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TAX

Nigeria Fiscal Guide 2012/13

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Introduction:

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Income tax

Generally, all companies doing business in Nigeria are subject to corporate income tax. Companies resident in Nigeria are assessable to tax on their worldwide income. Non-resident companies are subject to tax on profits accrued in or derived from Nigeria, to the extent that the profit is not attributable to operations outside Nigeria.

Individuals are subject to tax under the Personal Income Tax (PIT) Act, Cap P8, Laws of the Federation of Nigeria, 2004 (as amended by the PIT (Amendment) Act, 2011). Resident individuals are subject to tax on all personal income, including income derived outside Nigeria (except those specifically exempted from tax). Generally, the tax is collected by the government of the state in which the individual resides, except for certain categories of individuals whose taxes are payable to the Federal Government.

Non-residents are liable for tax on income from sources in Nigeria. The income of a non-resident from an employment, profession, vocation or business in Nigeria is generally taxed in the same manner as that of a resident. However, investment income derived from Nigeria by a person resident outside the country is typically only liable to withholding tax.

Rates

Resident companies	
Companies income tax	30%
Tertiary education tax	2%
Petroleum profits tax (for petroleum companies)	85% ¹ (standard rate)
Capital gains tax	10%
Dividends	10% ²
Interest	10% ²
Royalties	10% ²
Rents	10% ²
Consultancy fees, management fees and fees for technical services	10% ²

Resident individuals	
Income tax	7-24% ³
Capital gains tax	10%
Dividends	10% ²
Interest	10% ⁴
Royalties	5% ⁴
Rents	10% ²
Consultancy fees, management fees and fees for technical services	5% ²
Directors' fees	10% ²

Non-resident companies	
Corporation tax	Non-resident companies are taxed at the same tax rates as resident companies. However, they are only taxed on Nigerian-sourced income. Tertiary education tax does not apply ⁵ .
Income tax (for individuals)	only taxed on Nigerian-sourced income
Capital gains tax	Taxed at the same rate as residents
Dividends	Taxed at the same rate as residents
Interest	Taxed at the same rate as residents ⁴
Royalties	Taxed at the same rate as residents ⁴
Rents	Taxed at the same rate as residents ⁴
Fees	Taxed at the same rate as residents

¹ For a company in its first five years of petroleum operation, the applicable rate is 65.75%. The petroleum profits tax rate for companies operating under Production Sharing Contracts (PSCs) with the Nigerian National Petroleum Corporation (NNPC) is 50% flat for the contract area. There are plans to vary the tax rates in the proposed Petroleum Industry Bill, currently before the Nigerian law making body, the National Assembly.

² Withholding tax deducted at source. Dividend received after deduction of withholding tax is regarded as franked investment income.

³ The current income tax table for individuals is shown below:

Taxable income	(NGN)	Rate of tax (%)
up to	– 30,000	5
30,000	– 60,000	10
60,000	– 110,000	15
110,000	– 160,000	20
over	– 160,000	25

⁴ The withholding tax deducted at source is the final income tax due on the income.

⁵ The Federal Inland Revenue Service (FIRS) has the discretion to assess non-resident companies to corporation tax at the higher of actual assessable profit (determined based on audited accounts) and deemed profit (currently 20% of revenue). In practice, most non-resident companies are assessed to corporation tax on deemed profit basis.

Capital gains tax

Capital gains tax (CGT) is imposed at a rate of 10% on capital gains accruing from the disposal of any asset, corporeal or not, irrespective of where it is situated in Nigeria. Transactions which are subject to income tax are usually excluded from the scope of CGT, as are gains of exempt organisations and institutions. Capital losses arising from the disposal of an asset cannot be offset against capital gains for the purposes of calculating CGT.

Where assets situated outside Nigeria are disposed of by a non-Nigerian company, or by a person who was not resident for more than 183 days in Nigeria, CGT is only charged in respect of that part of the gain (if any) which is brought into or received in Nigeria. Generally, gains on transfer of securities, stock and shares are exempt from CGT.

Transfer pricing and thin capitalisation rules

There are currently no special transfer pricing rules in Nigeria. However, there are general anti-avoidance provisions in the tax laws that empower the FIRS to adjust the tax liability of a company where the FIRS is of the view that the company's transactions were not conducted at arm's length. Transactions between a company and related entities are usually scrutinised by the tax authorities, to ensure that they are conducted on competitive terms. Certain expenses (such as management fees and offshore expenses), for which relevant regulatory approval was not obtained, may also be disallowed by the FIRS for corporate income tax purpose.

