Thinking beyond borders: Management of extended business travelers - Nigeria

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Key message

The Personal Income Tax (PIT) Act provides the conditions for deeming income taxable in Nigeria. It provides, among others, that the gain or profit from an employment shall be deemed to be derived from Nigeria if the duties of the employment are wholly or partly performed in Nigeria or the employer is in Nigeria, unless the duties of the employment are wholly performed on behalf of an employer who is in a country/jurisdiction other than Nigeria and the employment is wholly performed, and the remuneration paid, in a country/jurisdiction other than Nigeria except during a temporary visit or leave in Nigeria.

1 Key message

Extended business travelers are likely to be taxed on income relating to workdays in Nigeria. The PIT Act vests the administration of the PIT on the State Internal Revenue Service (SIRS) in each State of the federation and the Federal Capital Territory (FCT) Abuja.

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Income tax

2 Income Tax

The incidence of taxation on employment income and the relevant tax authority are determined by residence. Once a place of residence or principal place of residence (as the case may be) is determined, the relevant tax authority is the SIRS in which the taxpayer has a permanent place of residence. Therefore, if an employee resides in Lagos State but works in Ogun State, the relevant SIRS will be the Lagos State Internal Revenue Service (LIRS).

As such, income tax due from employment (individuals and partners) is due to the state where such employees are resident.

2.1 Tax trigger points for employment income

The taxation of income from employment in Nigeria is based on certain conditions as provided under section 10 of the PIT Act. Income from an employment shall be deemed to be derived from Nigeria and therefore taxable in Nigeria if:

- The duties of such employment are performed wholly or partly in Nigeria, unless:
  - the duties are performed on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria, and
  - the employee is not in Nigeria for a period or periods amounting to an aggregate of one-hundred and eighty-three days (inclusive annual leave or temporary period of absence) or more in any twelve-month period commencing in a calendar year and ending either within that same year or the following year, and
  - the remuneration of the employee is liable to tax in that other country under the provisions of the avoidance of double taxation treaty with that other country.

Note that all the conditions listed above must be jointly met for the expatriate to be exempted from taxes in Nigeria.

- The employer is in Nigeria or has a fixed base in Nigeria.

The concept of residence is critical in determining the relevant tax authority for the purpose of assessing and collecting taxes.

Under the PIT Act, a person's place of residence is defined as a place available for their domestic use in Nigeria on a relevant day. This excludes hotel, rest house or other place at which they are temporarily lodging unless no more permanent place is available for their use on that day.

Once a place of residence is determined, the relevant tax authority is the state tax authority of the territory in which the taxpayer has their place of residence or principal place of residence, as the case may be.

2.2 Types of taxable income and benefits

Under the PITA, any salary, wages, fees, allowances or other gains or profits from an employment including bonuses, premiums, benefits or other perquisites allowed, given or granted to an employee are chargeable to tax. However, the following income streams, expenses and benefits are tax exempt:

- reimbursement of expenses incurred by the employee in the performance of their duties, and from which the employee is not expected to make any profit or derive any gain;
- retirement gratuities and compensation for loss of office;

- interest on loans for developing an owner-occupied residential house.

On a related note, the following are tax deductible contributions:

- National Housing Fund Contribution National Health Insurance Scheme
- Life Assurance Premium
- National Pension Scheme.

Along with the above listed tax exempts, the Consolidated Relief Allowance (CRA) will be granted as a relief. The CRA is the higher of 1 percent of gross income or 200,000.00 Nigerian naira (NGN), plus an additional 20 percent of gross income.

2.3 Tax rates

Taxable income is assessed to tax at graduated rates ranging from 7 percent to 24 percent, depending on the income band being assessed. Non-residents are subject to the same tax rates as residents. The maximum tax rate is currently 24 percent of an individual's income (net of all tax-exempt income and allowable expenses).

Social Security/Nigerian Pension Scheme

The Pension Reform Act 2014 (PRA 2014) which repeals the Pension Reform Act 2004, governs and regulates the administration of the contributory pension scheme in Nigeria.

Major considerations in PRA 2014 include:

- **Scope of application** - The minimum threshold for private sector employers to participate in the Scheme is 15 employees However, the Act also provides that self- employed persons and private sector employees of an organization with less than three (3) employees shall be entitled to participate in the scheme, notwithstanding the minimum threshold.
- **Change in contributory rate -** The Act has increased the rate of contribution for employees and employers to a minimum of 8 percent and 10 percent, respectively. The employees and employer may however decide to contribute more to the scheme and is required notify the Commission of this decision. Employers, who choose to bear the full pension cost of their employees, will be required to contribute a minimum of 20 percent to the Scheme. The rates remain applicable to monthly emoluments.
- The Act defines monthly emoluments as 'total emoluments as may be defined in the employee's contract of employment but shall not be less than a total sum of basic salary, housing allowance and transportation allowance.
- Furthermore, every employer is required to maintain a Group Life Insurance Policy in favor of each employee for a minimum of three (3) times the annual total emolument. Premium shall be paid not later than the date of commencement of the cover.

