

Tax Alert

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A photograph of a person's hands holding a white rectangular box. The word "DONATE" is printed in bold, blue, capital letters on the front of the box. The background is slightly blurred, showing the person's patterned shirt.

FIRS issues requirements for enlisting organizations under the 5th Schedule to CITA

The Federal Inland Revenue Service (FIRS) has issued Information Circular No.: 2021/02 on the procedures for enlisting Funds, Bodies and Institutions (FBIs) under the Fifth Schedule to the Companies Income Tax (CIT) Act, Cap 21 Law of the Federation of Nigeria, 2004 (CITA) ("the Circular"). The Circular was issued pursuant to the provisions of Section 25 of the CITA and Requirements for FBIs (under the 5th Schedule to the CIT) Regulations, 2011 ("the Regulations").

We have provided below, a summary of the key aspects of the Circular:

1. Eligibility criteria

The Circular categorised eligible FBIs that may apply to be listed under the Fifth Schedule to the CITA under three (3) broad categories as follows:

- i) a public fund established in Nigeria,
- ii) a statutory body or institution in Nigeria, and
- iii) an ecclesiastical, charitable, benevolent, educational, or scientific institution or body of a public character established in Nigeria.

Other criteria prescribed in the Circular include: registration of the FBIs in accordance with the relevant law in Nigeria; prohibition of distribution of their profits, whether in cash or kind, to their members or promoters; and exclusive use of their incomes for the objects of the institution or organisation in the interest of the public.

2. Approval procedures and administration of tax-deductible certificate (TDC)

- i) **Initial application for TDC** – Eligible FBIs are required to submit a completed application form for listing under the Fifth Schedule (which can be downloaded from www.firs.gov.ng), along with other supporting documents listed in the Circular and evidence of payment of a non-refundable fee of ₦250,000 to the FIRS.

Once the application is reviewed and approved, the FIRS will issue a three-year TDC to the FBI and notify the Honourable Minister of Finance, Budget and National Planning (HMoFBNP), in line with the provisions of the Regulations. Thereafter, the HMoFBNP may amend the Fifth Schedule of the CITA by Order in a Federal Gazette to include the approved FBI under the Fifth Schedule to the CITA. However, where the application is denied, the FIRS shall notify the applicant of such denial within 30 working days.

- iii) **Renewal of TDC** – Upon expiration, the TDC may be renewed for another three years subject to satisfactory performance and compliance with the relevant laws, rules, and regulations applicable to the activities of FBIs in Nigeria. In addition, FBIs are required to submit their tax clearance certificates, current financial statements, compliance report of their activities for the period covered by the expired TDC, evidence of payment of a non-refundable fee of ₦150,000 and a copy of the expired TDC.

The FIRS may revoke an FBI's TDC, delist the FBI from the Fifth Schedule, or refuse the deduction of a taxpayer's donations to an FBI where the FBI no longer meets the requirements for which the certificate was granted, notwithstanding the validity of the certificate at the time. Where such a decision is made, the FIRS shall notify the HMoFBNP within 30 days of its decision and provide reasons for the action.

Comments

By Order No. 1 of 2011, the then Coordinating Minister of the Economy and Minister of Finance, in the exercise of her powers under Section 25(6) of CITA, amended the Fifth Schedule to CITA to include an additional list of organisations eligible to receive tax deductible donations under the Schedule. Further to this, the FIRS, pursuant to the provision of Section 61 of the FIRS Establishment Act (FIRSEA) and approval of the Minister, published the Regulations for the administration of the Order.

The guidelines in the Circular are based on the provisions of Parts III and IV of the Regulations. Part III of the Regulations requires eligible FBIs to apply for and obtain TDCs upon payment of the prescribed fees, to prequalify them for receiving deductible donations under the Fifth Schedule, while Part IV provides for the 3-year validity period of the TDC and conditions for its renewal for another 3 years.

There may be concerns on the legality of Order No. 1 of 2011, the Regulations and Circular issued by the FIRS further to it. This is in light of the recent judgement of the Federal High Court in the case between the *Registered Trustees of Hotel Owners and Managers Association of Lagos and Attorney-General of the Federation & Minister of Finance, Budget and National Planning* (reviewed in our newsletter [Issue No. 9 7 of 30 September 2020](#)). On this basis, the FIRS may consider submitting the provisions of Order No 1 of 2011 as proposals for amendment of the Fifth Schedule to CITA in Finance Bill, 2021. If the provisions of the Order are incorporated into Finance Act, 2021, the FIRS will be in order to reissue the Regulations and the Guidelines or combine the two in one instrument. In this regard, the FIRS may want to revisit the prescribed fees for obtaining the TDC, especially in the interest of small FBIs. Also, to the extent that the objective of administration of the amendment to the Schedule by the FIRS is to prequalify eligible FBIs for tax deductible donations in lieu of their specific listing in the Schedule, as was the practice before 2011, the need for TDC's renewal every three years should be dispensed with as a TDC should not be treated as a tax clearance certificate. Such newly prequalified FBIs should be treated equally as the FBIs that were specifically listed in the Fifth Schedule up to 2011 as they are not required to renew their eligibility status periodically.

Please click [here](#) to read the FIRS' Circular

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