

FIRS Issues Information Circulars on provisions of tax laws amended by the Finance Act, 2020.



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The Federal Inland Revenue Service (“FIRS”) has issued information circulars and guidelines intended to provide clarification to all stakeholders and provide insight into practical issues associated with the implementation of the amendments introduced by the Finance Act, 2020 to the major tax laws and other statutes that fall within the Nigerian fiscal legislative framework. The circulars dated 3rd June 2021, amend, update or replace contents of any circular, notice or other publication previously issued by the FIRS on any given subject.

Below is a list of the published circulars:

1. Clarification on the Provisions of Capital Gains Tax (CGT) Act. Circular No. 2021/09 (**“CGT Circular”**).
2. Clarification on the Commencement and Cessation Rules, and Business Reorganisation. Circular No.2021/10 (**“Business re-organisation Circular”**).
3. Tax Implication of Operation of Real Estate Investment Companies (‘REIC’) In Nigeria. Circular No. 2021/17 (**“REIC Circular”**).
4. Clarification of the Provisions of The Finance Act, 2020 as it relates to Personal Income Tax Circular (**“PITA”**). Circular No. 2021/18 (**“PITA Circular”**).
5. Information Circular on the Taxation of Non-Residents in Nigeria. Circular No. 2021/07 (**“Non-Resident Taxation Circular”**).
6. Taxation of Companies Engaged in Shipping, Air Transport and Cable Undertakings. **Circular No. 2021/14 (“Transportation and Cable Undertakings Circular”)**.
7. Information Circular on the Claim of Tax Treaties Benefits in Nigeria. Circular No. 2021/05 (**“Tax Treaties Benefits Circular”**).
8. Guidelines For Filing of Income Tax Returns by Approved Enterprises Within the Export Processing and Free Trade Zones. Circular No. 2021/15 (**“Export Processing and Free Trade Zones Circular”**).
9. Clarification on the Provisions of the Stamp Duties Act (**“SDA”**). Circular No. 2021/12 (**“SDA Circular”**).
10. Clarification on the Taxation of Seafarers and Onshore or Offshore Platform Workers. Circular No. 2021/13 (**“Seafarers and Platform Workers Circular”**).
11. Clarification on Sundry Provisions of the Finance Act 2020 as its Relates to Companies Income Tax Act (**“CITA”**). Circular No. 2021/11 (**“CITA Circular”**).



12. Clarification on the Amendment to Section 16 of Companies Income Tax Act (“CITA”) in Relation to Taxation of Insurance Companies Circular No. 2021/16 (“**Insurance Taxation Circular**”).
13. Guidelines for filing income tax returns by foreign companies. Circular No. 2021/06 (“**Tax Returns Circular**”).
14. Clarification on the Implementation of the Value Added Tax (VAT) Act. Circular No. 2021/08 (“**VAT Circular**”).

Highlights of the information circulars

- a. **Commencement And Cessation Rules, And Business Reorganisation: - Sections 29 Of Companies Income Tax Act (CITA), 32 Of Capital Gains Tax Act (“CGTA”), Section 24 & 25 Of Personal Income Tax Act (“PITA”) and 42 of Value Added Tax Act (VATA) (as amended by the Finance Act). Circular No.2021/10.**

This provides clarification on the administration of the various amendments to Section 29 (3), (4) & (9) of CITA, Section 32 of the Capital Gains Tax Act (CGTA), Sections 24 & 25 of PITA and Section 42 of the Value Added Tax Act (VATA) which provide for commencement and cessation rules as well as rules applicable to business reorganisations. As a result of the amendment to section 24(b) and (c) of PITA by the Finance Act 2020, PIT shall be assessed in the event of new trade, profession, vocation or business on a preceding year basis. The FIRS has clarified that there will not be any overlap of basis period where the profits of all the relevant years are computed in line with the new provision, save for the basis period in the 3rd (third) year of assessment due to transitional issues for an individual or partnership that commenced business in 2019.

