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At the Training: Conducting Financial Investigations (Foundation)

Virtual Programme

On 21st February, 2023

Overview of the Special Tax Crimes Department

• The Special Tax Crimes Department was formerly a Division under the Tax Investigation Department of the Service. However, it was upgraded to a department in 2022 with the mandate for specific areas of tax investigation with emphasis on suspected criminal violations of tax laws, tax evasion, willful default, tax fraud and financial-related crimes.

This mandate is in accordance with Sections **8**, **26** and **35** of the FIRSEA, **2007**. The Department through intelligence provided by relevant law enforcement and anti-graft agencies for specific investigation is to track:

- i. criminal violations of tax laws
- ii. tax evasion
- iii.illicit funds flow and related tax implications
- iv Willful under remittance of taxes
- v. Non-registration etc.
- vi.Look into the issue of beneficial ownership (properties) and how it has been incorporated into the financial report of the businesses for tax purposes.

The Special Tax Crimes Department is mandated to actively investigate potential and actual criminal violations of the tax laws and related financial crimes in a manner that enhances tax compliance and fosters confidence in the Nigerian tax system. This mandate is actualized through detection, disruption and deterrence of all possible criminal violations of tax laws.

This is achieved through intelligence-based investigation for possible prosecution and enforcement to ensure taxpayers are brought to compliance with the provisions of the tax laws.

Legal Framework:

- The Federal Inland Revenue Service & The Special Tax Crimes Department derived its investigative Powers from the following laws:
- 1. FEDERAL INLAND REVENUE SERVICE ESTABLISHMENT ACT (FIRSEA) 2007
- Section 35 (1) of FIRSEA 2007: "The Service shall employ Special Purpose Tax Officers to assist any relevant law Enforcement agency in the Investigation of any Offence under this Act".
- Section 35(2) of the FIRSEA 2007 which provides thus: "Notwithstanding anything to the Contrary in any other enactment or law, the Service shall have the power to investigate or cause investigation to be conducted to ascertain any violation of any law whether or not such violation has been reported to the Service".

Section 68 (1) of FIRSEA.—Relevance of other laws: "This Act and the laws listed in the First Schedule to this Act shall take precedence over any other laws with regards to the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federal Government or Federation in Nigeria, except in cases such tax or levy is a subject of litigation in a court of competent jurisdiction, and if the provisions of any other law, including the enactments in the First Schedule are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.

68 (2) Subject to subsection (1) and notwithstanding any other law imposing taxes or levies in Nigeria, the Service shall be the primary agency of the Federal Government of Nigeria responsible for the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federation and the Federal Government or any of its agencies, except as may be authorised by the Minister responsible for Finance by regulation as approved by the National Assembly.

68 (3) Subject to subsection (1), it shall be an offence for any person to carry out or authorise another to carry out the function of administering, assessment, collection, accounting or enforcement of taxes and levies due to the Federation and the Federal Government of Nigeria, except as may be provided under this Act or any of the laws listed in the First Schedule to this Act or as authorised by the Minister responsible for Finance by regulation as approved by the National Assembly.

68 (4) For the purposes of enforcing compliance with the provisions of the relevant tax laws and preventing tax revenue loss, the Service may collaborate with relevant Ministries, Departments, Agencies or institutions of the Federal Government.

68 (5) Any person or agency of the Federal Government that becomes aware of any incidence requiring tax investigation, enforcement or compliance, in the course of the performance of its functions, shall refer same to the Service for necessary action and the Service may in accordance with the provisions of this Act collaborate with such person or agency in carrying out required investigation, enforcement or compliance measures.

2. COMPANIES INCOME TAX ACT (CITA) 2004 as amended:

Section 60(4) of CITA 2004 as amended: - (Call for returns, books, documents, and Information). "Nothing in this section or any other provisions of this Act shall be construed as precluding the Service from verifying by tax audit or investigation to any matter relating to any return or entry in any book, document, accounts, including those stored in a Computer, digital, magnetic, optical, or electronic media as may, from time to time, be specified in any guideline by the Service.

What is Tax Fraud & Examples of Tax Fraud in Nigeria

- Tax fraud occurs when an individual or business entity wilfully and intentionally falsifies information on a tax return to limit the amount of tax liability.
- Examples of tax fraud which are prevalent in Nigeria includes:
- ✓ claiming false deductions.
- ✓ claiming personal expenses as business expenses.
- ✓ not reporting income (diverting sales proceeds into personal accounts or other registered business accounts.

The Nigeria Story:

- Tax fraud is a longstanding problem in Nigeria, and it has affected the Service's ability to mobilise revenue needed by Government of Nigeria to enhance growth and development. Billions/trillions of naira have been reported lost to tax fraud and mitigating this menace has become a high point of call to the Current Executive Chairman of the Service.
- The Federal Inland Revenue Service (FIRS) has moved against illicit financial outflow and to improve tax compliance among multinationals operating in the country, as its Executive Chairman, Mr Muhammad Nami, said that Nigeria reportedly lost "\$178 billion to tax evasion by multi-nationals in ten years from 2007 – 2016".

