicle for introducing new tax proposals and the running of the tax systems. It contains the fiscal policies that will support the implementation of the government budget for the following year. This practice which was rekindled by the Federal Government of Nigeria last year, conforms to best practices, and the government is set to sustain this development.

Each area of the Bill clearly sets out what the legislation is set to achieve. According to the Minister of Finance, Budget and National Planning, the Bill was not meant to introduce new taxes but to improve the instant laws and reduce the tax burden on small businesses and low income earners.

The 2020 Bill seeks to introduce changes to the following Laws:

- a. Capital Gains Tax Act
- b. Companies Income Tax Act (CITA)
- c. Customs & Excise, Tariffs etc. (Consolidation) Act
- d. Federal Inland Revenue Establishment Act
- e. Industrial Development (Income Tax Relief) Act
- f. Personal Income Tax Act
- g. Tertiary Education Trust
- h. Value Added Tax Act
- i. the Fiscal Responsibility Act (FRA)
- j. Public Procurement Act.

The highlights of the key amendments are as follows:

Capital Gains Tax Act

1. Compensation for loss of office: Restriction of capital gains tax for compensation for loss of office to any amount in excess of N10m.

Companies Income Tax Act

1. Minimum tax (COVID-19 incentive) and treatment as tax deductible donations: Minimum tax to be reduced further to 0.25% of gross turnover less franked investment income in sympathy with the disruptions caused by COVID. This will affect only tax returns relating to financial years ending between 1 January 2020 and 31 December 2021.

2. Provision for COVID-19 crisis intervention fund donations: Deduction to be restricted to 25% of assessable profit, and where the balance is not relieved, it may be carried forward for not more than two years.

3. Gas utilization: Companies claiming the gas utilization incentive under CITA would not be entitled to any similar incentives provided under the Petroleum Profits Tax Act or Industrial Development (Income Tax Relief) Act.

4. Agricultural production: "Agricultural trade or business" has been redefined as 'Primary Agricultural Production'. The intention is to exclude processing and manufacturing of all forms of agricultural products.

5. Shipping and transport income: Other incidental income associated with international shipping/air transport would be treated under section 9 of CITA and not as income relating to specialized business under section 14 of CITA.

6. Tax returns filings for non-resident companies: Non-resident companies whose tax exposure is withholding tax are not required to file audited financial statements.

7. Service of notice of assessment: Notices of assessment sent electronically or through courier will now be valid.

Value Added Tax

1. Commencement date for 7.5% VAT rate: This is a clarification of the effective date to be 1 February 2020 and provided legal backing.

2. Time of supply of goods and services: Time of supply of goods or services is the later of; date of supply or date of invoice. The objective is to remove any ambiguity on the determination of date of supply.

Industrial Development (Income Tax Relief) Act

1. Introduction of primary agricultural product as a pioneer industry: Companies involved in primary agricultural production (livestock, crop, fisheries and forestry) are to be issued with pioneer incentive status if the application is made.

Customs & Excise, Tariffs etc. (Consolidation) Act

1. Withdrawal of excise duty exemption: The exemption granted on imported goods and locally manufactured goods would be withdrawn.

2. Excise duties to be applied on services: Services are to be subjected to excise duty based on the Fifth schedule of the Act.

Federal Inland Revenue Establishment Act

1. Application of technology in the administration of tax laws: This proposed section empowers the FIRS to adopt technology in collecting taxpayers' information but to ensure confidentiality.

2. FIRS is empowered to conduct hearings virtually.

Tertiary Education Trust Fund Act

Exemption for small companies: Small companies as defined under CITA to be exempted from tertiary education tax. This is to align with the exemption granted under CITA

Personal Income Tax Act

1. Definition of gross income: Gross income is defined as income from all sources excluding non-taxable income, tax exempt income, income on which no further tax is payable, allowable business expenses and capital allowances. This is to create certainty on the base for calculation of consolidated relief allowance (CRA).

2. Significant economic presence (SEP): As introduced under CITA, the concept of SEP is adopted to subject to tax certain non-resident individuals. It is expected that the Minister of Finance will release guidelines in this respect.

3. Commencement and cessation rules: This is similar to the amendment in the Finance Act 2019 with respect to CITA for commencement and cessation rules to avoid double taxation. The basis for the application of tax will be on the individual's accounting year.

Unclaimed dividend Trust Account

1. Setting up unclaimed dividends trust fund: To set up a fund to keep all unclaimed dividends for public companies quoted on stock Exchange. This trust fund will serve as a haven for all unclaimed dividend three years and above. The dividends would be transferred to Federation Account after a period twelve years.

