The Legal 500 Country Comparative Guides

Nigeria: Tax

This country-specific Q&A provides an overview of tax laws and regulations applicable in Nigeria.

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1. **How often is tax law amended and what are the processes for such amendments?**

   Typically laws in general are to be amended on an average of every 10 years. It may be longer or shorter depending on the exigencies of the situation such as a reform exercise.

   Laws are generally amended in Nigeria by the National Assembly through a bill. The bill goes through the amendment process (first reading, second reading, committee stage, report stage and third reading), and sent to the President for his assent, after which it becomes a law and is recorded in the Federal gazette.

   Notwithstanding the above, it is not unusual to have provisions in Nigerian tax laws enabling the President, Minister of Finance or any other person it deems fit, to publish guidelines and provide clarifications further to existing provisions.

2. **What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?**

   The procedural obligations of a taxpayer in Nigeria is dependent on the type of entity in question, whether individual or corporate.

   For individuals, there is further distinction between employees of organizations and their employees. In the case of employees, their employers are required to deduct the income tax at source and remit same monthly to the appropriate state internal revenue service. While individual employers are required to self-assess themselves and submit the computations and financials annually to the relevant State Internal Revenue Service.

   Corporate entities are however required to submit their tax returns and audited financial statements to the Federal Inland Revenue Service for tax purposes six (6) months after their financial year end.

3. **Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?**

   The key regulatory tax authorities in Nigeria are the various State Internal Revenue Services, including the Federal Capital Territory (FCT) Internal Revenue Service, and the Federal Inland Revenue Service (FIRS). The tax authorities in Nigeria are fairly easy to deal with. Resolution of standard issues with the FIRS takes 1-2 month (s) while with the State Internal Revenue Services, resolution of issues may take up to a year.

4. **Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?**

Tax disputes in Nigeria are usually resolved by the Tax Appeal Tribunal (TAT) first, after which an aggrieved party may proceed to the Federal High Court for an appeal.

The length of time for the conclusion of a tax matter is mostly dependent on the preparation of the parties (the tax payer and the tax authorities) for the trial. Tax disputes have been known to extend over a long period of time majorly because of the failure of either or both parties to adequately prepare for the matter at hand.

5. **Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?**

Company Income Tax (CIT) must be paid two (2) months from the date of filing returns. Tax returns must be filed six (6) months after the financial year end of the company. In the case of a new company, the tax returns must be filed within eighteen (18) months from the date of incorporation or after the end of its first accounting period whichever is earlier. On the other hand, Witholding tax (WHT) and Value Added Tax (VAT) are required to be remitted to the relevant tax authority twenty-one (21) days after the month of deduction.

Generally upon submission of returns and audited accounts (especially in the case of corporate entities) the tax authority will raise an assessment of the tax payable. The tax payer may either accept the assessment by paying the amount in question or object to the assessment. The objection may be accepted by the tax authority or otherwise. Where the objection is rejected by the tax authority, the aggrieved tax payer may seek recourse by filing of an appeal of the assessment at the TAT.

6. **Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?**

Tax payers' information in Nigeria are generally treated as confidential and not disclosed to third parties or even government except where the tax authority is compelled by a court of competent jurisdiction to disclose same in a legal dispute.

This general provision is however qualified by the signing of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreement (MCAA) on the Automatic Exchange of Financial Information by the FIRS in 2017. This is in line with the decision of the Nigerian government to widen its tax net, and will enable the FIRS receive information of the financial accounts of certain persons who are deemed taxable in Nigeria.

Yes, Nigeria is a signatory to the OECD's Common Reporting Standard Multilateral

Competent Authority Agreement.

Nigeria joined the Open Government Partnership in 2016, and has since 2019 established a CAC-hosted public register of beneficial owners of companies operating in Nigeria.

7. **What are the tests for residence of the main business structures (including transparent entities)?**

Generally, the test for residence of business structures, either corporate or transparent, in Nigeria is mainly local incorporation. Non-resident companies will however, be deemed resident in Nigeria for tax purposes where they maintain a fixed base, habitually carry on business through an independent agent, performs turn-key contracts or performs artificial transactions. Non-resident companies who are not deemed resident but render digital services to Nigerians or render technical services are subject to tax to the extent that they have significant economic presence and on the profits directly attributed to their activities in Nigeria.

8. **Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?**

The focus on the FIRS on cross border transactions is majorly in the area of transfer pricing. The Income Tax (Transfer Pricing) Regulations was particularly enacted to address the short falls in tax revenue leakages occurring from cross border activities between related parties.

The bane of the transfer pricing regulations is that pricing indices between related parties must be at arm's length, and should achieve the same results as if they were unconnected.

Some of the ways in which the Transfer Pricing Regulations control cross border transaction include the provision of guidelines on the following:

- the pricing of commodity transactions,
- pricing of controlled transactions involving intangibles,
- controlled transaction which will qualify for safe harbor,
- annual transfer pricing forms for declaration of connected persons e.t.c.

