

UUBO COVID-19 RESOURCE HUB:



INTERIM PALLIATIVE MEASURES INTRODUCED BY NIGERIAN TAX AUTHORITIES TO MINIMISE THE IMPACT OF THE COVID-19 PANDEMIC ON TAXPAYERS

Introduction

Due to the disruption of economic and other business activities in the wake of the coronavirus disease 2019 ("COVID-19") pandemic, Nigerian governments (at the federal and state levels) have put in place measures and policies to stop the further spread of the pandemic as well as to mitigate its effect on businesses and individuals. Various Nigerian tax authorities have, on their part, adopted some interim measures to support taxpayers in managing their tax obligations in these unprecedented times. The measures are aimed at easing the burden

of taxpayers in complying with their obligations under the tax laws. We have highlighted below such interim measures introduced by the Federal Inland Revenue Service ("FIRS"), Lagos State Internal Revenue Service ("LIRS") and the Federal Capital Territory Internal Revenue Service ("FCTIRS"), the tax authorities of the Federal Government, Lagos State Government and the Federal Capital Territory respectively. Other state internal revenue services may adopt (or have adopted) similar measures in their respective states, but the focus on this update is on the three mentioned above.



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Measures introduced by the FIRS

The FIRS recently issued a press release published on its website (www.firs.gov.ng) (pursuant to its earlier statements) which outlines the interim measures it has adopted to support taxpayers in managing the discharge of their tax obligations during this period. Those measures include:

Waiver of penalties for late filing of companies' income tax returns and extension of timeline to file returns

The Companies Income Tax Act 2004 (as amended) ("CITA") requires every company in Nigeria to file its income tax returns within 18 months from the date of incorporation or not later than 6 months after the end of its accounting period, whichever is earlier, for newly incorporated companies and within 6 months from the end of the accounting year for existing companies. The CITA further provides that a company will be liable to penalties of NGN25,000 in the first month of failure to file the returns within the prescribed period and NGN5,000 for each month that the default continues. The FIRS has now indicated that it has waived these applicable penalties for late filing of income tax returns under the CITA. This waiver of penalties only applies to taxpayers who pay their income tax early but file the requisite returns late. The FIRS, however, requires that the supporting documentation for such filings be sent electronically to the dedicated FIRS email addresses or submitted physically to the relevant FIRS tax office where the documents cannot be sent electronically.

Our understanding of the implication of this waiver is that a company will only be entitled to the benefit of the waiver of penalties if the applicable tax is paid within the prescribed time for payment and the return filed thereafter.

In relation to the timeline to file returns, the FIRS has extended the due date for the filing of income tax returns by one month from the last day of the due date for all companies. There is currently no indication of how long this waiver will subsist.

Submission of unaudited accounts with company income tax returns

The CITA requires companies to submit audited accounts for each relevant year of assessment when filing their companies' income tax self-assessment returns. The FIRS has now indicated that companies can file their income tax returns using unaudited accounts for the relevant year of assessment. Where a company has adopted this approach, such a company is required to submit its audited accounts within 2 months from the revised due date of filing its income tax returns as indicated above.

FIRS press release of 23rd March 2020 titled "Covid-19: Message to taxpayers from Executive Chairman, FIRS, Muhammad Nnami" and FIRS press release of 6th April 2020 titled "COVID - 19: Executive Chairman FIRS Statement on palliative measures to cushion effects on Taxpayers"



Extension of the deadline for remitting Value Added Tax and withholding tax

The Value Added Tax Act 2004 (as amended) (“VAT Act”) requires value added tax (“VAT”) collection agents to remit the VAT collected to the FIRS not later than the 21st day of the month following that in which the supply of taxable goods and/or services was made. The VAT Act imposes a fine equal to 5% of the VAT liability (plus interest at the commercial rate) in addition to the amount of tax not remitted for failure to remit the VAT collected within the prescribed period. Similarly, the CITA requires withholding tax (“WHT”) deduction agents to remit the WHT deducted to the FIRS not later than 21 days (the Federal Inland Revenue Establishment Act 2007 (“FIRS Act”) prescribes 30 days to remit WHT) from the date that the amount was deducted and imposes a penalty of 10% of the tax not remitted plus interest at the prevailing Central Bank of Nigeria minimum policy rate (currently 13.5%) for failure to remit the tax withheld within this prescribed period. The FIRS has extended the deadlines for filing VAT and WHT returns from the 21st day of the month following the month that a taxable supply was made or 30 days from the date of deduction respectively to the last working day of the relevant month.

