

An overview of the tax implications on transactions carried out within the Free Trade Zone

BUKOLA OYENEYIN AND
CHIOMA AMADI-AGORO.

Introduction

The Free Trade Zone [FTZ] Scheme was strategically established to facilitate local and international investments by stimulating export-oriented business activities within licensed free zones in Nigeria. The main idea behind the FTZ creation is to ease cross-border trade within a region by removing imposed duties and customs regulations, minimizing labour cost and tax-related expenditures.

The Legal Framework

Following the enactment of the Nigeria Export Processing Zones Act 63, of 1992, LFN 2004 [NEPZ Act], the Nigerian Export Processing Zones Authority [the Authority] under the supervision of the Federal Ministry of Industry, Trade & Investment, principally governs the FTZ, as well as the under-listed extant laws:

Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria [The Guidelines 2004]

Oil and Gas Export Free Zone Act CAPO5, LFN 2004 [OGEFZA] Company Income Tax Act CAP 21 [Amendment Act, No 11 of 2007]

Value Added Tax Act [Amend-

ment Act, No 12 of 2007]

To appreciate the Free Trade Zone Concept, it is important to distinguish between a FTZ and a Business Enterprise. FTZ is a carved geographic area in a country usually managed by a Zone Management Company,

wherein importation of specified articles [as provided under the Fourth Schedules, NEPZ Act] are traded without any impediments imposed by customs authorities and bureaucratic bottlenecks are narrowed to attract new businesses and foreign investments. On the

other hand, a Business Enterprise is one licensed by the Authority to manage or undertake an approved activity within the Zone.

Pursuant to Section 10 [1] of the NEPZ Act, the Authority may grant licence to an individual or a business concern for any approved activity in a Zone, with exemptions on all Federal, State and Government taxes, levies and rates. The application for grant of licence for a Business Enterprise are in three [3] categories, to wit:

Free Zone Developers License: License granted by the Authority for the establishment, operation and management of a Free Zone in Nigeria [e.g. Zone Management Company]

Free Zone Enterprise License: License granted by the Authority or the Zone Management for an Enterprise to undertake an approved activity within a Free Trade Zone in Nigeria

Export Processing Factory: License granted to an export-oriented manufacturing farm company having the capacity to export 75% of its product

Tax Procedures

The Authority and any approved Business Enterprise shall be entitled to import into a Zone, free of customs duty, any capital goods, consumer goods, raw materials, components or articles intended to be used for the purposes of and in connection with an approved activity, including any article for

capital goods, machinery/components, spare parts, raw materials and consumable items in the zones.

- 100% foreign ownership of investments and 100% repatriation of capital, profits and dividends.

- Waiver of all imports and export licenses and waiver on all expatriate quotas.

- One-stop approvals for permits, operating license and incorporation papers.

- Permission to sell 100% of goods in the domestic market; save raw material - customs shall apply).

- For prohibited items in the custom territory, free zone goods are allowed for sale provided such goods meet the requirement of up to 35% domestic value addition.

- Waiver on all expatriate quotas for companies operating in the zones.

Conclusively, the FTZ offers rent-free lands during the first six (6) months of construction (for government owned zones) and delays in the movement of goods and services are minimized. The FTZ concept is laudable and should be explored by business entities accordingly.

WIGWE & PARTNERS

Bukola Oyenehin is a Partner, and Chioma Amadi-Agoro is a Senior Associate at Wigwe & Partners

S/N	SUBJECT MATTER	TAX IMPLICATION	BASIS OF THE POSITION
1.	Purchases made by Approved Business Enterprises from Companies operating in the Customs Territory	No VAT No WHT	See Sections 11[2] and 12[9] of NEPZ Act which made rules for export from Nigeria applicable
2.	Sales made by Approved Business Enterprises to Companies operating in the Customs Territory	VAT payable by Purchaser NO WHT	See Sections 11[1] and 12[7] of NEPZ Act which made rules for export from Nigeria applicable
3.	Purchases/Sale made from Customs Territory by Unapproved Business Enterprises operating within the Zone.	VAT and WHT applicable	See Sections 8 and 18[1] of NEPZ Act which grants tax exemption, but did not cover unapproved Enterprises operating within the Zone
4.	Imported goods conveyed through other ports outside the Zones but consigned to the Zones	No VAT and No Withholding Tax provided the goods are escorted from the Port of Entry to the FTZ by Nigeria Customs Service	See Sections 12[1] and 18 of NEPZ Act.
5.	Submission of the Tax Returns to FIRS by approved Business Enterprise	Approved Business Enterprises to submit Tax Returns through the Free Zone Authority to FIRS	See Sections 40A of the Companies Income Tax Act
6.	Business activities of Head Offices or Branch offices of approved Business Enterprises located in Customs Territory dealing with approved Enterprises	All Relevant tax laws applicable except as related to purchases and sales covered above	See Sections 8 of the Companies Income Tax Act and other relevant tax laws
7.	Approved Business Enterprises having contract of Supplies or design with companies in the customs Territory	VAT and Withholding Tax applicable	See Sections 51A of the PPTA and Section 8 and 63 Companies Income Tax Act