

NIGERIAN FREE ZONES: STILL BOUND BY THE TAXMAN'S NET?

1. The Public Notice may be accessed at <https://firs.gov.ng/public-notice-notice-to-all-approved-enterprises-operating-in-free-trade-zones-export-processing-zones-and-oil-gas-free-zones-to-file-income-tax-returns/>
2. Cap N107, Laws of the Federation of Nigeria, 2004.
3. Cap 05, Laws of the Federation of Nigeria, 2004 (as amended).
4. See Sections 8 and 18(1)(a) of the NEPZA Act and OGFZA Act.
5. (2016) 24 TLRN 1.
6. The customs territory refers to the territory of the Federal Republic of Nigeria outside the designated Free Zone.
7. See Paragraph 5 (2) of the OGFZA Regulations.
8. Cap 21, Laws of the Federation of Nigeria, 2004 (as amended)
9. Part 6, Paragraph 3 of the NEPZA Regulations.
10. Section 55 (1) of CITA mandates all companies, whether same are liable to pay tax for a year of assessment or not, to file a self-assessment return with the FIRS which shall contain, amongst others, audited accounts; duly completed self-assessment form; and evidence of payment of part or the whole of the tax due into the FIRS designated bank account.
11. A failure to file company income returns by the due date attracts a late filing penalty of Twenty-five Thousand Naira (₦25,000) in the first month and Five Thousand Naira (₦5,000) for every month that the default continues.

The Federal Inland Revenue Service ("FIRS") has recently issued a public notice requiring all enterprises registered and operating in Export Processing and Oil and Gas Free Zones in Nigeria ("Free Zones") to prepare and file income tax returns in accordance with Sections 58 and 59 of the Finance Act, 2020 (the "Finance Act") (the "Public Notice")¹. In this briefing, we provide our commentary on the erstwhile tax compliance regime applicable to Free Zones and highlight the new reporting obligations required of Approved Enterprises within Free Zones.

State of Play

Pursuant to the relevant provisions of the Nigeria Export Processing Zones Authority Act ("NEPZA Act")² and Oil and Gas Export Free Zone Authority Act ("OGFZA Act")³, the President of the Federal Republic of Nigeria, may designate certain areas as Free Zones. Upon designation of an area as a Free Zone, enterprises operating within the Free Zones ("Approved Enterprises") were, prior to the enactment of the Finance Act, fully exempt from all legislative provisions of Federal, States and Local Governments pertaining to taxes, levies and duties.⁴ The applicable rule in relation to the non-applicability of actual remittance and payment of taxes by Approved Entities was sacrosanct provided the Approved Enterprises restricted their commercial activities to within the Free Zone. As was firmly established in the case of **NIGERDOCK NIGERIA PLC FZE v. FIRS**⁵, the tax exemptions would apply to an Approved Enterprise provided its operations remain in the Free Zone; where the Approved Enterprise operates outside the Free Zone into the Customs Territory,⁶ it would be liable to relevant taxes.

However, a key controversy arose as to whether the above stated tax exemption rule applied to exempt Approved Enterprises from the compliance requirement of filing of appropriate tax returns.

Whilst the Oil and Gas Export Free Zone Regulations ("OGFZA Regulations") answered the question in the affirmative with the effect of exempting Approved Enterprises from "providing, filing or submitting any documents or information for the purpose of assessing or charging taxes, levies, rates, or duties"⁷; the Nigeria Export Processing Zones Authority Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria, 2004 ("NEPZA Regulations") required Approved Enterprises to submit tax returns to the FIRS through Nigeria Export Processing Zones Authority ("NEPZA") in accordance with the Companies Income Tax Act⁸, as amended ("CITA").⁹ It appeared, therefore, that although both regulations sought to confer similar benefits pursuant to their respective and materially similar legislations (i.e. NEPZA Act and OGFZA Act), the OGFZA Regulations, applicable to oil and gas Free Zones, extended the benefits for oil and gas companies operating in Free Zones to be exempt from filing and or provision of any information for the purpose of assessing or charging taxes, levies, rates or duties.

New Sherriff in Town

By the amendments enacted in Sections 58 and 59 of the Finance Act (the "Finance Act Amendments"), Section 18(1) of the NEPZA Act and the OGFZA Act now require all Approved Enterprises within Free Zones to prepare and render returns to the FIRS in the manner prescribed by the CITA.¹⁰ As such, penalties which apply to companies which fail to render returns in the manner prescribed by the CITA shall apply to the Approved Enterprises in the event of failure to render the requisite returns.¹¹

The Public Notice provides administrative context to the Finance Act Amendments. Accordingly, further to the Finance Act Amendments, Approved Enterprises are now



12. *Op. Cit See N.8*
13. *Companies are required to register for tax and file their audited accounts and tax computations with the FIRS within six months of their financial year-end on a self-assessment basis or eighteen (18) months after incorporation (whichever comes first).*
14. *Enterprises operating in the Zones located in South-South Geo-political region of Nigeria - MTO Port Harcourt; Enterprises operating in the Zones located in South-East Geo-political region of Nigeria- MTO Enugu; Enterprises operating in the Zones located in South-West Geo-political region of Nigeria- MTO Ibadan; Enterprises operating in the Zones located in North-East and North-West Geo-political region of Nigeria- MTO Kano; Enterprises operating in the Zones located in Lagos State- MTO Lagos Island; and Enterprises operating in the Zones located in North-Central Geo-political region of Nigeria and FCT- MTO Abuja.*

mandated to file income tax returns for the 2021 and subsequent years of assessment and to compute and pay the tax due (if any) in the manner¹² and time¹³ specified by CITA. In addition, the Public Notice enumerates tax offices where Approved Enterprises are required to file their tax returns¹⁴.

Commentary

As always, the FIRS is deserving of commendation for the proactive issuance of the Public Notice to clarify and provide administrative next steps in relation to the Finance Act Amendments. However, in our view, the Public Notice appears to overstep its purpose by imposing an additional obligation on Approved Enterprises to pay tax income tax due in any year of assessment.

As established above, Approved Enterprises are exempt from the payment of income taxes. In the instance where Approved Enterprises engage in commercial activities in the Customs Territory, the supervening rule is that the applicable taxes and duties, typically Value Added Tax and duties payable on the goods at the time of importation, are borne by the customer within the Customs Territory. In addition, the Public Notice raises practical compliance challenges where it requires Approved Enterprises to file tax returns at various medium tax offices ("MTO") of the FIRS. A fundamental policy behind the establishment of Free Zones, as an investment incentive, is that the NEPZA or Oil and Gas Export Free Zone Authority ("OGFZA") office within each Free Zone would serve as a one-stop shop for all compliance requirements of the Approved Enterprises. Accordingly, relevant regulatory agencies grant approvals, and receive returns and/or filings through the NEPZA or OGFZA office in the Free Zone. The new regime introduced through the Public Notice would, in practice, impose significant costs and additional compliance obligations on the Approved Entities.

Conclusion

All in, the Finance Act Amendments and Public Notice are laudable moves to harmonise the applicable tax treatment and compliance obligations of Approved Enterprises in Free Zones. It is hoped that the necessary mechanisms and collaborations will be established between FIRS and NEPZA to ensure a smooth and seamless compliance process to attain the objectives of these developments.

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