

Tax Alert

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The FIRS issues Guidelines on the Nature and Scope of Tax Compliance Inquiry Processes.

The Federal Inland Revenue Service (FIRS) has released guidelines to provide clarity regarding the nature and extent of inquiries related to desk examinations, tax audits, tax investigation exercises, and other tax inquiry processes. The key objectives of the guidelines are to clarify the nature and scope of the various tax compliance activities and eliminate potential conflicts and disputes between revenue officers.

The key takeaways from the guidelines are highlighted below:

1. Desk Review and Monitoring Exercises:

- These exercises are limited to the examination of current-year tax returns. However, if multiple returns are filed simultaneously, they will be considered for review and monitoring.
- Desk reviews do not involve physical visits to Taxpayers' premises or requests for source documents related to revenue or expenditure items and should be concluded before tax audits or investigations commence.
- Desk reviews and monitoring exercises do not preclude the tax authorities from conducting tax audits and/or investigations.
- Findings from desk reviews should be considered during tax audit or investigation exercises.

2. Tax Audits:

- Tax audits are back duty verification processes covering a maximum of six preceding years.
- They must be preceded by a pre-audit meeting with the Taxpayer, followed by visits to the Taxpayer's office, and ultimately reconciliation discussions.
- The conduct of tax audits does not preclude the possibility of tax investigations.

3. Tax Investigations:

- Tax investigations entail a comprehensive examination of violations of tax laws, which must be initiated by triggers and duly approved by the management of the FIRS.
- According to the Guidelines, there is no restriction on the number of years under scrutiny, and such investigations may result in criminal prosecution.

4. Special Tax Crimes Investigations:

- Special tax crimes investigations are dedicated to uncovering and prosecuting individuals involved in serious tax-related criminal activities.
- Specialized teams with expertise in financial crimes and tax matters are responsible for conducting these investigations.
- Forensic accounting techniques may be employed in carrying out these types of investigation.

5. Transfer Pricing Audit:

- Transfer pricing audits are under the jurisdiction of the International Tax Department. Therefore, other tax offices, audit teams, or investigation teams are not authorized to carry out transfer pricing audits.
- Joint tax audits or investigations are only permissible if directed by the Executive Chairman of the FIRS.

6. Turnover Threshold Determination:

- The FIRS refers to its recently published public notice, which outlines guidelines for segmenting taxpayers
- Companies with higher or lower turnovers for three consecutive years are to be reassigned to different Tax Offices
- Similarly, companies with turnover figures influenced by tax audits or investigations for three consecutive years will also be reassigned based on threshold requirements

Commentaries

We commend the FIRS for its commitment to enhancing the quality of tax compliance process in Nigeria. These guidelines should help to optimize resources expended by Taxpayers during tax inquiries and facilitate more efficient tax compliance exercises in the country. The Guidelines would also help to eliminate unnecessary disputes between officers of the tax authorities.

We note that FIRS is focused on making tax administration processes increasingly real-time or close to real time with the introduction of technology. Increased digitalization and implementation of analytical tools will significantly increase the efficiency and effectiveness of tax administration. As the FIRS embarks on this journey, the often-long gap between taxable events and the payment of tax will be reduced. Consequently, tax uncertainty and payment risks will be eliminated as audit/investigation processes are considered backward-looking.

However, the notion that an investigation enquiry is not restricted to any number of years is arguable based on the concept of 'reasonable time'. Reasonable time is that amount of time that is considered necessary and convenient to do whatever is required to be performed. Section 375 of the Companies and Allied Matters Act, 2020 requires companies to keep accounting records for 6 years. The question, therefore, is what will happen in an investigation enquiry that spans a longer period and where the accounting records post 6 years are not available? Though the Federal Inland Revenue Service (Establishment) Act does not specify any period, the question is can it exceed 6 years? It is unimaginable that the law can give the tax authorities the power to carry out any investigation to cover unlimited number of years. This is where the courts would have to step in to assess what is reasonable based on the circumstances of each case.

It is also essential for the FIRS to reconsider its comments on Turnover Threshold Determination in light of a recent judgment by the Tax Appeal Tribunal, as it appears to contradict the decision of the Tax Appeal Tribunal (TAT) in the case between Little Company Nigeria Limited (LCN) vs FIRS where the TAT established that the transfer of LCN's file between tax offices, based on FIRS Guidelines and Regulations without due consideration to the Company's registered address was in violation of the law. We draw your attention to our [Tax Alert Issue No 8 1 of 6 September 2023](#) titled "*TAT rules against the unilateral transfer of taxpayers' files based on FIRS guidelines and regulations*".

Please click [here](#) to read the FIRS' Public Notice.

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