We are aware that the FIRS is in the process of issuing Transfer Pricing Regulations based on both the OECD and UN models. There are indications that the regulations will be issued before the end of the year (2012), and apply to taxable periods commencing from 1 January 2013.

Nigeria has no specific thin capitalisation rules. Thus, generally speaking, there are no ratios which may limit the amount of debt that may be applied to fund a company.

However, companies that intend to engage in banking or insurance business are required to have specified minimum paid-up capital, capital adequacy ratios and/or solvency margins. Resident companies that intend to employ expatriates are also required by the Federal Ministry of Interior (FMI) to have a minimum authorised share capital of N10million (about US\$62 500 at US\$1:N160) which must be issued and fully paid up. We are aware of a move by the FMI to review the minimum authorised share capital threshold upwards to N30million (about US\$187 500 at US\$1:N160) or more.

Transaction taxes

Value Added Tax (VAT) is levied at a single rate of 5% on taxable goods and services supplied in Nigeria and on all goods and services imported into the country, except those specifically listed as exempt items in the Act.

VAT on goods and services payable to the following persons is required to be deducted at source by the recipient and remitted to the FIRS:

- 1 Non-resident companies.
- 2 Persons supplying goods and services to companies operating in the oil and gas industry.
- 3 Persons supplying goods and services to government ministries and parastatals.

Stamp and transfer duty

Stamp duty is levied on most legal instruments including agreements, awards, bonds, leases and receipts. Stamp duty is levied at a nominal rate on the transfer of shares or stocks. Instruments on which duty would be payable by the government are exempt from duty.

Double tax treaties and reduced rates

Country	Dividends ⁷ (%)	Interest ⁶ (%)	Royalties ⁶ (%)
Belgium	7.5	7.5	7.5
Canada	7.5	7.5	7.5
China	7.5	7.5	7.5
Czech Republic ⁷	7.5	7.5	7.5
France	7.5	7.5	7.5
Pakistan	7.5	7.5	7.5
Romania	7.5	7.5	7.5
Slovak Republic	7.5	7.5	7.5
South Africa	7.5	7.5	7.5
The Netherlands	7.5	7.5	7.5
United Kingdom	7.5	7.5	7.5

⁶ Although the Tax Treaties (with the exception of the Tax Treaties with South Africa and China) have not been formally amended to reflect the reduced rate of 7.5% specified in the 1999 Budget pronouncement, the tax authorities have been implementing it in Nigeria.

⁷ Nigerian Investment Promotion Commission (Website: www.nipc.gov.ng/investment.html – Date Visited: 12 July 2012)

Investment information

Investment rules

Investment in Nigeria is regulated by the Nigeria Investment Promotion Commission Act 1995. Few restrictions are placed on investors.

Foreigners are able to invest and participate in any enterprise in Nigeria, except for those on the following “negative list” (local investors are also precluded):

- Production of arms and ammunition
- Production and dealing in narcotic drugs and psychotropic substances
- Production of military and parliamentary wear and accoutrement.

A foreign investor is required to apply to the FMI for approval to establish a business and to employ expatriates. The investor should also apply for a Certificate of Capital Importation (CCI) in respect of equity investment in a Nigerian company to ensure remittance of dividends and repatriation of capital. Generally, there are no restrictions on foreign repatriation of profits as long as the documentation requirements are met and the appropriate taxes paid.

Investment incentives - General

In addition to capital allowances granted on fixed asset expenditure in lieu of accounting depreciation, investment incentives available to pioneer companies include:

- Nigerian companies with a minimum of 25% foreign equity are exempt from payment of minimum tax (tax paid by a company that has no taxable profit or whose taxable profit is lower than the minimum tax).
- Income/interest earned from Federal Government short-term securities is exempted from companies income tax and personal income tax. Income/interest earned from bonds issued by the Federal, State and Local governments, and corporate bodies (including supra-nationals) is also exempted from the taxes.
- Proceeds from the disposal of the bonds and securities listed in (b) above are exempted from VAT.
- Investment allowance of 10% on qualifying expenditure on plant, machinery and equipment.

