

# COMMENTARY ON KEY PROVISIONS OF THE FIRS' INFORMATION CIRCULAR ON NIGERIA'S WITHHOLDING TAX REGULATIONS, 2024

## Introduction

On February 24, 2025, the Federal Inland Revenue Service (“**FIRS**”) issued Information Circular No. 01/2025 (the “**Circular**”) to guide the implementation of the Deduction of Tax at Source (Withholding Tax) Regulations, 2024 (the “**Regulations**”), which became effective from January 1, 2025. Please click [here](#) to access our publication on the overview of the Regulations. As a general comment, information circulars or guidance notes serve as an official document issued by regulatory authorities, government agencies, or professional bodies to provide clarity, interpretation, and direction on specific legal, tax, regulatory, or procedural matters. FIRS' Circulars should be clear and provide sufficient guidance, rather than create more ambiguity.

This update provides a commentary on the key provisions of the Circular, compliance obligations, and critical considerations for businesses as follows:

## 1. Impracticality of Deducting WHT from Non-cash Transactions:

The Circular restates the Regulations' requirement that withholding tax (“WHT”) must be deducted at the point of payment or settlement. It also expands on other means of settlement, including barter/exchange, stock or equity transfers, payments by a third party, and debt swaps, specifying that WHT should be deducted as follows:

- a. Barter or exchange – on the date of exchange;
- b. Stock/equity transfer – on the date of transfer;
- c. Payment by a third party – on the date the payment is made; and
- d. Debt swap – on the effective date of the swap.

We observed that these categories of transactions are not specifically listed in the Regulations, but have been included by the FIRS for guidance, which is the

key purpose of information circulars. Unfortunately, the Circular lacks detailed guidance or practical examples illustrating how WHT should be applied to certain non-cash transactions such as barter, exchanges and swaps. Considering that WHT is typically calculated as a percentage of a cash payment, businesses may struggle with implementation, particularly in determining the value of transactions where no actual cash payment occurs. This challenge is particularly apparent for “Barter or Exchange” transactions and swaps which the FIRS has indicated should suffer WHT at the time of exchange or on the date of the swap. We discuss the key issues under each heading below:

### Barter and Exchange

The Regulations make no provisions for and provides no clear basis for WHT on Barter or Exchange, but the FIRS in its wisdom has attempted to provide (insufficient) guidance on the matter. Barter is simply a supply of goods or services in exchange for the supply of goods or services by the counterparty. No cash is exchanged. Understandably, because no cash is exchanged, determining the applicable WHT amount can pose a challenge. In some other jurisdictions where WHT applies to Barter and Exchange arrangements, the value of the goods or services are determined according to their fair market value and then WHT is applied accordingly. The guidelines in those jurisdictions provide guidance on determining fair market value. The Circular provides no such guidance,

leaving room for parties to agree what they consider the true value of their goods and services. This issue may raise many issues, for instance, in unregulated or unregistered securities lending transactions, where securities (such as shares of different private companies) could be exchanged by parties. Determining the value of such securities is (to a great extent) a subjective matter. This lack of guidance could be a pain point during tax audits.

Another problem that the FIRS’ Circular poses is the implied departure from the cash-basis for WHT accounting under the Regulations (for unrelated parties’ transactions) to an accrual basis (which applies to related parties’ transaction). Regulation 6 of the Regulations states that “The obligation to deduct at source shall arise at the earlier of when —

- (a) payment is made, or
- (b) **the amount due is otherwise settled.** (emphasis ours).

The emphasised section could be interpreted as a basis for introducing WHT to Barter or Exchange arrangements (i.e., where amount due is otherwise settled, other than through cash payment). While this may be an acceptable interpretation, the lack of guidance as noted above remains a problem.

Yet another ambiguity associated with the Circular is whether otherwise exempt transactions will now be subject to WHT if the payment is through barter

or exchange. For instance, the supply of goods by the manufacturer is exempted from WHT. If those goods are supplied in exchange for certain consultancy services, does the consultant have a WHT obligation on the value of the goods supplied?

### Debt Swaps

Additionally, while the Circular mentions debt swaps, it does not specify the particular type(s) being referred to, despite the fact that debt swaps can take various forms, including:

- a. Debt-for-equity swaps (where a creditor converts debt to a company to shares in the company, thereby extinguishing the liability) );
- b. Debt-for-debt swaps (where one type of debt is exchanged for another, often at different valuations); or
- c. Debt-for-assets swaps (where a debtor transfers an asset to settle a debt).

