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Information Circular

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Subject: CLARIFICATION ON THE TAXATION OF LIMITED LIABILITY PARTNERSHIP (LLP)

This circular is issued for the information and guidance of the general public, taxpayers and tax practitioners on the tax obligations of Limited Liability Partnership under the provisions of the relevant tax laws.

1.0 Introduction:

This circular is issued to provide guidance on the taxation of Limited Liability Partnerships (LLP) as defined under the Companies and Allied Matters Act 2020 (as amended), and also clarifies the application of the provisions of the Companies Income Tax Act (CITA) Cap. C21 LFN 2004 (as amended), Personal Income Tax Act (PITA) Cap.P8 LFN 2004 (as amended), Capital Gains Tax Act (CGTA) Cap. C1 LFN 2004 (as amended), Stamp Duties Act Cap.S8 LFN 2004 (as amended) and the Value Added Tax (VAT) Act Cap.V1 LFN 2004 (as amended).

2.0 Definition of Terms

• **Limited Liability Partnership:**

LLP is a body corporate registered under part C of CAMA. The Companies and Allied Matters Act 2020 (as amended) defines Limited Liability Partnership under Section 746 (1), as “a body corporate formed and incorporated under this Act and is a legal entity separate from the partners”.

• **Partner:**

Section 747 of CAMA 2020 (as amended) provides “Any individual or body corporate may be a partner in a limited liability partnership provided that an individual shall not be capable of becoming a partner of a limited liability partnership, if he is—

- (a) of unsound mind and has been so found by a court in Nigeria or elsewhere;
- (b) an undischarged bankrupt.

- **Company:**

Section 105 of the CITA, defines "a company as any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere".

3.0 Tax Obligation

The legal basis for the taxation of LLPs, other obligations and exemptions are specified under the relevant tax legislation as stated below:

3.1 Company Income Tax

Section 9 of the **Companies Income Tax Act** provides that, *"Subject to the provisions of this Act, tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria that are not subject to tax under the Capital Gains Tax Act, Petroleum Profits Tax Act and Personal Income Tax Act, such profits shall include -..."*

This implies that all companies and corporate bodies (including Limited Liability Partnerships (LLP)) are statutorily required to pay income tax on profits accrued in, derived from, brought into or received in Nigeria for each year of assessment. Profits that are taxable under CGTA, PPTA or PITA are excluded from tax under the provisions of CITA.

Furthermore, all companies and corporate bodies (including LLP) whose yearly turnover falls below the 25-million-naira threshold are exempt from payment of companies' income tax pursuant to section 23(1) (n) of CITA as amended.

3.2.2 Obligation to deduct Withholding Tax (WHT)

LLPs are required to deduct withholding tax (WHT) on dividends, interest, rent, royalties, fees and payments on qualifying transactions made to suppliers, service providers or contractors, and remit the WHT so deducted to the relevant tax authorities in the currency of transaction.

Pursuant to the provision of Section 9 (3) of CITA LFN 2004 as amended, any "profits distributed" by any company (including LLPs) to its "Partners" is deemed as "**dividend**". LLP being a corporate body is required to deduct withholding tax from any such "distribution" or "share of profits" and remit to the relevant tax authority in the currency of transaction.

Accordingly, the tax so deducted from the "Partners" when remitted to the relevant tax authority becomes the final tax on the income in the hands of the recipient.

3.2.3. National Agency for Science and Engineering Infrastructure Levy

The NASENI Act provides for the imposition of a levy on specific commercial companies and firms in Nigeria. **Section 20 (2) (b) NASENI Act**, provides as follows:

“(2) there shall be paid and credited to the Fund-

(b) levy on the profit before tax of commercial companies and firms with turnover of N100,000,000 and above covering the banking, mobile telecommunications, ICT, aviation, maritime, oil and gas sectors which shall be-

- i) at the rate of 0.25% of profit before tax
- ii) collected by the Federal Inland Revenue Service (FIRS), and
- iii) credited to the account of the Agency.”

Therefore, where an LLP operates in any of the sectors stated above and its turnover is ₦100,000,000 and above, NASENI levy shall apply at the rate of 0.25% of its profit before tax.

3.2.4 Nigeria Police Trust Fund Levy

Section 4(1) (b) of the Nigeria Police Trust Fund (Establishment) Act 2019, provides that:

4(1) (b) “The Trust Fund shall consist of a levy of 0.005% of the net profit of companies operating business in Nigeria.”

This implies that pursuant to Section 4(1) (b) of the NPTF Act, all companies and corporate bodies including LLP’s that carry on businesses in Nigeria are liable to pay NPTF levy at the rate of 0.005% on their net profit.

