FIRS issues public notice on penalty and interest rates for late payment of taxes

October 2014

In brief

In September 2014, the Federal Inland Revenue Service (FIRS) issued a notice titled 'Public Notice on the Administration of Penalty and Interest Rates Regime under the Companies Income Tax Act CAP C21 LFN 2004'.

According to the FIRS the aim of the public notice is to clarify and provide certainty on the applicable interest rate for late or non-payment of taxes. However, the notice may lack legal backing as it appears to amend certain provisions in both the Companies Income Tax Act 2004 and Federal Inland Revenue Service Establishment Act 2007.

In detail

Background

The applicable penalty and interest rates for late or non-payment of taxes in Nigeria is expressly provided by statute. Examples can be found in section 85 (1) (a) and (b) of the Companies Income Tax Act (CITA) and section 32 (1) (a) and (b) of the Federal Inland Revenue Service Establishment Act (FIRSEA). Both provisions are similar. Where there is a conflict, the FIRSEA supersedes other tax laws.

With respect to penalty rates, both Acts impose a rate of 10%. In the case of interest, while CITA provides that the rate shall be at bank lending rates, the FIRSEA provides that for Naira remittances, the interest rate shall be the prevailing minimum rediscount rate (MRR) of the Central Bank of Nigeria (CBN) plus a spread to be determined by the Minister of Finance. In the case of foreign currency remittance, the prevailing London Inter-Bank Offered Rate (LIBOR) or MRR of the CBN (whichever is higher) plus a spread to be determined by the Minister from time to time should apply.

The FIRS has now issued a public notice, and which subsequently shall be published annually, setting out applicable interest rates for tax defaults. The current notice retains the penalty rate at 10% but imposes 15% as the new interest rate. The notice does not contain any effective date or transition arrangements. It was signed by the Acting Executive Chairman of the FIRS.

By its notice the FIRS, in effect, seeks to amend the provisions of both statutes with respect to interest rate on late and non-payment of taxes.

Legal implications

The CITA and FIRSEA are Acts of the National Assembly which can only be amended by the legislative process carried out by the lawmakers.

The notice therefore conflicts with these Acts by imposing a flat rate of 15%. The intention of the notice is to clarify the position of the law, and provide certainty to taxpayers, which is good. However, the question is whether the FIRS is empowered to do so given the clear provisions of the FIRSEA requiring the Minister to do so.

Interest rates in Nigeria

According to the notice, the practice prior to the enactment of the FIRSEA was to impose an administrative rate of 20% as the applicable interest rate. This was done to address the fluctuating rates in the banking industry which resulted in the application of different interest rates.

With the enactment of the FIRSEA, interest rate on late and non-payment of taxes was dependent on the Minimum Rediscount Rate (MRR). The MRR is the interest rate set by the CBN for credit transactions with commercial banks. Thus, the MRR influences commercial lending rates such that the higher the MRR, the higher the lending rates.

The Monetary Policy Rate (MPR) replaced the MRR in 2007. It is viewed as more encompassing as it incorporates liquidity and reserve ratios as well as the rediscount rates.

With respect to foreign remittances, the notice states that LIBOR would always be lower than MRR and the bank lending rate. This conclusion may reflect present circumstances.

The effect

The MPR is a benchmark rate which expectedly fluctuates in response to a variety of economic conditions. The CBN, through its Monetary Policy Committee (MPC) meets quarterly to review this rate.

In the event the MPR increases beyond 15% in any year, the FIRS could be bound to accept a lower interest rate. On the other hand, where the MPR is significantly lower than 15%, taxpayers could, by this notice be assessed to interest at the higher rate, contrary to the FIRSEA.

By the fixed rate, the problem of fluctuating interest rates may have been resolved. However, there is the likelihood of discontent on the part of either the FIRS or taxpayers depending on the swings in the MPR.

Also, the uncertainty regarding the mode of computation and when interest will start to accrue have not been addressed.

The takeaway

Notwithstanding the good intention of the FIRS, the notice has no legal basis.

At best, the 15% interest rate put forward by the FIRS will serve as an indication of what taxpayers should expect when dealing with the FIRS. To have the required legal backing, the rate should be MPR plus a spread to be announced by the Finance Minister from time to time.

Let’s talk

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

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