



FEDERAL INLAND REVENUE SERVICE

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INFORMATION CIRCULAR

NO: 2020/07

Publication Date: 29th April 2020

Subject: CIRCULAR ON TAX IMPLICATIONS OF OPERATION OF REAL ESTATE INVESTMENT COMPANIES ('REIC') IN NIGERIA

This circular is issued for the information and guidance of the general public, taxpayers and tax practitioners in line with the provisions of the relevant tax laws. This instant circular amends, updates or replaces contents of any circular, notice or other publication previously issued by the Service that is inconsistent with its contents to the extent of such inconsistency.

1.0 Introduction

The objective of this Information Circular is to provide clarifications on the tax treatment of Real Estate Investment Companies (REIC), which is approved or regulated by the Securities and Exchange Commission (SEC) under the relevant provisions on Real Estate Investment Scheme ('REIS'). Specifically, this Information Circular provides clarifications on the application of Sections 9, 19, 23, 24 and 80 of the Companies Income Tax Act (CITA) Cap. C21 LFN 2004 (as amended).

2.0 Relevant Regulatory Provisions

The regulation of REIS in the Nigerian capital markets is pursuant to the provisions of the Investment and Securities Act of 2007, the Securities and Exchange Commission Rules 2017 (as may be amended from time to time) and other extant laws and regulations.

3.0 Interpretation

Section 105 of CITA defines a "Real Estate Investment Company" (REIC) as a Company duly approved by the Securities and Exchange Commission to operate as a real estate investment scheme in Nigeria.

In this Information Circular:

“Real Estate Investment Schemes” (REIS) includes a company, trust or other such corporate structures approved and regulated by the Securities and

Exchange Commission, which is primarily engaged in and invests in income generating real estate asset or real estate related asset and is expected to distribute not less than 75% of its income within 12 months of receipt of the income.

“Real estate” for the purposes of this circular, means income generating property consisting of land or building. It also includes special purpose vehicle (SPV) holding such income generating lands and buildings.

4.0 Nature of Business

REIS are investment vehicles which pool funds from investors comprising individuals, companies, pension funds, associations etc. for investments in real estate as an asset class. REIS are usually established to acquire, develop and hold portfolios of real estate assets, and do not generally hold single assets. While some REIS focus their investment specifically according to geographic location, others are structured to invest in specific property types. They primarily engaged in and invest in income generating real estate asset or real estate related asset.

5.0 Income of REIC

Income of a REIC may be classified into four:

1. Rental Income
2. Dividend from another REIC
3. Gains from disposal of assets
4. Others (fees and other income not related to REIS)

6.0 Taxation of the Income of REIC

6.1 Fees and Other Income

There are no tax exemptions or concessions applicable to gains, fees and other income of REIC other than dividend or rental income under a REIS. Such items of income are taxable in accordance with the provisions of the relevant laws.

6.2 Dividend and Rental Income of REIC Earned under a REIS

The following provisions of CITA shall apply to dividend and rental income of REIC earned under a REIS.

6.2.1 Section 19 of CITA

Distributions of rental and dividend income made by a REIC to its shareholders under a REIS are exempt from the application of Section 19 of CITA. As such, where a REIC redistributes the rental or dividend income to its shareholders under a REIS, the redistributed income shall not constitute dividend for the purposes of Section 19 of CITA.

Consequently, rental and dividend income redistributed to shareholders would be backed out from the total dividend paid before arriving at the net amount of dividend that is relevant for the purposes of Section 19 of CITA.

It should be noted however that for a dividend paid out by a REIC to be considered a redistribution under a REIS, the redistribution to shareholders must not be less than 75% of the rental or dividend income, and such redistribution must be done not later than 12 months after the end of the financial year in which the rental or dividend income was received by the REIC.

NOTE:

Where the two conditions above are not met, the redistribution will be considered as part of dividend paid out for the purposes of Section 19.

6.2.2 Section 23 of CITA

Section 23(1)(s) of CITA exempts the rental or dividend income received by a REIC under a REIS from further tax in the hand of the Company. That is, the gross amount of rental income and dividend received by a REIC will be treated as a non-taxable income, because the amount is deemed received on behalf of its shareholders. Where such income is already included in the profits of the company, it would be deducted in computing the assessable profits of the company.

However, in order to qualify for this exemption, the REIC must fulfill the following two conditions:

1. not less than 75% of such rental or dividend income received must have been redistributed as dividend to the shareholders; and
2. such redistribution is done not later than 12 months after the end of the financial year in which the rental or dividend income was received. For example, if a REIC receives a rental or dividend income during its financial year 1st July 2019 to 30th June 2020, that income must be distributed to the shareholders not later than 30th June 2021.

NOTE:

Notwithstanding that a company has met the condition to qualify for exemption as enumerated above, any undistributed rental or dividend income is chargeable to tax.

6.2.3 Section 24 of CITA

In accordance with Section 24(1)(k) of CITA, dividends or mandatory distributions made by the REIC to its shareholders under REIS is an allowable deduction.

Note that the rental or dividend income received by a REIC is exempt from tax under Section 23(1)(s) of CITA. As such, in line with section 27(1)(h), the following shall not be allowed as deduction in computing the company's assessable profits:

- i. any dividend or mandatory distribution made by the REIC to its shareholders, being an expense relating to an exempt income; and
- ii. any other expense of the REIC incurred for the purposes of earning exempt income.

However, where the conditions that will allow a REIC to enjoy the tax exemption provided in Section 23(1)(s) of the Act is not met, rental or dividend income received by the REIC will constitute a taxable income under Section 9 of the Act. Consequently, all expenses incurred for the purposes of earning the rental and dividend income, including dividends or mandatory distributions made by the REIC to its shareholders, under a REIS shall be allowed.

6.2.4 Section 80 of CITA

Any distribution or dividend payment made to a REIC pursuant to a REIS shall not be subject to deduction of WHT under Section 80 of CITA. Consequently, such distribution or dividend payment shall not constitute "franked investment income". However, where such distribution or dividend payment, to a REIC, is not under a REIS, such payment shall be subject to WHT as appropriate.

6.2.5 Section 80 (5) & (6) of CITA

A REIC making a distribution or dividend payment to its shareholders shall withhold tax at the rate of 10% and remit the amount so deducted to the relevant tax authorities, unless such shareholder is a REIC under a REIS.

7.0 Amendment or Revision of the Circular

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

8.0 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, No 20 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
Revenue House, No 15 Sokode Crescent,
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