



Tax Alert

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FIRS' Public Notice on Regularisation of Tax Status of Dormant Companies

The Federal Inland Revenue Service (FIRS or “the Service”) recently issued a Public Notice requesting all dormant companies to regularise all their outstanding returns with the Service by 30 June 2020. This follows an initial notice issued in February 2020 by the Service on the same subject. Based on the Public Notice, the FIRS is collaborating with other government agencies, such as the Nigerian Financial Intelligence Unit, Corporate Affairs Commission (CAC) and Money Deposit Banks, to ensure that taxpayers duly comply with the provisions of the tax laws.

According to the Public Notice a dormant company is “*a company that has informed the FIRS of its temporary cessation of business activities due to understandable exigencies for a minimum of one financial year*”. The FIRS noted that any dormant company that fails to regularise its outstanding tax returns by 30 June 2020 will face enforcement actions, including delisting the defaulting company from the list of incorporated companies and placing a lien on its bank account(s).

The FIRS further noted that dormant companies are permitted to submit “Statement of Affairs” in lieu of audited financial statements for the purpose of regularising their tax status.

Comments:

Enforcement of tax compliance is within the statutory powers of the FIRS. Specifically, Section 25(1) of the FIRS Establishment Act empowers the FIRS to “administer all the enactments listed in the First Schedule of this Act and any other enactment of law on taxation...”. However, it is imperative that every aspect of tax administration is carried out in strict adherence to the provisions of the enabling extant laws.

Typically, companies are required to file value added tax (VAT) and withholding tax (WHT) returns on a monthly basis on qualifying transactions while companies income tax (CIT), tertiary education tax and capital gains tax (CGT) returns are filed annually based on the business activities for the relevant accounting year. While the FIRS' request may be appropriate for the VAT and CIT returns, as the provisions of both tax laws do not preclude dormant companies from filing obligations, WHT and CGT returns can only be filed when a company incurs qualifying transactions in line with the relevant laws. Consequently, affected companies should ensure that they utilise this opportunity to prepare and file all outstanding VAT and CIT returns by the deadline.

However, it is doubtful if all the affected companies would be able to meet the stipulated deadline for the exercise, as most companies are only returning back to business following COVID-19 lockdown, which may have delayed the preparation of the documents required to complete the exercise. Consequently, the FIRS should consider extending the deadline to afford companies, who would want to utilise the opportunity, more time to collate, prepare and finalise all relevant documents required for the regularisation exercise.

Further, the relevant extant laws already stipulate penalties for failure to file and pay taxes as and when due. It is, therefore, important that any enforcement action by the FIRS on defaulting taxpayers aligns with the procedures stipulated in the extant laws, including the prescribed process for recovery of outstanding taxes. Consequently, where there is a need for the FIRS to place a lien on the bank accounts of defaulting taxpayers to recover any outstanding taxes, the amount to be attached should be in respect of only the undisputed tax liabilities.

Similarly, the Companies and Allied Matters Act, Cap 20, Laws of the Federation of Nigeria, 2004, which empowers the CAC to delist a company, has provided conditions that should be fulfilled before a company is delisted. Non-compliance with tax obligations is not one of such conditions. Therefore, it is imperative that any enforcement action carried out by the relevant agencies is done in line with the provisions of the relevant laws.

While the FIRS should consider the foregoing comments, affected taxpayers should ensure full compliance with the provisions of the tax laws in order to avoid unnecessary enforcement actions by the FIRS that could disrupt their business.

Please click [here](#) to download a copy of the Public Notice.

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