FIRS CLARIFICATION ON SUNDRY MATTER - CIT

Introduction

The Finance Act 2019 (the Act) addresses different issues in Company Income Tax Act and these are pulled together for general clarity as Sundry Matters. The FIRS information circular touches *sections 19, 23, 24, 27, 29, 33, 39, 40, 77, 81 and the third schedule* of the Companies Income Tax Act (CITA) Cap C21 LFN 2004 (as amended).

This publication seeks to give more insights as well as offer explanations and interpretations on some of the matters clarified in the FIRS information circular.

Section 19 - Dividend

The Act exempts the following classes of dividend from tax.

i. Dividends paid out of retained earnings of a company, provided that the dividends are paid out of profits that have been subjected to tax under Companies Income Tax Act, Petroleum Profit Tax Act (PPTA) or the Capital Gains Tax Act (CGTA)
ii. Dividend paid out of all tax-exempt incomes pursuant to the CGTA, PPTA & Industrial Development (Income Tax Relief) Act or any other legislation
iii. All franked investment income under CITA
iv. Distributions made by a Real Estate Investment Company to its shareholders from rental or dividend income received on behalf of those shareholders

WYZE Takeaway*:*

The Act exempts the above listed dividends from tax even where the profits that generated such dividend accrued in a year other than the year in which the dividend was paid. The aim of this amendment is to avoid double taxation on profits that have been previously subjected to tax. Taxpayers are expected to keep track of the sources of dividend paid.

Section 23 – Tax exempt companies

The finance Act exempts the profit of small companies (i.e. companies with a gross turnover of N25 million and below) from company income tax. For the small companies to enjoy the exemption stated in the finance Act, it must have registered for tax purpose, filed its tax returns on or before the due date and complied with all other provisions and obligations stipulated under CITA, including provisions relating to penalties for breach of statutory duties.

Similarly, the dividends received by a small company from another small company in the manufacturing sector in the paying company's first five years of operation is exempt from tax under Section 23(1)(o) (ii) of CITA.

Payments made to small companies are not exempt from withholding tax and they are also required to withhold from payments made to other companies and remit same accordingly. A small company can request for a WHT refund from the FIRS.

Others include:

i. Exemption from paying tertiary education tax as they do not have assessable profit.
ii. Capital allowances are deemed to have fully utilized and are not available for carry forward to future year(s) of assessment in which the company becomes taxable under the Act.

Furthermore, profits of a Nigerian company relating to the portion of export proceeds utilized in the purchase of raw materials, plant, equipment, and spare parts shall exempted from tax while those unutilized for shall be subject to tax proportionately. However, the expense incurred in deriving this profit is not tax deductible.

WYZE Takeaway:

The FIRS exclusion of the profits of small companies does not automatically take off the other tax responsibilities due from small companies. Thus, it will be more efficient for companies within this bracket to comply accordingly with the guidelines to enable it to enjoy the full exemption status.

Section 24 – Allowable Deductions

Amendment to the Finance Act provides that deductions will be allowed only for expenses incurred wholly, reasonably, exclusively, and necessarily (WREN) in the production of profits chargeable to tax. As such, expenses incurred in generating profits not chargeable to tax (such as exempt income, franked investment, etc.) will not be allowed as deduction.

Furthermore, the Finance Act introduced a restriction on the deductibility of interest for a Nigerian company or a fixed base of a foreign company in Nigeria that has incurred any interest or deduction of similar nature where loans or debts are obtained from a foreign connected person. Such deduction shall be restricted to only 30% of the company's earnings before interest, tax, depreciation, and amortization (EBITDA).

Any unused amount may be carried forward for a period of not more than 5 years from the year for which the excessive interest expenditure was first computed.

WYZE Takeaway:

The circular provides that all companies except for a Nigerian subsidiary of a foreign company engaged in banking or insurance business will benefit from this amendment. This exception is ambiguous as the FIRS did not provide justifiable reason for such exception

Section 27(1)(h) – Exempt-Income Expenses

The circular explains that where a deductible expense is incurred for the purposes of generating both exempt and non-exempt income, the portion of the expense that relates to income assessable to tax shall be determined on pro-rata basis and allowed for deduction.