The FIRS has not issued any waivers in relation to the applicable penalties for late remittance of VAT and WHT. The effect of this is that where a taxpayer does not remit VAT and WHT within the prescribed period (as has been extended by the FIRS), even during this lockdown due to the COVID-19 pandemic, the applicable penalties for late remittance of VAT and WHT may be imposed by the FIRS. As indicated above, the applicable penalties are stiff and we are of the view that the FIRS ought to have extended the waiver to these penalties as well and taxpayers could push for that.

Foreign currency remittances can now be paid in Naira

The various tax laws require that tax should be paid, collected, deducted and/ or remitted in the currency of the transaction. What this means is that VAT and WHT must be deducted and remitted in the currency of the transaction. Recognising that taxpayers with obligations to make tax payments/ remittances in foreign currency could have challenges sourcing said currency during this period, the FIRS has stated that affected taxpayers have the option to offset such tax liabilities by paying the Naira equivalent using the prevailing exchange rate of conversion at the Investors & Exporters (“I&E”) window on the day of payment. What this means is that such affected taxpayers will do a notional conversion of the amount of tax in foreign currency into Naira using the exchange rate for the relevant currency available at the I&E window on the day of payment and pay the tax in Naira.

This is a welcome development which should ease the burden on taxpayers who would have had an obligation to deduct and withhold tax, or collect and remit VAT, in foreign currency to the FIRS, as they can now do so (i.e., pay/remmit) in Naira.



Extension of the deadline for filing personal income tax returns

Under the Personal Income Tax Act 2004 (as amended) (“PITA”), the income tax returns of taxable persons are required to be filed with the tax authority of the state in which a person is deemed to be resident within 90 days from the commencement of every year of assessment (i.e. no later than 31st March).

In relation to employees, the PITA requires employers to remit taxes under the pay as you earn scheme within 10 days after the end of each month and to file full tax returns for each employee by the 31st of January in each year. The penalties for not meeting these deadlines are the total sum of taxes due and 10% per annum thereon and NGN500,000 for corporate bodies and NGN50,000 for individuals upon conviction.

The personal income tax of certain categories of persons (such as members of the armed forces and police force, officials of Nigeria Foreign Service, non-residents etc) is required to be remitted to the FIRS. The FIRS has however extended the period within which the 2019 personal income returns for these individuals should be filed to 30th June 2020. Although the FIRS is silent on whether the applicable penalties have been waived, we believe that, the extension provides sufficient basis for such penalties to be waived.

Suspension of tax audits and investigations

The FIRS is empowered, under the FIRS Act, to carry out tax audits and investigations on companies and it does this on a regular basis. Due to the effect of the COVID-19 pandemic, the FIRS has now suspended all field audits, investigations and monitoring visits until further notice. This means that all ongoing audits and investigations will now be suspended until the FIRS issues a further directive for them to commence again.

E-Filing of tax-related documentation

Although this is not a new development, the FIRS has further encouraged taxpayers to utilise its e-filing process to submit all their tax-related documents as opposed to physically visiting the relevant FIRS offices to file same.

Each FIRS tax office has a designated email address as well as a phone number on which the offices can be reached. Taxpayers are expected to forward all the required documents to the email address of the relevant FIRS’ tax office. The full list of those offices is available at:

<https://www.firs.gov.ng/HelpSupport/OfficeLocator>. In addition, any tax-related issues which taxpayers may have with the FIRS can be directed to any of the following designated help lines on: 09074444441, 09074444442, 0907211111 or 09073777777.

The FIRS has also directed that taxpayers already registered on its e-filing platform should submit their tax returns via the efiling.firs.gov.ng portal or any of the industry or tax-office specific email addresses made available. Filing on the FIRS’ electronic platform will not only make for easier and quicker filings but is the best alternative for taxpayers at this time.



The measures introduced by the FIRS do not cover all tax-related filings required to be made by taxpayers to the FIRS under Nigerian tax laws and regulations. Such other filings include transfer pricing returns and Country by Country Reporting reports or notifications pursuant to the Income Tax (Transfer Pricing) Regulations 2018 and the Income Tax (Country-by-Country Regulations 2018 (“CbCR Regulations”) respectively. These regulations stipulate stiff penalties for failure to file the returns within the prescribed period. For instance, under the Transfer Pricing Regulations, failure to file a transfer pricing declaration with the FIRS within 6 months from the company’s accounting year-end attracts a penalty of NGN10 million in the first instance, and NGN10,000 for every day during which the failure continues. Under the CbCR Regulations, failure by a qualifying entity to file a Country-by-Country report with the FIRS within 12 months from the last day of the reporting accounting year of the relevant Multinational Enterprise Group attracts a penalty of NGN10 million for the first month of default and NGN1 million for every month the default continues. As a result, we believe that it is imperative for the FIRS to also extend the palliative measures to these filings as well as waive the applicable penalties for failure to meet the prescribed deadlines.

