

FIRS Finance Act Circular Real Estate Investment Companies ('REICs')

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Background

The Federal Inland Revenue Services (FIRS) circular on the taxation of Real Estate Investment Companies (REICs) is further to the recent amendments made by the Finance Act (FA), 2019 to the Companies Income Tax Act (CITA).

We have highlighted and analysed key matters from the Circular below.

Highlights

Definitions

The FA 2019 defines a REIC as a Company duly approved by the Securities and Exchange Commission (SEC) to operate a Real Estate Investment Scheme (REIS) in Nigeria. The Circular further defines 2 key terms:

- 1) REIS:** this includes a company, trust or other such corporate structures approved and regulated by the SEC, which is primarily engaged in and invests in income generating real estate assets or real estate related assets and is expected to distribute not less than 75% of its income within 12 months of receipt of the income; and
- 2) Real Estate:** means income generating property consisting of land or building including a special purpose vehicle (SPV) holding such income generating lands and buildings.

Companies Income Tax (CIT)

The Circular clarifies that:

- 1) Rental or dividend income earned by a REIC will be exempt from CIT if 2 conditions are met:
 - a) At least 75% of the income is distributed; and
 - b) Such distribution is made within 12 months after the end of the financial year in which the income was earned.

Any undistributed rental or dividend income would be chargeable to tax.

- 2) Income earned by a REIC other than dividends or rental income from a REIS will be taxable in accordance with the provisions of relevant laws.
- 3) Expenses incurred to generate tax exempt dividend or rental income would not be allowable.

Excess Dividends Tax (EDT)

Distributions by REICs will not be subject to EDT to the extent that the distributions meet the prescribed exemption criteria, i.e. distribution of at least 75% of the rental or dividend income within 12 months after the relevant accounting period.

Withholding Tax (WHT)

WHT will not apply on dividends and other distributions to REICs.

Therefore, such dividends will not be Franked Investment Income (FII) in the hands of the REICs. However, WHT will apply on distributions by a REIC to its shareholders.

Takeaway

The FIRS has provided its views on CIT in relation to REICs. The circular is silent on whether a REIC will be exempted from Tertiary Education Tax (TET). It is expected that the exemption granted to eligible rental and dividend income of a REIC would extend to TET as the dividend and rental income would be excluded from assessable profits.

The FA exempts "distribution or dividend payments" to a REIC from WHT. There is no specific WHT exemption for rental income. Therefore, it is expected that rental income earned by a REIC will be subject to WHT where the payer is authorised to deduct WHT.

The WHT exemption on dividends and other distributions only applies on payments to REICs, it does not apply when the REIC distributes dividends to its shareholders. This ensures that WHT is deducted only once as legally applicable to other companies.

However, the WHT exemption can be a disadvantage to a REIC if it does not fulfil the conditions for CIT exemption on its dividend income. This is because the undistributed income will be taxed at 30%, since it is not franked investment income. This is unlike other companies which are not taxed on their franked dividend income.

Subjecting undistributed dividend and rental income to CIT is not in line with global best practice. Subsequent amendments to the law should exempt all dividends and rental income earned by a REIC where the exemption criteria are met.

For a deeper discussion, please contact any member of our Tax team below or your usual contact within PwC Nigeria:

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