

INFORMATION CIRCULAR

No: 9302

SUBJECT: THE TAXATION OF NON-RESIDENTS IN NIGERIA.

DATE: 22nd MARCH, 1993

This circular is issued for the information of the general public and in particular all taxpayers, taxpayers' representatives or advisers and the staff of the Revenue Services. The contents are based on the provisions of the various Nigeria Tax Acts as amended to-date and the Double Taxation Agreement between Nigeria and other countries.

1. Introduction

The purpose of the circular is to provide a general description of the application of the Nigerian tax laws to non-residents and in particular the extent of their liability to Nigerian taxes, as well as the payment procedure.

2. Residence

The concept of residence determines the extent to which the income of a taxpayer is liable to tax under a tax jurisdiction. In Nigeria, a resident person (individual or corporate) is assessable on the global income~ This means that the taxpayer is liable to tax on the income or profits "accruing, derived from, brought into, or received . in, Nigeria". It also determines the scope of deductions that may be allowed for the purpose of computing an individual's chargeable income. For instance, only residents may claim children's allowance, dependants' Allowance and life assurance allowance.

For income tax purposes, a person may be resident, non-resident or possess dual residence.

2.1 Residential Individual

An individual is regarded-as resident in Nigeria throughout an assessment year if he:

- (i) is domiciled in Nigeria;
- (ii) Sojourns in Nigeria for a period or periods in all amounting to 183 days or more in a 12-month period;

or

- (iii) serves as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria.

2.1.1 Resident Individual and Liability to Tax

- (i) The Profit of a trade, profession or vocation is liable to tax in Nigeria regardless of the period for which such a trade, profession or vocation has been carried on.
- (ii) Employment income is liable to tax on the basis of residence.

Nigeria

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Example 1

Mr. John James entered Nigeria on 20th July, 1991 and remained in an employment in the country till May 31st, 1992.

Treatment

Under the old law, Mr. John James would not be regarded as resident in Nigeria since he stayed for less than 183 days in 1991 assessment year (July 20 to Dec. 31) and less than 183 days in 1992 Assessment Year (Jan. 1 to May 31). However, under the new law, he becomes resident and therefore liable to Nigerian tax as from January 19, 1992 (July 20, 1991 to Jan. 19, 1992 = 183 days).

2.2 Resident Corporation

A company is resident in Nigeria if it is registered or incorporated in Nigeria. Under the old law, the determining factor was the "place of management".

2.3 Non-Resident

A non-resident corporation or individual is liable to tax only on the profit or income deemed to be derived from Nigeria.

2.3.1 Non-resident Individual

A non-resident individual is a person who is not domiciled in Nigeria or who stays in Nigeria for less than 183 days but derives income or profits from Nigeria. A non-resident individual becomes liable to tax from the day he commences to carry on a trade, business, vocation, or profession in Nigeria. However, he is liable to tax in respect of employment income when he becomes resident. For further information, please see paragraph 11 below.

2.3.2 Non-Resident Corporation

This is a company or corporation that is not registered or incorporated in Nigeria but which derives income or profits from Nigeria. It is to be mentioned here, for the sake of emphasis, that exemption from incorporation does not confer exemption from payment of tax on any company. Every company, resident and non-resident, is liable to tax in Nigeria if its income is liable to tax under the provisions of the Companies Incomes Tax Act. It is also to be pointed out that the Nigerian tax laws do not exempt the income of a branch from tax.

An individual or corporation may have dual or multiple residence status.

2.3.4 Dual Residence of Individuals (Local)

Ordinarily, a resident individual is subject to tax in Nigeria in the State where the individual normally resides. In the case where such an individual has two or more places of residence in Nigeria for income tax purposes, he is subject to tax in the State where he has the "principal place of residence". The term "principal place of residence" means, for an individual with:

- (i) Pension as the only source of-earned income, his usual residence constitutes the principal place of residence.
- (ii) source of earned income other than pension, and the place nearest to his usual place of work; and
- (iii) sources of unearned income, his usual residence.

Where the determination of the principal place of residence leads to dispute between two or more tax authorities, the Joint Tax Board determines the tax jurisdiction. In practice, the determining factor is the source of earned income.

2.3.5 Local Dual Residence of a Corporation

The constitutional arrangement in Nigeria vested the taxation of all companies in the Federal tax authority. This does not allow for the dual residence of corporations locally. All corporations wherever located in Nigeria are under Federal tax jurisdiction. Therefore, the problem of local dual residence of corporations does not arise.

