Tax Administration (Self Assessment) Regulations 2011: What you need to be aware of

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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.

On December 12, 2011 the Management Board of the Federal Inland Revenue Service (the Board) in exercise of the powers conferred on it by Section 61 of the Federal Inland Revenue Service (Establishment) Act 2007, with the approval of the Minister of Finance gazetted a Regulation dated 19 December 2011 modifying the processes and procedures for self assessment returns.

The Regulations cover tax returns under the Companies Income Tax Act (CITA), Education Tax Act (ETA), Petroleum Profit Tax Act (PPTA), Personal Income Tax Act (PITA), National Information Technology Development Act (NITDA), Value Added Tax Act (VATA) and, though not specifically mentioned, Capital Gains Tax Act (CGTA) given that all taxes under the FIRS Establishment Act are stated as falling under the scope of the Regulations.

Broadly under the self-assessment regime, taxpayers are required to compute their tax liabilities, file and make payment concurrently on or before the due dates. Any breach is liable to fines and interest as prescribed under the Regulations or the relevant laws.

The key changes introduced by the Regulations include filing of tax returns to be done by the taxpayer in person or through an **accredited agent** being a person certified by ANAN, CITN or ICAN. To perform the filing, the 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 the agent in accordance with standards of the relevant professional body.

For income tax returns, the taxpayer must sign the forms in person in the case of an individual while for companies the returns can only be signed by a Director or the Company Secretary. With respect to Personal Income Tax (PIT) the due date for filing self assessment returns (SAR) is 31 March of every year while in the case of PAYE (for employment income), tax deducted must be paid with appropriate returns (showing total emolument and tax deducted for each employee during the month) within 10 days of the end of every month. Annual returns showing total annual emolument, tax relief, total tax deducted for each employee and **a declaration under oath** on the relevant forms must be filed by the employer.

In respect of companies income tax (CIT) returns, due date is 6 months after the financial year end date, while for petroleum profit tax (PPT) estimated tax returns must be filed for each accounting year within 2 months of the accounting year while installment payment must commence one month thereafter with final returns made within 5 months after the end of relevant accounting period along with evidence of payment of final instalment. For VAT, payment and returns are due not later than the 21st day of the month after the month of transaction with evidence of payment.

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. Late filing outside extension granted regardless of whether tax due has been paid will be liable to a penalty. **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.

A taxpayer is required to notify the relevant tax authority of intention to make instalment payment and pay the tax due by instalment commencing in the relevant year of assessment before the due date in a manner that the final instalment payment shall be made not later than the due date together with the returns. The tax authority may grant approval for instalment payment in a manner that the last instalment is paid not later than 2 months after the due date subject to a maximum of 3 instalments from the due date. Any taxes unpaid as at the due date shall attract interest. *Note that **due date** is defined as the day prescribed by the law for the filing of returns and making of payments by taxable persons. This means that whether extension has been granted or not any payment after the due date is liable to interest. This clearly defeats the purpose of seeking an extension as envisaged in the relevant laws.*

Tax authorities may issue administrative assessment where a taxpayer fails to file returns or as a result of underpayment arising from a tax audit or investigation. Minimum notice period to conduct an audit is 7 days. No notice period is stated for an investigation. Administrative assessment to include penalties and interests imposed as part of the liability due, **effective from the time the returns became due.**

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. Any appeal against an administrative assessment may be lodged with the appropriate tax office of the relevant tax authority responsible for the assessment. If dissatisfied, further appeal may be lodged directly to the Executive Chairman of the relevant tax authority (or its equivalent) and thereafter to the Tax Appeal Tribunal and then the Federal High Court.

Taxpayer information to be treated as confidential and not disclosed to any third parties or government agencies other than as provided in the Laws of the Federal Republic of Nigeria. All relevant tax authorities are required to apply uniform procedures to all taxes administered as set out under the Regulations.

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 null and void, and of no consequence.

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