



Tax Alert

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FIRS issues guidelines on the validation of unutilized withholding tax credit notes

The Federal Inland Revenue Service (FIRS) recently issued an Information Circular No.: 2021/07 (“the Circular”) providing guidelines on the validation of unutilized withholding tax (WHT) credit notes, in line with its mandate to achieve full automation of WHT administration. The Circular was issued pursuant to the provisions of Section 25(4) of the FIRS Establishment Act (FIRSEA), 2007 (as amended).

According to the Circular, taxpayers with unutilized WHT credit notes for periods up to 31 May 2020 are required to submit such credit notes to their respective tax offices between **1 April 2021** and **30 June 2021** for validation and upload to the FIRS online filing portal - TaxPro-Max portal.

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

1. Procedure for validation of unutilized physical WHT credit notes

The tax offices, upon receiving the WHT credit notes from taxpayers for validation, will:

- i) verify the genuineness of the WHT credit notes.
- ii) verify the ownership of the WHT credit notes.
- iii) verify the availability of the WHT credit.
- iv) verify the integrity of the WHT credit.

Where the income relating to the WHT credit notes has not been reported, the FIRS will issue additional assessment before validation of the credit note.

2. Procedure for validation of unutilized WHT credit notes under exceptional circumstances

2.1. Request for validation without physical credit notes

The FIRS may validate unutilized WHT credits for taxpayers without physical copies of WHT credit notes, provided that such taxpayers submit its application with evidence of WHT deduction. Upon submission, the taxpayers' application letters will be forwarded to the head of FIRS' Tax Accounting Department, where the procedures outlined in (1) will be carried out.

2.2. Validation of WHT credit notes issued using special window for unposted TIN

WHT credit notes issued using special window (unposted TIN) will be verified through the procedure detailed in (1) above. However, the ownership of the unutilized WHT credit notes will be verified by the FIRS' Revenue Accounting Department (RAD).

2.3. Validation of GIFMIS WHT Deduction

Currently, the FIRS' web portal does not report WHT deductions through the Government Integrated Financial and Management Information System (GIFMIS). Therefore, affected taxpayers without actual WHT credit notes are required to support their application for WHT credit validation with evidence of WHT deduction. Upon submission, the FIRS' RAD will review the FIRS Bank Statement from CBN to validate the taxpayer's claims.

3. Transfer of validated credit notes to TaxPro-Max portal

Validated WHT credit notes will be credited to taxpayers account on the TaxPro-Max portal and be used to offset future income tax payable. The Circular further outlines the FIRS' duties regarding the transfer of credit notes to the TaxPro-Max portal.

4. Forfeiture of unvalidated WHT credit notes

According to the Circular, the FIRS will not recognize WHT credit notes which have not been validated by **30 June 2021**. Consequently, unvalidated physical WHT credit notes after 30 June 2021 will be rejected by the FIRS and forfeited by taxpayers.

Further, taxpayers can only utilize the WHT credit balances transferred to the TaxPro-Max portal to offset relevant income tax liabilities or be granted WHT refund.

Comments

We commend the FIRS for clarifying the procedure for validating WHT credit especially WHT credits without the physical credit notes. This clarification will enable taxpayers who have suffered a deduction without a corresponding WHT credit note to claim such credits upon presentation of evidence of deduction. Consequently, taxpayers with remittance advices and taxpayers who have had issues in obtaining foreign denominated credit notes should take advantage of this process and obtain these credits.

However, the threatened forfeiture of unvalidated WHT credit notes after 30 June 2021 has no statutory backing and cannot be justified by the FIRS to deny taxpayers of their vested economic right. Section 25(4) of the FIRSEA under which the Circular was issued only empowers the FIRS to "deploy proprietary technology to automate the tax administration process including tax assessment and information gathering..." The power to forfeit WHT credit notes for failure to validate them within the timeline set by the FIRS cannot be read into the referenced provision or the provision of any other law whatsoever. Indeed, Section 81(5) of the Companies Income Tax (CIT) Act, which provides that "Income tax recovered under the provisions of this section by deduction from payments made to a company shall be set off for the purpose of collection against tax charged on such company by an assessment." neither provides a timeline for such credits to be utilized nor their forfeiture for any reason whatsoever. Equally, there is no such restriction or sanction under Section 3(2) of the CIT (Rates, ETC., of Tax Deducted at Source (WHT) Regulations ("the WHT Regulations"), which provides that "where a Company from whom tax is deducted claims tax credit for the tax so deducted, it shall submit the receipt issued to him...to the relevant tax authority as evidence of the tax deducted".

Finally, the validation window provided by the FIRS is a few days away at a time when taxpayers are saddled with compliance with the 30 June deadline for filing their tax returns for the financial year ended December 2020. As such, it is a daunting task to expect all the affected taxpayers to comply within the deadline for validation set by the FIRS. It is understandable why the FIRS may want taxpayers to comply within a timeline so as to ensure that all WHT credits are uploaded onto the Tax-Pro Max as soon as possible. However, the FIRS should comply with the extant law and withdraw the threat of forfeiture of unvalidated WHT credits within the period defined in the Circular. It is unreasonable to expect a taxpayer to make direct tax payment when it has outstanding unutilized WHT credits. FIRS should, therefore, preserve taxpayers' right to validate their WHT credits at their earliest convenience, which is one of the canons of taxation.

We hope that the FIRS will reconsider its position both in terms of the prescribed deadline and the

threatened forfeiture of WHT credit notes that taxpayers are unable to validate before then. Taxpayers need sufficient time to reconcile their WHT positions with the FIRS and their ability to utilize their WHT credit notes without restriction should be respected. The FIRS should accordingly announce an extension of the deadline and urge taxpayers to comply within the extended timeline without any threat of forfeiture of their vested economic rights in the WHT credit notes that cannot be legally enforced.

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

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