2.3.6 International Dual Residence

The definition of the term "residence" differs from one country to the other. For instance, in Nigeria, the length of stay to qualify a taxpayer as a resident is reckoned within a 12-month period. In some countries, this is reckoned within an assessment year - allowing for the qualifying period of stay to split over two years of assessment. In some other countries (e.g. the USA), the citizen is regarded as resident in the home country whatever the length of stay abroad. This creates the problem of dual residence for the individual who is regarded as resident in more than one country. For example, he is regarded as resident at the same time in country A where nationality is the basis of residence, in country B where he has stayed for more than 183 days in a 12-month period and, maybe, in his home country where he is away for the less than 183 days in that assessment year.

A corporation may also have the problem of dual residence. For instance, the definition of the residence of a corporation in Nigeria is the place of incorporation. In some other countries, the relevant criterion may be the "place of management" or the "place of residence of the directors". In this instance, the Nigerian tax authority would treat the corporation as resident in Nigeria on the basis of the place of incorporation while the tax authority of the other country would regard the same corporation as resident in that other country on the basis of "place of management." The Nigerian tax treaties govern the treatment of such cases and affected companies can claim tax credit for the Nigerian tax in their home countries to avoid double taxation.

2.4 Branches and the Parent Company

The tax laws of some countries regard a branch as resident, for tax purposes, in the same country as the parent company and therefore exempt the income of branches from tax. There is no such provision in the Nigerian tax law. A Nigeria branch of a foreign company is treated as a corporate entity under the law of the land and any income or profit derived by it from Nigeria is taxable here. The only two conditions where a branch may not be so treated are:

- (i) if the branch is used solely for storage or display of goods or merchandise; and
- (ii) if the branch is used solely for the collection of information.

2.5 Subsidiaries and the Parent Company

A subsidiary is expected to incorporate in Nigeria and therefore to operate as a separate legal entity from the parent. The foreign equity-participation may now, in certain circumstances, be 100% but such equity-ownership or the control will not affect the residence status in Nigeria once the company incorporates. However, the claim to the contrary by the other country may raise the problem of dual residence

5.1 Article 4 of the Nigerian model Double Taxation Agreement spells out the mode of resolving the problem of dual residence between Nigeria and a treaty-country.

2.5.2 The Agreement provides for the criterion of "place of incorporation" as basis of resolving dual residence of

companies. Where this fails, the question is to be resolved by "mutual agreement".

3. Treatment of Expenses

The Nigerian tax laws do not discriminate between residents and non-residents in the allowance of expenses for the purpose of determining the taxable income. All expenses proved to be incurred for the production of the income are allowable as deductions. Rent, interests, royalties, management fees, head offices expenses and similar expenses are deductible if proved that they are "wholly ,exclusively, necessarily and reasonably" incurred for the purpose of the trade or business.

4.0 Profits or Income "deemed to be derived from Nigeria"

Under the old law, the liability to the Nigerian tax on the income from a trade or business of a non-resident company or individual in Nigeria was restricted to that portion of the income attributable to the operations performed in Nigeria. This definition has been found to be inadequate in view of the growing complexities in the nature of commercial operations in Nigeria. The government is in favour of encouraging foreign investment and has therefore decided to state in clear and specific terms which activities of a non-resident company and individual would attract Nigerian tax and to what extent. Recent amendments to the former laws have comprehensively defined what constitutes the deemed profit or income from a trade or business carried on in Nigeria.

For corporations, the pertinent questions to ask are

- (i) does the Corporation have a "fixed base" in Nigeria?
- (ii) does the Corporation operate in Nigeria through a dependent agent authorized to conclude contracts or deliver goods or merchandise on its behalf?
- (iii) is the Corporation executing a turnkey project in Nigeria? Or
- (iv) is the operation between the corporation and its Nigerian subsidiary at arm's length?

Each of these specific circumstances will be treated in turn.

4.1 Fixed base of Business

If a non-resident corporation has a "fixed base" from which it carries on its business or trade in Nigeria, the profits from such activities would be deemed to be derived from Nigeria.

The term "fixed base" implies that the place must be easily identifiable and must possess some degree of permanence. It includes-

- (i) facilities such as a factory, an office, a branch, a mine, gas or oil well, etc.;
- (ii) activities such as building, construction, assembly or installation; and
- (iii) furnishing of services in connection with the activities mentioned above.

