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Tax Treatment of Non-Government Organisations

On 31st March 2021, the Federal Inland Revenue Service released an information circular titled "Guidelines on the Tax Treatment of Non-Governmental Organisations (NGOs), which objective was to clarify the meaning of NGOs under applicable laws and treatment of income, operations and activities of NGOs under extant Nigerian tax laws.

Introduction

On 31st March 2021, the Federal Inland Revenue Service (the “FIRS”) released an information circular titled “Guidelines on the Tax Treatment of Non-Governmental Organisations (“NGOs”), which objective was to clarify the meaning of NGOs under applicable laws and treatment of income, operations and activities of NGOs under extant Nigerian tax laws (the “Circular”).¹

In summary, the Circular specifically restated the definition of an NGO as a not-for-profit association of persons either incorporated as a company limited by guarantee under Part B of the Companies and Allied Matters Act, 2020 (“CAMA”) or an incorporated trustee under Part F of CAMA with the principal object of advancing a given public good and not carrying on business for the purpose of profits distribution to its members. The Circular further noted that the NGOs include organizations, institutions, and companies engaged in ecclesiastical, charitable, benevolent, literary, scientific, social, cultural, sporting or educational activities of a “public character” status². The Circular also resolved the uncertainty bordering on the construction of distribution of assets as distribution of profits, clearly stating that distribution of assets, whether in cash or in kind, for personal use by promoter or members, will be construed as distribution of profits.

Tax Registration and Filing Obligations of the NGOs

The Circular requires all NGOs to register at the designated FIRS’s medium tax offices (“MTOs”) in their respective geo-political regions for tax purposes and obtain Taxpayer Identification Number (“TIN”). The application for the TIN registration is typically accompanied with the registration/incorporation documents³. Further, the Circular specifically mandates NGOs to file annual tax returns at FIRS’ designated offices. The Tax returns shall contain the following documents: a) the audited accounts, tax and capital allowances computations; b) a written declaration signed by the trustee, director, secretary or any authorized person; c) period of filing returns; and d) such other required particulars with respect to such profits, allowances, reliefs and other deductions.

Companies Income Tax

Whilst acknowledging that section 23(1)(c) of Companies Income Tax Act (“CITA”) specifically exempts the profits of all NGOs from liability to Companies’ Income Tax (CIT), the Circular reiterates that NGOs’ profits will not be exempt from CIT to the extent that the profits are derived from any trade or business carried on by the NGO. Accordingly, profits derived from trade or business carried on by the NGO (such as proceeds from sale of goods or merchandise, provision of consultancy, professional or other services for a fee) and investment income (such as interest, rent, royalty, dividend or similar income) earned by the NGO shall be liable to CIT.

The foregoing is a clear restatement of the decision of the Court of Appeal in *Best Children International Schools Limited v Federal Inland Revenue Service*⁴ to the effect that an educational institution will be

¹ These laws include the Companies Income Tax Act (CITA), Cap. C12, LFN, 2004 (as amended), Personal Income Tax Act (PITA) Cap. P8 LFN 2004 (as amended), Capital Gains Tax Act (CGTA) Cap. C1 LFN 2004 and Value Added Tax(VAT) Act Cap. V1, LFN 2004(as amended).

² Section 105 of the Companies’ Income Tax Act (as amended) defined public character, in relation to an organization or institution, as an organization that a) is registered in accordance with the relevant law in Nigeria; and b) that does not distribute or share its profit in any manner to its members or promoters. Pertinently, an organization registered as a co-operative society is also accorded similar treatment as an NGO.

³ These documents shall include a) a copy of registration certificate issued by the CAC or any exemption instruments from incorporation b) CTC of Memorandum and Articles of Association, Constitution or Rules and Regulations governing the NGO c) List and profiles of the Trustees/Board members nominated and d) other relevant documents (as may be specified at the registration point).

⁴ (2018) LPELR-46727 (CA) Pp 12-22 C-B

liable to companies' income tax in so far it carried on business as a profit-making company limited by shares⁵.

Pertinently, the Circular imposes a Withholding Tax ("WHT") obligations on both the payer of an income and NGOs to deduct and remit any WHT due in respect of any payments made to the NGOs and contracts awarded to suppliers, contractors and other qualifying payments respectively.

Personal Income Tax

Notwithstanding the tax-exempt status of the income accruing to NGOS (save for the exceptions), the income of the individual promoters and employees of the NGOs are liable to Personal Income Tax ("PIT"). Specifically, the income contemplated here include but not limited to emoluments of promoters (from all sources – including from the NGO), fees, other remuneration or benefits-in-kind paid to trustees and guarantors, salaries or other remuneration of employees.

As it is typical with the PIT regime, the Circular further reiterates the Pay-As-You-Earn (PAYE) obligation imposed on the NGOs to deduct tax at source from salaries and other emoluments of employees and officers and accordingly remit same to the relevant tax authorities in the currency of payment.

Capital Gains Tax

Whilst gains accruing from the disposal of chargeable assets of NGOs may be exempt from tax upon the joint fulfilment of two conditions in accordance with section 26 of the Capital Gains Tax Act (CGTA)⁶, any gains accruing from the disposal of assets owned by the NGOs are liable to Capital Gains Tax (CGT) where such gains are derived from disposal of assets acquired in connection with any trade or business carried on by the NGOs or where the gains are not applied purely for the purpose of the NGO.

Value Added Tax

The Circular provides that goods purchased by NGOs for use in humanitarian donor-funded projects are zero-rated. Notwithstanding the above, where the NGO procures contracts or purchases goods not to be applied for any humanitarian donor-funded projects, VAT shall be chargeable on the goods at the prevailing rate and proper remittance of same shall be made to the FIRS. In the event that the NGO procures the goods or services from a non-liable persons or non-resident suppliers, the NGO shall self-account and remit same to the FIRS.

Other Statutory Obligations

In furtherance of the fulfillment of the above obligations, NGOs are statutorily required to maintain accurate record of employees and proper books of accounts. Pertinently, any failure to comply with the above requirement will attract appropriate penalties under the extant tax laws.

Conclusion

The Circular largely attempted to restate applicable principles and resolve the ambiguities/uncertainties associated with the tax/fiscal regime on the treatment of income, operations and activities of the NGOs. Given the objectives and purpose of this Circular, we thus expect that NGOs can now carefully plan their activities and operations around these tax laws in light of the Circular.

⁵ It is imperative to mention here that the Court noted that the school may be entitled to exemption from CIT in so far as it can demonstrate that it is a company engaged in ecclesiastical, charitable or educational activities of a public character or its profits are not derived from any trade or business it carries on.

⁶ The two conditions are that a) the gains are not derived from the disposal of assets acquired in connection with any trade or business carried on by the NGO and b) the gains are applied purely for the purpose of the activities of the NGO.



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