



00172381-0001

4 August 2021

The Director
Tax Investigation Department
Federal Inland Revenue Service,
Revenue House, Sokode Crescent,
Wuse Zone 5, Abuja.



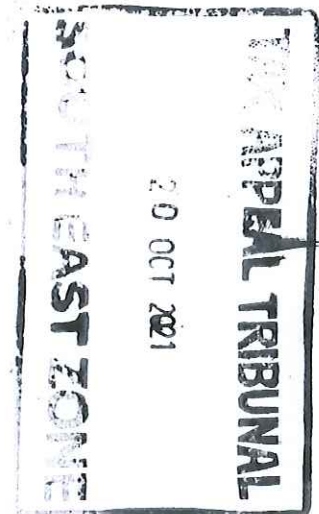
Attention: Garba Muazu

Dear Sir

EMENITE LIMITED
RE: TAX INVESTIGATION EXERCISE (2014-2019 ACCOUNTS)

We refer to your letter dated 4 June 2021 with reference number FIRS/TID/SD/00172381-0001/07 and notices of assessment detailed below

1. CIT assessment (2014) - LTO/AWKA/CIT-INV/040AD
2. CIT assessment (2017) - LTO/AWKA/CIT-INV/039AD
3. CIT assessment (2018) - LTO/AWKA/CIT-INV/038AD
4. CIT assessment (2019) - LTO/AWKA/CIT-INV/037AD
5. EDT assessment (2014) - LTO/AWKA/EDT-INV/046AD
6. EDT assessment (2015) - LTO/AWKA/EDT-INV/045AD
7. EDT assessment (2016) - LTO/AWKA/EDT-INV/044AD
8. EDT assessment (2017) - LTO/AWKA/EDT-INV/043AD
9. EDT assessment (2018) - LTO/AWKA/EDT-INV/042AD
10. EDT assessment (2019) - LTO/AWKA/EDT-INV/041AD
11. VAT assessment (2014) - LTO/AWKA/VAT-INV/058AD
12. VAT assessment (2015) - LTO/AWKA/VAT-INV/057AD
13. VAT assessment (2016) - LTO/AWKA/VAT-INV/056AD
14. VAT assessment (2017) - LTO/AWKA/VAT-INV/055AD
15. VAT assessment (2018) - LTO/AWKA/VAT-INV/054AD
16. VAT assessment (2019) - LTO/AWKA/VAT-INV/053AD
17. WHT assessment (2014) - LTO/AWKA/WHT-INV/052AD
18. WHT assessment (2015) - LTO/AWKA/WHT-INV/051AD
19. WHT assessment (2016) - LTO/AWKA/WHT-INV/050AD
20. WHT assessment (2017) - LTO/AWKA/WHT-INV/049AD
21. WHT assessment (2018) - LTO/AWKA/WHT-INV/048AD
22. WHT assessment (2019) - LTO/AWKA/WHT-INV/047AD



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The letter, along with a review report and notices of assessment, detailing the Federal Inland Revenue Service's (FIRS) position was received by Emenite Limited ("Emenite" or "the Company") on 6 July 2021 and has been referred to us for necessary action.

In the letter, the FIRS communicated its position in respect of the tax investigation carried out on Emenite and has issued notices of assessment for the additional tax liabilities arising from the tax investigation for 2014 – 2020 financial years (FY). We have summarised the alleged additional liabilities and also stated the Company's position below:

FY	2019	2018	2017	2016	2015	2014
Tax	N	N	N	N	N	N
CIT	767,523,428	882,425,163	835,951,558	-	-	20,946
TET	50,005,696	34,048,284	35,522,885	29,368,533	12,644,672	287,736
WHT	167,751,135	129,614,655	134,731,106	109,517,933	183,290,035	156,082,384
VAT	114,603,510	127,691,057	101,230,497	297,249,706	42,548,213	41,409,150
Total	1,099,883,769	1,173,779,159	1,107,436,046	436,136,172	238,482,920	197,800,216

Total		
Description	Amount per FIRS (N)	Amount per PwC (N)
CIT	2,485,921,095	-
TET	161,877,807	-
VAT	880,987,249	189,972,095
WHT	724,732,134	-
Total	4,253,518,285	189,972,095

We have reviewed the FIRS' position on the issues identified from the investigation and have provided our responses adopting the same numbering for ease of reference.