However, two cases are specifically exempted and these include:

- (i) facilities used solely for storage or display of goods or merchandise;
- (ii) facilities used solely for the collection of information.

4.2 Operation of a Dependent Agent

A non-resident corporation can have two types of agents in Nigeria - an independent agent or a dependent agent. An agent is regarded as possessing independent status when he acts on behalf of a non-resident corporation in the ordinary course of his business. The status may however change if he devotes his activities wholly or almost wholly on behalf of the corporation.

4.3 The word "**habitually**" as used in the new legislation implies that the operation of the non-resident company must be repetitive. An isolated case will therefore not qualify as "**habitual**".

Where a dependent agent makes an isolated sale of goods on behalf of a principal, that may not necessarily constitute the income from such an operation a deemed profit liable to Nigerian tax. However, where the facts show that the sale of goods on behalf of the principal or of any company associated to it by the agent is on a regular pattern, this arrangement will conform with the Intention of the term "habitually".

4.4 Profit on a Turnkey Project

A turnkey project is defined as a "single contract involving survey, deliveries, installation or construction". The profit on a turnkey project is liable to tax in Nigeria. Such a profit should not be split between the so-called "Nigeria source" and "**off-shore**" profits but taxed wholly in Nigeria.

4.5 Transactions not at arm's length

The new legislation allows the Board to make appropriate adjustment to the profits of Nigerian companies where the following circumstances prevail:

- (i) where there is a controlling interest in the Nigerian Company;
- (ii) the presence of a control of a Nigerian company may be exercised directly or indirectly by a parent company or any other company associated to it;
- (iii) the imposition of conditions in the financial and commercial relationship by the controlling interest; (iv) the conditions imposed must be different from what would obtain between independent parties or in an open market situation; and
- (v) such relationship and conditions lead to the transfer of goods and services at prices not at arm's length; and
- (vi) consequently, the profits declared for the Nigerian tax are understated.

The 'imposition of conditions' or control and influence as mentioned above can move in various appearances like over-invoicing of goods and services, packaging of the terms of payment of interest on loans, frivolous charges for management fees, royalty, patent and rent, convenient shifting of profits between companies or in the allocation of expenses, all with the objective of minimising, avoiding or evading the Nigerian tax.

When the conditions analyses above holds, the profit deemed to be derived from Nigeria shall be as determined by the Board. In such circumstance, the Board will carry out comparative cost and price analysis to establish the true market prices and make necessary adjustments to determine the true profit for tax purposes

4.6 "Sales' Outlet"

The new law has excluded

- (i) "facilities used solely for storage of goods or merchandise"; and
- (ii) "facilities used solely for the collection of information" from the facilities that would constitute a fixed base. The use of the word "solely" in the law implies that facilities used in the law imply that facilities used exclusively as a representative office would be exempted. Where, however, a facility is so exempted but such a facility is used for some other purposes than those originally intended, the facility will qualify as a "sales' outlet" and treated as a fixed base for the non-resident company. The profit arising from such a sales outlet is taxable.

Example 2

Sweet Horne Inc. has a representative branch in Nigeria for the display of its products. It was later discovered that sales were regularly conducted from the stock held for the display

Treatment

With the activity of the branch restricted solely to the display of the parent's in Nigeria, the branch will retain the status of a representative office and will not be held liable to Nigerian tax. However, with the sales activity of the branch, the status of the branch has changed to a sales' outlet and this will turn it into the parent's field base in Nigeria.

4.7 Individuals

The recent amendment to the tax law has introduced conditions similar to those explained in sub-paragraphs 4.1 to 4.6 above to individuals. In other words, the profits of an individual carrying on a trade or business in Nigeria through a 'fixed base' shall be the profit attributable to that fixed base. Therefore:

- if the business is through a dependent agent, the profit attributable to that agent;
- if the business involves a turnkey project, the profit from that contract; and
- if the business is between related persons, the profit that may be determined on arm's length principle by the relevant tax authority.

4.8 Double Taxation Agreement and the Permanent Establishment Concept

4.8.1 Article 5 of the Nigerian model Double Taxation Agreement (D.T.A.) spells out what constitutes a permanent establishment (P.E). The permanent establishment is the condition for liability to Nigerian tax of business profits made from Nigeria. In other words, if a company has a permanent establishment Nigeria, It is liable to Nigerian tax on the profit from trade or business derived from Nigeria but in the absence of a permanent establishment the company will not be held liable to Nigerian tax on the profits from the source.

