
Tax Alert

May 2012



*Self
Assessment*

*Amended
CITA*

*TP
Regulations*

Self Assessment Regulation

On 12 December 2011, the Federal Inland Revenue Service (FIRS) pursuant to its powers under Section 61 of the FIRS Establishment Act (FIRS Act)), with the approval of the Minister of Finance, issued the Tax Administration (Self Assessment) Regulations 2011 which was officially gazetted on 19 December 2011.

The regulation seeks to modify the existing self assessment procedure where taxpayers are required to compute their tax liabilities, file and make payment by the due date or in approved instalments.

Notable highlights are as follows:

Scope

The Regulation would impact the filing of tax returns for the under listed legislation:

- Companies Income Tax Act (CITA)
- Personal Income Tax Act (PITA)
- Petroleum Profits Tax Act (PPTA)
- Value Added Tax Act (VATA)
- Education Tax Act (ETA)
- National Information Technology Development Agency Act (NITDA)
- FIRS Act
- Capital Gains Tax Act (CGTA)
- Other tax regulations and laws that may be enacted from time to time.

Legislative powers

Section 61 of the FIRS Act empowers the FIRS to make

Regulation to give full effect to the provisions and for the administration of the FIRS Establishment Act. It does not extend to amending the principal tax laws accordingly the relevant legislation should prevail where inconsistencies exist.

Commencement

The Regulation which become effective from the commencement date of 12 December 2011, would apply to all returns filed in 2012 relating to the 2011 financial year and onwards.

Payment in Instalment

Taxpayers are now required to notify the tax authorities of their intention to pay taxes in instalments before the filing due date as defined in the relevant laws with the final instalment made by the due date when filing the returns. Instalments can be made within 2 months of the filing due date subject to a maximum of 3 instalments. Instalments after the due date will however attract interest.

CITA provides that the due date for payment should be two months from the filing date where a lump sum is made or in such instalments as may be approved by the FIRS, not exceeding six.

Interest should therefore not accrue on payments made within two months after the due date for filing

otherwise it is inconsistent with the Act. Although instalments are subject to approval by the tax authorities, imposing interests on approved instalments clearly defeats the purpose of instalment plans as envisaged in the relevant laws.

Considerations for Extension of Time to File Tax Returns

A taxpayer may apply for extension of time to file returns but specific circumstances to be considered by the relevant tax authority as stated in the Regulations are (1) Death of taxpayer in the case of an individual or death of a principal officer such as the Chairman, Director or Company Secretary in the case of a company or (2) A natural disaster. Both circumstances are to be supported by verifiable evidence.

Consequence of late filing under period of extension

Late filing outside extension granted regardless of whether tax due has been paid will be liable to a penalty. The Regulations do not state whether approved extension will be excluded from default period.

Approved extensions cannot alter payment dates

Any extension of time for filing returns shall not be construed as to alter the time for payment of tax due under the

relevant law. This implies that taxes must be paid as and when due regardless of any approval for extension of time for filing granted by the tax authority. Such tax payments may have to be estimated given that in many cases the actual amounts may not be known. There is no extension for the filing of VAT returns.

Self-assessment is no longer business as usual

Due Date for Filing Returns

The filing due dates for various tax returns are as contained in the existing laws with the following additions or exceptions:

PIT: There is an additional requirement to file monthly returns in a format to be approved by the tax authorities. We expect that the various State Boards of Internal Revenue will issue directives on the monthly filing of returns as in practice the monthly payments are made without any returns.

Annual returns showing total annual emolument, tax relief, total tax deducted for each employee should be filed by the employer together with a declaration under oath on the relevant forms not later than 30 days after the end of each year.

CIT: The regulation only refers to 6 months after the accounting year. For newly incorporated companies the due date is the earlier of 18 months or 6 months after the accounting day. The provisions under the CITA would still apply.

Administrative assessment

The tax authority may issue an administrative assessment where a

taxpayer fails to file returns or as a result of underpayment arising from a tax audit or investigation. The minimum notice period to conduct an audit is 7 days. No notice period is stated for an investigation. Taxpayers can object to such assessments in line with the objection procedures in the relevant Acts.

In practice, it is usual for notices to be received after the scheduled date for the audit. Taxpayers are advised to keep proper records of the receipt dates and send a written application to the tax authorities for an extension with evidence that the notice was received late.

Mode of Serving Demand Notices

In addition to serving demand notices to the taxpayer as contained under the relevant Acts, the Regulations state that demand notices can now be sent to agents. This implies that statutory timelines for objecting to demand notices will now include the time it was received by the agents/consultants even where the agent fails to notify the taxpayer.

This provision is inconsistent with

the Act which requires that notices should be served on taxpayers.

