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International tax

Nigeria Highlights 2013

Investment basics:

Currency – Nigerian Naira (NGN)

Foreign exchange control – Equity share capital must be brought into Nigeria through authorized dealers (banks). The remittance of dividends is permitted provided the share equity was imported. There are no restrictions on the percentage of profits that may be distributed as dividends. The remittance of interest, royalties and technical service fees is permitted, provided the royalty contracts and technical fees have been approved by the National Office for Technology, Acquisition and Promotion.

Accounting principles/financial statements – NASB SAS/ IAS/IFRS. Financial statements must be prepared annually and filed with the Corporate Affairs Commission.

Principal business entities – These are the public and private limited liability company, partnership and sole proprietorship. Foreign companies are required to incorporate local subsidiaries or branches.

Corporate taxation:

Residence – The Companies Income Tax Act uses the concept of a "fixed base" rather than residence. Any company doing business in Nigeria that has a fixed base as defined in the Act is subject to tax. A nonresident company operating through a fixed base or permanent establishment (PE) as defined in a tax treaty also will be subject to the Nigerian tax regime. A Nigerian company is one incorporated in Nigeria.

All companies involved in petroleum operations, as defined by the Petroleum Profit Tax (PPT) Act, wherever incorporated, are subject to PPT.

Basis – Nigerian companies are taxed on worldwide income, while companies registered in a foreign jurisdiction with a fixed base or PE in Nigeria are taxed only on Nigerian-source income.

Taxable income – Taxable income is a company's income, less allowable deductions and losses. Income of a capital nature is not included in taxable income.

PPT, rather than corporate tax, is imposed on petroleum companies. Income for PPT purposes refers to the value of the oil and related substances extracted, except gas, plus any other income of the company. Various deductions are allowed.

Taxation of dividends – Dividends received by a Nigerian company from another Nigerian company are exempt from corporate income tax.

Capital gains – Capital gains tax generally is levied at a rate of 10%. Gains from the disposal of shares are not subject to capital gains tax.

Losses – Losses may not be carried back but may be carried forward indefinitely (except insurance companies, which are limited to a four-year carryforward).

Rate – The corporate tax rate for non-oil and gas companies is 30%. The tax rate for petroleum companies normally is 85%, although a reduced rate of 65.75% is used for companies operating for less than five years and 50% is used for production sharing contracts.

Surtax – No

Alternative minimum tax – A minimum tax is levied to ensure that, unless exempt, every company pays a certain amount of corporate income tax. The minimum tax is payable by a company where, in any year of assessment, the total assessable profits from all sources results in a loss or no tax being payable or tax payable that is less than the minimum tax. When turnover is NGN 500,000 or less, the minimum tax is the highest of 0.5% of gross profits or 0.5% of net assets, or 0.25% of paid-up capital or 0.25% of turnover. When turnover exceeds NGN 500,000, an additional tax is payable, calculated at the rate of 0.125% of the turnover exceeding NGN 500,000.

Agricultural and agro-allied companies, companies with at least 25% foreign equity and any company in the first four years of commencement of business are not required to pay the minimum tax.

Foreign tax credit – A unilateral credit is not available to corporate taxpayers. However, income tax paid in nontreaty countries is deductible if Nigeria also taxes the income.

Participation exemption – No

Holding company regime – No

Incentives – Various investment incentives are available to foreign investors, including import concessions, tax exemptions for exported products, tax reductions for qualifying companies (i.e. pioneer companies, manufacturing companies) and tax deductions for research and development (R&D) expenses.

Withholding tax:

Dividends – Dividends are subject to a 10% withholding tax whether paid to a resident or non-resident unless (in the latter case) the rate is reduced under a tax treaty. Dividends paid between two Nigerian companies are exempt.

Interest – A withholding tax of 10% is imposed on payments of interest to a resident or nonresident unless the interest is exempt. Exempt interest includes interest on savings accounts, provided the amount deposited is below NGN 50,000.

Royalties – Tax must be withheld at a rate of 10% in respect of royalty payments to a resident or nonresident company and 5% for individuals. The rate for a nonresident may be reduced under a tax treaty.

Technical service fees – Fees paid for technical services are subject to withholding tax at a rate of 10% for corporate recipients and 5% for individuals.

Branch remittance tax – No

Other – Payments, such as management consulting fees and commissions, are subject to withholding tax at a rate of 10% for corporate recipients and 5% for individuals. A 10% withholding tax applies to all rental payments and director's fees. These withholding taxes are final for nonresident recipients, but may not be final for residents.

Other taxes on corporations:

Capital duty – No

Payroll tax – No

Real property tax – States and local authorities levy "rates" on the occupation of real property.

Social security – The employer is required to make a compulsory pension contribution at a minimum of 7.5% of an employee's basic salary, transport and accommodation allowance. An employee also contributes a minimum of 7.5% of earnings. While there is no maximum limit to the amount that may be contributed by an employer, the minimum total contribution is 15%.

Stamp duty – Stamp duty is charged by both federal and state governments on various commercial and legal documents, such as transfers of deeds, insurance policies and bills of exchange.

Transfer tax – No

Other – All employers are expected to contribute annually an amount equal to 1% of their annual payroll to the Industrial Training Fund. A refund up to a maximum of 50% of the amount contributed by the employer is granted to an employer with an adequate and approved training program.

