

# Beyond Borders

## Navigating the Nigeria Tax Act 2025



This article was developed from the conversations at the Beyond Borders Tax Webinar

### Introduction

Nigeria's tax landscape is evolving, driven by globalization, digitalization, and shifting economic dynamics. This has led to the enactment of the Nigeria Tax Act (NTA) 2025, a significant milestone in the country's fiscal development. These reforms introduce new provisions and amend existing laws, particularly regarding the treatment of nonresident companies (NRCs) and cross-border transactions. This article unpacks the critical changes, emerging obligations, and strategic risks that organizations must navigate in this new era.

### Redefining Residency: From Form to Substance

An important shift in the reform is the transition from a simple, incorporation-based residency test to a substance-oriented framework.

#### Historical Context



A Nigerian company was defined strictly by its incorporation under Nigerian law.

#### The New Framework



A company may be considered Nigerian if its central/effective place of management is in Nigeria.

#### Commercial Relevance



Tax residency is no longer driven solely by legal form; it is defined by where real decisions are made. Tax authorities will now scrutinize factual evidence, including board minutes, approval authorities, executive travel patterns, and sign-off protocols.

The law uses these terms disjunctively ("management or control"), which potentially lowers the threshold for being deemed a Nigerian resident. This shift significantly increases the scope for tax controversy and requires proactive internal documentation to substantiate management location.

### The Expanded Concept of Nexus

Beyond residency, the rules for establishing a taxable presence (nexus) in Nigeria have broadened considerably.

#### 1. Permanent Establishment (PE)

The concept of a "fixed base" has been replaced with a broad definition of Permanent Establishment. Triggers for a PE now include:

- Physical locations such as offices, factories, workshops, and mines.
- The furnishing of services through employees, agents, or subcontractors.
- **Contract Splitting:** The law addresses contract splitting by asserting a PE if a project is executed in Nigeria, even if parts of the contract are technically performed offshore.

## 2. Significant Economic Presence (SEP)

The SEP regime targets the digital economy. NRCs providing digital services—such as electronic books, music, or high-frequency trading—trigger a taxable presence if they derive value from Nigerian users. Even services like multi-factor authentication (SMS) sent to Nigerian users could potentially trigger SEP.

## 3. Payment-Based Taxation

PE and SEP may not be required for taxation. Payments originating from Nigeria may trigger a withholding tax (WHT) liability in the country.

# Profit Allocation and the Minimum Effective Tax

Once a nexus is established, the focus shifts to determining attributable profit.

- **Customer-Centric Attribution**

Profit attribution has shifted from where infrastructure sits to where customers and users are located.

- **The “Parent Check”:**

The tax authority may now compare the Nigerian operation’s profit margin and credit rating against its global parent company. The expectation is that the Nigerian PE should not have a lower profit margin than the parent, regardless of local operating peculiarities.

- **Minimum Tax Floors:**

NRCs face multiple tax checks. The final tax liability is often determined by the higher of:

- i. The actual profit allocated to the PE.
- ii. A profit margin aligned with the global parent.
- iii. **4% of turnover** (the “deemed profit” floor).
- iv. **Withholding Tax suffered:** Effectively, the WHT deducted at the source (5% to 20%) often becomes the final minimum tax, eliminating the ability to carry forward excess tax credits.

# Sectoral Impacts and Compliance Realities

## The Digital Economy and VAT



The NTA 2025 specifically defines digital assets, including crypto-assets and non-fungible tokens (NFTs). NRCs supplying goods or services to Nigeria must register for VAT, implement e-invoicing systems, and may be required to appoint local collection agents.

## M&A and Restructuring



The tax rate for capital gains is now at the applicable income tax rate, which can range from 30% to 85%. However, the rules for restructuring have been relaxed to encourage investment. Tax-neutral mergers are now permitted even for unrelated companies, provided the tax authority is notified. Indirect transfer of interest in shares and any asset located in Nigeria will now be subject to tax.

## Compliance Enforcement



The tax authority has intensified its “revenue protection” efforts. For example, if an NRC fails to register for a Tax ID, the applicable withholding tax rate may double. This “what we have, we shall hold” approach increases the cost of doing business and forces NRCs to choose between local incorporation or navigating a complex PE framework.

# Strategic Recommendations

To mitigate risks and ensure compliance in this “New Era,” businesses should:

- **Identify Fact Patterns:** Assess if current operations trigger Nigerian residency, PE, or SEP.
- **Review Governance:** Ensure that board minutes and executive travel do not inadvertently shift the “place of effective management” to Nigeria.
- **Evaluate Operating Models:** Analyse whether operating as a PE remains commercially viable compared to local incorporation.
- **Prioritize Documentation:** Maintain contemporaneous records to support profit attribution and intergroup service charges

## Conclusion

The Nigeria Tax Act 2025 leaves no room for assumptions. NRCs must proactively adapt their tax positions to avoid costly controversies and ensure their cross-border models remain fit for purpose.

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