

Automation of the withholding tax system – Will migration be seamless?

Federal Inland Revenue Service (FIRS) in its bid to extend the Integrated Tax Administration System (ITAS) initiative to all of its processes, recently indicated its intention to fully automate the withholding tax (WHT) system in Nigeria.

Pursuant to this initiative, FIRS has started inviting taxpayers for reconciliation of unutilized WHT credits. The essence of this exercise is to update all taxpayers' unused/outstanding WHT credit notes into FIRS' system for effective takeoff of the automated tax credit system. This is a welcome development in the tax administration system in Nigeria, as the objective is to simplify the tax compliance process and cut out inherent inefficiencies.

It is instructive to note that WHT is not a separate type of tax but an advance payment of income tax. It is simply, payment on account of the ultimate income tax to be paid. The legal basis for WHT is contained in the provisions of the Companies Income Tax Act, Personal Income Tax Act, Petroleum Profit Tax Act and the Regulations made thereunder.

An entity making payment on qualifying transactions withholds the tax, at the applicable rates. Deductions from qualifying payments made to limited liability companies are payable to FIRS. For qualifying payments to individuals, partnerships and other non-corporate bodies, the relevant tax authority is the Board of Internal Revenue of the state (including Federal Capital Territory) where the individual, partnership or body is resident.

The WHT mechanism has contributed in various ways in strengthening Nigeria's tax system. It ensures that income tax payable is collected ahead of the due date of filing tax returns. The tax revenue could be used to carry out government operations and programs before the actual due date for payment of income tax. In essence, it improves the cash flow of government. It has assisted tax administrators to gather information on economic activities of other agents that were, hitherto, outside the tax net.

The system has also assisted in capturing the activities of offshore companies that carry out business activities in Nigeria. It increases compliance,



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decreases tax evasion and invariably reduces the collection cost.

However, there are inherent difficulties in obtaining WHT credit, which makes it appear unfavorable to taxpayers. Until recently, FIRS used to issue the credit notes to the entity that had withheld and remitted the tax (payer). The payer will then distribute the credit notes to the taxpayers that suffered the source deductions (beneficiaries). The Revenue only grants credit when the beneficiaries present the credit notes. The process is rather cumbersome, involves much paper work and valuable time in pursuit of the credit. In a number of cases, some of the credits are lost due to such bureaucratic constraints.

In recognition of these issues, the focus of tax administrators, which this new initiative seeks to cover, is making the process efficient and reducing excessive stress taxpayers go through in order to obtain credit for source deductions suffered.

By way of managing migration to automation, FIRS had, in its letters of invitation, given taxpayers 15 working days, which ended on 30 August 2018, to come forward with receipts of unutilized tax credit notes for confirmation, approval and usage. FIRS had further indicated that taxpayers stand to forfeit the right to present

any other previous WHT credit notes for tax offset in the future after the expiration of the window. The WHT balance, which is agreed with FIRS, is to be updated in the beneficiaries' tax position card (K-card). The updated amount would form the opening balance that would be uploaded to Standard Integrated Government Tax Administrative System (SIGTAS). The expected date of the migration is 30 September 2018.

Under SIGTAS, when a payer remits WHT deducted from a contracting party, the system credits the accounts of all the beneficiaries directly, making the credit automatically available for utilization. The aim is to remove the various challenges and paper work associated with the current system. Further, taxpayers can access their accounts online and monitor the remittance of source deductions suffered.

Although this initiative appears laudable, some major concerns expressed by taxpayers are whether migration of their balances will be seamless and whether FIRS' actions will be consistent with statutory provisions to ensure that balances due to taxpayers are not eroded. Other pertinent questions from the taxpayers in this respect include:

- Is the proposed timeline adequate for seamless migration?

- Given the time lag between the conclusion of a transaction and receipt of the actual credit notes, what happens to the WHT credits not received?
- Is the proposed action of FIRS with respect to forfeiture consistent with the provisions of the law?

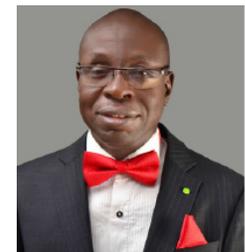
Again, there are indications that any request for carry forward, which is more than three years, would be subject to audit. There are no indications as to when the audit may be concluded, given the average tax audit cycle in Nigeria. Assuming there are income tax liabilities crystallizing during the period, would the taxpayer be required to make cash payment for the tax, pending the conclusion of the audit?

Additionally, there may be need to accommodate companies with low margins bearing in mind that unutilized credit notes represent excess tax that ought to be refunded to the taxpayers. Refund of excess tax should not always be frustrated and seen as a gift from government.

The introduction of SIGTAS is laudable and another bold step in instituting an effective and efficient tax system, aimed at encouraging tax compliance. Thus, stakeholders expect FIRS to adequately address these questions, as well as the concerns of taxpayers. Above

all, the migration should not be done in such a way as to add extra burden on taxpayers and negate the improving perception on ease of doing business.

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