

FIRS Issues Tax Return Guidelines for Free Zone Enterprises in Nigeria

Background

The Federal Inland Revenue Service (FIRS) recently issued a circular setting out guidelines for filing tax returns and other compliance obligations relating to approved enterprises within Nigeria's export processing and free trade zones. These guidelines were issued pursuant to the recent Finance Act (FA) 2020 amendments to the Nigeria Export Processing Zone Act (NEPZA) and Oil and Gas Free Zone Act (OGFZA).

In the past, NEPZA and OGFZA provided that approved enterprises operating in the free Zones were exempt from “legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations...”. However, the FA 2020 has now amended this to exempt from “taxes, levies, duties and foreign exchange regulations...”. Therefore, while the profits and transactions of Free Zone Enterprises (FZE) remain tax-exempt, they are now clearly required to fulfil relevant filing obligations..

Key Highlights of the Circular

The circular explains that licences issued by the Authority or Management of a Zone are only valid within the relevant Zone. Tax laws will be duly applied on unapproved entities operating within Zones or entities with expired or withdrawn licenses.

The amendment mandates FZEs to comply with Section 55(1) of the Companies Income Tax Act (CITA) and file tax returns whether or not they have any tax liabilities for the year of assessment.

Required Contents of The Tax Return

1. Audited financial statements;
2. Tax and capital allowances computations;

3. A true and correct statement in writing containing the amount of profit from each source, where applicable;
4. Duly completed self-assessment forms as prescribed by the FIRS and attested to by a Director or Secretary of the FZE;
5. Evidence of payment of the whole or part of any tax due;
6. Schedules showing the computation of profits arising from transactions carried out within and outside the Zone.

Other Statutory Obligations for FZEs

In addition to the above, FZEs are also required to satisfy the following statutory obligations:

- Register with FIRS and obtain a Taxpayer's Identification Number (TIN);
- Maintain proper books of accounts;
- Maintain accurate records of employees;
- Deduct and remit Pay-As-You-Earn (PAYE) taxes
- Pay CIT where applicable
- Comply with the Transfer Pricing Regulations in respect of transactions with related parties;
- Deduct WHT as applicable, on transactions with companies operating outside the Zone, and;
- Perform such other obligations as may be legally required.

Commentaries

The Finance Act 2020 amendment and the circular clarify some of the vagueness around FZEs' compliance obligations. Generally, FZEs are required to fulfil CIT filing requirements on their operations and deduct taxes on payments to recipients that are not tax exempt.

It may also be correct to take the position that FZEs are required to deduct WHT on payments to foreign entities that provide technical, professional, management, consultancy, and digital-related services, in line with the recently introduced Significant Economic Presence (SEP) rules. It would be preferable if the circular also provided guidance in this regard.

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