LAGOS STATE GOVERNMENT

PUBLIC NOTICE

TAX RELIEF ON VOLUNTARY PENSION CONTRIBUTIONS

The Lagos State internal Revenue Service (LIRS) is issuing this Public Notice to all employers, company owners or their representatives, employees and other members of the public.

Definition

Voluntary Pension Contributions are extra fund contributions In addition to the mandatory pension contribution made by an employee through his/her statutory pension scheme which allows an employee to save additional amounts for retirement. An employee can opt to make withdrawals, at any time, from such contribution which is a tax free benefit.

Legal basis

Section10 gives the necessary guidelines for the application of tax exempt granted for pension contribution and withdrawals.
Section10(1) of Pension Reform Act, 2014 (PRA) states that contribution to the pension scheme shall form part of tax deductible expenses in the computation of tax payable by an employer or employee under the relevant tax law.

Section16 of the PRA gives certain condition that must be adhered to before withdrawals from a Retirement Savings Account (RSA) can be tax deductible. These conditions includes:

1. An employee shall not be allowed to make withdrawal from his RSA before attaining the age of 50 years.

2. Where the employee retires, disengages on the required advice that the employee is no longer capable of carrying out the function of his office, due to total or permanent disability before the age of 50 years in accordance with the terms of his engagement.

3. An employee, who disengages or is disengaged from employment before the age of 50 years is unable to secure another employment within four (4) months, may make withdrawals from the RSA.

Compliance Requirements

ANY payments made by Pension Fund Administrators to individuals that do not meet the relevant conditions specified in Section16 of the PRA 2014 will be considered to fall outside the tax exemption granted in n Section 10(3) of the Act.

The LIRS will periodically audit withdrawals of voluntary pension contributions authorized by the respective PFAs and will be relying on the provisions of Section17 of PITA.

The LIRS will enforce the law with respect to recovery of any tax due which will include: applying interest and penalties on any resulting tax due on the employer under the PAYE scheme in line with Paragraph 8 of the Fourth Schedule of PITA.

The LIRS is also willing to defend its position with each taxpayer or employer through the available judicial process.

Reporting Obligation: On an annual basis, individuals claiming tax relief on voluntary pension contributions must submit alongside their income tax return, a copy of their RSA statements for the relevant tax year and any other period requested by the LIRS.

For further enquiries, please call **0700-CALL LIRS (0700 2255 5477)** or visit **www.lirs.gov.ng**

Thank You

Signed
Ayodele Subair
Executive Chairman
Lagos Internal Revenue Service

VOLUNTARY PENSION CONTRIBUTIONS

Definition

Voluntary Pension Contributions [VC] are extra fund contributions in addition to the mandatory pension contributions made by an employee through his/her employer pension scheme which allows an employee to save additional amounts. This is to provide additional pension for such an employee and is usually a tax-free lump sum benefits.

Legal Basis

Sections 10 of the Pension Reform Act (PRA) 2014 states the necessary guidelines for the application of tax exemption granted for pension contributions and withdrawals.

Below are the specific tax-exempt provisions under the section 10:

i. Notwithstanding the provisions of any other law, contributions to the scheme shall form part of tax deductible expenses in the computation of tax payable by an employer or employee under the relevant tax law.
ii. All interest, dividends, profits, investment and other income accruable to pension funds and assets under the PRA shall not be taxable.
iii. Any amount payable as a retirement benefit under this act shall not be taxable
iv. Without prejudice to the provisions of subsection (2) of this section, any income earned on any voluntary contribution made under section 4 (3) of this Act shall be subject to tax at the point of withdrawal where the withdrawal is made before the end of 5 years from the date the voluntary contribution was made.

The PRA grants a deduction when you make a contribution but does not give an exemption when you withdraw. It only gives an exemption at the point of withdrawal for retirement benefits and withdrawal of income earned on the voluntary contributions after 5 years. There is no exemption for withdrawal of voluntary pension contribution both in PITA and the PRA. Section 16 gives condition for withdrawal of retirement benefits that are tax exempt which has to do with either the employee attaining the age of 50, retiring before age 50, or being unemployed for up to 4 months.

Also, the PRA in Section 16 makes the following provisions to guide withdrawals from the employees' RSA:

1. An employee shall not be allowed to make withdrawal from his RSA before attaining the age of 50 years.

2. The exception to (1) above is where the employee retires, disengages on the required advice that the employee is no longer capable of carrying out the function of his office, due to total or permanent disability before the age of 50 years in accordance with the terms of his engagement.

3. An employee, who disengages or is disengaged from employment before the age of 50 years is unable to secure another employment within four (4) months, may make withdrawals from the RSA.