- Rural investment allowance of between 15% and 100% of the cost incurred in providing facilities/ infrastructure in rural areas.
- Capital allowance of 95% in the first year in respect of plants and machineries purchased to replace old ones.
- Tax exemption of between 40% and 100% of the interest earned on foreign loans advanced to companies in any industry, where the terms and tenure of the loan satisfy the conditions specified in the law.

Incentives for “pioneer companies”

Under certain circumstances, pioneer status may be granted to companies (including foreign-owned companies registered in Nigeria) involved in designated industries. The fiscal incentives available to pioneer companies include:

- Exemption from income tax for 3 years with a possible extension of 2 years
- Capital expenditure on qualifying assets incurred during the tax relief period is treated as having been incurred on the first day following the tax relief period. Pioneer companies are therefore able to fully claim capital allowances on such assets
- Tax free dividends during the holiday period
- Losses in the relief period may be set off against profits after the end of the period.

Incentives for the agricultural sector include:

- Companies engaged in agricultural trade or business are not liable for minimum tax
- Non-restriction of the capital allowance claimable by the companies to 66% of assessable profit
- Tax exemption of the interest earned from agricultural loans, provided the moratorium is not less than 18 months and the rate of interest is not more than the base lending rate at the time of the loan.

Export and Mining Enterprises incentives include:

- A wholly-export-oriented company established outside an export processing zone (EPZ) is exempted from companies income tax for its first three tax years, provided the export proceeds constitute at least 75% of its turnover and it repatriates at least 75% of the export earnings to Nigeria.
- Plant, machinery, equipment and accessories imported exclusively for mining operations in Nigeria are exempted from customs and import duties.
- A new company engaged in the mining of solid minerals will enjoy a tax holiday of 3 years.
- Free Trade Zones (FTZs) and EPZs are designated from time to time and enterprises operating in such designated zones enjoy tax exemption and considerably relaxed exchange control measures.

Exchange controls

Exchange controls are regulated by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995. The Act creates an autonomous market in which transactions may be conducted in any convertible currency through authorised dealers. Investments may be made in foreign currency or imported capital but information on such transactions must be filed by the dealer within 24 hours with the Central Bank of Nigeria (CBN), which will then issue the investor with a CCI.

Any person may open, maintain and operate a foreign currency account with an authorised dealer (Bank).

Residence and work permits

All foreign citizens are required to obtain work permits, which are generally granted if it can be demonstrated that a Nigerian citizen does not have the required expertise to perform the job.

Annual budget announcement

The President presents the annual budget for the fiscal year commencing on 1 January to the joint session of the National Assembly. Thereafter, the Minister of Finance provides the detailed breakdown of the budget.

Trade and bilateral agreements

Membership – Africa, Caribbean and Pacific (ACP), European Union (EU) Partnership Agreement, Organisation of Petroleum Exporting Companies (OPEC), World Trade Organisation (WTO), African Union (AU) and Economic Community of West African States (ECOWAS).

Investment treaties are in force with France, Netherlands, Germany, Switzerland, Romania, Spain and the UK. Nigeria has signed the 1965 Convention on the Settlement of Investment Disputes.

Economic statistics (2010)⁸

Prime interest rate (av)	16.02%
CBN monetary policy rate (av)	8.90%
US\$ exchange rate (av)	153.86
Inflation (av %)	11.9% (2011 est.)
GDP 2011 (est)	US\$414.5 billion (using official exchange rate)

⁸ CBN (Website: <http://www.cenbank.org/rates.asp> - Date Visited: 10 July, 2012) CIA World Fact book – (Website: <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html> – Date Visited: 12 July 2012)

Travel information

Visa requirements	Other than nationals of ECOWAS member states, visas are required by all foreign passport holders.
Flights	A number of international carriers fly into Nigeria. There are regular flights between major international hubs, daily regional flights with neighbouring countries and other hubs such as Nairobi and Johannesburg.
Inoculations	Standard requirements.

Currency

The Naira (NGN) and this is divided into 100 kobo.

Languages

English is the official language of the country. Hausa, Ibo and Yoruba are the main languages of the North, South-East and South-West, respectively

Official holidays

- 1 January (New Year's Day)
- 1 May (Workers' Day)
- 29 May (Democracy Day)
- 1 October (National Day)
- 25-26 December (Christmas Day and Boxing Day)
- Birthday of the Prophet (Birthday of the Prophet – S.A.W)
- Variable days: Easter, End of Ramadan and Feast of the Sacrifice



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