9. **Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?**

Nigeria currently has no CFC. The provisions of the Finance Act amended its Thin Cap regime to reflect thus, interest paid or payable in excess of 30% before earnings, interest, taxes, depreciation and amortization of the Nigerian company in an accounting period. Also, deductible interest can only be carried forward for a period of five years following the year due or year assessment was made. Finally, the Federal Inland Revenue Service (FIRS) has hinted in its circular on frequently asked questions on TP regulations, that the FIRS admits

Advance Pricing Agreements (APA) between Parties and the FIRS to set criteria on complying with the Arm's length Principle. Note however that this only applies where the transaction has a cumulating value of 250 million Naira.

10. **Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?**

Yes, there are sections of the Nigerian tax laws that operate as GAAR. i.e. Section 22 of the Companies Income Tax Act allows tax authorities to disregard any disposition or transaction that is likely to reduce tax liability where such is artificial or fictitious. Practically, Nigeria's tax administration does not have this as a major challenge nor is it commonly litigated. Where necessary, it is the obligation of the tax authorities to challenge such negotiation and where the tax payer disagrees with the opinion of tax authorities then they can approach the Tax Appeal Tribunal (TAT). Similar GAAR provisions may be found in Section 17 of the Personal Income Tax Act, Section 15 of the Petroleum Profit Tax Act.

11. **Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?**

Action Plan 1: Addressing tax challenges of the digital economy.

Action Plan 4; Limiting base erosion involving interest deductions and other financial payments.

Action Plan 6: Preventing allowance for treaty benefits in inappropriate circumstances.

Action Plans 8-10: Aligning Transfer Pricing regulation to value creation.

Action Plan 13: Transfer Pricing documentation and Country-by-Country (CbC) reporting.

Action Plan 14: Making dispute resolution mechanisms more effective.

12. **In your view, how has BEPS impacted on the government's tax policies?**

Yes, Nigeria being a member of the OECD community and a country with considerable level of foreign participation and international business interaction, the OECD BEPs Action plan has impacted in our tax policies, i.e, Nigeria's Transfer Pricing Regulation of 2018 was amended to align with global best practices.

Also, the Finance Act introduced taxation of digital economy, following which, Nigeria released the Companies Income Tax, (Significant Economic Presence) Order, 2020

13. **Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?**

Yes, Nigeria's tax system broadly follows the recognized OECD model, to the extent that OECD models have been made in respect of such taxes.

BUSINESS PROFIT: Once a company carries on business operation in Nigeria, such country is subject to income tax. The rate is graduated, depending on the annual turnover of the company. Where it is below 25 million, zero tax applies, above 25 million but below 100 million, then 20% of taxable income is deducted as income tax, above 100 million attracts 30% of taxable income as tax.

VAT: Nigeria's VAT approach is to levy VAT on taxable goods and services and this is collected and remitted via the input and output tax mechanism. This is largely the model of the OECD. VAT like most countries is at a flat rate. Nigeria's is pegged at 7.5% following the amendment of the VAT Act by the Finance Act.

CAPITAL GAINS: Nigeria's capital gain tax is at a flat rate of 10% of profit from the disposal of certain kind of asset such as Land.

STAMP DUTY; This could either be flat or graduated depending on the nature of the transaction, i.e, For bank transfers above 10,000 Naira, it is fixed at 50 naira while applicable stamp duty on land transactions are ad valorem. That is, graduated on the basis of the total amount for sale. Same applies to rent on tenancies. This is graduated on the basis of duration of tenancy. Thus, to understand the applicable rate, the nature of transaction and document attracting stamp are to be considered.

14. **Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?**

Business tax is levied in accordance with principles of commercial accountancy vis a vis the tax legislations. This is because, the tax legislations provide guidelines as to the calculation of taxable revenue. PART III of the Companies Income Tax Act broadly defines how profits may be ascertained for the purpose of income tax calculations.

15. **Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?**

For the purpose of carrying on business, entities that are deemed taxable entities include

Companies and Partnerships. Entities such as Non-Governmental Organizations (NGO) and any such charitable outfit are not allowed to carry on business as they are set up for specific objectives.

With regards to tax transparency, Companies are the most transparent. The law clearly defines how they may be taxed. For Partnerships, the Partners are regulated under the Personal Income Tax Act and Partnerships are not mandated to submit financial statements. This may allow for some profit shifting and tax avoidance. For NGOs and entities that are not deemed taxable entities, the law presumes that they do not carry on business, thus have no income to be taxed. However, they are obligated to make tax returns and may be subject to tax audit.