Without clarification, taxpayers may face difficulties in determining the applicable tax treatment for each scenario. Given that the Circular was intended to clarify the Regulations, its failure to provide sufficient guidance creates uncertainty for businesses engaging in alternative settlement methods.

To address these gaps, FIRS should consider issuing supplementary guidelines or FAQs to provide clearer directives on WHT deductions for non-cash settlements.

## 2. Deduction of Tax at Source for Related Parties:

For related party transactions, tax should be deducted at the point of payment or when the liability is recognised, whichever comes first. For example, if an entity books an invoice but payment occurs later, tax must be deducted when the liability is recognised, not when the payment is made. This highlights the need for businesses to monitor internal transactions to ensure timely tax deductions.

## 3. Exemption of Small Businesses and Unincorporated Entities:

Small businesses and unincorporated entities are exempt from withholding tax WHT if the supplier has a valid Taxpayer Identification Number ("TIN") and the transaction value does not exceed ₦2,000,000 in a calendar month. Hence, small businesses should review contracts and supplier relationships to ensure compliance with the TIN requirement and the ₦2,000,000 threshold.

A key update in the Circular is that for contracts exceeding ₦2,000,000, WHT must be deducted on every part payment, regardless of the amount paid. For instance, if a company makes a ₦1,500,000 instalment on a ₦3,000,000 contract, tax must still be deducted on that instalment. This underscores the importance of monitoring instalment payments and ensuring that WHT is deducted at each stage of payment,

even if an individual instalment falls below the exemption threshold.

#### **4. Keeping and Maintaining Adequate Documentation:**

The Circular reinforces the Regulations' requirement for businesses to submit returns to tax authorities with evidence of tax remittance, including detailed transaction records such as payer and payee details, tax amounts, and the nature of transactions. Additionally, businesses must issue receipts for WHT deductions to the payee, ensuring alignment between both parties and facilitating tax credit claims. This underscores the importance of accurate record-keeping and timely issuance of receipts and statements.

However, the Circular does not provide guidance on reporting and documenting WHT deductions for non-cash transactions. Businesses may face challenges in generating proper documentation, particularly when there is no direct invoice reflecting a payment amount or the transaction involves valuation complexities, such as stock/equity transfers with fluctuating market values. Clearer guidelines are needed to help businesses navigate WHT reporting for non-monetary settlements, ensuring compliance and reducing administrative burdens.

#### **5. Utilisation of Tax Technology:**

The Circular highlights the potential introduction of technological solutions by tax authorities to streamline processes such as Withholding Tax

(WHT) credit administration. This suggests that businesses may benefit from an automated system for validating, granting, and reconciling WHT credits, reducing administrative burdens and improving efficiency.

Notably, the FIRS recently introduced the e-Invoice (Merchant Buyer System) - a digital invoicing platform designed to ensure real-time compliance with tax regulations for B2B, B2C, and B2G transactions. While primarily focused on Value Added Tax ("VAT") compliance, the system captures and verifies transaction details, creating an authenticated, traceable record of taxable transactions. This functionality could also support FIRS in reconciling WHT deductions and credits, minimizing fraud, and enhancing overall tax compliance. The Finance Act 2019 had long established a legal basis for the FIRS to connect to taxpayers' computers or sales software to access financial information, and with the proposed VAT fiscalisation by the Nigerian Tax Bill, this will soon become a reality. Taxpayers need to be ready for this era of financial transparency and compliance.

#### **6. Disparity on the Applicable Rates Between Residents and Non-residents:**

The Circular reproduces the different WHT rates for residents and non-residents, depending on the nature of the transaction. However, this disparity appears to conflict with Nigeria's Double Taxation Agreements (DTAs), which emphasise the principle of non-discrimination in tax treatment.

Several DTAs signed by Nigeria contain provisions ensuring that nationals of a contracting state are not subjected to more burdensome taxation than local taxpayers in similar circumstances. The imposition of higher WHT rates on non-residents could be viewed as tax discrimination, potentially damaging Nigeria's reputation in international tax and investment circles.

Furthermore, the increased tax burden on non-residents may discourage foreign businesses from transacting with Nigerian entities or investing in the country, ultimately affecting Nigeria's global competitiveness.

## Conclusion

This Circular provides important guidance for businesses and other stakeholders to ensure compliance with WHT obligations. The consequences of failing to deduct or remit tax on time can be costly, including penalties

and interest on the tax not remitted. By integrating these requirements into their financial processes, businesses can avoid unnecessary costs and ensure adherence to Nigerian tax laws.

We are available to assist in transitioning to these updated Regulations, ensuring that your business operates within the legal framework and maximizes its tax efficiency.

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