1.0 Companies Income Tax (CIT) and Tertiary Education Tax(TET)

1.1 Debit to Sales





The FIRS in its letter disallowed the net after-sale transport costs incurred by the Company on the basis that the Company did not substantiate these costs with documentary evidence. The Company has provided as **Appendix 1**, a schedule of these costs for each year considered and the requested support documents that tie to the schedule. On this basis, we ask that the FIRS update its position.

1.2 Additional Revenue (VAT form 002)

The FIRS identified and added back the total variance of ₦4,826,015,277 between the Company's turnover per financial accounts and per filed VAT form 002 returns for the period 2014 to 2019. We explained this at the reconciliation meeting where we provided evidence that the Company had not only incorrectly filed the VAT form 002 by recognising the "quantity of items sold" as revenue, but also recognised turnover inclusive of VAT for the period 2014 to 2017. Based on this it was agreed at our last reconciliation meeting, as recorded in paragraph 3 of the minutes, that the Company was expected to reconcile only the variance for 2018 and 2019 which we did in our last letter.

The FIRS also expressed its displeasure in its report concerning the Company's use of trial balance in reconciling the differences for the 2018 and 2019 years. The FIRS was also displeased that the Company had excluded "Other income" for which it had previously admitted to charging VAT during reconciliation. We believe the FIRS has misunderstood the reconciliation schedule we provided earlier. Given that the income on the filed VAT returns is higher than the turnover recorded by the Company in its financials, we simply reconciled the difference starting from the turnover per filed returns and taking out every income and expense (collected on behalf of third parties) for which VAT was charged but which did not form a part of the turnover in the financials. These include "Other income", "Sale of asset", "Sale of raw materials", "Transportation costs" etc. For example, the 2019 sale of asset figures of ₦16,190,476 can be directly seen in note 7 of the 2019 Financials. This shows that the Company had subjected all its income to income tax, and that the turnover in the VAT returns comprises not only Emenite's turnover but also "Other income" and third-party costs collected by Emenite but paid to these third parties.

Hence, we have once again provided the reconciliation schedule as **Appendix 2** and ask that the FIRS update its computation.

1.3 Other Operating Income

The FIRS stated in its letter that the Company did not completely account for other operating income and hence subjected the difference between the amounts per financial accounts and per trial balance (TB) to taxes. We have analysed the amounts subjected to taxes by the FIRS and clearly shown in **Appendix 3** how these amounts had been accounted for and taxed by the Company. The treatment of the other income for the respective years are explained below

- 2014 (₦7,290,663)

From our review of the FIRS workings, we observed that the FIRS identified a component (₦7,290,663) of the total other income (₦10,273,000) in the TB and is adding this component back again to the same total other income. The component income consists of sundry receipts (₦5,290,663) and loss on exchange (₦2,000,000) which relate to the sale of scrap (see note 8 of the financials). There is therefore no basis for subjecting these amounts to tax a second time.

- 2016 (₦4,984,456)

We clearly explained where the FIRS could locate this amount in our last letter. This amount relates to unrealised exchange income which the Company subjected to tax even though it did not have to. This amount is a part of the N40,518,742 recorded in note 9 of the 2016 financials, and we have once again submitted the breakdown in **Appendix 3a**.

- 2018 (N37,698,864)

This income was subjected to tax by the Company. This income can be found in **note 10** of the financial statements, was subjected to tax by the Company as can be seen from the profit before tax in the filed tax computation. See attached **Appendix 3b**.

- 2019 (N109,394,246)

The above amount selected by the FIRS is made up of CR (Devedore Duvido) (N38,135,518) and realised exchange gains (N71,258,728). Similar to previous comments, these two amounts have been taxed. See page 12 of the filed tax computation. This has been reattached as **Appendix 3c**.

1.4 Impairment

The FIRS disallowed the impairment expense on the basis that they were general provisions and not tax deductible. The Company agrees that the impairment provisions are not tax deductible and had already disallowed the actual expense for these years in its tax computation. The FIRS however is adding back the balance (comprising previous expenses and current expenses) and not the actual expense for each of these years. In doing this, the FIRS has picked a balance sheet item and added it back to the profit before tax e.g. FIRS added back the 2014FY opening balance of N33,640,000 (this balance relates to periods not covered by the Investigation) and the 2014FY closing balance N179,386,000 which comprises once again the N33,640,000 opening and the N145,746,000 charge for the year.