3.2.4 Tertiary Education Tax

Section 1(2) of the Tertiary Education Trust Fund Act 2011 (as amended) provides that TET be charged at 3% of the assessable profit of a company registered in Nigeria, other than small companies as defined under the Companies Income Tax Act.

As such, LLP (having gross turnover of ₦25million or more) are liable Tertiary Education Tax at 3%.

4.0 Value Added Tax (VAT)

Section 2 of Value Added Tax Act (VATA), Cap V1, LFN 2004 (as amended) states: *“The tax shall be charged and payable on all supplies of goods and services in Nigeria other than those listed in the First Schedule to this Act”*

Section 46 VATA, defines a **“taxable person”** to include an individual or body of Individuals, family, corporations sole, trustee, executor or a person who

carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or a person or agency of Government acting in that capacity”

The above provision implies that VAT is chargeable upon the consumption of taxable goods and services, except those listed in the First Schedule to the VAT Act.

LLP that makes taxable supplies and the value of such supply either singular or cumulative in a calendar year is more than 25 million is required to register for the tax, charge VAT on its invoices and file returns on or before the 21st day of every month in which the threshold is achieved.

5.0 Personal Income Tax Act

LLP is a body corporate formed and incorporated as a legal entity separate from its partners or promoters.

The profit of the LLP for each year of assessment is subject to Company Income Tax. However, any distribution or share of profits to the partners, promoters after tax, is deemed to be dividend in the hands of the partners.

In addition, any income or profit from any other source, trade or business earned by the partners other than income or profit from the LLP shall be taxed in the hands of the partners in line with the provisions of Personal Income Tax Act, Cap P8, LFN 2004 as amended

6.0 Capital Gains Tax (CGT)

Capital Gains Tax (CGT) is a tax levied on the gains on the disposal of property or an investment, in accordance with the provisions of the Capital Gains Tax Act (CGTA), Cap. C1 LFN 2004 (as amended).

All chargeable gain arising from the disposal of assets of LLP, whether the assets is situated in Nigeria or not, are subject to **CGT at the rate of 10%**. However, CGT shall not apply when assets specifically exempted by the provisions of CGTA are disposed.

7.0 Stamp Duties

Stamp duties are paid either at a fixed rate or ad valorem rate on written and electronic documents or instruments relating to transactions in Nigeria except where such instruments or documents are listed as exempt in the Schedule to the SDA.

Where LLP executes a chargeable instrument, the party paying the consideration usually pays the duty, and where this party does not pay, the duty is borne by whoever seeks to rely on the instrument/agreement in judicial proceedings.

The Federal Inland Revenue Service is the competent authority to collect duties upon instruments relating to transactions or matters executed between corporate bodies or between a corporate body and an individual, group or body of individuals. The relevant State Tax Authorities are responsible for the collection of stamp duties in respect of instruments executed between individuals.

8.0 Other Statutory Obligations of LLP

8.1.1 Filing of Returns

In line with **Section 55(1) of CITA**, it is mandatory for every company including body corporate, whether they are liable to pay tax or not in any year of assessment to file tax returns every year and such return shall contain:

- i) The audited accounts, tax and capital allowances computations and a true and correct statement in writing containing the amounts of its profits from each and every source computed in accordance with the provisions of CITA;
- ii) a duly completed self-assessment form as may be prescribed by the Service, from time to time, attested to by a director or secretary of the company and such attestation shall contain a declaration that it contains a true and correct statement of the amount of its profits computed in respect of all sources in accordance with this Act and any rule made and that the particulars given in such return are true and complete; and
- iii) evidence of payment of the whole or part of the tax due into a bank designated for the collection of the tax.
- iv) The period for filing returns shall be as stipulated in the relevant tax laws.

8.1.2 Other Obligations

In addition to its obligation to file tax returns to FIRS pursuant to the provisions of section 55 of CITA, LFN 2004 as amended, the LLPs are required to:

- 1) Maintain proper books of accounts;
- 2) Maintain accurate record of its partners and employees;
- 3) File Capital Gains Tax returns bi-annually in line with the provisions of Section 2(4) of CGTA, The CGT returns shall be filed with the relevant tax authority accordingly;
- 4) Deduct PAYE at source from salaries and other emoluments of employees, directors, partners, officers, etc. and remit same to the relevant tax authorities in the currency of payment of the emoluments.

Failure to comply with the above requirements will attract appropriate penalties under the extant laws.

9.0 Amendment or Revision of the Circular

The Service may, at any time, withdraw or replace this Circular or publish an amended or updated version.

10.0 Enquiries

Any request for further information or clarifications on this Information Circular should be directed to the:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House,
15, Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department,
Federal Inland Revenue Service,
No 26, Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Email: tpld@firs.gov.ng