Tax Alert

The New Audit Wave: What you should know

www.pwc.com/ng

July 2023

Introduction

An audit is a verification exercise typically carried out to ascertain completeness and accuracy. Whilst most employers are familiar with statutory financial audits and State/Federal tax audits carried out on an annual basis, there is little or no experience with other regulatory authorities. We have seen increased audits from other regulatory agencies particularly as they relate to employer/employee obligations. Audits are a good way to monitor and enforce compliance, however, if not properly done, this can be quite disruptive to business.

In February 2023, the Business Facilitation (Miscellaneous Provisions) Act 2022 was enacted to promote the ease of doing business in Nigeria.This Act amended several legislation including the Industrial Training Fund (ITF) Act and the National Housing Fund (NHF) Act. Some of these amendments are likely to result in reduced revenue for the affected regulatory authorities, hence, we envisage an increased scrutiny to close out ongoing audits and new audits on prior periods. For the purpose of this alert, we will be focusing on the National Pension Commission (NPC), the Industrial Training Fund (ITF) and the Employee Compensation Scheme (ECS).

The National Pension Commission (PenCom):

The Pension Reform Act (PRA) 2014 requires private sector employers with 15 or more employees to participate in the contributory scheme. The rate of contribution is 8% and 10% of employees' monthly emolument for employees and employers respectively. Where an employer elects to make the full contribution on behalf of its employees, the rate of contribution shall not be less than 20% of employee's monthly emolument. These contributions should be remitted to the Pension Fund Custodians (PFC) specified by the Pension Fund Administrators(PFA) of the employees no later than 7 working days from the day employees' salaries are paid.

In addition to the above, every employer is expected to maintain a Group Life Insurance Policy in favour of each employee for a minimum of three times the annual total emolument of its employees.
The primary role of PenCom is to enforce and administer the provisions of PRA 2014 including ensuring that the right contributions are remitted to the employees' RSA within the specified timeline, contributions are invested in the right portfolios and retirement benefits paid as and when due.As part of its responsibilities, the commission is responsible for imposing non compliance administrative or civil sanctions or fines on erring employers, PFAs or PFCs.

Employee Compensation Scheme (ECS):

The ECS is administered by the Nigerian Social Insurance Trust Fund (NSITF) in line with the provisions of the Employee Compensation Act 2010. The Act requires all employers in the public and private sectors to make a minimum monthly contribution of one percent of the total monthly payroll into the Fund.

There are some controversies around the definition of monthly payroll as this is not expressly defined in the Act. Whilst some employers believe this should be restricted to Basic, Housing and Transport allowances (BHT), others believe it should be any monthly recurring payment excluding one off payments. This has been subjected to different interpretations and sometimes become problematic during audits.
Despite the controversies highlighted above, the NSITF and the Nigeria Employers Consultative Association (NECA) have an agreement which allows employers who belong to NECA to restrict their contributions to BHT.

Industrial Training Fund (ITF):

The ITF Act (ITFA) governs the ITF which is to be utilised to promote and encourage the acquisition of skills in industry or commerce in Nigeria. The overall goal is that Nigeria has a pool of indigenous trained manpower sufficient to meet the needs of the economy. Qualifying employers contribute 1% of their payroll to the fund with a possibility of recovering at least 50% of the amounts contributed. One must therefore circumspectly assess how far we have come as a nation on the training agenda over and above revenue audits.

The Business Facilitation Act (BFA) which was recently signed into law, made amendments to the basis for contributing to the scheme. Every employer with twenty five (25) or more employees in its establishment each calendar year, is expected to contribute one per cent (1%) of their annual payroll cost each calendar year to the fund. Any supplier or contractor with more than 25 employees who intends to bid for contracts from any Federal Government MDA also has to fulfil the statutory obligation with respect to payment of contribution to the fund.

Audit triggers

Some triggers for audits by the agencies highlighted below include:

Random selection: On a periodic basis, mostly annually, the regulatory authorities select a number of participants for a detailed examination. If your company is selected, it does not necessarily mean that you have done something wrong, it is standard practice.

General non-compliance / Risk assessment: Where the authorities discover based on experience that there is a non-compliance pattern or complexity in a particular client or industry, there is a high chance that they will be selected for an audit whenever there is an intention to carry out the exercise. This is because the authorities would have done an assessment on the possibility of recovery to ensure that the cost of the audit does not outweigh the liability to be recovered.

Change in legislation/Grey areas in legislation: When there is a recent change in legislation, particularly one that turns out contentious, the authorities initiate verification exercises to assess compliance. General ambiguity in the law sometimes triggers an audit.

Insider information: If a case of non-compliance is reported to any regulatory authority, they immediately raise an inquiry to investigate.

Revenue generation: Where there is pressure on an agency to meet a revenue target, chances that it will look keenly into compliance/non-compliance matters is high. Audits also give them an opportunity to recover unpaid liabilities with penalties and interest in some instances.

Audit challenges

Statute of limitation / Document retention: Whilst some legislation have specific timelines (mostly six years) for when an audit can be conducted on a company, some do not have this clearly spelt out. Some regulatory authorities have taken advantage of the non-existence of a specific timeline to serve companies audit notifications which dates far back. Companies may push back on these limitless timelines on the basis that the Companies and Allied Matters Act (CAMA) has a specific provision on document retention and this is the Act that regulates how companies operate. The timeline stipulated in CAMA is six years.

With the recent emigration wave ("japa syndrome"), companies have found it more challenging retrieving documents or vital information where documentation was a struggle.

Technical capabilities: The regulatory authorities sometimes make use of consultants for the audit process. These consultants in some instances do not have a good understanding of the relevant legislation, industry practices and peculiarities etc. This creates bottlenecks in closing out audits.

Takeaway

The regulatory environment is getting stricter, hence the need to ensure full compliance with relevant legislation. The regulatory authorities have begun to tighten the compliance process and a lot of companies have received notifications for audits beyond tax. It has become imperative for employers to review their policies, processes and procedures to manage any risk that may arise as a result of non-compliance. Companies are encouraged to carry out proper housekeeping and firm up governance processes that can reduce risk exposures.

We welcome the Federal Government's recent announcement to streamline taxes to promote efficiency and accountability. While the contributions are not all taxes,the administrative processes involved in collecting them could be better harnessed by streamlining collection across the agencies. This will afford more time for regulation by the agencies so that revenue generation is not a key driver for the audits. Instead, compliance with attaining the strategic rationale for which the Acts were set up will be critical in attaining a stronger economy.

Should you need further clarification, do not hesitate to reach out to us:

Esiri Agbeyi
Partner | Tax
emuesiri.agbeyi@pwc.com

Oluwatoyin David
Associate Director | Tax
oluwatoyin.x.david@pwc.com

Abiye Oruitemeka
Senior Associate | Tax
abiye.oruitemeka@pwc.com

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 152 countries with over 328,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com

© 2023 PricewaterhouseCoopers Nigeria. All rights reserved. In this document, "PwC" refers to the Nigeria member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.