

**Subject: GUIDELINES ON THE TAX EXEMPTION STATUS OF NON-GOVERNMENTAL ORGANISATIONS (NGOs)**

This Circular is issued pursuant to Section 8(1)(t) of Federal Inland Revenue Service (Establishment) Act 2007 which empowers the Service to carry out all necessary action that are expedient for the discharge of its functions, Sections 55 of Companies Income Tax Act (CITA) Cap. C 21 LFN 2004 as updated to May 2007 and Section 15 of Value Added Tax Act (VATA) Cap. V1 LFN 2004 as updated to May 2007 require all companies to file returns in prescribed forms. The Circular also relates to Section 23(1) of Companies Income Tax Act (CITA) Cap. C21 LFN 2004 as updated on Profits exempted in respect of Companies engaged in ecclesiastical, charitable or educational activities. Section 3 of Value Added Tax Act (VATA) Cap. VI LFN 2004 as updated and 1st Schedule to the Act on goods and Services exempted and zero rated goods, Section 19, Personal Income Tax Act (PITA) Cap. P8 LFN 2004 as updated to May 2007, Third Schedule (paragraph 13) on income of ecclesiastical, charitable or educational institution.

This Circular is therefore to provide guidelines to the general public particularly the Non-Governmental Organizations (NGOs) on the procedures for filing tax returns and other obligations under the tax laws.

This circular should be read in conjunction with the circular on what constitutes a trade (Circular No: PC-T10.2.3.1021) dated August, 2010 and the circular on Checklist for listing under the 5th Schedule.

1.0 Introduction

A Non-governmental organisation (NGO) is an association of persons registered under Section 590 of the Companies and Allied Matters Act

(CAMA) 1990 for the advancement of any religious, educational, literary, scientific, social development, cultural, sporting and charitable purpose. They are non-profit making organizations.

Upon registration of the association, the body corporate may contract in the same form and manner as an individual in accordance with Section 605 of CAMA 1990. It is to be noted that by virtue of the provisions of Section 23 of CITA any organization registered under any law within the Federation or any part thereof as a co-operative society shall also be treated as a Non-governmental organization.

NGOs includes organizations, institutions and companies engaged in ecclesiastical, charitable, benevolent or educational activities of a public character. Many countries including Nigeria have recognized the significant role being played by these organizations in building a strong, caring and well-functioning society as well as in contributing to its welfare and economic growth. In recognition of this, Government grants tax incentives to such organizations in form of exemption of their profits (other than those derived from trade or business carried out by them) from income tax and zero rate of Value Added Tax (VAT) for their humanitarian services.

The role of the tax authority is to ensure that these tax incentives or benefits are appropriately enjoyed and not abused and that the obligations associated with the tax benefits are complied with by the NGOs. Therefore these guidelines are to check possible abuse and ensure standardization.

2.0 Legal basis

Section 23(1) of the Companies Income Tax Act (CITA) Cap C21.LFN 2004 (as amended) states that the profit of any statutory, charitable, ecclesiastical, educational or other similar associations are exempted from companies income tax obligation provided such profits are not derived from any trade or business carried on by such an organization or association.

By virtue of Section 23(1)(c) of CITA and Section 19, Para 13 Third Schedule of PITA, profits of any company/institution engaged in ecclesiastical, charitable, benevolent or educational activities of a public character are exempt from income tax provided such profits are not derived from a trade or business carried on by the company. Where an NGO engages in any trade or business, the profit derived therefrom will be subjected to income tax as provided for in the Act. Also, where the NGO invests its assets in any institution, the income derived from such investment shall be subjected to tax. It should be noted that Capital Gains Tax (CGT) shall arise where assets are disposed of by the NGOs at a gain.

The FIRS position on what constitute a trade or business is contained in Information Circular PC-T10.2.3.1021 dated August, 2010.

3.0 Case Laws

A relevant Nigerian decided case is that of Arbico Ltd Vs FBIR, {1996} 2 All NLR 303. The plaintiff in the dispute, Arbico, had acquired a plot of land, erected a building and sold the property at a profit. The company was subsequently assessed to tax on the proceeds of the sale of the property. The company objected to the assessment on the basis that the transaction was a one-off and did not constitute "trade". The case was ultimately settled in the Supreme Court.

In the ruling the Court laid down two important axioms:

- Firstly, that the word 'trade' should be interpreted in its widest sense in accordance with its common everyday meaning;
- Secondly, that an isolated one-off transaction can still constitute a "trade".

Decided cases in other jurisdictions on what constitute trade or business are as follows:

- i) In the case of Marlin Vs Lowry (1955)3 All ER 48; 11 TC 297), a person without previous knowledge of linen trade bought a surplus stock of aeroplane linen from government which he sold to the public in small lots. He engaged employees for the re-packaging and embarked on sales" promotion through extensive adverts and campaigns. It was held that he was trading.

