

FIRS issues a public notice to clarify directive on filing of tax returns by non-resident companies

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In brief

The Federal Inland Revenue Service (FIRS) recently released a public notice to clarify inquiries from taxpayers on the filing of full tax returns by non-resident companies operating in Nigeria. In the notice, the FIRS stated that all affected companies are to ensure compliance from the assessment year commencing 1 January 2015 (2014 financial year).

The FIRS had earlier indicated that the new requirements would take effect from 2014 tax year (2013 financial year).

In detail

Background

During a stakeholder meeting organised by the FIRS on 24 July 2014, the FIRS indicated that non-resident companies should begin to file full tax returns to include actual profit tax computations, capital allowance computations and audited financial statements effective from the 2014 tax year.

The above led to a number of issues and enquiries directed at the FIRS hence the public notice released recently.

Effective date

Non-resident companies are to comply with the filing directive effective from 1 January 2015.

Summary of the FIRS public notice

The FIRS provided some clarifications to its directives:

1. All Nigerian and non-resident companies carrying on business in Nigeria must file income tax returns in accordance with s.55 of the CITA.
2. Assessment to tax based on turnover is solely at the discretion of the FIRS.
3. A non-resident company assessed to tax by the FIRS on the basis of turnover does not preclude a company from filing full tax returns as required by law.
4. Compliance with the filing requirements of CITA does

not prevent the FIRS from exercising its discretion to assess a company to turnover tax (deemed profit basis) where necessary in accordance with s.30 of the CITA.

5. International tax conventions require tax authorities to treat foreign companies (non-residents) in the same manner as local companies.
6. One of the objectives of the Income Tax (Transfer Pricing) Regulations is to provide a level playing field for both multinational and independent companies operating in Nigeria.
7. FIRS mentioned that Country by country reporting is an acceptable

international best practice to address base erosion and profit shifting.

Comments on the public notice

Based on the public notice released, the FIRS has reiterated that non-resident companies operating in Nigeria should self-assess and file comprehensive income tax returns with actual tax and capital allowance computations as prescribed by s.55.

The outcome is that the FIRS will tax a permanent establishment (“PE”) of a foreign company in exactly the same way it taxes a Nigerian company.

The FIRS has also stated that it reserves the right to still assess non-resident companies to tax based on turnover in accordance to s.30 of the CITA despite complying with the filing requirements of s.55. While this is consistent with the powers granted to the FIRS by CITA, this may lead to a situation where the FIRS arbitrarily chooses which option will generate more revenue to the detriment of the taxpayer. However, if the intention is to treat non-resident companies in the same way as domestic companies, we expect the FIRS to accept tax based on actual profit except where it is impracticable to determine the actual profit. This should not result in non-resident companies being taxed at the higher of deemed and actual profit basis given that Nigerian companies are not treated as such.

Most companies suffer withholding tax deduction at source on their income at a minimum of 5%. Where tax based on actual profit is less than 5% of turnover, FIRS should be ready to pay tax refunds after proper verification.

The public notice also states that the requirement for non-residents to file their returns as stated above should commence from assessment year 2015. This is different from the previous communication by the FIRS which indicated that the requirement would apply from the 2014 assessment year and demanded some non-resident companies that had submitted returns on the deemed profit basis to take steps to rectify their positions.

The takeaway

The revision of the effective date (2015) for non-resident companies to comply with the directive rather than 2014 is a welcome development. Companies who had already filed their 2014 tax returns on the deemed profits basis would not necessarily have to refile those returns. This may not preclude affected companies from filing their transfer pricing declaration and disclosure forms for 2014 tax year if they are yet to do so.

The public notice released by the FIRS has officially confirmed the position of the FIRS regarding filing of full tax returns by foreign companies operating in Nigeria. However there are still many issues and grey areas requiring clarifications such as treatment

of capital allowances, movement of assets into and out of Nigeria, head office expense allocations etc. It is expected that a detailed guideline will be issued in the coming months.

While we await additional guidance, non-resident companies should take necessary steps to ensure full compliance with returns filed relating to the 2015 tax year and going forward.

Proper documentations relating to all income earned and expenses incurred should be kept in order to avoid a situation whereby the FIRS insists on exercising its powers to assess on turnover basis.

In the event of any unfair treatment, affected taxpayers should also be prepared to substantiate their tax filing position and if necessary resolve their disputes with the FIRS through the established objection procedures including the Tax Appeal Tribunal and the courts.

Conclusion

The new directive from the FIRS is as a result of Transfer Pricing implementation which became effective from financial year 2013 (tax year 2014). Therefore, non-resident companies operating in Nigeria should take necessary steps to comply with the transfer pricing requirements as part of their full tax filing.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

PwC Nigeria - Tax and Regulatory Services Unit

Taiwo Oyedele
+234 1 271 1700 Ext 6103
taiwo.oyedele@ng.pwc.com

Kenneth Erikume
+234 1 271 1700 Ext 6110
kenneth.y.erikume@ng.pwc.com

Ugochukwu Dibia
+234 1 271 1700 Ext 6120
ugochukwu.dibia@ng.pwc.com

Ajibola Onanuga
+234 1 271 1700 Ext 6127
ajibola.onanuga@ng.pwc.com