

SYNOPSIS TAX INFORMATION

JURISDICTION – NIGERIA

SECTION 4 – TAX RESIDENCE

CORPORATIONS TAX RESIDENCE

Corporations operating businesses within the Nigerian tax jurisdiction are liable to pay tax in Nigeria; whether they are resident or non-resident in Nigeria.

Under Nigerian Tax Laws, a Resident or “Nigerian” Company is any corporation or company incorporated under Nigerian Law; while a Non-Resident or “Foreign” Company is defined as any company or corporation established under any law in force in any Territory or Country outside of Nigeria.

Whether a company is a Nigerian company or a non-resident company doing business in Nigeria is crucial in determining its tax obligations under Nigerian Law as the Nigerian Companies Income Tax Act (“CITA”) (as amended) charges a Thirty 30% Corporation Tax on all profits which **accrue in, are derived from, are brought into, or are received in Nigeria** in respect of any legitimate trade, enterprise or business by any company, whether resident in Nigeria or not.

The above tax principle therefore means that all income or profits of a resident or Nigerian company, whether earned in Nigeria or outside Nigeria, are liable to tax in Nigeria. Also, a non-resident company is liable to tax on its profits or income derived from or deemed to be derived from Nigeria, whether or not the foreign company has legal entities incorporated in Nigeria or it is exempted, by appropriate authority, from incorporating any legal entity in Nigeria.

NON-RESIDENT COMPANIES

The taxable income or profit of a non-resident or foreign company is its Nigeria-source income or profits; or income or profits attributable to its operations in Nigerian.

By Section 13 (2) of the CITA, a non-resident or foreign company will be liable to pay Nigerian corporation tax where such a company:-

- (i) Has a fixed based in Nigeria from which it carries on its business or trade, to the extent that such profits derived from such business or trade are attributable to that fixed base;

- (ii) Habitually or customarily operates a business or trade in Nigeria through a dependent agent in Nigeria whom it authorises and controls to conduct such business on its behalf in Nigeria.
- (iii) Operates a business or trade that involves executing a single turnkey project, that is, contract for surveys, deliveries, installations or construction;
- (iv) Operates a trade or business with another person in Nigeria which in the opinion of the Federal Inland Revenue Service (“FIRS”) is not conducted to reflect an arm’s length transaction, devoid of artificial or fictitious conditions.

However, the reference to “fixed base” does not include facilities used solely for the collection of information; or, for the storage or display of goods or merchandise.

The above conditions for a non-resident company’s liability to Nigerian corporation tax conform largely to the universal concept of a “Permanent Establishment”; even though the latter term does not feature in the CITA. The term Permanent Establishment, however, features mainly in the tax treaties to which Nigeria is a party.

TRANSFER PRICING REGULATIONS 2012

The Income Tax (Transfer Pricing) Regulations No. 1, 2012 (“TPRs”) came into effect on 1st January 2013 with the primary objective of preventing any under-pricing between an associate local company and its foreign parent entity, who are not adhering to the arm-length tax principle, or are involved in artificial taxable transactions, with the purpose of reducing that amount of the tax that they will otherwise be assessed to payment as a taxpayer in Nigeria.

The new TPRs also now formally treats Permanent Establishments (“PEs”) as separate tax entities, engaged in a controlled transaction, liable to direct Nigerian tax.

PART 2 – INDIVIDUALS TAX RESIDENCE

The basis of individual liability to income tax under the Nigerian tax jurisdiction is residency. Individuals, communities, families, trustees or executors of an Estate in Nigeria, whether citizens of Nigeria or not, are required to pay their income tax to the State Tax Authority in the State where they reside. Individuals exempted from this general rule include those in active Military and Police service, officers of the Nigerian foreign services, residents of the Federal

Capital Territory Abuja, and persons resident outside Nigeria who derive income or profit from Nigeria. The latter persons are obligated to pay their income tax to the Federal Inland Revenue Services (“FIRS”).

However, an Itinerant worker, who, during each year of tax assessment, travels from one State to another State as part of his or her work, is obligated to pay income tax to the Tax Authority in the State where he or she works for a minimum of Twenty (20) days in at least three (3) calendar months of the relevant year of tax assessment.

Resident individuals are liable to pay tax on their worldwide income or profits; that is, their income or profits **accruing in, derived from, brought into or received in Nigeria.**

DURATION OF RESIDENCY

An individual is considered a resident of Nigeria if he is physically in Nigeria for at least 183 days (including period of leave and temporary absence) in any 12 calendar month.

NON-RESIDENT INDIVIDUALS

A non-resident individual is a person who is not physically in Nigeria for at least 183 days in any 12 calendar month period. However, where a non-resident individual derives or is deemed to derive income or profits from Nigeria, he will be liable to Nigerian tax.

The taxable income or profit of a non-resident individual is his or her Nigeria-source income or profits; or income or profits attributable to his or her operations in Nigerian.

By Section 6 of the Personal Income Tax Act (“PITA”) (as amended), the income or profits of a non-resident individual will be liable to tax in Nigeria, where such non-resident individual:-

- (i) Has a fixed base in Nigeria from which he or she carries on his or her business, trade, vocation or profession.
- (ii) Habitually operates his or her business or trade through a dependent agent in Nigeria.
- (iii) Operates a business or trade in Nigeria involving a single turnkey project, that is, contract for surveys, deliveries, installations or construction;
- (iv) Operates his or her business or trade with another person in Nigeria which in the opinion of a relevant State tax authority is

not conducted to reflect an arm's length transaction, devoid of artificial or fictitious conditions.

With respect to employment, a non-resident individual is liable to income tax in Nigeria if the terms of his employment are wholly or partly performed in Nigeria. However Section 10 of the PITA (as amended) has exempted from Nigerian tax the employment income of a non-resident individual:-

- (a) Who performs duties in Nigeria on behalf of a non-resident employer; and whose remuneration for the duties performed in Nigeria are not borne by his or her non-resident employer's fixed base in Nigeria;
- (b) Who is not physically in Nigeria for at least 183 days in any 12 calendar month period;
- (c) Whose remuneration for the duties performed in Nigeria is liable to tax in the Country in which the employer is resident;
- (d) Who wholly performs duties in a country other than Nigeria, for an employer that is resident in Nigeria, and his or her remuneration for the duties performed are paid in that other country; except during a temporary visit to or leave in Nigeria.