



UUBO COVID-19 RESOURCE HUB:



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DONATIONS BY NIGERIAN COMPANIES TO THE GOVERNMENT TO COMBAT THE COVID-19 PANDEMIC: ARE THEY TAX DEDUCTIBLE EXPENSES?

Introduction

In a bid to support the Nigerian government in the fight against the spread of the coronavirus disease 2019 (“COVID-19”) in the country, several corporate organisations and well-meaning individuals have made charitable donations (in cash and kind) to the federal and state governments. As at Friday, 17th April 2020, monetary donations to the Private Sector Coalition Against COVID-19 (“CACOVID”) Relief Fund domiciled at the Central Bank of Nigeria stood at over NGN25 billion.

Recognising the support by corporate organisations to the Nigerian government, and in a bid to encourage others to support the government’s efforts, the Minister of Finance, Budget and National Planning, Mrs Zainab Ahmed (the “Minister”) issued a press statement on Monday, 6th April 2020 stating that she would soon issue Ministerial Orders (“Orders”) to ensure that donations made by companies to support the government’s efforts to curb the spread of the COVID-19 pandemic are treated as tax deductible expenses.




Current law on tax deductible donations

Generally, donations made by corporate organisations in Nigeria must meet certain criteria to be tax deductible. This is by virtue of section 25 of the Companies Income Tax Act 2004 (as amended) (“CITA”) which provides donations made to public funds, bodies and institutions established in Nigeria which are set out in the 5th Schedule to the CITA will be tax deductible expenses. That is, for a donation to be a tax deductible expense, it must (a) be made out of the profits of the company; (b) not be an expenditure of a capital nature; and (c) be made to any of the entities set out in the 5th Schedule to the CITA.

The schedule contains a list of 42 entities which include any university teaching hospital, any hospital owned by a state government or the Federal Government of Nigeria (“FGN”), the National Council for Medical Research and “any public fund established or approved by the Federal Government or established by any of the State Governments in aid of or for the relief of drought or any national disaster in any part of the Federation”. What this means, in relation to the COVID-19 pandemic, is that

only donations made by corporate organisations to university teaching hospitals, hospitals owned by a state government or the FGN and the National Council for Medical Research will be tax deductible expenses.

In addition, donations to (i) public funds either established or approved by the FGN; or (ii) public funds established by a State Government, in aid of or for the relief of the COVID-19 pandemic in Nigeria, COVID-19 is deemed to be a “national disaster”, will be tax deductible expenses. While President Muhamadu Buhari has only declared COVID-19 a “dangerous infectious disease” pursuant to the COVID-19 Regulations, 2020, one could argue that that presidential declaration and the lockdown of various parts of Nigeria should be sufficient basis to treat the COVID-19 pandemic as constituting a “national disaster” to come within section 25 and the 5th schedule to the CITA. Consequently, donations made by corporate organisations to any of the aforementioned public funds will qualify as tax deductible expenses.

Donations made to public

funds approved by a State Government or set up by a Local Government to fight the COVID-19 pandemic will not qualify as tax deductible expenses unless such funds are approved by the FGN. Furthermore, donations made by corporate organisations to statutory bodies and institutions and ecclesiastical, charitable, benevolent, educational or scientific institutions not specifically set out in the schedule, even in the fight against the spread of COVID-19 in the country, will not be tax deductible expenses unless such institutions are approved by the FGN.

The amount of donation to be allowed as a deductible expense for a company must not exceed 10% of the total profits of the company in the year of assessment when it was made (any excess will be disallowed) and must not be a deductible expense under any other provision of the CITA.

The above analysis shows that the existing provisions of the law are not sufficient to cover every donation made by corporate bodies in their bid to curb the spread of the COVID-19 pandemic.



Proposed Changes to the 5th Schedule of the CITA

The lacuna identified above in the 5th Schedule on the deductibility of donations made towards the relief of national disasters (such as COVID-19) is probably what the Minister seeks to correct through the proposed Orders with a view to ensuring that donations made by companies to support the government's efforts to curb the spread of COVID-19 are tax deductible expenses. Such Orders will be issued by the Minister pursuant to section 25(6) of the CITA which empowers the Minister to, by order published in the Federal Gazette, amend the 5th Schedule to include other funds or institutions of a public character.

We hope that the Orders are issued by the Minister soon as they will prescribe the criteria to be met by such donations in order to qualify as tax deductible expenses under section 25 of the CITA.

It appears that this proposal to make donations to the government to combat the COVID-19 pandemic tax deductible expenses

may not extend to similar donations made by individuals, as the Minister only mentions companies in the press statement without any pronouncement in relation to individuals.

It should also be noted that, unlike the CITA which contains provisions for the deductibility of donations made by corporate organisations, the Personal Income Tax Act 2004 (as amended) ("PITA") does not have corresponding tax deductibility provisions for donations made by individuals. Having said that, where an individual is able to show that his donation to fight the COVID-19 pandemic is wholly, reasonably, exclusively and necessarily incurred to generate his profits (for example, donations to fund research into a cure for COVID-19), such donations may be tax deductible.

It is hoped that the relevant provisions of the PITA will be amended to clearly state that donations made by well-meaning individuals to fight the COVID-19 pandemic are tax deductible expenses.



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