The correct treatment is to disallow the actual impairment charge (income statement expense) which the Company has done consistently, and not the balances as the FIRS has done in its workings which will result in double taxation. Please see the schedule attached as **Appendix 4** showing the total amounts that were added back by the Company. Note that the Company inadvertently added back more impairment expense (N363,158,570) than it should have (N23,621,199) and will be adjusting for this difference in subsequent years.

1.5 Impairment (Recovery from Tax)

The FIRS stated that the deduction taken by the Company was not allowed because the Company did not provide any evidence. All deductions taken can be traced to the notes in the financial statements for these periods. We have clearly explained this in **Appendix 4**. The deduction taken by the Company for impairment was estimated based on the same model for which the provisions were made. The impairment model simply estimates how much impairment provision the Company should recognise for each year. For some years a provision was estimated, for other years a reversal in order to arrive at an impairment balance. Since the FIRS agrees that the Company should disallow any impairment charge made, it is therefore reasonable that the Company should as well take a deduction for any reversal to the previous provisions made. Please see again **Appendix 4** for a breakdown of reversals/deductions made by the Company for this period.

1.6 Overstated cost of sales

The FIRS in its report accepted the Company's position on the 2018 reconciliation but stated that the 2019 cost of sales in the trial balance presented by the Company is different from that which was earlier presented. On this basis the FIRS has taken an approach in comparing these two sets of information and identified a variance of ₦753,081,662. This approach does not accurately depict the true cost of sales of the Company. As stated earlier in our reconciliation meetings, the Company's cost classification system is peculiar and has elements sitting under administrative, selling and distribution expenses. The Company has provided the exact amounts that were recognised as cost of sales for that year as well as the general ledgers containing these amounts. Please see **Appendix 5** for a reconciliation of the variances identified by the FIRS for the years 2014, 2016, 2017 and 2019.

1.7 Unsubstantiated Direct Costs - ₦1,668,392,870

In its review report shared with us, the FIRS stated that it was going to maintain its position on the basis that it could not trace the closing balances on the utilisation (balance sheet) accounts of the Heavy Maintenance equipments and because the Company did not provide invoices and other necessary documents issued by Eternit, a related party, for costs recognised in the books of Emenite.

With respect to the Heavy maintenance equipment, the FIRS will not see a closing balance as earlier stated as any excess provision is reversed subsequently and the utilisation account will be written down to nil while the provision account will be credited with the actual provision made during the year.

For the invoices from Eternit, these were provided in our last response. The invoice was part of the documents provided in our last response. We have decided to extract and reattach as **Appendix 6**, the relevant sections of the previous document for ease of reference. Thirteen (13) invoices have been provided as well as three schedules showing a list from which the invoices were selected.

1.9 Technical Know-How – Approval/Payment - ₦139,604,985

The FIRS disallowed this expense on the ground that the cost charged by the Company to its account is higher than the NOTAP approval the Company had received. We maintain our position in our previous letter that a NOTAP approval is not required by law in determining the deductibility of a technical know-how expense. The deductibility for such expense is based on it being wholly, reasonable, exclusively and necessarily incurred for the purposes of the business. The Finance Act 2019 has also stated that such expenses are deductible to the extent that they are consistent with the transfer pricing regulations.

The NOTAP approval is only required to make payments through the Central Bank of Nigeria or a licensed bank in Nigeria. This is emphasised in the 2019 decision of the Court of Appeal (COA) in the case between Stanbic IBTC Holding Plc v. the Financial Reporting Council of Nigeria (FRCN) & Anor.

1.10 Finance cost

The FIRS disallowed the finance cost expenses recorded in the books of the Company for want of evidence. We observed that the FIRS did not fully consider the documentary evidence we had shared previously. For instance, we had clearly shown that the 2018 interest expense of ₦37,629,000 comprises both euro-denominated debt (₦8,639,055) and dollar-denominated debt (₦28,989,767), but the FIRS recognised only 8,992,450 and ignored the other interest cost.

The 2014 interest expense comprises interest on intercompany loan (₦2,809,049) and interest on staff loan (₦2,221,000). The Company has added back the interest on staff loan for both 2014 and 2015



as can be seen in **Appendix 7** while it has taken a deduction for the interest on intercompany loan. The 2019 interest on lease liabilities (N4,270,134) which the FIRS disallowed in its computation had already been added back by the Company in its 2019 tax computation.

As stated in Section 24 (1)(a) of the Companies Income Tax Act (CITA), the Company is allowed to take a deduction for its interest expenses on debt borrowed and employed as capital in acquiring its profits. It is on this basis, that we have once again presented as **Appendix 8**, documents which clearly show a breakdown that ties to the financials for the years the FIRS adjusted these expenses.