Based on the above, the Section 16 of the PRA compels the employee to adhere to certain conditions within the law before withdrawals made on their RSA can be termed to be tax exempt.

Objective

This explanatory note provides LIRS guidance with respect to claiming tax relief on voluntary pension contributions and to discourage abuse of the tax incentive based on the following:

i. Tax deduction cap for Voluntary Pension Contributions;

Lock-in Period for tax exempt payment of Voluntary Pension Contributions; and

Income earned on voluntary contributions

Observation

The Pension Reform Act 2014 does not specify a threshold for the amount that can be contributed by employees before the amount will qualify as tax free. However, a situation where an employee makes a voluntary contribution of a material portion of his salary in one month and withdraws almost the entire amount in the next month is clearly an abuse of the law and does not qualify as retirement benefit or a pension as envisaged in the Pension Reform Act., Section 16 of which states:

*"An employee shall not be entitled to make **ANY** withdrawal from his retirement savings account opened under Section 11(1) of this Act, before attaining the age 50."*

Such actions also clearly conflict with the provisions of the Personal Income Tax Act (PITA), Section 17 in relation to retirement benefits which states;

"Where a tax authority is of opinion that any disposition is not in fact given effect to, or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the tax authority may disregard the disposition or direct that such adjustments shall be made as respects the income of an individual, an executor or a trustee, as the tax authority considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction."

Paragraph 8 of PITA's Fourth Schedule also states that:

"Where in respect of a pension or provident fund any benefit is paid to an employee before the cessation of his employment with an employer, such benefit shall be deemed to be income derived by him from his employment on the date on which the benefit is paid."

The LIRS is not discouraging individuals from making voluntary contributions. It is happy to grant deductions for such contributions in line with the law. However, if they are withdrawn before the conditions in section 16 of the PRA is fulfilled, they will be taxed as such withdrawal have no exemption.

Compliance Requirements

1. On an annual basis, individual claiming tax relief on voluntary pension contributions must submit alongside their income tax return, a copy of their RSA (Retirement Savings Account) for the relevant tax year. Section 47(1)(c) of PITA gives the LIRS the authority to request for any document which it may be deemed necessary for the purpose of obtaining full information on the income of an individual. The LIRS will be able to track pension deductions made by the employee with the sole intention of reducing tax which constitutes an abuse from the RSA statement.
2. ANY payments made by Pension Fund Administrators to individuals that do not meet the relevant conditions specified in Section 16 of the PRA 2014 will be considered to fall outside the tax exemption granted in 10(3) of the Act.
3. The LIRS will periodically audit withdrawals of voluntary pension contributions authorized by the respective PFAs.

The LIRS will enforce the law with respect to recovery af any tax due which will include: applying interest and penalties on any resulting tax due on the employer under the PAYE scheme. Section 81(2) of PITA gives the LIRS the authority to recover tax on income paid to an employee from an employer. Tax on voluntary pension contributions made by an employee can therefore be recovered from the employer under PAYE. However, the LIRS is also open to recovering the tax directly from the employees through additional assessments raised to the individual if the employer can demonstrate that they did not encourage the abuse.

The LIRS is also willing to defend its position with each taxpayer or employer through the available judicial process.

Conclusion

All voluntary pension contributions withdrawn outside the three conditions in section 16 will be taxed because the LIRS has to be fair to all taxpayers. it will be unfair for the LIRS to allow the top earning employees to pay minimum tax because they can afford to spare one month earnings to fund the abuse of the scheme, resulting in their tax being at the same level as the lower earning taxpayers. The LIRS also has to be fair to employees who in their good conscience have decided not to abuse the scheme.

The above is without prejudice to the provisions of National Pension Commission's circular which prescribed additional conditions/requirements for Withdrawals from voluntary contributions. These are:

1] The timeframe for withdrawal from VC account shall be once every two years from the last approved withdrawal date. Subsequent Withdrawals shall be on the incremental contributions from the date of last withdrawal.

- For mandatory contributors, the amount remitted as VC shall be separated as follow:
  - 50% shall be treated as contingent and available for withdrawal within the stipulated timeframe of every two years. Taxes shall be deducted on income earned in accordance with Section 10(4) of the PRA 2014
  - The balance of 50% shall be fixed for pension and utilized at date of retirement to augment the contributor's retirement benefit.

2] Exempted/foreign contributors are also allowed to withdraw. once every two years and may withdraw all the funds in their VC account after two years of contribution. This is however subject to deduction of taxes on both income earned and principal amount when withdrawal is less than five years of contribution.

3] All tax deductions must be remitted to LIRS within 21 days after the end of the month of deduction. Failure by any PFA to comply will result in the imposition of appropriate sanctions.