

The Federal Inland Revenue Service's Public Notice on Utilization of Capital Allowances

Recently, the Federal Inland Revenue Service (the “**FIRS**”) issued a Public Notice titled Submission of Certificate of Acceptance notifying all companies that enjoyed capital allowances on their assets between 2016 and 2021 years of assessment to submit their Certificates of Acceptance (“**CoA**”) issued by the Industrial Inspectorate Division of the Federal Ministry of Industry, Trade, and Investment (the “**Division**”) not later than October 31, 2022. Below are the salient points in the Public Notice:

- (A) Any person and/or company incurring a Qualifying Capital Expenditure (“**QCE**”) of ₦500,000.00 (Five Hundred Thousand Naira) and above must obtain a CoA from the Director of the Division under section 3 of the Industrial Inspectorate Act, 1970 (as amended).
- (B) All companies which enjoyed capital allowances on QCE of ₦500,000.00 (Five Hundred Thousand Naira) and above between 2016 and 2021 years of assessment are to submit their CoA to the FIRS no later than October 31, 2022.
- (C) All companies are now required to submit their CoA in respect of QCE of ₦500,000.00 (Five Hundred Thousand Naira) and above incurred in each year of assessment.
- (D) Failure by any company to comply with paragraph (B) above may be met with a withdrawal, by FIRS, of the capital allowances for the relevant period and the issuance of an additional tax assessment to the company.

The Industrial Inspectorate Act (“**the Act**”), s. 3, provides for the issuance of a CoA by the Division in respect of specified capital expenditure incurred by a company. Although the Companies Income Tax Act, 1977 (as amended) does not make the CoA a requirement for claiming capital allowances, the CoA may not be completely dismissed since it has legal backing, being predicated on the Act.

However, the FIRS’ approach to enforcing the CoA in relation to capital allowances claims and the penalty for non-compliance with the requirement raises several questions. Some of them are legal, while others are practical. For instance, it does not appear that the requirement for CoA before claiming capital allowances meets the reality of today's world. Will most companies meet the October 31 deadline, given the complexity and sometimes onerous process seen with most Government parastatals? When compared to a reasonable-sized company, the ₦500,000 minimum threshold set by the tax authority may appear to be too low and unrealistic. Is the stated penalty of withdrawal of capital allowances previously enjoyed by companies backed by law, and can the FIRS apply this CoA requirement retrospectively?

The changes that the FIRS purports to introduce to the Act through the Circular are indeed questionable. The power to amend any law resides with the legislature and not the executives or its agency, like the FIRS. See *The Registered Trustees of Hotel Owners and Managers Association of Lagos (Suing for Itself and on Behalf of All its Members) v. Attorney-General of Lagos State & FIRS* (2019) 47 TLRN, where the Federal High Court voided the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order 2015, made by the Minister for Finance for being an impermissible encroachment to the legislative powers of the National Assembly. The Circular is, therefore, no more than the opinion of the FIRS on the matter and cannot represent the law. See *Global Marine International Drilling Corporation v. FIRS* (2013) 12 TLRN 1.

Further, several other issues will arise as the FIRS plans to implement the CoA requirements. Hence, each taxpayer should obtain a guidance to fully understand how the implementation could affect or impact on it in order to determine the extent to which the Public Notice applies to the relevant taxpayer and how the FIRS may proceed against such taxpayer with a view to ensuring compliance (as applicable) and avoiding unnecessary penalties from being imposed on them.

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