Penalties

The penalties in the Regulations are consistent with those under the principal tax Acts but the situations that trigger these penalties are more stringent and in some cases not consistent with the principal laws. Where a taxpayer fails to file returns or pay the tax due, the relevant tax authority shall impose penalties and interest on the taxpayer, agent or employer from the due date of filing as provided in the applicable laws or Regulations issued by relevant tax authorities.

The tax authorities cannot penalize agents for the failure of the taxpayer especially given that the taxpayer appends the self assessment return forms and has a direct obligation to remit taxes due.

Signing of Tax return forms

Income tax returns must be signed by the relevant taxpayer in the case of individuals while tax returns for companies can only be signed by the Director or Company Secretary.

Accreditation of Agents



Filing of tax returns should now be done by the taxpayer in person or through an accredited agent being a person certified by ANAN, CITN or ICAN. The filing agent must have the accompanying seals of the relevant professional bodies, and must be tax compliant (has paid taxes as and when due as evidenced by production of current tax clearance certificate). The relevant tax authority may assess the competence and professionalism of agents to be listed annually. Such agents can be delisted in accordance with standards of the relevant professional body.

The listing of agents based on the tax authority's assessment that they are knowledgeable in the tax laws is at best discretionary without specific guidance. Also, the tax authorities' intervention in this regard should be limited to requiring consultants to provide accreditation certificates before acting on behalf of clients and not taking over the accreditation process.

Overall the Regulations seek to provide some guidance and introduce some level of consistency in the filing of self assessment tax returns. However, the enabling section 61 of the FIRS (Establishment) Act only grants

powers to the FIRS Board to make rules and Regulations for giving full effect to the provisions of the law. The Board does not have powers to amend or modify the law. Therefore any provisions of the Regulations which run contrary to the relevant laws will be of no effect.

The Amendment to the 5th Schedule of the Companies Income Tax Act

The Minister of Finance, in exercise of powers conferred on the Office by section 25(6) of CITA LFN 2004 (as amended) on 12 December 2011 by an Order (No 1 of 2011) published in the National Gazette on 14 December 2011 amended the Fifth Schedule to the CITA.

The commencement date of the amendment is 12 December 2011 therefore it applies to tax returns due for filing on or after 12 December 2011. The major highlight of this amendment is that there is now a wider definition for tax deductible donations.

In addition to the existing bodies eligible for tax deductible donations listed in the Act, donations to Institutions, bodies or funds engaged in the following broad categories of activities will now be tax deductible provided such organisations are not set up for the purpose of profits or gains to the individual members of the society, association or person.

1. Promotion or defence of human rights
2. Women empowerment and development
3. Re-orientation, rehabilitation, welfare support service for orphans, widows, physically challenged, refugees and all categories of persons that may require social or economic rehabilitation and transformation
4. Youth empowerment and development
5. Leadership and Resource Development
6. Promotion of National Unity and Patriotism
7. Promotion of Social and Economic Development
8. Accident prevention and control activities
9. Information system development and awareness
10. Creation of awareness for transparency in governance and electoral processes
11. Promotion of national unity and patriotism
12. Museum development and promotion of sports, arts and culture
13. Rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development
14. Any professional body established under an Act of the National Assembly for the regulation and practice of the profession.

The amendment is in line with global best practice and the recently launched National Tax Policy of the government in that tax waivers/incentives are broad based rather than for selected organisations.

The list of bodies eligible for tax deductible donations has been expanded

Proposed Transfer Pricing Regulation

The FIRS is about to issue Transfer Pricing (TP) Regulations for Nigeria.

Transfer pricing in simple terms is the pricing of goods or services transferred between related parties. From shared services to technical fees, royalty payment to intercompany loans or guarantees and so on, determining the right price for goods and services or transfer of intangibles between related parties is a herculean task. Transfer pricing has always existed indirectly in Nigeria given that the tax authorities are empowered to adjust related party transactions to reflect the economic reality. Prior to now, there has been no clear guidance on expectations from taxpayers thus the regulation should provide some degree of clarity and certainty.

Companies that are most likely to be affected by this include members of Multinational groups or groups of companies based in Nigeria. It is best practice for corporate groups including multinationals to develop a TP policy that provides a reasonable basis for the pricing of transactions within their group as TP adjustments by the tax authorities can lead to substantial tax liabilities. By considering TP practices carefully, group entities can manage the risk of economic double taxation while preserving value.

Like in many countries around the globe, this will have far reaching implications for your business thus preparation is key.

*Moving
towards
certainty
and
clarity*

On Friday 30 March 2012 PwC Nigeria organised a Breakfast Meeting for major companies in Nigeria and other stakeholders including the FIRS and NOTAP. The objective of the meeting was to give participants a unique insight into this important area of taxation and to get the regulators' perspectives of the subject, as well as update on the status of Nigeria's TP Regulations, the key requirements and likely effective date.

Please visit our website www.pwc.com/ng for more information on Transfer Pricing and its impact on your business.



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