4.8.2 The term "**permanent establishment**" has been defined in the OECD* Model Double Taxation Convention as "**a fixed place of business through which the business of an enterprise is wholly or partly carried on**" It includes:

- (i) the fixed base in paragraph 4.1 above;
- (ii) the operations of the dependent agent in paragraph 4.2 above; and
- (iii) the sales' outlet in paragraph 4.6 above.

4.8.3 As pointed out above the existence of a permanent establishment-is essential for the determination of liability to tax on business profit in Nigeria. Article 7 of the Nigerian Model D.T.A. has restricted the profit that may be so taxed to what is attributable to the permanent establishment. .

4.8.4 Article 14 of the Nigerian Model D.T.A. makes the establishment of a fixed base in Nigeria the condition for the liability to tax of the income of the professional services of lawyers, architects, doctors, accountants, etc. The concept of "fixed base" is not defined here, but it is generally agreed to have the same meaning as the permanent establishment.

5.00 Turnover Basis of Assessment

This is an alternative to the normal basis of assessment to tax based on the profit as per the financial statement submitted as part of the taxpayers' annual returns. Under the basis, the turnover, which is often apparent, is used to ascertain the assessable profit by applying a reasonable percentage on it.

5.1 The recent amendments to the tax laws have modified the mode of application of the turnover tax to a trade or business carried on in whole or in part in Nigeria when the following conditions exist; when

- (i) the trade business has produced no assessable profits; or
- (ii) the assessable profits produced appear less than might be expected to arise from such a

trade or

business; or

- (iii) the true amount of the assessable profits of the company cannot be readily ascertained.

5.2 The same tax treatment applies to both residents and non-resident when the above conditions prevail. The implications of this treatment particularly to the non-residents, are illustrated below :

- (i) for a non-resident company or individual with a fixed base in Nigeria, the turnover that can be assessed and charged is only that portion that is attributable to the fixed base. In other words, it will be wrong to base the percentage considered "fair and reasonable" on the total turnover of such a company or individual once a fixed base is established. This means that the first step is to establish the fixed base. The second step is the determination of the turnover attributable to the operations carried on through the fixed base. The final step is to determine the percentage of that turnover considered fair and reasonable.

In practice, it is the industrial ratio or percentage which is compatible with the size and the geographical area of operation that will guide the Revenue officials in exercising their judgement. However, with effect from January 1993, attempts have been made to standardize what is considered to be an acceptable ratio or percentage for certain lines of trade. The prescribed standards are merely a guide which can be changed by management, based on in-depth research~ from time to time (see paragraph 53 for more details).

• *OECD; Organisation for Economic Cooperation & Development*

Example 3

ABC SPA had a contract for the construction of a fuel depot in Nigeria. It was clear from the contract agreement that the fabrication costing \$50m would be carried out outside Nigeria. The installation works on Nigerian and related services would cost \$20m and N240m.

Comment

For the fabrication works, a fixed base cannot be established in Nigeria. It will therefore not be liable to Nigerian tax. However, for the installation and other services, the installation site will serve as a fixed base for the performance of the works. If a tax treaty exists between Nigeria and the country of residence of ABC SPA, we will require an additional condition of time threshold to hold the company liable to tax. In the absence of such a treaty the company is to be held liable if even the installation takes only one day.

If by the nature of the works performed, there is a resort to the determination of the tax payable on turnover basis, the turnover to be adopted in this case will be the addition of \$20m and B240m. With the current 10% rate of turnover, the assessable profit will be \$2m plus N24m.

- (ii) where the non-resident company or individual operates in Nigeria through a dependent agent who:
 - (a) regularly concludes contracts or makes sales on behalf of the principal; or
 - (b) has authority to conclude the contract on behalf of the principal or another associated enterprise, or in the case of an individual, another person related to him;
 - (c) the turnover to be adopted will be the turnover of the trade or business carried on through the dependent agent.

Example 4

Zf2Ltd is a non-resident insurance company. Its agency agreement and pattern of operation in Nigeria show that its Nigerian agent must not take premiums on behalf of any other Insurance company except for the principal or any other company associated to it. The business the agent generated for the year amounted to N900m.