Conclusion

We commend the action of the Federal Government of Nigeria for providing the window for stakeholders' consultation. The objective of the public consultation is to afford external stakeholders the opportunity to provide input early in the process and to benefit from that input. Stakeholders are therefore encouraged to make their input in order to reduce the gaps may arise as a result of the proposed amendments and improve the quality of the legislation.



The powers of Revenue authorities to assess taxpayers to back duty taxes beyond six years

The Tax Appeal Tribunal (TAT) (South-South Zone sitting in Benin), on 8 October 2020 in the case between Citibank Nigeria Limited (Citibank) and Rivers State Board of Internal Revenue (RSBIR), ruled that tax authorities cannot raise additional assessments relating to back-duty taxes beyond six years.

RSBIR had indicated its intention to carry out PAYE tax investigation on Citibank covering the period 1999 to 2017 (nineteen years) and had requested for specific documents and information to complete the process. Citibank responded to RIRS that it was unable to provide the relevant information for the period, and stating that it is obliged to retain the relevant documents for six years as provided under section 332(2) of the Companies and Allied Matters Act Cap C.20 LFN 2004. Subsequently, RSBIR raised a best of judgement assessment (BOJ) on the bank in the sum of N303.95m for the periods covering 2006 to 2017 (12 years).

Following the receipt of the assessment, Citibank, objected to the notice of assessment. RSBIR sent a demand notice on 29 November 2018, based on its standpoint that the tax assessment was final and conclusive. On that basis, Citibank approached the TAT requesting that the best of judgement (BOJ) assessment be set aside, and to further restrain RSBIR from raising any personal income tax assessment for the periods.

Citibank stated that it objected to the assessment within the statutory period and on that basis the assessment could not have been deemed final and conclusive. Citibank received the notice of assessment on 16 September 2018 and objected to the notice assessment on 16 October 2018. Citibank further submitted that the back-duty assessment, having exceeded 6 years should be set aside as it contravenes section 55 of PITA Cap P8 2004, as no case of fraud, willful default and neglect has been established. RSBIR had submitted that the notice of assessment was invalid and therefore final and conclusive. It further argued that mere suspicion of fraud, willful default and neglect is enough to act on the provisions of section 55(2) of PITA . S.55 of PITA gives the Revenue authority the power to assess a taxable person to tax within the year of assessment or within six years and may even go beyond the six years, provided any form of fraud, willful default or neglect has been committed by the taxable person.

TAT ruled in favor of Citibank by setting aside the BOJ assessment issued by RSBIR and restrained RSBIR from assessing Citibank to further PAYE tax for the period. TAT relied on sections 54 and 55 of PITA, stating that the tax authorities cannot go beyond six years, except where the tax authorities have established a case of fraud, willful default or neglect. TAT stated that the onus of prove of fraud, willful default or neglect is on the tax authority and as long as this was not proved, RSIRS cannot rely on section 55(2) to carry out back-duty investigation beyond six years. It further cited section 36(5) of the Constitution of the Federal Republic of Nigeria, wherein an accused is deemed innocent until proven guilty.

On the BOJ, TAT stated that RIRS did not provide break down of the liabilities for the years involved but rather reported a bulk sum for all the years. It further emphasized that the tax authorities should be reasonable in excising authorities granted to them under the Act.

Conclusion

Section 55 of PITA gives power to tax authorities to assess a taxable person to tax, where it discovers that such a person has not been assessed or has been assessed at a less amount than the actual tax. However, Nigerian laws have limitations

provisions for tax purposes. The general limitation period for tax matters is six years as stated in sections 54 and 55 of PITA. The law further provides that where any form of fraud, willful default or neglect has been committed by or on behalf of a taxable person in connection with any tax imposed under PITA, the Revenue may revisit the periods irrespective of the number of years. The implication is that RSBIR can only revisit periods earlier than six years where fraud, willful default or neglect has been committed by the taxpayer.

Although our tax laws did not define what constitute fraud, willful default or neglect, however, there is a general contention that a successful criminal prosecution would be a condition for the tax authorities to revisit tax years earlier than six years. This position has again been affirmed by the recent TAT decision that a tax authority cannot assess a taxpayer to tax beyond six years unless the taxpayer has been proven guilty of fraud, willful default or neglect. This judgement will further guide the tax administrators and the taxpayers in handling tax audits and investigation involving periods beyond six years.

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