- b. **Clarification of the Provisions of the Finance Act, 2020 as it relates to Personal Income Tax. Circular No. 2021/18.**

This circular provides clarification on the provisions of Sections 6, 20, 33, 37, 48, 73, 86, 89, 93, 106A and 108 of PITA. These include the introduction of the Significant Economic Presence (SEP) provisions for the taxation of non-resident individuals, partnerships, trustees etc. in Nigeria. By implication, Nigerian residents transacting with non-resident individuals have a WHT obligation in relation to payments for technical, consultancy, management, and professional services. The circular also clarifies the implication of the definition of “gross income” in relation to the tax liabilities of employees.



c. Circular on Tax Implications of Operation of Real Estate Investment Companies (‘REIC’) In Nigeria. Circular No.2021/17.

This circular substitutes the FIRS Information Circular “2020/07” of 29th April 2020. and now clarifies the criteria for tax exemption of dividend and rental income earned by a real estate investment company (REIC), qualification of distributions to REICs as franked investment income and the applicability or otherwise of the excess dividend tax under Section 19 of CITA, which appeared unclear in Finance Act 2019.

d. Taxation of Non-Residents in Nigeria. Circular No. 2021/07.

The circular withdraws and replaces FIRS Information Circular No. 2019/09 of 21st October 2020. The circular aims to provide insight on the application of the Nigerian tax laws and tax treaties to non-residents (individuals or corporate) and the extent of their liability to Nigerian taxes, as well as their compliance and tax remittance obligations.

e. Guidelines for filing income tax returns by foreign companies. Circular No. 2021/06.

The clarification provided in this circular include short-term or one-off contracts by non-resident companies, temporary relocation of assets from Nigerian operations, treatment of group losses. The circular also provides insight on the prescribed form, timing for filling income tax returns by Companies including foreign companies that are liable to tax in Nigeria in accordance with section 55 of the CITA. This circular amends, updates or replaces contents of existing circulars, notices or other publications previously issued by the FIRS.

f. Taxation of Companies Engaged in Shipping, Air Transport and Cable Undertakings. Circular No. 2021/14.

The circular explains the taxation of the income of foreign companies providing shipping or air transport in international traffic, as well as cable undertakings services. The clarification includes definition of terms used but not defined in CITA, taxation of foreign ships or vessels lifting crude oil from Nigerian territorial waters, taxation of income from Ancillary Services or Non-Freight Income etc. In addition, the circular provides that Nigerian companies engaged in the business of cable undertakings or international carriage of passengers, mails, livestock or goods by ship or air are not taxable under the provisions of section 14 and 15 of CITA.

g. The Claim of Tax Treaties Benefits in Nigeria. Circular No. 2021/05.

This circular provides an overview of the Avoidance of Double Taxation Agreements between Nigeria and other countries, the provisions of relevant tax laws and the qualification for claim of tax treaty benefits. The circular includes a checklist for



application for residency certificate by Nigerian residents (individuals, partnerships and companies) seeking treaty benefit and a checklist for non-residents seeking treaty benefit. The FIRS by virtue of this circular withdrew and replaced the earlier FIRS Information Circular No. 2019/03 of 4th December 2019.

h. Guidelines For Filing of Income Tax Returns by Approved Enterprises Within the Export Processing and Free Trade Zones. Circular No. 2021/15.

According to this circular and the amendment of Section 18(1)(a) of the Nigeria Export Processing Zone Act (NEPZA) and the Oil and Gas Export Free Zone Act (OGEFZA) by the Finance Act, 2020, the approved enterprises operating within the respective zones are required to render tax returns in Nigeria and make some mandatory filings. The circular clarifies contents of tax returns to be submitted to FIRS by the approved enterprises and their other statutory obligations. In addition, the FIRS has clarified that an unapproved enterprise or an enterprise whose license either expired or is withdrawn but still operates within the Zones will be subject to all relevant taxes imposed by Federal, State or Local Governments. As such, the tax reliefs under the Nigeria Export Processing Zones Authority Act or the Oil and Gas Export Free Zone Authority Act, shall not apply to such entity.

i. Clarification on the Provisions of the Stamp Duties Act. Circular No. 2021/12.

