MODULE 14

TAX PRACTICE

OUTLINES

- Tax audit and investigation.
- The role of the accountant: position as tax agent including duties to the client, the profession and the State.
- The requirements of revenue audit so as to facilitate or ensure client/employer Compliance.
- Nature and purpose of revenue enquiry.
- Revenue departments’ procedures.
- Ethical issues and implication of confidentiality, conflict of interest and disclosure of information on tax practice.
- Communication with clients tax authorities and other stakeholders.
- Case presentation before body of appeal commissioners.
- Decided cases of the Joint Tax Board.

Tax audit and investigation

- Tax audit and investigation involves the examination of financial statements, accounting and other relevant records of a taxable person. Such an examination will reveal whether the taxable person has complied with the provisions of the relevant tax laws. It will be possible to verify whether the taxes computed or deducted by the taxable person are complete and correct and whether such taxes have been paid to the tax authorities. Taxes underpaid will be recovered from the taxpayer. A tax auditor or investigator may not necessary be a Chartered Accountant or a member of any other recognized accountancy bodies. His responsibilities and authority are governed by the provisions of the relevant tax Acts.
- The Federal Inland Revenue Service (FIRS) is to employ Special Purpose Tax Officers to assist any relevant law enforcement agency in the investigation of any offence under FIRSA 2007. The FIRS has power to investigate or cause investigation to be conducted to ascertain any violation of any tax law. Where any investigation reveals the commission of any offence or an attempt to commit any offence, the FIRS shall undertake to prosecution of the offences.

An investigation may extent to the properties of any taxable person if it appears to the FIRS that the lifestyle of the person and extent of the properties re not justified by his source of income.

The role of the accountant: position as tax agent including duties to the client, the profession and the State.

The tax accountant position is accountable for the collection of tax-related information, reporting to taxation authorities at the federal, state, and local levels in a timely manner, and advising management on the Tax impact of various corporate strategies.

Principal Accountabilities:

1. Devise tax strategies to defer or eliminate tax payments
2. Create tax data collection systems
3. Negotiate with tax authorities over tax payment issues
4. Research the basis for tax positions to be taken
5. Advise management regarding the tax impact of corporate strategies

6. Advise management on the impact of new laws on tax liabilities.
7. Coordinate outsourced tax preparation work
8. Identify tax savings in prospective acquisition scenarios.

The requirements of revenue audit so as to facilitate or ensure client/employer Compliance.

- A Revenue audit is an examination of the information and figures shown by a taxpayer in their tax returns against those shown in their business records. Therefore, the auditor needs to see all books and records in relation to the tax for the period being audited and these should be available on the first day of the audit. It is normally concerned with the review of the taxpayer's return of income for one year, but where significant discrepancies arise during the audit, the Revenue may extend the examination for prior or subsequent years.

Objectives of Revenue Audits The primary objectives of Revenue audits are to promote voluntary compliance and monitor tax compliance. The function of a Revenue audit is to:

- Determine the accuracy of a return in relation to tax liability or claim for repayments;
- Identify any additional liabilities or other matter requiring adjustment;
- Collect tax, interest and penalties where applicable;
- Specify any remedial action required to put the taxpayer on a compliant footing for the future;
- Publish defaulter's name
- Where indicators of serious evasion occurs to consider prosecution.

- **Conduct of Revenue audit**

  At the initial meeting the auditor identifies himself/herself to the taxpayer and explain the purpose of the audit while giving an indication of its duration. At this meeting the inspector will outline his/her authority and draw the taxpayer's attention to the Charter of Rights. The auditor will invite a voluntary disclosure thus giving the taxpayer an opportunity to disclose all inaccuracies in the tax returns. The auditor will ask questions about book-keeping and accounts systems in operation to obtain information about the business and the taxpayer's lifestyle and financial commitments. He/she will then commence to examine the books and records of the business in order to verify that the figures in the tax return. During the course of the audit, the auditors will ask questions and may look for explanations to help on assessing the accuracy of your tax returns. The auditors may, in the course of the audit, inspect the business premises, manufacturing or other processes or items of machinery or stock. The auditor will inform the taxpayer that, in the event that discrepancies are discovered, he/she will seek a meeting to discuss the results of the audit and making a formal settlement offer for all outstanding liabilities.

Nature and purpose of revenue enquiry

Revenue make the point that an enquiry into a taxpayer's affairs is not the same as an audit, although from the taxpayer's point of view there is often little difference other than that he is denied the ability to make a voluntary disclosure prior to the commencement of the enquiry.

Depending on the nature of what is being enquired into, the matter may be more serious that an audit. If for example, Revenue have evidence of an undisclosed offshore account, or undisclosed sources of income, they may initiate an enquiry with a view to gathering evidence for prosecution. This may involve seizure of records, computers and documentation.

At the other end of the scale, Revenue may use their powers of enquiry simply to cross-check a (sales) transaction in one trader's records against the equivalent (purchases) transaction in the customer's records.