Comment

The agreement and the pattern of operations have shown the Nigerian agent as a dependent agent with authority to contract business for the principal. The whole of the turnover from the operation will be attributable to the Nigerian source. If the profit cannot be determined, a fair and reasonable percentage of the N900m will be assessed and charged to tax in Nigeria. With the current applicable rate of 10%, the assessable profit is N90m.

- (iii) For a **turnkey project**, the assessment is to be based on a "fair and reasonable" percentage of the whole turnover of the project.

Example 5

A non-resident company has a contract embracing the survey, deliveries, installation and construction of a satellite station in Nigeria. The contract price for the various works is \$350m.

Comment

If the assessment has to be based on turnover, the turnover to be adopted in this case is \$350m.

- (iv) Where the trade or business is between a principal and a subsidiary or between related individuals and the transactions are not at arm's length, the turnover attributable to each party is to be determined by the Board based on the terms of the contract agreement, P . E. and arm's length considerations.

Example 6

Blake Inc. U.SA. has Abu Nigeria Limited as its subsidiary. Blake Inc. has a contract for the dredging of a river port in Nigeria for N40m. It chose to execute the contract through Abu Nigeria Limited. Blake Inc. hired out its dredger to Abu Nig. Ltd. for N5m when Abu Nig. Ltd. could have hired one independently for N3m. Personnel cost "and other costs invoiced to Abu Nig. Ltd were found to be at variance with what obtains on the open market.

Comment

The assessable profit will be determined by deducting from the turnover of N40m the arm's length costs incurred by Abu Nig. Ltd and these will include only the N3m for hiring a dredger (not N5m) and the open market prices for personnel and other costs.

5.3 Modalities for determining 'fair and reasonable percentage' of the turn over of a Non-Resident company

For uniformity of treatment of similar cases and create an atmosphere of certainty in the minds of taxpayers, the Board has come forward with a policy on the percentage of the turnover to be adopted under each situation. The situations are analysed as follows:”

- (i) where the activity carried on through the fixed base involves construction, assembly or installation, or in the case of turnkey projects, the percentage of the turnover to be adopted to determine the assessable profit is 10%. The capital allowances are deemed to have been granted and at the current tax rate of 35 per cent, this gives an effective tax rate of 3.5 per cent of turnover.
- (ii) where the activity carried on through the fixed base for through the dependent agent involves consultancy, management, technical or agency services, the 10 per cent withholding tax is a final tax.

6.00 Building, Construction, Assembly and Installation Projections

In view of the amendment to the laws, the following clarifications on the implications of construction, assembly and installation projects in Nigeria become necessary.

6.1 A Nigerian Project Awarded to a Non-Resident Company but Sub-contracted in part to a branch, a subsidiary or an associated company

This is usually a single contract involving survey, supply and construction or installation. The whole profit on the contract will be taxable as a Nigerian profit with the subcontract allowable as an expense but limited to the actual cost to the main contractor.

6.2 Split Contract

This is where there are two distinct contracts of supply and construction or installation. The tax implications will depend on other facts of the case.

- (i) if both contracts are awarded to the same company, the profit on the supply aspect will not be subject to Nigerian tax, provided the prices of the supplies reflect open-market situation.
- (ii) if the company is resident in a treaty country, the liability to tax on the construction, assembly and/ or installation aspect will depend on the existence of a permanent establishment in Nigeria for the performance of the activities. The permanent establishment will be determined as follows:
 - (a) for construction and assembly or building: the existence of a site for more than 3 months;
 - (b) for installation: the charge for the installation relative to the free-on-board sale's price of the machinery or equipment. If the charge exceeds 10 per cent of the sales' price, the installation site would constitute a permanent establishment in Nigeria.
- (iii) if the non-resident company sub-contracts the activities in Nigeria (building, assembly, construction or installation) to a resident company, the tax implication will be the same as those illustrated under paragraphs 5.2 and 5.3 above.

6.3 Project Awarded to a Nigeria Company but subcontracted to a Non-Resident Company

If the main contract is awarded to a Nigerian company which subcontracts the supplies aspect to a non-resident company, the contract will be viewed as single contract as per paragraph 3 above and the profit on it will be liable to tax in Nigeria but with the expenses of the subcontract allowed at cost of the main contractor.

7. Airlines and Shipping

A non-resident company that carries on the business of shipping and air transportation into Nigeria is liable to tax in Nigeria on the **full profits or loss arising from the "carriage of passengers, mails, livestock or goods shipped, or loaded into an aircraft in Nigeria"**. The basis of taxation is either:

- (i) profit on the transportation business as reflected by the annual account; or
- (ii) withholding tax of 2% on Nigerian sales on monthly remittance basis.