We therefore ask that the FIRS adjust its computation accordingly.

2.0 Withholding Tax (WHT)

From our review of the report of the FIRS, we understand that the tax authority insists on recognising WHT on the expenses identified below for lack of support documents. We have addressed matter under the sub-headings below:

i. Addition to fixed assets/Spares - N7,890,065,000/N835,555,345

As stated in our previous responses, the acquisition of the fixed assets relates to purchases from vendors who made these sales in the ordinary course of their business and these expenses are exempt from WHT in line with the ruling of the Tax Appeal Tribunal in the case between "Tetra Pak West Africa Limited and the FIRS". However, the Company subjected construction services capitalised to WHT. We have provided sample invoices for these. See **Appendix 10a**

ii. Commercial charges - N1,463,364,000

As requested by the FIRS, please see attached **Appendix 10b** showing sample invoices of transactions classified as commercial charges.

iii. Training costs - N 26,442,000

Please see attached **Appendix 10c** showing sample invoices of training costs.

iv. Rent – N 130,674,000

We have provided as **Appendix 10d** sample invoices of rent paid to vendors, both incorporated and unincorporated entities. Please note that the FIRS cannot use the financial statements in analysing the WHT payable on rent as the information in the financials represent accrued expenses and not actual rent payments.

3.0 Value Added Tax (VAT)

The FIRS stated that the Company did not fully remit VAT and has recomputed the Company's VAT liability. We have reviewed the FIRS' computation and observed several issues which we have highlighted below.

- Undisclosed sales (VAT Return-Form 002)

As discussed under item 1.2, these amounts relate to errors made by the Company for 2014 to 2017 when completing its VAT returns form, turnovers collected by the Company on behalf of third-party vendors, and "other income" arising from the disposal of items.

- Other operating income not reported

The FIRS subjected another set of income - "Other operating income not reported" to VAT. Firstly, these incomes were actually reported in the tax returns as we have explained in item 1.3. Also, the breakdown of these items (which is at the disposal of the FIRS) consists of realised exchange gains, interest income on loans and deposits, unrealised exchange income, and proceeds from disposal of materials.

Clearly, only the proceeds from the disposal are liable to VAT and these were subjected to VAT by the Company.

- Additional revenue not subjected to VAT

The FIRS stated in its report that some sales presented in the "debit to sales" appendix from our last letter had not been subjected to VAT. In line with this, the FIRS subjected additional sales of ₦7,775,135,980 to VAT. We have analysed what the FIRS has done in the paragraphs below.

For the year 2019, the net revenue breakdown of ₦11,128,265,087 clearly shows a gross inflow of ₦11,894,750,299 and an outflow of ₦766,485,212 (monies collected on behalf of third-party vendors). The FIRS in its calculations subjected not only the net revenue of ₦11,128,265,087 but also an amount of ₦1,652,047,328 within the gross inflow. This cannot be correct as the FIRS is now taxing a total base of ₦12,780,312,415. See **Appendix 9** for an analysis of the duplication made by the FIRS.

For the years 2014 to 2018, the FIRS subjected the revenue which we clearly demonstrated was collected on behalf of third-parties, to VAT. We have attached as an appendix a sample of the invoice received from one of the vendors.

- Other income

We also reviewed the breakdown of the "Other income" which the FIRS also subjected to VAT. The 2019 income amount of ₦58,340,883 contains ₦38,135,518 which the FIRS has already included in the "Other operating income not reported". This is also the same situation the FIRS has adopted for 2014, where the "Other operating income not reported" is a component of "Other income".

4.0 Capital allowance

We agree with the FIRS that the Company does not have any capital allowance carried forward to the 2020 financial year. However, we do not agree with the capital allowances computed by the FIRS for the period under review. Please see Appendix 7 showing the Company's capital allowances for the period under review.



Conclusion

Based on the above explanations, we ask that the FIRS issue the Company with a revised assessment. We will be happy to have a final reconciliation meeting on these matters as we look forward to the speedy conclusion of this exercise.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kenneth Erikume'. The signature is stylized and includes a long horizontal stroke extending to the right.

Kenneth Erikume
Partner
Tax

Cc: The Head, Southern Division
Tax Investigation Department
Federal Inland Revenue Service
213 Woji Road GRA
Port Harcourt – Rivers State

Attention: Ime Ikpaisong/Enerson Johnson