

Tax Refunds in Nigeria – Myth or Reality



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Introduction

Tax refunds have a growing perception of being a myth in Nigeria. Like the saying “chickens will grow teeth when pigs begin to fly”, there is general pessimism on the likelihood of getting refunds for overpaid taxes. However, the tax authorities will argue differently, and state that tax refunds are given for valid claims.

In this article, we will highlight the general issues and bottlenecks surrounding the efficient administration of tax refunds in Nigeria, with a focus on Federal Inland Revenue Service (FIRS) refunds.



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What provisions in the law give the taxpayer the right to a tax refund?

The Federal Inland Revenue Service Establishment Act 2007 (FIRSEA) stipulates that refunds can be made to taxpayers for overpayment of tax, after a proper audit has been carried out. Various tax laws also make provision for tax refunds subject to meeting specific conditions. Notably, the Companies Income Tax Act (CITA) refers to a repayment of overpaid taxes within 90 days upon request.

A taxpayer may request for a refund for various reasons including:

- i. Tax remittances made with mistaken Tax Identification numbers (TIN)
- ii. Withholding tax deductions in excess of income tax payable
- iii. When input VAT exceeds output VAT
- iv. Other computation or payment errors

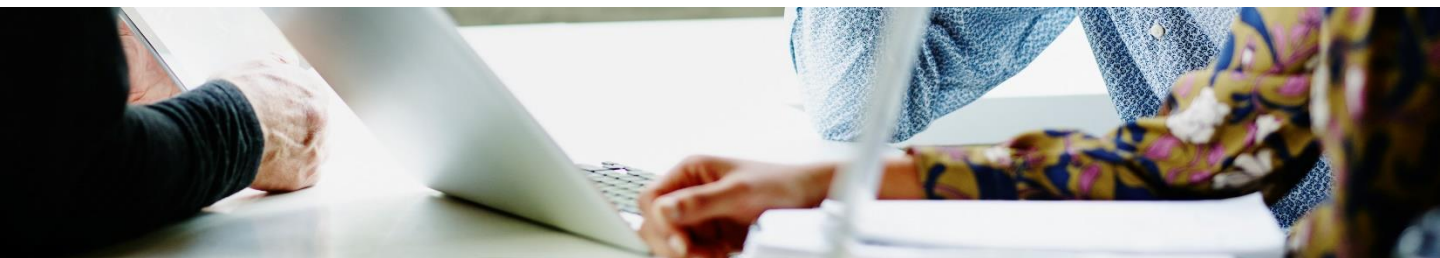
Before the enactment of the FIRSEA in 2007, tax refunds were almost practically impossible, because the modalities for refunds were not codified in any law. However, the FIRSEA established structures for the administration of tax refunds. The provisions of the FIRSEA cover the following:

1. The requirement to undergo a proper audit before a refund can be issued.
2. The setup of guidelines and rules, by the Federal Inland Revenue Board, to determine refund eligibility.
3. Timeline for processing tax refund i.e. any tax refund must be processed within 90 days of the Service's decision, with the possibility of setoff.

In addition to these, the Finance Act 2020 introduced a requirement for the Accountant-General of the federation to set up a dedicated account, funded for the sole aim of refunds payment and managed by the FIRS. The FIRS is also charged with the duty to prepare an annual tax refund budget to be approved by the National Assembly.

These introductions have slightly strengthened the regulatory framework for tax refunds in Nigeria, although they are being implemented marginally and cannot achieve the objective of an efficient tax refund administration. For example, refunds should not be driven by a budget but by facts.

Knotty Issues



i. Duration and outcome of refund audits

Based on section 23(1) of the FIRSEA, a prerequisite for the grant of a tax refund is a tax audit by the FIRS to verify the basis of the claim.

The tax audit process in Nigeria is known to be rigorous, lengthy and expensive and the tax refund applicants often ends up with liabilities that exceed the refund requested and looks into areas that are not relevant for the refund. Section 23 of the FIRSEA does not specify a timeframe within which tax refund audits must be concluded; as a result, there seems to be a low level of commitment from the tax authority to finalise such audits.

In many tax refund cases, the audits are delayed for years without significant progress or accountability. This is counterproductive for taxpayers as they lose the time value of money.

ii. Mutual distrust between the government and taxpayers

At the root of the administrative difficulties of tax refunds in Nigeria, is the inherent distrust between taxpayers and the FIRS. The FIRS assumes that taxpayers are unwilling to comply with tax laws, hence the tax authority takes a confrontational approach to tax audits. On the other hand, taxpayers do not trust the government due to the perceived lack of transparency and public accountability.

