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INFORMATION CIRCULAR

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**Subject: INFORMATION CIRCULAR ON THE CLAIM OF TAX TREATIES BENEFITS
IN NIGERIA**

This circular is issued for the information of the general public and in particular all, resident and non-resident taxpayers, taxpayers' representatives or advisers and the staff of the Revenue Services. The contents are based on the provisions of the Double Taxation Agreements between Nigeria and other countries and provisions of relevant tax laws.

1.0 Introduction

A Tax Treaty otherwise called an Avoidance of Double Taxation Agreement (ADTA) or Double Taxation Agreement (DTA) could be described as an agreement between two or more countries (otherwise known as Contracting States or parties) with the objective of making sure that a resident of one or both of the contracting countries does not suffer from paying tax twice on the same income in both jurisdictions or unduly benefit from not paying appropriate taxes in any of the countries through tax evasion or avoidance. The Agreement covers taxes on income and capital only, and does not extend to consumption taxes such as Value Added Tax or sales taxes.

This Circular is issued pursuant to Sections 45 and 46 of the Companies Income Tax Act (CITA) Cap. C21 LFN 2004 (as amended), Sections 38 and 39 of the Personal Income Tax Act (PITA) Cap. P8 LFN 2004 (as amended), Sections 61 and 62 of the Petroleum Profits Tax Act (PPTA) Cap. P13 LFN 2004 and Section 41 of the Capital Gains Tax Act (CGTA) Cap. C1 LFN 2004, to provide a general description of the application of the DTAs between Nigeria and other countries, especially on the treaty benefits that can be accessed by residents of either contracting countries by way of relief from double taxation, treaty tax rates on income from source countries, dispute resolution mechanisms and others.

2.0 Nigeria's DTA's with other countries

Nigeria currently has operational DTA's as detailed below, with the following countries:

S/N	Country	Type	Date of Entry into Force	Effective Date
1	Italy	Air and Shipping Transport Agreement Only.	22 nd February, 1977	1 st January, 1968
2	United Kingdom	Full DTA	1 st January, 1988	1 st January, 1989
3	Belgium	Full DTA	1 st January, 1990	1 st January, 1991
4	Pakistan	Full DTA	7 th March, 1990	1 st January, 1991
5	Czech	Full DTA	2 nd December, 1990	1 st January, 1991
6	Slovakia	Full DTA	2 nd December, 1990	1 st January, 1991
7	France	Full DTA	2 nd May, 1991	1 st January, 1992
8	Netherlands	Full DTA	9 th December, 1992	1 st January, 1993
9	Romania	Full DTA	18 th April, 1993	1 st January, 1994
10	Canada	Full DTA	16 th November, 1999.	1 st January, 2000
11	South Africa	Full DTA	5 th July, 2008	1 st January, 2009
12	China	Full DTA	21 st March, 2009	1 st January, 2010
13	Philippines	Full DTA	18 th August 2013	1 st January, 2014
14	Singapore	Full DTA	1 st November, 2018	1 st January, 2019

The full texts of the Agreements may be downloaded from FIRS website: <https://www.firs.gov.ng/TaxResources/TaxTreatiesNew>. This Information Circular shall also be applicable to any Agreement that comes into effect after the date of its publication.

3.0 Entitlement to Treaty Benefits in Nigeria

There are some conditions that must be fulfilled before a taxpayer can be entitled to benefits under a tax treaty and the extent of tax relief or benefits that may be granted will depend on the specific provisions contained in that particular agreement.

3.1 Who is Entitled to Treaty Benefits in Nigeria?

A taxpayer to be entitled to benefits under a tax treaty between Nigeria and another country, must be:

- a) a resident of Nigeria;
- b) a resident of the treaty partner; or
- c) a resident of both Nigeria and the treaty partner

It should be noted that a resident of another country will not be entitled to any benefit under a tax treaty between Nigeria and any of her treaty partners.

3.2 Conditions for Deriving Benefits under any of the DTAs

In addition to 3.1 above the following conditions must be present in order to take advantage of the concessions provided by a DTA:

- i) The taxpayer is liable to tax in the treaty country of which he is a resident.
- ii) The income in question is not exempted from tax in Nigeria
- iii) The tax for which that individual is seeking benefit is covered by the treaty.
- iv) The benefit is not specifically excluded under the treaty.
- v) The benefit is claimed within the time stipulated by the treaty or domestic laws.

3.3 Denial of Treaty Benefits

A taxpayer, resident or non-resident may be denied treaty benefits if, based on facts and circumstances, it is discovered that its residency of one of the treaty countries was principally for the purpose of accessing that treaty benefit (treaty shopping) or if it is discovered after careful review of the case that one of the principal purposes of the arrangement of a transaction or business is to take advantage of the treaty or abuse its provisions (Principal Purpose Test "PPT").

4.0 Available Treaty Benefits

The following are the benefits and reliefs that are available under the tax treaties between Nigeria and other countries:

- a) Relief from double taxation, in form of tax credits or deductions of foreign tax paid from tax payable in Nigeria by a Nigerian resident in order to eliminate double taxation.
- b) Treaty tax rates to foreign airlines or shipping companies or exemption of their income from tax.
- c) Treaty withholding tax rates for passive income or fees for technical service derived from Nigeria by residents of a treaty partner.
- d) Access to Mutual Agreement Procedure (MAP) for dispute resolution.
- e) Non-Discrimination in Taxation Matters.

4.1 Relief from Double Taxation (Tax Credit):

Where a resident of Nigeria has paid foreign tax on an income derived from a treaty partner of Nigeria, the Article on Elimination of Double Taxation in the tax treaty and Section 46 of CITA, Section 39 of PITA, Section 62 of PPTA or Section 41 of CGTA as the case may be, allows for a credit relief against similar tax

payable in Nigeria by that resident. The amount of foreign tax paid is deductible from the tax payable in Nigeria on same income.