The Federal Inland Revenue Service (FIRS) on **30**th **April**, **2021** issued a Public Notice informing the general public of its intention to prosecute taxpayers for non-compliance with tax laws, regulations and other related tax offences, especially those listed in Part IV of the FIRS Establishment Act No. 13, 2007 (as amended) (FIRSEA or "the Act"). These include tax evasion, **tax fraud**, failure to deduct or remit tax, obstruction, false declaration, counterfeiting of documents, failure to file tax returns, etc.

Further, the FIRS noted its intention to invoke the provisions of Section 49(2) of the FIRSEA and prosecute all persons involved in the management of the affairs of the non-compliant company, firm or association. In light of this, the FIRS enjoins taxpayers, practitioners and company managements to comply with the provisions of Section 24(f) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) by registering for tax, declaring all their incomes honestly, correctly, and accurately, and paying the appropriate taxes.

Prosecution of defaulting taxpayers is within the statutory powers of the FIRS. Specifically, Section 47 of the FIRSEA provides that "the Service shall have powers to employ its own legal officers who shall have powers to prosecute any offences under this Act subject to the powers of the Attorney-General of the Federation".

TAX OFFENCES/CRIMES IN NIGERIA

- Some of the tax offences/crimes being monitored by the Department includes:
- 1. False Statements and Returns Section 94 of CITA
- 2. Failure to deduct or remit tax Section 40 of FIRSEA
- 3. False declaration Section 42 of FIRSEA
- 4. Counterfeiting Documents, etc Section 43 of FIRSEA
- 5. Furnishing of False documents Section 25 of VATA
- 6. Evasion of Tax Section 26 of VATA
- 7. Failure to issue Tax Invoice Section 29 of VATA
- 8. Failure to keep proper records & Accounts Section 33 of VATA
- 9. Aiding and abetting Commission of Offence, etc Section 36 of VATA

CASE STUDY - TAX FRAUD CASE

- Case Referral: A Company owned by some Chinese Nationals were referred to the Department by FIRS Management because of intelligence report from a law enforcement agency.
- Intelligence Report: The Report stated that the Company under reported its income from 2016 2021 Accounting Years.

- Preliminary Review: The Department requested for the following:
- ✓ The Tax Returns filed by the Company from the Tax Office.
- ✓ All previous Tax Audit reports and additional Assessments raised from the Tax Audit Department.
- ✓ All Desk examination/review reports and additional assessment raised from the Tax Office.
- ✓ All Corporate Affairs Commissions registration documents (including the MEMART & Particulars of Directors).
- ✓ Bank Statements of the Company from the Banks and any other documents submitted to the Banks by the Company for loan application.

Field Investigation Exercise:

During the field investigation, the investigation team requested for the following:

- ✓ Sales Invoices
- ✓ Purchases invoices
- √ General ledger/transactions listing
- ✓ The Company's Bank statements.
- ✓ And other relevant documents

However, the Company stated that they maintain manual accounting system, and that all sales invoices were handwritten and issued manually.

Hence, they provided the following:

- √ handwritten sales invoices for the period under investigation
- √ Very few purchases invoices
- ✓ The Company's bank account statements.
- ✓ And other irrelevant documents

Findings & how the tax fraud (under reporting of Income) was perpetrated.

- The investigation team used the following investigative techniques during the investigation to unravel the tax fraud:
- ✓ Observations
- ✓ Search & seizure
- Analytical Review
- Findings/Scheme:
- ▼ The Company has an accounting system/software in Chinese for recording transactions and issuing sales invoices.
- Representatives of the Company registered several business names/enterprises using proxies, associates & other Chinese nationals, opened bank accounts for the registered entities and were diverting the Sales proceeds into these Bank accounts.
- ▼ The Bank Accounts opened will be operated for a while and then closed.
- Sales proceeds were also diverted into individual (Chinese proxies & associates) Bank Accounts. These individuals will stay briefly in Nigeria and then returned to China (high foreign employee turnover).
- Some Sales proceeds were also paid directly to suppliers Bank accounts (The Company will direct their customers to pay directly into the suppliers' Bank accounts) so that the sales revenue would not be seen or traced to the Company's bank account.
- The Cost/Expenses were under reported as a result of the Income understatement.
- ✓ Stamp duties were not paid on the Technical Agreement & other software agreements for the period under investigation.
- ✓ The Financial Statements submitted to the Bank to obtain Credit facilities (Loan) were different from the one filed with the Service.

Conclusion:

- The transactions recorded in Chinese were translated and recognised. Hence, the Income diverted for the period under investigation were all brought into the tax net.
- The taxes (Income Tax, Stamp duty, Valued Added Tax & Withholding Tax on qualifying transactions) were all recovered.
- Penalties and interest were applied in line with the provisions of the relevant tax laws.

Challenges:

Some of the challenges encountered are as follows:

- ✓ High cash transactions in Nigeria
- ✓ Some of the penalties are not stiff enough to deter recurrence.

Example: False statement and returns – Section 94 of CITA stipulates "a fine of N1,000 or to imprisonment for five years or to both such fine and imprisonment upon conviction".

✓ The "snailing" speed of the Nigerian criminal justice system is another challenge.

