FIRS Information Circular on Clarification on Commencement and Cessation Rules, and Business Reorganization

Introduction

The 2019 Finance Bill which was signed law on 13 January 2020 by the President of the Federal Republic of Nigeria, Muhammadu Buhari, made significant amendments to the Companies Income Tax Act Cap. C21 ("CITA"), Value Added Tax, Cap. VI (VAT) Act ("VATA Act"), Petroleum Profits Tax Act, Cap. P13 ("PPTA"), Personal Income Tax Act, Cap. P8, Capital Gains Tax Act, Cap. C1 ("CGTA"), Customs and Excise Tariff Etc Cap. C49 and the Stamp Duties Act, Cap. S8 ("Stamp Duties Act") Laws of the Federation of Nigeria (LFN).

The FIRS released its information circular which provide further clarification on Commencement and Cessation rules, and Business reorganization.

In this article, we examine some of the matters clarified in the FIRS information circular which comprise:

1. Commencement of Trade or Business
2. Basis of Assessment for Commencement of Trade or Business
3. Cessation of Trade or Business
4. Business organization and restructuring

1. Commencement of Trade or Business

Section 29 (3) of CITA is amended to eliminate the occurrence of overlap of basis period upon commencement of trade, thereby ensuring that the profits of a particular year are only assessed to tax once.

The amendment provides that the basis of taxation is the preceding year basis (PYB). Thus, the income of a given year is assessed to tax in the immediately following year of assessment.

Year of Assessment (YOA)	Amended Basis Period	Previous Basis Period
1st YOA	From the date of commencement to the end of first accounting period (PYB)	From the date of commencement to the end of the year (Actual Year Basis AYB)
2nd YOA	From the beginning to the end of the second financial year (PYB)	From the date of commencement to the end of the first 12 months.
3rd YOA	From the beginning to the end of the third financial year (PYB)	Period of 12 months immediately preceding the year of assessment (PYB)

The determination of the first YOA and the relevant basis period shall be based on the company's accounting year-end. Thus, a company’s first accounting period is the date of commencement to the end of its first accounting year-end. Where a company submits financial statements for a period shorter or longer than the first accounting period, the assessable profits for the first accounting period shall be ascertained (on pro-rata basis) up to the indicated accounting year-end.

Illustration 1. Company XYZ commenced business on 1st April 2020 and makes up its accounts to 31st December 2021. The first three years of assessment and basis periods under the new and old tax regimes are as shown below:

Year of Assessment (YOA)	Amended Basis Period	Previous Basis Period
1st YOA	2021 YOA Basis Period is April 1 - 31 December 2020 (PYB)	2020 YOA Basis Period is April 1 – 31 December 2020 (AYB)
2nd YOA	2022 YOA Basis Period is January 1 - 31 December 2021 (PYB)	2021 YOA Basis Period is April 1, 2020 – 31 March 2021 (From the date of commencement to the end of the first 12 months)
3rd YOA	2023 YOA Basis Period is January 1 - 31 December 2022 (PYB)	2022 YOA. Basis Period January 1 – 31 December 2021 i.e period of 12 months immediately preceding the year of assessment (PYB)

Illustration where there is an overlap of basis period due to transition from old tax regime to the new tax regime.

Illustration 2: Company ABC commenced business on 1 June 2018 and makes up its accounts to 31 November 2019 (18 months period). The first three years of assessment and basis period will be as shown below:

Year of Assessment (YOA)	Basis Period
1st YOA - 2018 YOA	Basis Period is June 1st - 31st December 2018
2nd YOA - 2019 YOA	Basis Period is June 1st, 2018 – 31st May, 2019
3rd YOA - 2020 YOA	Basis Period is October 1st ,2018 – 31st November 2019

An overlap occurs in the period October 1, 2018 – May 31, 2019 due to transition.

2. Cessation of Trade or Business

The FIRS explained that the taxable profit of a company in the year of cessation of business, will be the profit from the beginning of the last accounting period to the date of cessation. The tax computed must be remitted not later than six months from the date of cessation.

Illustration 3: FGH Nigeria Limited makes up its account to 31st December and permanently ceased operation on 30th June 2020.

The relevant years of assessment and the due date for tax payment will be as follows:

Year of Assessment	Basis Period	Payment Date
2020 YOA	January 1, - December 31, 2019 (PYB)	Not later than June 30, 2020
2020 YOA	January 1 – June 30, 2020 (Cessation)	Not later than December 31, 2020

Filing of Returns and due date of payment under new cessation rule is as shown below:

Period of Cessation	Filing of Return	Payment Date
January - June	Current Year	Current Year
July - December	Next Year	Next Year

WYZE Comment: The Act clearly seeks to simplify the commencement and cessation rules. As is the case with many of the changes in the CIT provisions, this change reduces the risk of double taxation.

3. Business Organization and Restructuring

The FIRS explains the provision of business organization and restructuring as contained in the provisions of Sections 29(9) of CITA, 32 of CGTA, and 42 of VATA, and stated that such entities will qualify for the specific concessions subject to the following conditions:

a. All parties involved must obtain the consent of the FIRS in writing
b. The companies must present to the FIRS the satisfaction that one company has control over the other or the companies are controlled by some other person or are members of a recognized group companies.
c. The entities involved must have been related for not less than a consecutive period of 365 days before the reorganization.

Where the conditions are met, the entities shall qualify for the following concessions:

1. Commencement and cessation rules shall not apply.
2. Assets would be deemed transferred at Tax Written Down Value (TWDV) i.e. balancing adjustments would not be made.
3. Capital Gains Tax (CGT) will not apply on such asset transferred or sold.
4. Value Added Tax (VAT) shall not apply on the assets transferred or sold in the process

However, where assets transferred in the reorganization process are further disposed within 365 days of the reorganizations, all concessions granted shall be withdrawn and all applicable taxes shall be recovered. As such, all relevant taxes shall be treated as due but unpaid from the date it ought to have been paid if there was no concession, and all penalties and interest shall be charged accordingly.

WYZE Comment

This provision seeks to deal with situations where related parties restructure and dispose of assets via untaxable transactions for the sole purpose of avoiding taxation which include Transfer pricing. Aggressive tax planning should be done with caution in order not to fall on the wrong side of the law.

Contact us:

Femi Wright
+234 908 0000 358
fwright@wyzeassociates.com

Wale Ogunsola
+234 908 0000 358
wogunsola@wyzeassociates.com

Kehinde Adeyemi
+234 908 0000 358
kadeyemi@wyzeassociates.com

Gbenga Akinsulere
+234 908 0000 358
gakinsulere@wyzeassociates.com