The PRA 2014 does not make specific provisions on the requirements for foreigners to participate in the Nigerian pension scheme. However, guidance from the National Pension Commission indicates that foreigners may at their sole discretion join the Nigerian Pension Scheme, without considering whether they have an existing pension arrangement in their home country/jurisdiction.

New Guidelines on Voluntary Pension Contributions

The National Pension Commission (PENCOM) issued a circular dated 16 November 2017 to all licensed Pension Fund Administrators (PFAs) and Custodians. A brief summary of the circular has been provided below:

Voluntary contributions (VCs) by Mandatory Contributors

1. Withdrawals from VC account is limited to once every 2 years

2. Where income is withdrawn within 5 years, taxes will be deducted on such income.

3. The total withdrawal from a VC account is capped at 50 percent while the outstanding balance of 50 percent must be kept to supplement contributor's retirement benefit.

VC by Exempt Contributors (including expatriates)

1. Withdrawals from VC account is limited to once every 2 years

2. All the VCs may be withdrawn after 2 years. However, the withdrawn income will be subject to tax on the principal contribution and income earned.

3. Any withdrawals made after 5 years from the date of contribution will be fully tax exempt

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Compliance obligations

3 Compliance obligations

3.1 Employee compliance obligations

Every employee (or the employer on behalf of the employee) is required to complete/submit an income tax form for return of income (Form A), within 90 days of commencement of every year of assessment; i.e. 31 March of the following year to the relevant SIRS.

3.2 Employer reporting and withholding requirements

Every employer is required to complete/submit an employer tax return detailing income and tax paid on behalf of its employees. The return is to be filed by 31 January of the following year.

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Immigration

4 Immigration

Generally, foreign nationals must obtain a visa prior to entering Nigeria for work, except ECOWAS nationals. The type of visa required will depend on the purpose of the individual's entry into Nigeria.

Temporary Work Permit (TWP) Visa: Where individuals will be in Nigeria for 90 days or less, they may obtain a TWP visa. The issuance of a TWP visa is subject to obtaining prior approval of the Comptroller General of the Nigeria Immigration Service (CGNIS). The TWP visa would allow the assignee stay in Nigeria for an initial period of 60 days, although this may be extended upon the submission of an application to the Nigeria Immigration Service (NIS). An extension is due by the 56th day.

Subject to Regularization (STR) Visa: The STR visa is obtained to facilitate long term employment (a period more than 6 months) in Nigeria. A prerequisite for the issuance of an STR visa is an Expatriate Quota (EQ) approval which is issued by the Federal Ministry of Interior in Nigeria and a Free Zone licence for organizations with business presence and operations in the approved Free Zone areas. Following the issuance of the EQ, an application for an STR visa can be made to the relevant Nigerian Mission abroad. Upon the expatriates' arrival in Nigeria, an application is then submitted to the NIS (sometimes through the Free Zone authorities) to facilitate the issuance of a work/residence permit.

More information can be found on the Nigerian Immigration website.

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Other issues

5 Other issues

5.1 Double taxation treaties

Nigeria has a broad network of double taxation treaties, which includes the United Kingdom, the Netherlands, France, Pakistan, Belgium, Romania, Canada, South Africa, Philippines, China, Czech Republic, Italy (Air and shipping agreement only), Slovak Republic and Spain. Subject to certain conditions, the total (or part of) tax paid in any of the treaty countries/jurisdictions by a taxable person would be utilized as a relief on their income in the treaty country/jurisdiction of residence.

There are also various draft treaties at either negotiation stage or ratification stage.

5.2 Permanent establishment implications

Generally, a company would be taxable in Nigeria if it is deemed to derive income from Nigeria. The relevant legislation for taxation of companies in Nigeria, the Companies Income Tax (CIT) Act, provides that the profits of a non-resident company shall be deemed to be derived from (and therefore taxable in) Nigeria if that company has a fixed base of business in Nigeria and to the extent that the profit is attributable to the fixed base. The Finance Act 2019 expanded the conditions under which the business income of NRCs would be taxable in Nigeria. Under the new rules, NRCs will be liable to tax in Nigeria if; they supply digital services or goods, and profits can be attributable to the activities; or they provide Technical, Professional, Management, or Consultancy services; and they have a significant economic presence (SEP) in Nigeria. The Nigerian Courts have found sufficient permanence in the presence of employees of a foreign company in temporary lodgings (e.g., hotel lodgings) as sufficient to create a fixed base.

5.3 Indirect taxes

Nigeria imposes a Value Added Tax (VAT) on sales of goods and provision of services. The rate for VAT in Nigeria is 7.5 percent and does not fluctuate. Payments are made to the Federal Government through the Federal Inland Revenue Service (FIRS). A detailed list of goods and services exempt from VAT can be found in the First Schedule of the VAT Act.

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