Government should strive to bridge the trust gap with taxpayers by showing fairness in tax administration, especially in the prompt payment of refunds. This will increase voluntary tax compliance by taxpayers as refunds improves trust in the tax compliance process.

iii. Lack of proper documentation by taxpayers

Audits generally require proper planning and preparation on the part of the taxpayer. Delays in audits are sometimes traceable to taxpayers not providing requested information. Taxpayers can carry out audit simulations and audit-readiness health checks to confirm that all necessary documents are available before a claim for a tax refund is made.

Taxpayers should also adopt efficient document retention and archiving systems to ensure that documents in support of their true tax positions are readily available.

iv. Accounting for tax revenues

Another key issue in obtaining refunds is the public finance and accounting for refunds. The FIRS typically recognises all taxes received as revenue to the Government. For example, WHT collected is treated as revenue, as against recognising it as an advance payment of Companies Income Tax (CIT) which is a liability until the taxpayer utilises or forfeits the WHT. In doing so, the FIRS would have overstated its revenue, or at best created an unrealistic revenue expectation. This exacerbates the resistance by the FIRS to grant refunds.

Where the FIRS continues to record all receipts as revenue, there should be a provision in the books for possible credit losses that may arise from refunds.



Overview of Tax Refund Cases in Nigeria

In 2021, the FIRS in its Annual Report provided a breakdown of refund cases between 2019 and 2021 as shown below

Year	
2019	<ul style="list-style-type: none">• 284 applications received and processed in the sum of : - N211,305,047,504.44 and \$18,041,869.81• 192 applications processed and paid in 2019, total amount paid was N23,605,897,863.40• Budget funding by the Accountant General for 2019- N25,000,000,000.00
2020	<ul style="list-style-type: none">• 242 Applications received and processed in the sum of: -N52,584,000,991.28, \$6,416,999.31 and EUR57,453.31• 125 Applications processed and paid in 2020, total amount paid N27,883,524,254.05• Budget funding by the Accountant General 2020- N25,000,000,000.00
2021	<ul style="list-style-type: none">• 385 Applications received and processed in the sum of: - N57,455,497,607.96, \$838,153,879.51 and EUR56,547• 45 Applications processed and paid in 2021, total amount paid was N18,436,923,135.00• Budget funding by the Accountant General 2021- N25,000,000,000.00

The Report indicates that the value of tax refund applications received by the FIRS increased by almost 10% from 2020- 2021 and in each year, the applications received exceeded the budget amount of N25bn in each year.

It appears that there is no data driving the fixed budget amount of N25bn, despite the increase in demand cases. This may cast more doubts in the minds of taxpayers about the willingness of the tax authorities to make refunds.

According to the report, the payment of approved refund applications was subject to the availability of funds released to the FIRS in the annual budget/appropriation. The question then is whether the government has made adequate provisions to cater for situations where the approved refunds exceed the budget.

What obtains in other territories?

In Germany, refund payments are usually made within two to six months of an application; and there is an interest of 0.15% that is charged for late refunds payments. South Africa has made remarkable progress with its tax refund administration.

The South African Revenue Service (SARS) reported in April 2022 that it paid out its highest-ever amount in tax refunds in 25 years, representing an estimated 5.1% of gross domestic product.

According to the reports, the refunds reflected a growth year-on-year of 10% mostly dominated by VAT (R262.4 billion), Personal Income Tax (R33.7 billion), CIT (R17.7 billion) and Customs duties (R58 billion).



Recommendations

- The timeframe from verification of refund to the payment of the tax refunds should not exceed 12 months.
- Taxpayers should ensure that proper and relevant documentation is maintained to aid refund requests. Also, taxpayers should conduct a tax health-check before applying for the tax refunds.
- The FIRS should adopt a proper revenue recognition mechanism where WHT from companies (except where the WHT is final tax), are properly treated as liabilities until the relevant entities have filed their annual returns, or other appropriate criteria are met. This results in more accurate reporting, increases transparency and improves taxpayer confidence
- Commercial interest should apply on late payment of refunds, similar to interest imposed on taxpayers for late payment of taxes. This encourages accountability, and align our tax system with global best practices.