16. **Is liability to business taxation based upon a concepts of fiscal residence or registration? Is so what are the tests?**

Liability to business taxation is based both on Fiscal residence and registration. The idea of taxation is contigent on whether income has been derived from Nigeria. Flowing from this, the Companies and Allied Matters Act mandates all companies seeking to carry on business operation in Nigeria to register same. Similar provision also exist in our tax laws.

The tenor of Section 13 of the Companies Income Tax Act suggests that the key focus for liability to business taxation is on whether such business has derived profit from Nigeria. Where it has, it is enforced directly, i.e. where the companies has a registered entity or through its registered agent or contracting party. Thus, liability on business taxation is ultimately levied on registered business entity.

17. **Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?**

Yes, there are special taxation regimes in Nigeria such as Enterprise Zones (also known as Free Zones or Export Processing Zones). Approved enterprises within the Free Zone are exempted from all federal and state Government taxes, levies and rates as well as all legislations pertaining to taxes, levies and duties and foreign exchange regulations.

Approved Enterprises are also permitted to repatriate all foreign capital investment with capital appreciation of the investment while also employing foreign managers and qualified personnel without the requirement of obtaining an expatriate quota.

18. **Are there any particular tax regimes applicable to intellectual property, such as patent box?**

There are no particular tax regimes applicable to intellectual property in Nigeria. However, subject to the approval of the National Office for Technology Acquisition and Promotion (NOTAP), Nigerian companies are allowed to remit royalties, management & technical fees and payments under Technology Transfer Agreements to their non-resident technical partners.

19. **Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?**

No. Nigeria has no tax grouping rules. Each legal entity is treated as separate for tax purposes.

20. **Are there any withholding taxes?**

Yes, there are withholding taxes. It can be applied as a tax credit against income tax liability in most instances. The rate of withholding tax is within the range of 5% – 10% and is applicable to transactions such as Dividend, Interest, rent, Royalties, Directors' fees, Commission, Consultancy, legal, audit & other professional fees, all types of contracts and agency arrangements, other than sales in the ordinary course of business.

The rate of WHT on dividend, royalty and interest is reduced from 10% to 7.5% when paid to a corporate recipient resident in a treaty country. In the case of individuals, 7.5% is applied on dividend and interest and 5% on royalty.

21. **Are there any recognised environmental taxes payable by businesses?**

There are no recognised environmental taxes payable by businesses in Nigeria. However there are regulatory approval requirements and annual dues/ levies and fees.

22. **Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?**

Dividends received by a Nigerian resident company from another Nigerian resident company are taxable at source. Withholding tax of 10% is chargeable and it is not subject to further tax.

A withholding tax of 10% is deducted from the dividend paid by a Nigerian company to a non-resident company. However, the rate is 7.5% for a non-resident company located in a country that has entered into a double tax treaty with Nigeria.

Dividends received from non-resident companies are taxable except if repatriated into Nigeria through government-approved channels (i.e. any financial institution authorized by the Central Bank of Nigeria to deal in foreign currency transactions).

23. **If you were advising an international group seeking to re-locate activities from the UK in anticipation of Brexit, what are the advantages and disadvantages offered by your jurisdiction?**

Foreign nationals and entities can fully own a company in Nigeria save for few exceptions, which include companies seeking to bid for contracts in oil and gas industry that requires 51% of shares of such companies be owned by Nigerians, foreign nationals may register and fully own shares of a limited liability company 100% in Nigeria.

Tax incentives for companies in certain industries: There are numerous tax incentives available for different types of newly registered companies in Nigeria. Some of these incentives include Pioneer Status Scheme, which grants a tax holiday exempting companies from certain industries obligations to pay corporate income tax and to withhold tax on dividends for 5 years, non-taxation in respect of gains from the sale of shares. In addition, a foreign company may be exempted from the interest payable on a loan granted to a Nigerian company, subject to terms and conditions.

Repatriation of Capital and Interest: A foreign company registered and undertaking business in Nigeria is entitled to repatriate all its capital, profits and interests. However, such foreign company must have a Certificate of Capital Importation.

Seamless Immigration System and Business Permit: Having registered a company in Nigeria, investors are entitled to benefit from Nigerian seamless immigration and business permit system which requires that a company registered by foreign nationals, has foreigners as shareholders or is seeking to employ foreigners must obtain a Business Permit Certificate and apply for Expatriate Quota Approvals.

Swift and Efficient Business Registration: The process of registering a Company is quick, efficient and can be completed within 5 days. Investors do not need to be physically present in Nigeria to incorporate a Company. By the provisions of the Companies and Allied Matters Act 2020, the concept one person company has been introduced such that a company can be owned by a single shareholder.

Disadvantages revolve around the typical uncertainties surrounding economic growth in developing countries such as Nigeria, Investors are therefore encouraged to amongst other things have a fair understanding of the relevant tax regime(s) applicable to their respective investments to enable them develop detailed tax/business planning and strategy plans.