This circular replaces FIRS Information Circular 2020/05 of 29th April 2020 and provides insights on the implementation of the amendments to several provisions of the Stamp Duties Act (SDA) Chapter S8 LFN 2004, by the Finance Act 2020. It further provides clarity on when an instrument would be deemed to be received in Nigeria, the applicable stamp duties rates for certain instruments, and transitional issues.

j. Clarification on the Amendment to Section 16 of Companies Income Tax Act in Relation to Taxation of Insurance Companies. Circular No. 2021/16.

One of the major issues addressed in this circular is the taxation of life and non-life insurance businesses, the treatment of losses, definition of Gross Premium and Gross Income, and the basis for the computation of minimum tax for insurance business. The FIRS clarified that evidence of Withholding Tax ("WHT") suffered is a condition for dividend income to be treated as Franked Investment Income for the purpose of minimum tax computation.



k. Clarification on the Provisions of Capital Gains Tax (CGT) Act. Circular No. 2021/09.

This circular amends, updates or replaces existing circulars, notices or other publications issued by the FIRS on the provisions of the CGT Act (as amended). In addition to providing clarification on the taxation of compensation for loss of office, the circular clarifies the filing obligation of taxpayers with respect to disposal of chargeable assets, the timing, procedure and form for filing these returns.

l. Clarification on the Taxation of Seafarers and Onshore or Offshore Platform Workers. Circular No. 2021/13¹.

The taxation of individuals who operate within the Nigerian territorial space but are not resident in any given state has been a controversial issue from a personal income tax perspective. The FIRS via this circular provides clarification on the taxation of income earned by Seafarers (resident or non-resident), and Platform Workers (Onshore or Offshore) employed in Nigeria. It defines 'Seafarers' 'Platform workers' and 'Nigeria' for the purpose of taxation of this category of persons.

m. Clarification on the Implementation of the Value Added Tax (VAT) Act . Circular No. 2021/08.

This circular provides clarification on the implementation and implication of the amendment of some provisions of the VAT Act by the Finance Act 2020. Some important clarification relate to exemption of supply of land and building from VAT, determination of ₦25,000,000 threshold, introduction of new VAT forms for non-resident companies and self-filers.

n. Clarification on Sundry Provisions of The Finance Act 2020 as its Relates to Companies Income Tax Act. Circular No. 2021/11.

The issues discussed in this circular include the conditions for exemption of small companies from CIT, the continued withholding tax obligations of entities transacting with small companies regardless of the exemption, the continued WHT obligations of small companies, treatment of capital allowances for small companies, and the compliance obligations of companies involved in exportation to qualify for tax exemption on their profits. The circular also clarifies the restriction on interest deductibility rules, the claim of tax incentives available to companies engaged in gas utilisation, WHT rate for construction contracts generally etc. The circular replaces FIRS Information Circular 2020/05 of 29th April 2020 and provides clarification on other amendments introduced by the Finance Act, 2020.

¹ This circular amends, updates or replaces contents of existing circular, notice or other publication previously issued by the FIRS



Conclusion.

In conclusion, it is usual practice for the FIRS to issue clarification when a provision in the tax laws is considered to be ambiguous. When attempting to provide clarity on the provisions of the law, the FIRS should avoid an attempt to amend the substantive law. For instance, the FIRS in the Non-Resident Taxation Circular has attempted to restrict the allowable expenses for computation of the income tax liability of non-resident companies by exempting expenses deemed to be notional costs by the FIRS. This seems to be contrary to the law, especially if such expenses are wholly, reasonable, exclusively, and necessarily incurred towards the production of the profits sought to be taxed by the FIRS. The decision in *FBIR v. Halliburton (WA) Ltd*², is instructive on the point that an information circular issued by the FIRS is merely an explanatory note or advisory and cannot, by any stretch of statutory interpretation override or supersede the clear and unambiguous meaning of any statutory provision.

Some of the clarification provided by the FIRS have far reaching effects on companies and individuals, which we will discuss in detail in subsequent publications.

For further enquiries on the above, please contact taxteam@uubo.org.

² (2014) LPELR-24230(CA)