

INCREASED TAX COMPLIANCE OBLIGATIONS FOR APPROVED ENTERPRISES OPERATING IN FREE ZONES.

Introduction:

In late February 2024, the Nigeria Export Processing Zones Authority (the "Authority") communicated to all Free Zone Managers, Free Zone Operators, Free Zone Administrators and Free Zone Enterprises/Entities, the Guidelines for Tax Compliance by Approved Enterprises Operating in Nigeria Export Processing Zones (the "Guidelines") as jointly endorsed by the Authority and the Federal Inland Revenue Service.

This briefing note highlights the impact of the Guidelines on Free Zones from a tax compliance perspective.

1. **Filing of Tax Returns:** By virtue of the Guidelines, in addition to the compliance obligation of filing Companies Income Tax Returns, the Guidelines now require Free Zone Enterprises to file the following tax returns:
 - a. Monthly Value Added Tax (VAT) Returns
 - b. Monthly Withholding Tax (WHT) Returns
 - c. Monthly PAYE Returns
 - d. Transfer Pricing Returns
 - e. Country-By-Country Returns (where applicable)

Please note that the monthly returns are mandatory irrespective of whether or not there were VATable or WHT liable transactions in the relevant month.



2. **Categories of Persons and Income not entitled to enjoy tax incentives under the Nigeria Export Processing Zones Act:** the Guidelines stipulate that the following persons or income shall not enjoy the tax exempt status under the NEPZ Act:
 - a. A firm operating within a Zone without the Authority's license.
 - b. An enterprise whose license is invalid.
 - c. Income of an Approved Enterprise engaged in unapproved activities.
 - d. Income of an Approved Enterprise arising from transactions in the custom territory.
 - e. Income of Custom Territory – based unlicensed head-office, branch, holding company or subsidiary of an Approved Enterprise from transactions with the Approved Enterprise.
3. **Approved Enterprises are to charge Value Added Tax for certain types of transactions:** the Guidelines expect that Approved Enterprises are to charge VAT on the following categories of transactions:
 - a. Services to persons to persons who are resident in the Custom Territory.
 - b. Services to another Approved Enterprise within the zones whose license is invalidated by the Authority.

Are Approved Enterprises to charge VAT on Goods supplied to a Company in the Customs Territory? The Guidelines are specific to the effect that only the supply of services to entities in the Customs Territory will be subject to VAT. Invariably Approved Enterprises are not expected to charge VAT on goods sold to entities in the Customs Territory. The reason for this may be attributable to the fact that import VAT is payable at the point of export of goods into the Customs Territory. Therefore, a charge of VAT on the sale of goods by an Approved Enterprise would amount to double taxation. It must be noted that this scenario is limited to when a sale is concluded in a Free Zone. In the event a sale is concluded by a Free Zone Enterprise in the Customs Territory, such Free Zone Enterprise will be expected to charge and remit VAT.

- 4. Categories of Transactions for which Withholding Tax (WHT) is to be deducted by Approved Enterprises:**
 - a. WHT liable payments to entities that are not Approved Enterprises.
 - b. WHT liable payments to Non-Resident Companies.
- 5. Grace Period for Tax Registration and Regularization by Approved Enterprises:** Approved Enterprises are expected to carry out the relevant registrations for the purposes of tax compliance and filing no later than 31 March 2024.
- 6. Potential Penalties:** Failure of Approved Enterprises to comply with the obligations highlighted above will attract penalties as contained under extant laws.
- 7. Approved Enterprises to be subject to routine tax compliance monitoring exercise.**

Conclusion:

While the Guidelines recognizes the incentives provided to Approved Enterprises under the Nigeria Export Processing Zones Act, the increased tax compliance obligations for Approved Enterprises by virtue of the Guidelines appears to negate the intention of the tax exemption status of Free Zone Enterprises.

Pending a decision by a court of competent jurisdiction on the legality or otherwise of the Guidelines, it is suggested that Free Zone Enterprises comply with the Guidelines in order to avoid stiff penalties and interests for non/late filing of the relevant returns under extant laws.

Disclaimer:

The foregoing should not be regarded as tax advice. In the event you need tax advice please contact your Tax Manager.

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