



FEDERAL INLAND REVENUE SERVICE
20 SOKODE CRESCENT, WUSE ZONE 5, P.M.B 33, GARKI, ABUJA, NIGERIA

INFORMATION CIRCULAR

NO... 2022/05

Publication Date: -- 11th April, 2022

Subject: **CIRCULAR ON TAX IMPLICATIONS OF THE OPERATION OF REGULATED SECURITIES LENDING TRANSACTION ('SEC LENDING') IN NIGERIA**

This circular is issued for the information and guidance of the general public, taxpayers and tax practitioners in line with the provisions of the relevant tax laws. This instant circular amends, updates or replaces contents of any circular, notice or other publication previously issued by the Service that is inconsistent with its contents to the extent of such inconsistency. This circular withdraws and replaces the earlier FIRS Information Circular NO: 2020/03 of 29th April, 2020.

1.0 Introduction

The objective of this Information Circular is to provide clarification on the tax treatment of Regulated Securities Lending Transaction (SEC Lending), which is approved or regulated by the Securities and Exchange Commission (SEC). Specifically, this Information Circular provides clarification on the application of Sections 9, 23, 24, 29, 78, 80, 81 and 105 of the Companies Income Tax Act (CITA) Cap. C21 LFN 2004, Section 30 of the Capital Gains Tax Act (CGTA) Cap. C1 LFN 2004 (as amended), Schedule to the Stamp Duties Act (SDA) Cap. S8 LFN 2004 (as amended), the provisions of the Personal Income Tax Act (PITA) Cap. P8 LFN 2004 (as amended).

2.0 Relevant Regulatory Provisions

The operations of SEC Lending in the Nigerian capital market is governed by the provisions of the Investment and Securities Act, 2007 (as amended) the

Securities and Exchange Commission Rules, 2013 (as amended) and other extant laws and regulations. Taxation of the SEC Lending is governed by CITA and other relevant tax laws.

3.0 Nature of Regulated Securities Lending Transaction

“Regulated Securities Lending Transaction” is an arrangement where a lender enters into an agreement with an agent, for depositing securities for the purposes of lending, through the lending agent, in accordance with the SEC rules, and the Borrower enters into a separate agreement with the lending agent for the purposes of borrowing the securities. It also includes an arrangement where the borrower deposits collateral with the Lender, through the agent as a security for the borrowed securities.

Any direct agreement between the lender and the borrower for lending and borrowing of securities will not qualify for a SEC Lending.

4.0 Interpretation

Section 105 of CITA defines a **“Regulated Securities Lending Transaction”** to mean any securities lending transaction conducted pursuant to rules made by the Securities and Exchange Commission.

In the context of Securities Lending Transactions and for the purposes of this Information Circular, the following terms shall have the meaning stated herein:

“Approved Agent”, “Agent” or “Lending Agent” means any person approved by the Securities and Exchange Commission to function as an intermediary for the conduct of a Regulated Securities Lending Transaction.

In line with the above, an agent is a middleman through which the lender will deposit the securities for lending and the borrower will borrow the securities.

“Borrower” means an approved borrower in a Regulated Securities Lending Transaction.

As such, a borrower is a person who borrows the securities under SEC rules and regulations, through an agent.

“Collateral” means acceptable forms of securities, cash, or a combination of acceptable forms of securities delivered by the borrower to the lender as security to support a loan.

“Compensating Payments” means any payments made in lieu of interest or dividend pursuant to a Regulated Securities Lending Transaction.

As such, payment made under SEC Lending where the underlying transaction giving rise to the payment is a receipt of dividends or interest in a Regulated Securities Exchange Transaction will be treated as compensating payments.

“Dividend” means ‘compensating payments received by a Lender from its approved agent or Borrower in a Regulated Securities Lending Transaction’.

As such, a dividend under SEC Lending is a payment ‘manufactured’ by the borrower to compensate the lender for the dividend not received by the lender having entered into a securities lending transaction.

“Interest” means compensating payments received by a Borrower from its approved agent or a Lender in a Regulated Securities Lending Transaction provided that the underlying transaction giving rise to the compensating payment is a receipt of interest by a Lender on the collateral it received from its approved agent or a Borrower in a Regulated Securities Exchange Transaction.

As such, interest is a payment ‘generated’ by the Lender to compensate the Borrower for the net interest not received by the Borrower on the collateral deposited with the Lender against the borrowed securities.

“Lender” means an approved Lender in a Regulated Securities Lending Transaction.

As such, a Lender is a person who deposits securities registered in his name or in the name of any other person duly authorised on his behalf with an agent for the purpose of lending under SEC regulations.

5.0 Income under a SEC Lending

Income under a Regulated Securities Lending Transaction includes:

1. Dividends;
2. Rights;
3. Bonus;
4. Redemption benefits;
5. Interests; and
6. Securities lending fees or any other right or benefit accruing on the securities lent.

6.0 Taxation of the Income on SEC Lending under CITA

6.1 Rights, Bonus, Redemption Benefits and Other Income

In accordance with Section 9(1) (h) of CITA, rights, bonus, profits, fees or any other benefit accruing to a Borrower or Lender under a SEC Lending is wholly taxable in accordance with the provisions of CITA or other relevant tax laws.

