

FIRS issues tax return guidelines for Free Zone enterprises in Nigeria

August 2021

Background

The Federal Inland Revenue Service (FIRS) recently issued a circular setting out guidelines for the filing of tax returns and other compliance obligations relating to approved enterprises within the export processing and free trade zones in Nigeria. These guidelines were issued pursuant to the recent Finance Act (FA) 2020 amendments to the Nigeria Export Processing Zone Act (NEPZA) and Oil and Gas Free Zone Act (OGFZA).

Previously, NEPZA and OGFZA provided that approved enterprises operating in the Zones, were exempt from *“legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations...”*. However, the FA 2020 has now amended this to an exemption from *“taxes, levies, duties and foreign exchange regulations...”*. Therefore, while the profits and transactions of Free Zone Enterprises (FZE) remain tax exempt, they are now clearly required to fulfill relevant filing obligations.

We have highlighted key areas of the circular below:

Highlights

The circular clarifies that licences issued by the Authority or Management of a Zone are only valid within the relevant Zone. Tax laws will be duly applied on unapproved entities operating within Zones, or entities with expired or withdrawn licenses.

The amendment mandates FZEs to comply with Section 55(1) of the Companies Income Tax Act (CITA) and file tax returns whether or not they have any tax liabilities for the year of assessment.

Content of the tax returns

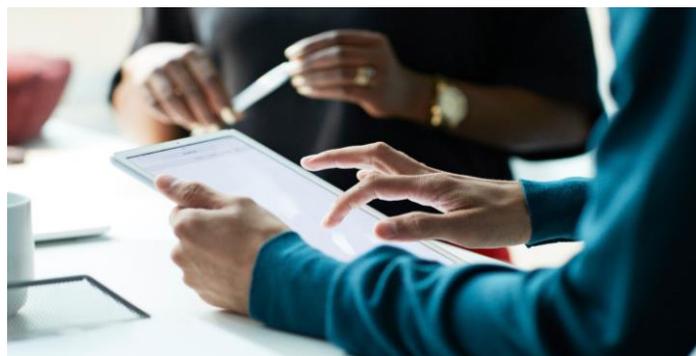
- Audited accounts;
- Tax and capital allowances computations;
- A true and correct statement in writing containing the amount of profit from each and every source, where applicable;
- Duly completed self-assessment forms as prescribed by the FIRS, and attested to by a Director or Secretary of the FZE;
- Evidence of payment of the whole or part of any tax due.
- Schedules showing the computation of profits arising from transactions carried out within and outside the Zone

Other Statutory obligations for FZEs

FZEs are also required to:

- Register with FIRS and obtain a Taxpayer's Identification Number (TIN);
- Maintain proper books of accounts;
- Maintain an accurate record of employees;
- Deduct and remit Pay-As-You-Earn (PAYE) taxes
- Pay CIT as applicable;
- Comply with the Transfer Pricing Regulations in respect of transactions with related parties; and
- Deduct WHT as applicable, on transactions with companies operating outside the Zone
- Perform such other obligations as may be legally required.

The circular reiterates that failure to comply with the provisions of the law will result in payment of penalties by the defaulting entity.



Takeaway

The FA 2020 amendment and the circular clarify some of the ambiguities around FZEs' compliance obligations. Generally, FZEs are required to fulfil CIT filing requirements on their operations, and deduct taxes on payments to recipients that are not tax exempt.

It may be safe to also take the position that FZEs are required to deduct WHT on payments to foreign entities that provide technical, professional, management, consultancy, and digital-related services, in line with the recently introduced Significant Economic Presence (SEP) rules. It would be preferable if the circular also provided guidance in this regard.

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