



FIRS restricts taxpayers from carrying forward withholding tax credits

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The Federal Inland Revenue Service (FIRS) management has recently decided to restrict the withholding tax (WHT) credit notes that taxpayers can use to settle their Companies Income Tax (CIT) liability to credit notes relating to the basis period for the relevant tax year. In a particular instance, the FIRS' letter to the taxpayer stated that the company could only utilize WHT credit notes relating to its 2015 financial year (FY) to settle its 2016 CIT liability, and not any of the WHT credits brought forward from prior FYs.

According to the FIRS, transfer of WHT credit notes from one tax year to another will henceforth be treated as tax refund under Section 23 of the FIRS (Establishment) Act, 2007 (FIRSEA). For this purpose, the FIRS will carry out a special WHT audit on taxpayers that intend to carry forward WHT credits before such credit transfers can be approved.

The FIRS' position is vulnerable as it seeks to deprive taxpayers of their statutory right to elect whether they want cash refund, or apply their WHT credit notes *"for the purpose of collection against the tax charged on such company by **an assessment**"* as provided by Section 81(5) of CIT Act (as amended), or *"to set off against **future taxes**"* as provided by Section 81(7) of the CIT Act (as amended).

It is elementary knowledge that the FIRS cannot administratively amend a legislation, not least to the prejudice of taxpayers. For the avoidance of doubt, the right of a company to utilize its WHT credits to offset is current or future tax liability is unconditional. Therefore, subjecting a taxpayer to a "special WHT audit", before its WHT credits relating to prior years can be approved by the FIRS and applied, is not supported by the provision of CIT Act or FIRSEA. Indeed, it is unclear what the FIRS would be auditing when it should have a taxpayer's WHT credit profile in its database. While the FIRS is at liberty to exercise its power to audit a taxpayer before refunding overpaid taxes, the objective of the audit is to determine if the taxpayer has fully discharged all its tax liabilities and is not owing the Government in taxes in any respect. Therefore, a special

WHT audit cannot be subsumed under this power as there is really nothing to audit in WHT credit notes, which the FIRS itself would have issued and captured in its database.

It is expected that the FIRS will reverse itself after receiving representations from taxpayers. The FIRS must not only comply with due process as enshrined in the CIT Act and FIRSEA, but must be seen to do so. Hence, it cannot go out of its way to breach unambiguous provisions of the legislation that it was established to administer. Taxpayers need this comfort, and Nigeria needs it even more to improve its global ranking on relevant indices.

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