However, if sub-paragraph (i) above yields tax less than the 2% of gross sales at the end of the year of assessment, the withholding tax of 2% becomes the final tax.

7.1 The formula for ascertaining the profit element under (i) above is given the tax legislation and this is in two parts; one part ascertains what may be called "adjusted profit ratio" of an accounting period before any allowance is made on account of depreciation relief, and the second part ascertains the required ratio for the depreciation relief. In effect,

The "**Adjusted profit ratio**" is the ratio that the adjusted profit/loss before depreciation allowances bears to the total sum receivable in respect of carriage of passengers, mails and livestock.

* The "**depreciation ratio**" is the ratio that the depreciation charged in the accounts bears to that same total sum.

Example 7

The global income statement of *JAN* Airways Ltd., a foreign airline which operates into Nigeria for the year ended 31st Dec.,1992 shows the following:

	N'000	N'000
Transportation Income		
- Income from passengers, cargo and mails:	3,100,000	
Outside Nigerian Sales	<u>100,000</u>	3,200,000
Nigerian Sales		
Less: Transportation Expenses		
- Salaries & other expenses - Depreciation	2,300,000	
- Other disallowed expenses	320,000	
<i>Net Transportation Profit</i>	<u>180,000</u>	<u>2,800,000</u>
		300,000
Other Income		
Income from Properties (net)	25,000	
Income from Maintenance (net)	50,000	
Income form duty-free shops (net)	50,000	
Income from catering (net)	<u>75,000</u>	<u>200,000</u>
		<u>500,000</u>
Net Profit		

Treatment

N'000

To determine the Nigerian tax payable

(i) calculate the Profit on the transportation business:

Net transportation Profit as per account	300,000
Add Depreciation	320,000
Other disallowed expenses	1800,000

(ii) Compute the statutory ratios

(a) Adjusted Profit ratio:	$\frac{800,000}{3,200,000} \times 100\% = 25\%$
(b) Depreciation ratio:	$\frac{320,000}{3,200,000} \times 100\% = 10\%$

(iii) Calculate the Tax payable:

Nigerian Sales as above	<u>100,000</u>
Total Assessable Profit 25% of N100,000,000	25,000
Less: Depreciation Allowance 10% of N100,000	<u>10,000</u>
Total Profit	<u>15,000</u>
Tax at 35%	<u>5,250</u>

The depreciation allowance is in lieu of the capital allowance claimable by the company under the law.

It is very important to note that the above formula will apply on two conditions:

- if the FBIR is satisfied that the tax authority of the foreign country concerned computes and assesses the profits of companies operating ships and aircrafts on substantially similar basis as in Nigeria; and
- that the foreign tax authority certifies both the adjusted profit and depreciation relief ratios to the FBIR.

7.2 Treaty Situation

Non- resident airlines and shipping companies are exempted from Nigeria tax on reciprocal basis if a double taxation agreement exists between Nigeria and the country of residence of the airline or shipping company. However, if a double taxation agreement exists but the route is plied by the airline or shipping company of only one party to the agreement the tax chargeable is 1 per cent of the sales less refunds and payment of wages/salaries of ground staff.

8. Remittance of Funds out of Nigeria

All non-residents remitting income or profits out of Nigeria are expected to obtain a Tax Clearance Remittance Certificate covering the amount to be remitted. The certificate is to show that relevant tax has been paid on the amount to be remitted or that the amount is liable to Nigerian tax. It is an offence for any remittance to be made without the Revenue clearance.

8.01 Application forms for a Tax Clearance Certificate for the purpose of remittance are obtainable free of charge from:

The International Tax Branch Federal
Inland Revenue Service 39/43,
Ibadan Street (East) Ebute - Metta,
Lagos, Nigeria.
Tel; (01) 865883.

9.00 Withholding Tax

- (a) Investment Income (Companies and Individuals)
The applicable rates for the various types of income are:

	Rates
Interest	5%
Dividend	5%
Rent	5%
Royalties	15%

The withholding tax is a final tax when paid in respect of non-residents.

(b) Services

The applicable rates for the various services performed by companies or individuals are as follows:

	Companies Rates	Individual Rates
(i) management	10%	5%
(ii) consultancy	10%	5%
(iii) technical (iv) construction	10%	2.5%
(iv) contract supplies	2.5%	2.5%
(v) directors' fees	-	5%

The payment of withholding tax is now in the currency of the payment of the contract sum.