Education tax at a rate of 2% is payable by all resident companies. The tax base is calculated on the company's adjusted/assessable profits for corporate income tax (or PPT) purposes before the deduction of capital allowances. The tax is payable by self-assessment or assessment notices issued by the federal tax authorities and is an allowable expenditure for PPT purposes.

Anti-avoidance rules:

Transfer pricing – The Companies Income Tax Act contains general provisions on anti-avoidance rules. It requires transactions by related parties to comply with arm's length principle. Further guidelines covering applicable transactions, acceptable transfer pricing methods, required documentation, advance pricing agreements and offences, penalties and dispute resolutions are contained within the Income Tax (Transfer Pricing) Regulations.

Thin capitalization – There are no specific thin capitalization rules, but transactions are required to be conducted at arm's length.

Controlled foreign companies – No

Other – The arm's length principle applies to all transactions.

Disclosure requirements – Annual tax returns must be accompanied by signed, audited financial statements.

Administration and compliance:

Tax year – The tax year is 12 months on a preceding year basis, except for the commencement of a new business, a change of accounting date and cessation of business, where special rules apply.

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return.

Filing requirements – A corporate taxpayer must file an annual return, based on its income for the accounting year. The return is due within six months after the end of the accounting year. The taxpayer's audited financial statements must accompany the return.

Penalties – A taxpayer failing to file a return will be assessed by the tax authorities to the best of their judgment. Penalties may apply for late filing.

Rulings – A Tax Appeal Tribunal is in place to settle tax disputes. A private ruling can be obtained from the Federal Inland Revenue Service on the tax consequences of a transaction.

Personal taxation:

Basis – Nigerian residents are taxed on their worldwide income. Foreign-source income of residents is taxable if remitted to Nigeria. Foreign-source income in convertible currency arising from salaries, dividends, interest, rent, royalties, fees or commissions is exempt if brought into Nigeria through approved channels. Income brought into Nigeria through domiciliary accounts by athletes, playwrights, authors, musicians, artists and temporary guests who are professionals also is exempt. Income earned from bonds issued by federal, state and local governments and their agencies, as well as those issued by corporations, including supra-nationals also are exempt.

Nonresidents are taxed on Nigerian-source income, generally via withholding at source.

Residence – An individual is deemed to be resident in Nigeria if he/she spends more than an aggregate of 183 days (inclusive of annual leave or temporary period of absence) in any 12-month period in Nigeria.

Filing status – Each individual must file a return; joint filing is not permitted.

Taxable income – Employment income is generally taxable unless otherwise exempt. This includes employment income to temporary and permanent employees. Business profits earned by an individual from a trade or profession and other investment income also are taxable.

Capital gains – Capital gains tax is generally levied at a rate of 10%. Gains from the disposal of shares are not subject to capital gains tax.

Deductions and allowances – There is a consolidated allowance of the higher of NGN 200,000 or 1% of gross income, plus 20% of gross income.

Rates – Rates are progressive up to 24%.

Other taxes on individuals:

Capital duty – No

Stamp duty – Stamp duties are charged by both federal and state governments on various commercial and legal documents, such as transfers of deeds, insurance policies and bills of exchange.

Capital acquisitions tax – No

Real property tax – States and local authorities levy "rates" on the occupation of real property.

Inheritance/estate tax – No

Net wealth/net worth tax – No

Social security – An employee must contribute a minimum of 7.5% of earnings. The employer must make a pension contribution at a minimum of 7.5% of the employee's basic salary, transport and accommodation allowance. While there is no maximum limit to the amount that may be contributed by an employer, the minimum total contribution is 15%.

Administration and compliance:

Tax year – Calendar year

Filing and payment – An individual engaged in full-time employment is taxed under the pay-as-you earn system. The employer withholds personal income tax from the employee's salary or wages and pays it to the tax authorities. An individual whose only source of income is employment income from a single employer must file a tax return unless his/her employment income does not exceed NGN 30,000 per year. Other individuals pay tax by self-assessment or direct assessment.

Financial statements and schedules, when applicable, must accompany the self-assessment return. Payments may be made in full or, upon application, in installments. Withholding tax suffered at source can be used to offset income tax due.

Penalties – Penalties and interest are levied for late payments or failure to file returns.

Value added tax:

Taxable transactions – VAT is payable on taxable supplies of goods and services, including imports.

Rates – The VAT rate is 5%. Exempt goods and services include basic foodstuffs, medicines, medical devices and medical services, and exported goods and services. Some items are zero-rated.

Registration – Most businesses are obliged to register for VAT purposes. An exemption applies to individuals and small-scale traders, who may register voluntarily so that they can recover VAT they pay on business-related purchases.

Filing and payment – VAT returns are filed on a monthly basis, along with any payments due. The returns cover the VAT paid (input VAT) and VAT received (output VAT) in the previous month. If the input VAT paid by the taxpayer exceeds the output VAT charged to the taxpayer's customers, the taxpayer may apply for a refund. Input VAT does not include VAT paid on revenue expenses, which are otherwise charged to the profit and loss account. Various penalties and interest are charged for violations of the VAT law.

Source of tax law: Federal Inland Revenue Service (Establishment) Act, Companies Income Tax Act, Petroleum Profit Tax Act, Personal Income Tax Act, Capital Gain Act, Value Added Tax Act.

Tax treaties: Nigeria has 11 tax treaties

Tax authorities: Federal Inland Revenue Service, State Boards of Internal Revenue

International organizations: AU, ECOWAS, WTO, ICC

Deloitte contact
Evans Tomety
E-mail: etomety@deloitte.com