- ii) In *Murray Vs I.R. Comrs* (1951, 32 TC 238), where a timber merchant who bought standing timbers in two plantations and could not cut them due to labour cost, sold the rights to cut the timbers to meet his indebtedness. He was assessed to tax on the profit from the transaction. He contended that the sale was a capital transaction since it was not in the normal course of his business but it was held that the transaction was part of his normal trading as a timber merchant.
- iii) In *Burge Vs Pyne* (1969, 1 All ER 467), a club proprietor providing facilities for bar, dancing, cabaret, fruit machines and gambling, appealed against the inclusion of his winnings in his assessment. The appeal was dismissed on the ground that the winnings formed part of his regular income from the trade of running the club.

4.0 Tax Reliefs available to NGOs

In addition to the income tax exemption granted to NGOs as noted above, Section 25 of CITA provides that any company making donations to such an organization listed under the 5th schedule to CITA shall enjoy tax deductible donation not exceeding 10% of the total profits of that company for that year as ascertained before any deduction of such donations is made and must not be of capital nature (these restrictions will not be applicable where the donation falls under the provision of Section 25A of CITA).

Goods purchased for use in humanitarian donor funded projects are zero rated under the Value Added Tax Act Cap V1 LFN 2004 as amended.

5.0 Registration with FIRS by NGOs

All NGOs are expected to register with the relevant tax office of FIRS with the following documents:

- i) A copy of registration certificate issued by Corporate Affairs Commission(CAC) in Nigeria or other instruments of incorporation issued to foreign NGOs;
- ii) Certified copy of Memorandum or Constitution, Rules and Regulations governing the NGO;
- iii) List and Profiles of the Trustees/Board Members nominated;
- iv) Copy of the current Tax Clearance Certificate (TCC) of each of

- the Trustees; and
- v) Financial statements from inception of operation.

6.0 Filing of Returns by NGOs

In line with section 55 of CITA, it is mandatory for every NGOs to file its tax return every year and such return shall contain:

- i) The audited accounts, tax and capital allowances computations and a true and correct statement in writing containing the amounts of its profits from each and every source computed in accordance with the provisions of CITA;
- ii) Such particulars as may by such form or return be required for the purpose of the Act and any rules made with respect to such profits, allowances, reliefs, deductions or otherwise as may be material by virtue of the CITA; and
- iii) A declaration to be signed by a director or secretary of the organization that the information contained in the return is true and correct.

7.0 Responsibilities of the Tax Office

- 7.1 Clarification of Tax Status - An NGO seeking clarification on its tax exemption status shall direct such enquiries to the tax office where it was registered and the NGO Desk in the relevant tax office shall process the enquiry and respond to it.
- 7.2 Application for Tax Clearance Certificate (TCC) - An NGO shall direct its application for Tax Clearance Certificate (TCC) to the tax office where it was registered and files its tax returns. The relevant tax office shall process the application and issue TCC if the NGO is found qualified and if unqualified be given reasons in writing within two weeks of the application.

Monitoring - The relevant tax office shall monitor the activities of NGOs within its jurisdiction regularly to ensure compliance with provisions of the tax laws. Monitoring shall be through NGO desk set up for that purpose.

8.0 Other Statutory Obligations of NGOs

In addition to its obligation to file tax returns to the appropriate tax office, NGOs are statutorily required to:

- i) Maintain accurate record of employees;
- ii) Maintain proper books of accounts

- iii) Deduct Pay As You Earn (PAYE) from employees' salary and remit same to the appropriate tax authority;
- iv) Pay Value Added Tax (VAT) on goods and services consumed except those purchased exclusively for its humanitarian donor funded projects or activities;
- v) Deduct withholding tax (WHT), on, payments, made to its contractors/suppliers and, remit same to appropriate tax authority in accordance with the laws; such remittance is to be accompanied with schedule of deduction; and
- vi) Pay tax as at when due on non-exempt activities.

Failure to comply with the above requirements will attract appropriate penalty under the law.

9.0 Conclusion

It is to be emphasized that the fact that an NGO is exempted from payment of income tax does not remove the obligation to file returns regularly. It is also to be emphasized that profits derived from business or trading activities are liable to tax. It is expected that all NGOs will abide with the aforementioned regulations in order to continue to enjoy the tax incentives granted by the Government in furtherance of their charitable activities. All applications for tax exemption and listing under the Fifth Schedule of CITA and 3rd Schedule of PITA by NGOs should adhere to the attached checklist as guide for such application.

10.0 Enquiries

All enquiries on any aspect of this circular should be directed to any of the under-listed addresses:

Executive Chairman

Federal Inland Revenue Service,
Revenue House,
Plot 15 Sokode Crescent,
Wuse Zone 5, Abuja.

Director, Tax Policy & Legislation
Department

Federal Inland Revenue Service,
Revenue House,
Plot 15 Sokode Crescent,
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Or

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