Revenue departments' procedures

- In Nigeria, a taxpayer (individual or corporate) that is aggrieved by the assessment by the Relevant Tax Authority ("RTA") may file an objection to the assessment issued by the RTA. The RTA will then amend or refuse to amend the assessment. Where the RTA refuses to amend the assessment, the RTA will then issue a Notice or Refusal to Amend ("NORA").

  Upon receiving the NORA, and within 30 days, the taxpayer may file an appeal with the Nigerian Tax Appeal Tribunal ("NTAT") under Section 59 the Nigerian Federal Inland

  Revenue Establishment Act (FIRSEA) No. 13 of 2007, Section 11 of the Fifth Schedule to the FIRSEA and Paragraph 5 of the Tax Appeal Tribunals (Establishment) Order of November 25 , 2009 (TAT Order)

  In Nigeria, a tax appeal must be filed before one of the Six (6) NTAT in the region closest to the taxpayer, and after pleadings are completed, a hearing follows.

The Nigerian Tax Appeal Tribunal (NTAT) was established in 2007, and, it replaced the former Body of Appeal Commissioners (BAC) and Value Added Tax (VAT) tribunals. See, section 59, FIRSEA. The NTAT courts are located in Abuja, Lagos, Ibadan, Benin, Enugu, Kaduna, Jos and Bauchi while the coordinating secretariat located in Abuja is the central coordinating office which renders support services and facilitates the operations of the respective zones.

Ethical issues and implication of confidentiality, conflict of interest and disclosure of information on tax practice

- The profession forbids federal tax practitioners from having conflicts of interest, defined as representation of one client that is directly adverse to that of another client, or representing a client in circumstances creating a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client, or a third person or by a personal interest of the practitioner.
- However, a practitioner may represent a client despite a conflict of interest if the practitioner reasonably believes he or she can provide competent and diligent representation to each affected client and if all affected clients waive the conflict by giving their written informed consent.

- The accountant should, at the outset of the common representation and as a part of the process of obtaining each client's informed consent, advise each client that the information will be shared and that the accountant will have to withdraw if one client decides that information material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the accountant to proceed with the representation when the clients have agreed, after being properly informed, that the accountant will keep certain information confidential. For example, the accountant may reasonably conclude that not disclosing one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and, with the informed consent of both clients, agree to keep that information confidential.
- If a conflict of interest may exist or may be likely to develop before an engagement is undertaken, the engagement must be declined unless the CPA obtains the informed consent of each client under the conditions set forth. To determine whether a conflict of interest may exist or is likely to develop, a CPA should adopt reasonable procedures appropriate for the size and type of firm and practice and determine the persons and issues involved.

Communication with clients tax authorities and other stakeholders

- Professional accountants in public practice must not disclose confidential information to a client even though the information is relevant to an engagement for, or would be beneficial to, that client.
- Where professional accountants in public practice have confidential information which affects an assurance report, or other report which requires a professional accountant to state their opinion, the professional accountant cannot provide an opinion which they already know, from whatever source, to be untrue. If the professional accountant in public practice is to continue the engagement, the professional accountant must resolve this disparity. In order to do so, the professional accountant is entitled to apply normal procedures and to make such enquiries in order to enable the professional accountant to obtain that same information but from another source. Under no circumstances, however, shall there be any disclosure of confidential information outside the firm.

Case presentation before body of appeal commissioners

- A company which disputes it s assessment may send a notice of objection in writing to the FIRS within thirty days from the date of service of the notice of assessment (or within such extended period as the FIRS may approve) stating the reasons for the objection. If the FIRS and the company are unable to reach an agreement and notice of the refusal to amend the assessment is issued by the FIRS, the company can appeal against the assessment to the Tax Appeal Tribunal within thirty days after the service of the notice of the refusal to amend the assessment.

- If the company or the FIRS is dissatisfied with the Tribunal decision, it may appeal against the decision on a point of law to the Federal High Court within thirty days after the date on which the decision was given. An appeal against the decision of the Federal High Court will go to the Court of Appeal.

Decided cases of the Joint Tax Board.

- Mama Cass Nig. Ltd & 2Ors vs. Federal Board of Inland Revenue and Attorney General of Lagos State.
- K. Chellarams & Sons (Nig) Ltd v. The Commissioner of Stamp Duties, Lagos State & Annor (1977) 8 CCHCJ 2543
- NPA V. Eyamba (2006) All FWLR
- Federal Inland Revenue Service v. Nigeria Bottling Company Plc (2011)
- Oando Supply and Trading Company Ltd v. FIRS (4TLRN) May, 2011

Review Questions

- Discuss the concept of Confidentiality and Conflict of Interest as it relates to dealings with clients and other stakeholders
- State the requirements of revenue audit and state the functions
- Discuss the role of the accountant: position as tax agent

References

- **Adejola, P. A** (2015): Revision Pack on Taxation for Professional, Conversion and Undergraduate Students, Arogbodo Press, Abuja.
- **CITN** Nigeria Tax Guide & Statutes, 2nd Edition, Volume 2, 2014.
- **Bassey U. O(**2013)**:** "Companies Taxation in Nigeria", the CIBN Press Ltd, Lagos .
- **Seyi Ojo** (2006): "Fundamental Principles of Nigerian Tax", Sagribra Tax Publications, Lagos 2003.