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Measures introduced by the LIRS

In its own response to the challenges brought about by the COVID-19 pandemic, the LIRS has announced the following measures:

- Extension of deadline to file annual returns** The PITA requires that the personal income tax for taxable persons [employees or self-employed persons] resident in Lagos State should be remitted to the LIRS. Personal income tax returns for self-employed persons are required to be filed not later than the 31st of March each year. The applicable penalty for failure to do this upon conviction is NGN5,000 plus NGN100 for each day after the due date has passed.

In relation to employees, the PITA requires employers to remit taxes under the pay as you earn scheme within 10 days after the end of each month and to file full tax returns for each employee by the 31st of January in each year. The penalties for not meeting these deadlines are the total sum of taxes due and 10% per annum thereon and NGN500,000 for corporate bodies and NGN50,000 for individuals upon conviction.

To address the concerns of taxpayers, the LIRS through a public notice titled “Extension of Annual Returns Filing Deadline” extended the deadline for the filing of annual tax returns for individual taxpayers including self-employed persons from 31st March, 2020 to 31st May, 2020. This 2-month extension is aimed at protecting the affected taxpayers from incurring the above stated penalties for the late filing of personal income tax returns. We say that because, although not expressly stated, we believe that, by the extension, the applicable penalties would not apply.



Use of alternative platforms for payment of taxes

In its bid to make payment of taxes more convenient for taxpayers particularly at this period, the LIRS has, in a notice/directive titled “Alternative Payment Platform for Taxes” stated that tax-paying persons are encouraged to use other Lagos State Payment Platforms to pay their taxes. The platforms include:

- (a) Lagos State Government electronic banking system;
- (b) payment via bank mobile app (for designated banks);
- (c) internet banking (for designated banks);
- (d) payment with bank USSD; and
- (e) online payment agents.

The LIRS stated, however, that the LIRS eTax platform - <https://etax.lirs.net> remains the easiest and fastest way to pay taxes and carry out other related functions.

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Measures introduced by the FCTIRS

Similar to Lagos State, the PITA empowers the FCTIRS to collect the personal income tax of persons (employees and self-employed) resident in the Federal Capital Territory. In addition, the applicable penalties discussed in respect of the LIRS above also apply in the Federal Capital Territory.

In response to the challenges brought about by the COVID-19 pandemic, the FCTIRS, through a public notice titled “Extension of Deadline for Filing Annual Tax Returns (Form A)” extended the deadline for the filing of 2019 individual income tax returns by residents in the FCT from 31st March, to 30th June, 2020. This extension allows the affected taxpayers file their returns within the extended period without incurring penalties for late filing of personal income tax returns as provided under the PITA.

Like in the case of the LIRS, this 3-month extension will protect the affected taxpayers from incurring the applicable penalties for the late filing of personal income tax returns. We say that because, although not expressly stated, we believe that the extension provides sufficient basis for the applicable penalties not to apply.

An Important Note

It should be noted that, unlike the FIRS which introduced measures to extend deadlines relating to monthly remittances - such as VAT and WHT (discussed above), the LIRS and FCTIRS are yet to announce any palliative measures in respect of remittances of the personal income tax of employees under the PAYE scheme by employers on a monthly basis and WHT on payments made to individuals and unincorporated firms. In addition, the LIRS and FCTIRS have not made any pronouncement on whether remittances required to be made to them in foreign currency, given the difficulty some taxpayers may have, can be made in Naira. It is hoped that these tax authorities will introduce additional palliative measures to cushion the effect of the COVID-19 pandemic on taxpayers.



Conclusion

The measures introduced by the FIRS, LIRS and FCTIRS to cushion the effect of the COVID-19 pandemic on taxpayers are a welcome development. It is hoped that the tax authorities will continue to introduce measures to adequately meet the needs of the taxpayers during this difficult period. We should mention that the above measures are administrative in nature and are not backed by the provisions in the applicable tax laws. In addition, the involved tax authorities have not issued any formal regulations, circulars etc. setting out the above conditions. We believe that, given that the tax authorities are the institutions implementing the relevant statutes and imposing the applicable penalties in most cases, they will respect and give effect to these measures and will not subsequently seek to renege on their respective 'promises' to taxpayers.



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Disclaimer

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