BASIC TAX COMPLIANCE REQUIREMENTS FOR NON-RESIDENT ENTITIES

Although residence is the basis for taxation in Nigeria and taxes are payable on the world wide income of all resident persons, this does not however preclude non-residents from being liable to pay taxes in Nigeria where such liability is deemed to have arisen. Tax liabilities in this regard would usually ensue from transactions with Nigerian residents, and the type of taxes to be paid range from value added tax, withholding tax, personal income tax or even in some cases company income tax depending on the nature of the transaction, amount of profit or income derived or the extent of services enjoyed or provided by the non-resident entity.

The Federal Inland Revenue Service (FIRS) is responsible for collection of taxes due from non-resident entities, and in furtherance of its power, the FIRS established the Non-Residents' Tax Office in 2019, to promote voluntary compliance, address tax related issues amongst other objectives, of non-resident entities identified as liable to tax in Nigeria in accordance with the extant provisions of the applicable tax legislations.

This article shall focus on the likely taxes a non-resident entity (individuals and corporate bodies) may be liable for in Nigeria, and the current compliance requirements applicable to same.

NON-RESIDENT INDIVIDUALS

Personal Income Tax (PIT)

Section 2(2) of the Personal Income Tax Act (2011 as amended) (PITA) empowers the FIRS to collect income taxes from persons resident outside Nigeria on the part of their income or profits derived from Nigeria for a relevant year of assessment. Income or profits in this regard may be derived from employment, vocation or business, and it is taxable at the same rate applicable to Nigerian residents, which is provided in the Sixth Schedule of the Act.

Notwithstanding the above, it is significant to note that investment income, e.g. dividends, derived from Nigeria by a non-resident is only liable to withholding tax deducted at source.

In addition to the above and the provisions of Section 6 of PITA, the Finance Act 2020 further establishes the significant economic presence rule for taxation of non-resident individuals in Nigeria. The essence of the significant economic presence rule in this regard is that where an individual outside Nigeria provides technical, management, consulting or professional services to a person resident in Nigeria, the gains or profits derived from such transaction shall be deemed to be derived from Nigeria, and same shall be taxable at the applicable personal income tax rate.

A non-resident individual who is an employee of a non-resident company may also be liable to pay personal income tax on gains or profits derived from the duties of his employment wholly or partly performed in Nigeria. Provided that this liability shall not apply where:

1. His remuneration is not borne by a fixed base of his non-resident employer in Nigeria; and
2. He did not stay in Nigeria for up to 183 days (including annual leave or temporary period of absence) in a 12 month period; and
3. His remuneration is liable to tax in his home country under the provisions of DTT agreement with Nigeria.

Compliance Requirements

Employers of non-resident individuals identified to be liable for personal income tax are responsible for calculating and deducting the income tax payable at the appropriate rate, and remitting same to the designated FIRS account. In the same vein, non-resident business owners who have derived income from Nigeria are also required to self-assess themselves and file their returns with the FIRS.

Personal Income Tax deducted from an employee's remuneration in a month is required to be paid to the relevant tax authority within 10 days of the following month. Also, employer PAYE returns are due for filing by 31st January whilst individual returns are due by 31st March in the relevant year of assessment.

In order to comply with PIT filings, the non-resident entities are to:

- Visit the Non- Resident Persons' Tax Office (NRPTO) in Lagos for registration;
- Calculate the applicable tax, and remit same to the designated FIRS account;

- File the tax returns at the NRTPO office before the deadline.

NON RESIDENT COMPANIES

Company Income Tax (CIT)

Non-resident companies are liable to pay Company Income Tax (CIT) in Nigeria on the aspects of their profits derived from Nigeria. According to Section 13(2) of the Companies Income Tax Act (2007 as amended) (CITA), the profits of a non-resident company shall be deemed to be derived from Nigeria in the following instances:

1. Where the non-resident company has a fixed base in Nigeria, and the profits are attributable to that fixed base;
2. Where the non-resident company habitually operates a trade or business through a dependent agent;
3. Where the profits of the non-resident company is derived from a turnkey contract;
4. Artificial transactions between related parties.

The Finance Act 2019 further expands the scope to include companies who have established significant economic presence in Nigeria through the provision of digital services, or technical, management, consulting or professional services.

The CIT liability in this regard shall be at the applicable rate, which according to the Finance 2019 is:

- No tax for small companies (with a gross turnover of less than N25, 000, 000);
- 20% for medium sized companies (with gross turnover of up to N25, 000, 000 but less than N100, 000, 000);
- 30% for large companies (with gross turnover of N100, 000, 000 and above).

Note that although small companies are exempted from CIT, they are still however required to file their tax returns with the FIRS for every year of assessment.

Compliance Requirements

CIT is computed on a preceding year basis in Nigeria, that is, taxes for a particular year of assessment are paid on the profits derived from the previous year.

CIT returns are to be filed 6 months after a company's financial year end. Failure to file CIT returns as and when due attracts a penalty of N25, 000 for the first month of default, and N5, 000 subsequent months of default. While failure to pay CIT attracts a fine of 10% of the tax due with interest at the prevailing Central Bank of Nigeria (CBN) monetary policy rate of 5%.

The Finance Act 2020, amending Section 55 of the CITA on filing of returns, provides that non-residents companies shall submit their tax returns for a relevant year of assessment, and same shall include:

- The company's audited financial statements attested to by a certified accountant in Nigeria;
- Tax computation schedules based on the profits attributable to its Nigerian operations;
- A true and correct statement in writing containing the amounts of profits from its sources in Nigeria;
- Duly completed company income tax self-assessment forms

Value Added Tax (VAT)

VAT in Nigeria is payable at 7.5% on certain goods and services listed in the First Schedule of the Value Added Tax Act LFN 2004 (as amended by the Finance Act 2019).

According to the Finance Act 2019, non-resident companies carrying on business in Nigeria are required register for VAT with the FIRS, and shall include the tax on its invoice for the supply of taxable goods and services. The tax is however to be withheld and remitted by the Nigerian counterpart in the currency of the transaction.

Compliance requirements

To comply with CIT and VAT filing requirements, a non-resident company is to register with the Non-Residents Persons Tax Office (NRPTO), and obtain a Tax Identification Number (TIN), which will also be used for CIT remittances.

VAT returns are to be submitted to the FIRS on or before the 21st day of the month succeeding that in which the purchase or supply was made. Failure to render VAT returns as at when due attracts a fine of N50,000 in the month of default and N25,000 for every month in which the default continues.

CONCLUSION

The Nigerian tax environment is constantly evolving, more so with the signing of the OECD BEPS Framework in 2017. It is therefore expedient that persons doing business or seeking to do business in Nigeria keep abreast of the developments in the Nigerian tax laws, particularly where they relate to non-resident entities and tax compliance requirements.

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