



LISTING REQUIREMENTS FOR ENTITIES ENTITLED TO TAX DEDUCTIBLE DONATIONS

For the purpose of ascertaining assessable profits of a company for tax

purposes in Nigeria there is allowed deductions of donations made by such a company to certain entities. These entities have been defined under **Section 25 (5) of the Companies Income Tax Act CAP C21, LFN 2004 (as amended) (CITA)** as Public funds, statutory bodies and institutions, ecclesiastical, charitable, benevolent, educational and scientific institutions established in Nigeria which are specified in the fifth schedule to CITA. The fifth schedule to CITA contains a list of entities to which tax donations may be made. Therefore, only donations made to entities listed in the fifth schedule to CITA will be tax deductible with the exception of funds set up by federal or state government or any agency, ministry or department of the federal government in respect of any pandemic, natural disaster or other exigency of a similar kind (See **S. 25 (8) of CITA**).

Section 25 (6) of CITA goes on to provide that the Minister for finance may by Order in the Federal Gazette amend the fifth schedule to CITA in any manner whatsoever. The exercise of this power by the Minister for finance is subject to the proviso that no public fund, body or institution will be added to the fifth schedule

to CITA unless such fund is a public fund established in Nigeria, such body or institution is a statutory body or institution, or is a body or institution of a public character, established in Nigeria. The difference between the entities listed in the fifth schedule and the exceptions under section 25 (8) of CITA are that the Funds set up under Section 25 (8) of CITA are set up by federal or state governments or Federal government agencies, department or ministries for emergencies of the kind of a pandemic or similar disaster or exigency that do not present enough time for the process required to amend the fifth schedule to the CITA.

Further to the power of the Minister for finance to amend the fifth schedule to CITA, the Federal Inland Revenue Service (FIRS) in pursuance of its functions to make rules and regulations in administration of CITA under **Section 61 of the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSEA) and the first schedule to the FIRSEA** issued the **Requirements for Funds, Bodies or Institutions (under the fifth Schedule to CITA) Regulations No. 116 of 2011** (Regulations). The regulations set out the eligibility criteria for funds, bodies and institutions to qualify to receive tax deductible donations. The FIRS also acts as the agency ensuring compliance with the Minister's directives pursuant to the Minister's powers under the FIRSEA and other tax legislations in Nigeria (**See Section 60 of the FIRSEA**).

FIRS INFORMATION CIRCULAR NO: 2021/02

The FIRS has now issued an informational circular known as Circular No: 2021/02 published on the 31st of March 2021 and titled '**REQUIREMENTS FOR FUNDS, BODIES OR INSTITUTIONS FOR LISTING UNDER THE 5TH SCHEDULE TO THE COMPANIES INCOME TAX ACT, CAP C21, LFN 2004**' (FIRS Circular) to provide a detailed procedure for how funds, bodies and institutions (entities) may be listed under the fifth schedule to CITA pursuant to the provisions of section 25 of CITA and the Requirements for Funds, Bodies or Institutions (under the fifth schedule to CITA) Regulations 2011. The objective of this Article shall be to discuss the contents of the circular.

GENERAL CRITERIA FOR LISTING

It has already been shown the type of entities listed under the fifth schedule to CITA. As earlier mentioned, according to **Section 25 (6) of CITA** an amendment of the fifth schedule shall only cover such entities that must be public funds established in Nigeria, statutory body or institutions or bodies and institutions that are of a public character established in Nigeria.

Section 105 of CITA defines public character with respect to any organisation or institution to mean that such organisation or institution: is registered with any relevant law in Nigeria; and does not distribute or share its profit in any manner to members or promoters.

The FIRS circular clarifies further that for an organisation or institution to be regarded as having a public character apart from the criteria listed in section 105 of CITA, its income shall be wholly used for the objects of the organisation or institution in the interest of the public. Noting further that: distribution of assets, whether in cash or in kind e.g. gifting a vehicle or any asset for the personal use of the promoter or members shall be construed as distribution of profit. Any organisation or institution that engages in such practice would be deemed not to be of public character and therefore would not be listed under the 5th schedule to CITA and be treated like a regular business outfit for the purposes of tax.

