



UUBO COVID-19
RESOURCE HUB:



IMPLEMENTING EXCHANGE OF
INFORMATION REGULATIONS IN THE
FACE OF COVID-19 - MANAGING RISK
EXPOSURES FOR FINANCIAL INSTITUTIONS
AND MULTINATIONAL ENTERPRISES IN NIGERIA



In August 2019 the Federal Inland Revenue Service (“FIRS”) issued the Income Tax (Common Reporting Standard) Regulations (“CRS Regulations”) to enable the Nigerian government fulfil its commitment to commence Common Reporting Standard (“CRS”) implementation in 2019, as a signatory to the Multilateral Competent Authority Agreement for the Automatic Exchange of Financial Account Information (“the MCAA”).

Since the outbreak of the COVID-19 pandemic, the FIRS has published press releases announcing various measures to cushion its effect on corporate taxpayers (visit www.covid-19.uubo.org for our updates on this subject). These include the waiver of penalties for late filing of Companies’ Income Tax returns, extension of timelines for filing Companies’ Income Tax and Personal Income Tax (under the PAYE scheme) returns, and remittance of Value Added Tax and Withholding Tax. The FIRS is also granting waivers on interest accrued on penalties on outstanding tax debts that arise from desk reviews, tax audits and investigations, provided that the company pays such outstanding tax before the 31st of May.

Whilst the FIRS has granted extensions specifically for the filing of income tax and value added tax returns, it has made no statement in relation to the filing of exchange of information returns under the various exchange of information Regulations, especially the CRS Regulations, which require financial institutions to file Information Returns on or before the deadline of **May 31, 2020**. Also worthy of mention is the filing of Country-by-Country notifications and reports under the Income Tax (Country-by-Country) Regulations (“CbCR Regulations”), which apply to multinational enterprises.

In this update we consider the highlights of these reporting obligations and how to mitigate the compliance risks posed by the COVID-19 pandemic.

1

Common Reporting Standard (“CRS”)

The Common Reporting Standard (“CRS”) is an automatic exchange of information regime that makes it mandatory for all qualifying financial institutions, referred to in the Regulations as Reporting Financial Institutions, to provide information on the details of assets that they hold on behalf of non-resident account holders (“Reportable Accounts”). Reporting Financial Institutions include banks, investment funds, hedge funds, mutual funds, venture capital funds, exchange traded funds and private equity funds, other than those expressly exempted. These are all required to file Information Reports annually, whether or not they maintain Reportable Accounts. All Reporting Financial institutions, including those that do not have reportable accounts, are required to file the first set of reports by the 31st of May 2020 to cover the period July 1 – December 31, 2019, failing which defaulting financial institutions will incur stiff penalties.

The penalty for late filing is the sum of N10,000,000.00 (ten million naira) for the first month and N1,000,000.00 (one million naira) for each subsequent month that the failure continues. The filing of Information Returns under the CRS Regulations is a distinct obligation from filing tax returns and both are governed by separate rules. Any concessions granted in respect of the filing of tax returns should therefore not



be assumed to apply in the case of CRS compliance. The CRS Regulations do not provide any grounds on which a financial institution may apply for an extension, but give the FIRS the discretion to waive penalty incurred for late filing provided that the financial institution is able to demonstrate reasonable cause for the late filing.

2

Country-by-Country Report (“CbCR”)

A CbC Report is a report by a multinational enterprise (“MNE”) that provides information relating to the global allocation of the aggregate income earned and the taxes paid in each tax jurisdiction in which the MNE group operates. An MNE Group, for purposes of the Nigerian CbC Regulations, means “any group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a Permanent Establishment in another jurisdiction, and is not an “Excluded MNE Group””. An Excluded MNE Group is a group that has a total consolidated group revenue of less than N160billion.

An MNE Group, for purposes of the CbCR Regulations, should comprise Constituent Entities and an Ultimate Parent Entity. An Ultimate Parent Entity means a Constituent Entity of an MNE Group that

- (i) owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group, such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence, and
- (ii) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in sub-paragraph (i) above, in the first mentioned Constituent Entity.

A Constituent Entity includes subsidiaries and other members of the MNE Group other than the parent company, irrespective of whether such members are included in the Consolidated Financial Statements of the Group, and includes their respective Permanent Establishments.

An MNE group through its Constituent Entity is required to file a Notification or CbC Report (where eligible) not later than six months (for Notifications) and twelve months (for CbC Reports) after the last day of the Reporting Year of the MNE group. The penalty for late filing is N10,000,000.00 for the first instance and N1,000,000.00 for every month in which the default continues. The CbCR Regulations do not provide any process for applying for an extension of time for filing, neither do they provide any grounds for the waiver of penalties. An exception is where there has been a Systemic Failure of the jurisdiction of the residence of the Ultimate Parent Entity, and the FIRS has been notified. An example of such Systemic Failure includes an incidence of force majeure under the relevant Competent Authority Agreement.



Conclusion

The risk of incurring penalty for late filing under the Regulations discussed above is particularly high, especially in the absence of an express waiver or exemption by the FIRS, and given the fact that these reporting and filing obligations are not conditional upon the filing of a corporation's tax returns. With regard to CRS, in light of the complexity of the due diligence process required of financial institutions to produce an Information Report, it is doubtful that many financial institutions will be able to comply with the May 31st deadline for compliance due to the challenges caused by the COVID-19 pandemic.

Although the COVID-19 Pandemic is a global crisis, corporate taxpayers must not assume that they will automatically be granted waivers from penalty in the event that they are not able to meet their obligations within the statutory timelines. An application still needs to be made to the FIRS for extension of time. However, the onus is on the taxpayer to demonstrate reasonable cause for such an extension or waiver. Bearing in mind that the test of reasonableness is subjective, affected organisations should seek professional help in engaging with the FIRS as soon as possible in order to mitigate the risk of incurring penalty for non-compliance.



Lolade Ososami
Partner, Tax
lolade.ososami@uubo.org

Joseph Eimunjeze
Partner, Tax
joseph.eimunjeze@uubo.org

Mojisola Jawando
Senior Associate
mojisola.jawando@uubo.org

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