The Pandemic: Covid-19 and Employment

The FIRS circular seeks to provide clarification and guidance on application of Sections 9, 19, 23, 24 and 80 of the Companies Income Tax Act (CITA) Cap. C21 LFN 2004 (as amended).
In this publication, we examine and provide further insights on the implication of these tax provisions in relation to the operations of Real Estate Investment Companies (REIC) in Nigeria.

Definition of a REIC

The CITA defines a REIC as a Company duly approved by the Securities and Exchange Commission (SEC) to operate as a real estate investment scheme in Nigeria and regulated under the relevant provisions on Real Estate Investment Scheme (REIS).

"Real Estate Investment Schemes" (REIS) includes a company, trust or other such corporate structures approved and regulated by the Securities and Exchange Commission, which is primarily engaged in and invests in income generating real estate asset or real estate related asset and is expected to distribute not less than 75% of its income within 12 months of receipt of the income.

A REIC has various streams of income which comprises of rental income, dividend from another REIC, gains from disposal of assets and any other fees and income not related to REIS.

Tax Implications of the Income Earned by REIC

1. Taxable Income

Gains, fees, and other income earned by REIC are fully taxable under CITA. The implication of this is that a significant portion of the revenue earned by REICs will become taxable, thus, reducing the profitability of the business

2. Non-Taxable Income

Dividend and Rental income earned or received by a REIC under a REIS shall not be taxable under the following provision of CITA

- **Section 19 of CITA:** Distributions of dividend or rental income earned are exempt where a REIC redistributes the income to its shareholders under a REIS, the redistributed income shall not constitute dividend for the purposes of Section 19 of CITA (Excess Dividend Tax).

- **Section 23 of CITA:** Dividend or Rental income received by a REIC under a REIS will not be subjected to tax as the amount is deemed to be received on behalf of its shareholders. Also, where such income is already included in the profits of the company, it would be deducted in computing the assessable profits of the company.

However, the exemption under the above sections of the CITA is subject to the REIC meeting the following conditions, which are:

a) Redistribution to shareholders of such dividend and rental income either earned or received under a REIS, must not be less than 75% of the rental or dividend income.

b) Redistribution must be done not later than 12 months after the end of the financial year in which the rental or dividend income was received or earned by the REIC.

Note: Any undistributed rental or dividend income will be chargeable to tax.

- **Section 24 of CITA:** Dividends or mandatory distributions made by the REIC to its shareholders under REIS is an allowable deduction for tax purpose.

- **Section 80 of CITA:** Any distribution or dividend payment made to a REIC pursuant to a REIS shall not be subject to deduction of WHT under Section 80 of CITA. However, where such distribution or dividend payment, to a REIC, is not under a REIS, such payment shall be subject to WHT at the rate of 10% and remit the amount so deducted to the relevant tax authorities

3. Allowable and Non-allowable Deductions

According to Section 27 of CITA, the following shall not be allowed as deduction in computing the company's assessable profits:

I. Any dividend or mandatory distribution made by the REIC to its shareholders, being an expense relating to an exempt income.
II. Any other expense of the REIC incurred for the purposes of earning exempt income.

More so, if the conditions that will allow a REIC to enjoy the tax exemption provided in Section 23 of the CITA is not met, rental or dividend income received by the REIC will constitute a taxable income. Thus, all expenses incurred for the purposes of earning the rental and dividend income, including dividends or mandatory distributions made by the REIC to its shareholders under a REIS shall be allowed.

Section 80 of CITA

Any distribution or dividend payment made to a REIC pursuant to a REIS shall not be subject to deduction of WHT under Section 80 of CITA. Consequently, such distribution or dividend payment shall not constitute "franked investment income".

However, where such distribution or dividend payment, to a REIC, is not under a REIS, such payment shall be subject to WHT at the rate of 10% and remit the amount so deducted to the relevant tax authorities.

WYZE Comment

It is evident that the government is trying to regulate the real estate industry, thus, the provision of tax incentives to REIC. However, to be able to enjoy these incentives, a REIC must be duly registered under a REIS and complies with the the provisions of the tax laws, failure which the tax Any incentives will be withdrawn.

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