

FIRS orders banks to freeze accounts of taxpayers



For a deeper discussion, please contact any of the persons below or your usual contact within PwC Nigeria:

Moshood Olajide
+234 1 271 1700 Ext 6112
moshoo.olajide@pwc.com

Elizabeth Anaekwe
+234 1 271 1700 Ext 50013
elizabeth.anaekwe@pwc.com

Stanley Dike
+234 1 271 1700 Ext 50056
stanley.dike@pwc.com

Jeff Maduka
+234 1 271 1700 Ext 54027
jeff.maduka@pwc.com

Introduction

The Federal Inland Revenue Services (FIRS) has started writing to banks to appoint them as collection agents of taxpayers considered to be in default of tax payments. In order to achieve this, the FIRS is directing the relevant banks to freeze the accounts of the taxpayers to prevent them from drawing funds from the accounts.

Power to appoint agent

Section 31 of FIRS (Establishment) Act gives the FIRS powers to appoint a person as an agent of a taxpayer for the recovery of the tax that is payable by the taxpayer. The appointed agent will be required to pay any tax payable by the taxpayer from any money held by the agent on behalf of the taxpayer.

Practical challenges

The wording of this provision and the manner in which the FIRS is currently seeking to apply it raise a number of issues:

- i. The provision does not define when 'tax is payable' for the purposes of exercising the power to appoint an agent. It would seem that this power can only be validly exercised if an assessment has become final and conclusive under the relevant provisions of the tax laws.
- ii. The provision neither articulates what must be presented by the FIRS to demonstrate to the agent that the tax is payable nor does it specify the information that the agent can request from the FIRS to confirm that the tax is payable.

This creates a situation where the FIRS can arbitrarily allege that tax is payable and the agent may feel compelled to withhold a taxpayer's money even when the tax is under dispute.
- iii. The impact of the provision on business may be very harsh. For example, an appointment of a bank as an agent effectively freezes the account of a taxpayer up to the amount of the tax payable as alleged by the FIRS. The process of releasing the account may significantly disrupt business activities.
- iv. It is not clear how this provision will be interpreted by the court in the light of the provisions of section 42 of the Constitution of the Federal Republic of Nigeria that guarantees a citizen's right to own property. Under this section, a party must be given an opportunity to defend his property before the property can be taken.

Is the agent bound by the appointment?

The agent is required to pay the money in his possession to the FIRS. However, it would seem that the agent can challenge the appointment if the tax is not payable or if the agent does not have any money belonging to the taxpayer in his possession.

The appointment, like all decisions of the FIRS, can be challenged by the agent at the Tax Appeal Tribunal.

Takeaway

The tax landscape is changing rapidly. Taxpayers must attend to all tax assessments promptly and keep appropriate records of their tax affairs.

While the power of appointment is a very important tool for the FIRS in recovering unpaid taxes, this power must be exercised with caution and in accordance with the law to avoid negative impact on businesses and ease of paying taxes.

However, for tax evaders, tax authorities can, where appropriate, explore this tool to recover tax more quickly.