10.0 Capital Gains Tax (CGT)

The taxation of gains accruing from disposal of assets are administered under a separate Act - the Capital Gains Tax Act. Such gains are not taxed as part of income of the beneficiary but taxed separately at the rate of 20% of the net gains.

10.1 Grains arising from the Disposal of shares

Gains arising from the sale of shares held in a Nigerian Company are taxable in Nigeria.

* The withholding tax at the specified rates here is payment on account only. The taxpayer is expected to file tax returns for normal assessment and credit will be given for tax deducted at source.

10.2 Grains arising from Takeovers, Absorptions and Mergers

Where shares in a company are acquired and such a company is taken over, absorbed by, or merged to another company, the apparent gains from such reorganisation will not be subjected to tax provided:

- (i) there is no disposal of such shares by the original holders;
- (ii) there are no cash payments for the shares involved;
- (iii) the acquired company loses its identity.

11. Employment Income

11.1 Residence is the basis of taxing employment income in Nigeria. If a taxpayer is regarded as resident in Nigeria, his employment income is liable to Nigerian tax. The other conditions are as per paragraph 11.2 below

11.2 For employment income not to be liable to Nigerian tax, three conditions must hold viz;

- (i) the employee must be resident for less than 6 months in any 12-month period;
- (ii) the employer of the person must not be resident in Nigeria; and
- (iii) income of the person must conform with the "subject-to-tax" principle.

However, there are exemptions to the rule:

11.2.1 Diplomats

Under the Vienna Convention, salaries of diplomatic agents and consular officers are liable to tax only in their home countries. Therefore, the salaries for this class of individuals, who are normally resident in Nigeria and who are otherwise liable to Nigerian tax, are not taxable in Nigeria, irrespective of the resident rule. But, any income other than salaries, which a foreign diplomat may earn from Nigeria will be liable to tax in Nigeria. Nigerian diplomats serving abroad are, under the same principle, exempted from tax by their host countries but are taxable in Nigeria in respect of the salaries they may earn abroad.

11.2.2 Nigerians working in Embassies and United Nations Organizations situated in Nigeria

This class of workers are not covered by the Vienna Convention. They are therefore liable to tax in Nigeria. They are therefore to pay to the tax authority of the state where they are resident.

11.2.3 Nigerians working under United Nations Organisations Abroad

Such Nigerians fall under two categories for income tax purposes, that is:

- (i) if such Nigerian have diplomatic status, they are subject to tax in Nigeria;
- (ii) for workers other than those with diplomatic status, they are subject to tax in the country of residence.

12. Tax Jurisdiction

12.1 Local Jurisdiction

Persons	Relevant Tax Authority
(i) Resident Individuals other than officers in the Military, the Police, Officers of Foreign Affairs Ministry	Tax Authority of the State of Residence in Nigeria
(ii) Military Officers and the Police	Federal Tax Authority
(iii) Abuja residents	Federal Tax Authority
(iv) Non-resident individuals	Federal Tax Authority
(v) Resident Companies	Federal Tax Authority
(vi) Non-resident Companies	Federal Tax Authority
(vii) Foreign Diplomats accredited to Nigeria	Tax Authority of home country
(viii) Nigerian Diplomats serving abroad	Federal Tax Authority

- | | | |
|------|---|---|
| (ix) | Nigerians working in Embassies and
UN Organizations located in Nigeria | Tax Authority of State of the Residence in Nigera |
| (x) | Nigerian With Diplomatic
In UN Organisations abroad | Federal Tax Authority |
| (xi) | Nigerians without diplomatic
Statues working abroad | Tax Authority of the country of residence |

12.2 International Jurisdiction

For incomes arising in, or derived from Nigeria, Nigeria has the first right to tax. For income brought into Nigeria, credit will be granted for the tax paid in the country where the incomes arises.

13. Further Enquiries

Any request for further information or Clarifications should please be directed to the

Office of the Chairman,
Federal Inland Revenue Service, P. M. B. 33, Garki - Abuja.
Tel: (09) 2340939
Fax: (09) 2340670

Or

P.M.B. 12516,
Federal Secretariat, 1st Phase, Ikoyi, Lagos.
Tel: (01) 683102
(01) 2634329 Fax: (01) 263453