

Implications of Visa Extension Policy for Temporary Work Permit (TWP) Holders

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Introduction

The need for businesses to expand their frontiers beyond local borders continue to drive movement of employees' across the continents. In Nigeria, several immigration facilities are issued to foreign nationals based on the purpose and duration of visit.

One of such facilities is the Temporary Work Permit (TWP) issued to highly skilled expatriate personnel, whose expertise is required for a short period of time to carry out specialized assignments, such as repairs of machines and equipment, after sales installations, maintenance and training. Before a TWP visa can be obtained, Comptroller General of Immigration in Nigeria must grant an approval in the form of a cablegram. The TWP visa is a single entry visa with a validity of a maximum of three months, prior to the introduction of the visa extension policy on 22 September 2015.

The TWP Visa Extension Policy

Under the TWP visa extension policy, non-ECOWAS nationals and non-resident expatriates can legally stay beyond 56 days in Nigeria. Therefore, TWP visa holders, who intend to stay beyond the validity of their cable approval, can request for an extension (while still in the country) to complete their assignments. The visa can be extended up to 365 days, subject to approval and payment of associated statutory fees.

The extension policy will have a positive impact on business operations as holders of TWP visa would no longer need to hurriedly leave the country only to return on another visa for projects that require more than three months to complete. This will help to avoid unnecessary disruption to the projects the permit holders are working on. In essence, the expert is no longer bound by the validity of the visitor's pass endorsement issued at the point of arrival in Nigeria. However, it is critical to initiate the extension process before the expiration of the visitor's pass; otherwise the expatriate would be liable to a penalty, regardless of the fact that the visitor's pass is issued with a 60 day-stamp. The penalty takes effect from the 57th day.

The visa extension fee depends on the expatriate's intended period of stay in the country and is in three categories: 90, 180 and 365 days. However, the prescribed penalty for over-stay is twice the applicable statutory fee for the extension. The table below shows the details of statutory fees for extension of stay and the applicable penalty:

Period of Stay	Fee ¹ (for Extension)	Penalty (for violation)
57 - 90 days	\$200 or the Naira Equivalent	\$400
91 -180 days	\$1,000 or the Naira Equivalent	\$2,000
181 - 365 days	\$2,000 or the Naira Equivalent	\$4,000

Upon payment of the required fee, a document called the E-Pass is issued at a flat rate of N8, 000. Payment for the extension and E-pass can only be made at Sterling Bank, the designated bank for the E-Pass scheme.

Implications of the TWP extension policy

With the extension option, companies would need to decide if they want to extend the stay of their TWP holders while they are still in the country or bring them back on new TWP visas. While this may depend on the nature of the project, it is important to select the option that supports the company's operational and financial interests.

Where a company chooses to extend the expatriate's stay, it must also take into consideration the income tax implication. The Nigerian Personal Income Tax Act 2004, as amended, exempts from tax the income of expatriates, who spend less than a cumulative period of 183 days² in a 12-month

¹Though the fees are denominated in USD\$, payment is made in Naira at the prevailing exchange rate.

²Period of temporary absence from Nigeria is irrelevant for the calculation.

period and whose income is liable to tax in countries with double tax treaties with Nigeria. It is also critical that the remuneration of such expatriates is not recharged to Nigeria. Otherwise, such income would be taxable in Nigeria. The Expatriate Monthly Returns (EMR) would be a veritable source of information for the tax authorities in this regard.

Companies, therefore, have to carefully evaluate the cost-benefit implications of applying for the TWP extension relative to the cost of utilizing other visa facilities, the minimization of disruption to business operations and the potential tax implications.

Managing the Changes around Business Operations

Companies need to determine the scope of work and the required duration prior to bringing foreign employees or contract staff into Nigeria. If such work was initially based on

rotation, a company could consider having just one employee stay for the length of the specific project as this would reduce overhead costs such as travel expenses, salaries and welfare packages.

There will also be a better management of immigration compliance issues as there would be fewer number of employees to handle.

Conclusion

The visa extension policy offers a window of opportunity to companies and gives them some leverage in cost saving. However, a company must plan ahead and seek advice from professionals for guidance in order to properly manage its operations within the legal framework of the Nigeria Immigration Act 2015 and sundry regulations.

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For further enquiries, please contact:

Wale Ajayi

Partner, Tax, Regulatory & People Services
T: +234 803 402 1014, +234 1 271 8934
E: adewale.ajayi@ng.kpmg.com

Nike Yomi-Faseun

Senior Manager, Tax, Regulatory & People Services
T: +234 803 402 1044, +234 1 271 8930
E: nike.yomi-faseun@ng.kpmg.com

David Uzosike

Manager, Tax, Regulatory & People Services
T: +234 803 402 1043, +234 1 271 8942
E: david.uzosike@ng.kpmg.com

Lucky Sada

Manager, Tax, Regulatory & People Services
T: +234 803 403 5538, +234 1 271 8939
E: lucky.sada@ng.kpmg.com

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