6.2 Dividend and Interest Earned under a SEC Lending

The following provisions of CITA shall apply to dividend and interest earned under a SEC Lending:

6.2.1 Section 9 of CITA

Gross dividend and interest received by a Lender and Borrower respectively constitutes income that is liable to tax under Section 9(1) (c) of CITA.

Also, rights, bonus, profits, fees and any other benefits accruing to a Borrower or Lender under a SEC Lending constitutes taxable income under Section 9(1) (h) of CITA.

6.2.2 Section 23 of CITA

Notwithstanding the provision of Section 9(1)(c) of CITA, in line with Section 23(1)(t) and (u) of the Act, dividend received by a Lender from a Borrower or by an agent from a Borrower under SEC Lending is not subject to further tax in the hand of the Lender as it is franked investment income.

By the provisions of Section 23(1) (u), interest received by an Agent from a Lender under SEC Lending is exempt from tax in the hand of the Agent.

Consequently, a Lender or an Agent that included dividend received under SEC Lending in its income; or an Agent that included interest received under SEC Lending in its income shall "back it out" while computing the taxable income.

NOTE:

Interest received by a borrower under a SEC lending transaction is taxable under the law and shall not enjoy the exemption provided by Section 23(1) of CITA.

6.2.3 Section 24 of CITA

Section 24(1) (l) of CITA, provides that interest paid by a lender to an agent or a borrower under a SEC Lending is an allowable deduction.

As such, the interest and other expenses relating to the SEC lending transaction is deductible from income generated through the SEC lending transaction. Income generated from SEC lending transactions include interest received, fees, charges, bonus and any other right or benefit accruing to the lender.

6.2.4 Section 27 of CITA

In accordance with Section 27(1) (i), dividend generated by a borrower, and paid to the agent or Lender under SEC Lending will not be an allowable deduction to the borrower.

Also, in Section 27(1) (j), interest or dividend generated by the agent and paid to a borrower or lender respectively under a SEC Lending, will not be an allowable deduction to the agent.

6.2.5 Section 78 of CITA

Interest paid directly by a Lender to a Borrower is liable to WHT deduction as provided under Section 78 of CITA. However, where the Lender passes the interest through the agent for the benefit of the borrower, the obligation to withhold tax is shifted to the agent. As such, the payment of interest from the Lender to the agent shall not be subject to WHT. The remittance of the interest by the agent to the Borrower is subject to WHT.

S/N	Payment Direction	Result
1.	Lender pays directly to borrower	Lender to withhold tax
2.	Lender pays interest through agent	Lender not to withhold tax
3.	Agent remit interest to borrower	Agent to withhold tax

6.2.6 Section 80 of CITA

Payment of dividend from a borrower to an agent or lender shall not be subject to deduction of WHT under Section 80 of CITA. Similarly, WHT shall not be applicable when an agent pays the dividend to the lender.

6.2.7 Section 81 of CITA

Any payment of dividend or interest under the SEC Lending is exempt from the application of Section 81 of CITA. Consequently, the provisions of the WHT Regulations shall not apply where dividend or interest is paid under SEC Lending.

7.0 Income Earned by an Individual under a SEC Lending

Dividend and interest under SEC Lending received by persons chargeable to tax under PITA are not exempt from tax, as the exemptions and concessions provided in CITA relates to entities assessable to tax under the Act. As such, the existing provisions of PITA shall continue to apply in the taxation of dividend, interest, rights, bonus, profits, fees and any other benefit accruing to an individual under a SEC Lending.

8.0 Exemption from Capital Gains Tax

Shares transferred under SEC Lending transaction is exempt from capital gains tax under Section 30 of the CGTA. As such, gains accruing to an approved Lender, Borrower or agent from the transfer of shares in a Regulated Securities Lending Transaction as defined under Section 105 of CITA is not subject to capital gains tax.

However, capital gains tax shall be paid on gains accruing to either the Lender, Borrower or Agent from subsequent disposal of the shares to a third party, provided that other conditions for subjecting the gains to tax under the CGTA have been met.

9.0 Application of Stamp Duties Act to SEC Lending

The following documents and transactions are exempt from Stamp Duties under the Schedule to the Stamp Duties Act:

1. Receipts given by any person under a SEC Lending
2. Shares, stocks or securities transferred by a Lender to its agent or a borrower in furtherance of a SEC Lending.
3. Shares, stocks or securities returned to a Lender or its approved agent by a borrower in pursuant to a SEC Lending.
4. All documents issued by the SEC in relation to a SEC Lending.

10.0 Amendment or Revision of the Circular

The Service may, at any time, withdraw or replace this Circular or publish an amended or updated version.

11.0 Enquiries

Any request for further information or clarifications on this Information Circular should be directed to the:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House, No 20 Sokode
Crescent, Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service Revenue House,
No 15 Sokode Crescent, Wuse Zone 5, Abuja.

Or

Visit our website: www.firs.gov.ng