LISTING REQUIREMENTS FOR APPROVAL BY THE FIRS

The requirements for an application to be listed under the fifth schedule to CITA are:

1. Application made on the Application Form for listing under the fifth Schedule. The form is procured from the FIRS website and submitted with the applicable non-refundable fee.
2. The Application is completed in accordance with the checklist set out in schedule 1 to the Regulations. The following documents and information shall accompany the Application:

- a) Certified True Copy (CTC) of Certificate of Registration (incorporation);
- b) An application letter clearly stating what the company is applying for, relevant law and indicate whether or not it has commenced operation;
- c) Constitution/Memorandum and Articles of Association;
- d) Names, addresses and telephone numbers of the members of the Board of Trustees/Directors of the company/association;
- e) Evidence of payment of Personal Income Tax of the organisation;
- f) Tax Identification Number (TIN) of the organisation if employees are up to five (5);
- g) A statement of the nature of operation of the company/association;
- h) Registered address and principal place of business;
- i) Financial Statements from inception of operation;
- j) Details of previous activities before current registration and affiliated companies;
- k) Record of performance in corporate social responsibility.

APPROVAL PROCEDURE

All listings under the fifth schedule to CITA are made by Order of the Minister for finance subject to a recommendation by the FIRS. The FIRS screens and approves or denies any application for listing under the fifth schedule to CITA in the following manner:

1. The application and the supporting documents shall be reviewed to determine if the entity meets the requirements set out in the relevant regulations and laws.
2. Where the application is granted, the FIRS shall issue a Tax Deductible Certificate to that effect and notify the Minister for finance in accordance with the relevant regulations.

3. Where the application is denied, the FIRS shall notify the applicant of such denial within 30 (thirty) working days.
4. The Minister of finance may by Order in a Federal Gazette amend the fifth schedule to CITA to list such entity under the Schedule.

TAX DEDUCTIBLE CERTIFICATE

1. A Tax Deductible Certificate (Certificate) issued by the FIRS upon the grant of an application shall be valid for 3 (three) years and renewable on expiration for periods of 3 (three) years at a time upon satisfactory performance and compliance with the relevant laws and regulations. Some of such laws and regulations include the Companies and Allied Matters Act 2020, the Personal Income Tax Act P8 LFN, 2004 (as amended) and the CITA and the relevant regulations made thereunder.
2. Any entity issued with the Certificate shall file returns in compliance with tax laws such as the CITA. Personal Income Tax Act CAP P8, LFN, 2004 (as amended) and regulations issued thereunder.
3. The Certificate may be revoked and deduction of donations may be refused or an entity may be delisted from the fifth schedule to CITA where such entity no longer meets the requirements for which the Certificate was granted, notwithstanding that the tenure of the Certificate is still subsisting at that time.
4. Where a Tax Deductible Certificate is revoked or deductions are disallowed, the FIRS shall notify the Minister for Finance within 30 (thirty) days of such decision and give reasons for the action.
5. An expired Tax Deductible Certificate is renewable upon payment of a prescribed non-refundable fee provided the entity meets with requirements of the law and regulations. Documents required for renewal include:
 - a) Tax Clearance Certificate (TCC);
 - b) Current Financial Statement;

- c) Compliance report of activities covering the expired period and other evidence that such activities are carried out;
- d) Evidence of payment of the non-refundable renewal fee; and
- e) Copy of the expired Tax Deductible Certificate.

CONCLUSION

Any private organisation that meets the eligibility criteria under section 25 (5) and 105 of CITA may apply to be listed under the fifth schedule to CITA. Registration of such entity, under section 105 of CITA, with any relevant law in Nigeria shall include such laws as the Companies and Allied Matters Act in Nigeria 2020. Suffice it to say that any listing of an entity under the fifth schedule to CITA entitles such entity to receive tax deductible donations and no deduction of donations made to such entity may be disallowed except such an entity becomes delisted from the fifth schedule to CITA by an Order of the Minister for finance in Federal Gazette.

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