Takeaway: Companies that fall within this category are required to duly calculate the expense incurred in generating its exempt income as such expense are not allowable for tax purpose.

Section 29 of CITA – 2020 YOA Returns

The circular clarifies that 2020 YOA tax returns due for submission before the coming into effect of the 2019 Finance Act shall be prepared and submitted based on the extant provisions on the respective due dates. Such tax returns should not be adjusted for the new provisions introduced by the 2019 Finance Act.

Section 33 of CITA – Minimum Tax

Minimum tax will be computed at a fixed rate of 0.5% of Gross Turnover. Gross turnover, for the purposes of computing minimum tax, shall not include franked investment income.
The new minimum tax rule is applicable to all companies, except those specifically exempt by the Act, namely:

i. Companies with less than N25million gross turnover.
ii. Companies carrying on agricultural trade or business as defined in section 11(4) of CITA.
iii. Any company in its first four calendar years of business operations

Companies with at least 25% imported equity capital is no longer exempt from payment of minimum tax

Section 39 - Gas Utilization (Downstream Operations)

The requirement by the minister to approve the deduction of interest payable on any loan obtained has been deleted. However, such interest on loan shall only be deducted if:

a. the relevant income or profit is not exempt from tax.
b. the interest satisfies the wholly, reasonable, exclusive, and necessary (WREN) principle; and
c. the interest satisfies the interest deductibility rules introduced by section 24(a) and the Seventh Schedule of CITA.

Furthermore, the tax-free period granted to a company engaged in gas utilization (downstream operations) can either be claimed via section 39 of CITA or Industrial Development (Income Tax Relief) Act.

Section 40 - Rate of Tax

The Act categorized companies into sizes according to turnover with different tax rates.
Small Company (N25million and below Income) is exempt from tax subject to fulfillment of some statutory obligations while Medium Company (above N25million but less than N100million) and Large Company (N100million and above) are taxed at 20% & 30% of turnover, respectively.

Takeaway: Not all companies are subjectable to 30% tax rate anymore and hence companies need to be aware of this without altering books dubiously to benefit from this provision.

Section 77 – Removal of Provisional Tax, Filing and Payment

The Act has eliminated provisional tax which is a form of advance tax payment and provided for payment and filing as follows:

i. Payment of tax is to be made on or before the due date of filing in one lump sum or instalments.
ii. Any taxpayer that wishes to pay in instalments prior to the due date of filing may do so; however, the final instalment must be paid on or before the due date of filing.
iii. A company that pays all its tax liability 90 days before the due date shall be granted a bonus of 2% of the tax in the case of a medium-sized company or 1% for any other company.
iv. A company granted early payment bonus may set-off the bonus against its future taxes.
v. Any tax due and unpaid by the due date of filing shall attract interest and penalties as provided in the extant tax laws.

Section 81 - WHT Rate for Construction Contracts

The Act provides for a 2.5% withholding tax rate only for construction roads, bridges, buildings, and power plants. However, the following are not affected:

1. WHT rate on other forms of construction contracts are not affected; such other contracts shall continue to attract WHT at the rates specified in the relevant legislation.
2. WHT rate of 2.5% is applicable to construction work only. However, any part of the construction works (other than the actual construction work) subcontracted shall attract WHT at the rate specified in the law

Third schedule - Relief for Foreign Loans

The third schedule of CITA was amended by the finance Act and recognizes moratorium for foreign loans as indicated.

S/N	Repayment Period	Grace period (including Moratorium)	Tax exemption allowed
1	Above 7 years	Not less than 2 years	70%
2	5-7 years	Not less than 18 months	40%
3	2-4 years	Not less than 12 months	10%
4	Below 2 years	Nil	Nil

Conclusion
The sundry matters addressed by the Act are to be maximized by taxpayers generally and as concerned depending on the nature of business operations. Companies can take advantage of incentives and reliefs and it cannot be overemphasized that these benefits are to be enjoyed within the prescription of the Act and not illicitly as such attract penalties.

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