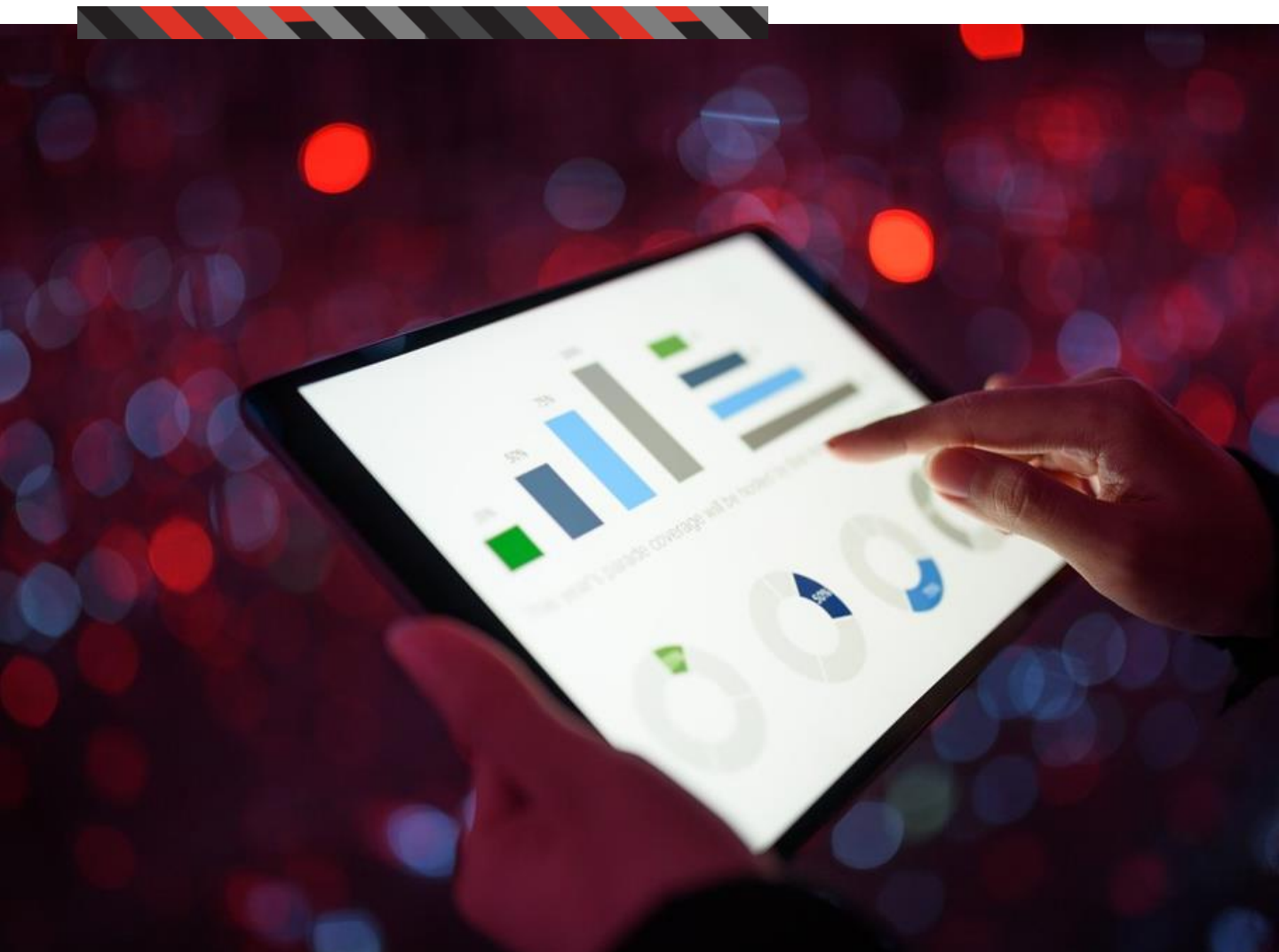
Conclusion

Whether tax refund is a myth or reality in Nigeria will depend on who you ask. However, refunds would likely be considered more of a myth to many businesses, especially to those whose refund requests exceeded the FIRS' N25bn refund budget, or who are hit with additional liabilities following a refund audit.

Without a doubt, taxpayers will begin to feel a deeper sense of trust and confidence in the Government if an efficient tax refund system is put in place.

From an equity perspective, it is generally accepted that if a legal remedy or equitable relief is available to a deserving party but is not provided in good time, it is effectively the same as having no remedy. Essentially, justice delayed is justice denied.

A proper refund system becomes increasingly critical as the government starts focusing on fostering the ease of doing business and encouraging foreign investment and participation in Nigeria. Investors will feel more confident where they know that overpaid taxes can be refunded.



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