However, Section 46(4) of CITA, Section 39(4) of PITA and Section 62(4) of PPTA restricts the tax credit allowable to an amount not exceeding the total tax payable in Nigeria for that year of assessment on that same income for that entity i.e. the rate of tax credit claimable is restricted to the Nigerian rate of tax on that income. Consequently, a Nigerian taxpayer liable to tax in a country with a higher tax rate than that of Nigeria will be entitled to only partial relief of an amount equivalent to the amount that is produced using the Nigerian tax rate on the income, while those from a lower tax rate will be entitled to full relief of the foreign tax paid.

4.1.1. Computation of Tax Credit that is Claimable:

The example below illustrates the computation of claims for tax credit in Nigeria:

XYZ Nigeria Limited is a Nigerian Company, which commenced business in June 2002. The company paid income tax of \$750 and \$2,100 in Belgium on its taxable profits of \$3,000 and \$6,000 for 2015 and 2016 tax year respectively, with respect to its branch, which qualifies as a permanent establishment in Belgium. The Total Profits of the company in Nigeria in those respective tax years, based on its worldwide income, are N6 million and N8 million. The tax rate in Nigeria is 30%, while Belgium imposes tax at the rate of 25% for income below \$4,000 and 35% for \$4,000 income and above. Nigeria and Belgium has a double taxation agreement, with Article 23 of the Agreement providing for credit method of elimination of double taxation. Compute the tax payable in Nigeria by the company for the relevant years of assessment in line with Section 46 of CITA. (Assume exchange rate of N200 to \$1 in both years).

Solution

For 2015 Year of Assessment:

Tax paid in Belgium = \$750 (i.e. \$3,000 X 0.25)

Tax payable in Nigeria:	N'000
Total Profit (based on the worldwide income)	<u>6,000</u>
Nigeria's rate of tax = 30%	
Tax Liability (6,000 X 0.3) =	1,800
Double Taxation Relief: (\$750 X N200) =	<u>(150)</u>

Tax payable in Nigeria = 1,650

For 2016 Year of Assessment:

Tax payable in Belgium = \$2,100 (i.e. \$6,000 X 0.35)

Tax payable in Nigeria:		N'000
Total Profit (based on the worldwide income)		<u>8,000</u>
Nigeria's rate of tax	= 30%	
Tax Liability (8,000 X 0.3)	=	2,400
Double Taxation Relief: *(\$6,000 X 0.3 X N200)	=	<u>(360)</u>
Tax payable in Nigeria	=	<u>2,040</u>

*Note: when the rate of tax imposed on the foreign income is higher than the Nigerian rate of tax, the maximum credit that may be given in Nigeria is restricted to the amount which is equivalent to that produced using the Nigerian rate of tax on the foreign income.

4.1.2. Time Allowed to Claim Tax Credit

In line with the relevant provisions of the tax laws, a claim for tax credit can only be made not later than two years after the end of the year of assessment in which the foreign tax was paid. For example a foreign tax paid in 2014 year of assessment cannot be claimed after 2016 year of assessment.

4.2 Treaty Withholding Tax Rate on Passive Income and Technical Service Fee

The Articles on Dividends, Interests, Royalties and Technical Service Fees in the DTA's between Nigeria and other countries may sometimes provide lower applicable rates for withholding tax (WHT) on passive income and technical service fees than those contained in the domestic laws.

The treaty WHT rate is only applicable in Nigeria when payments are made to non-residents and the payments are not connected to a Permanent Establishment that the non-resident has in Nigeria, while for Nigerian residents the treaty WHT are to be granted to them by the other treaty countries when payments are made to them from a source in those other countries.

4.2.1 Applicable WHT Rates

The following are the WHT rates applicable to the existing tax treaties in force in Nigeria:

S/N	Country	Dividend	Interest	Royalties	Fees for Technical Service
1	Canada	7.5%	7.5%	7.5%	N/A
2	Pakistan	7.5%	7.5%	7.5%	N/A
3	Belgium	7.5%	7.5%	7.5%	N/A
4	France	7.5%	7.5%	7.5%	N/A
5	Romania	7.5%	7.5%	7.5%	N/A
6	Netherlands	7.5%	7.5%	7.5%	N/A
7	United Kingdom	7.5%	7.5%	7.5%	N/A
8	China	7.5%	7.5%	7.5%	N/A
9	South Africa	7.5%	7.5%	7.5%	N/A
10	Italy	N/A	N/A	N/A	N/A
11	Philippines	7.5%	7.5%	7.5%	N/A
12	Czech	7.5%	7.5%	7.5%	N/A
13	Slovakia	7.5%	7.5%	7.5%	N/A
14	Singapore	7.5%	7.5%	7.5%	N/A

4.2.2 Entitlement to the Treaty WHT Rate

In addition to fulfilling the conditions for the entitlement to treaty benefits as contained in paragraph 3 of this Circular, the following conditions must also be fulfilled for the treaty WHT to apply:

- 1) Beneficial owner – the beneficial owner of the income must be a resident of the other treaty partner, even if the income was not paid directly to him. For example, where a dividend is paid by a Nigerian company directly to a resident of Nigeria's treaty partner but for the benefit of a resident of Nigeria or another country, the treaty rate on dividend will not be applicable. On the other hand, the treaty rate will be applicable if the dividend is paid to a resident of another country but for the benefit of a resident of the treaty country.
- 2) Absence of Permanent Establishment (PE) – the income must not be connected with a PE, which the beneficiary has in the paying country. The treaty WHT will not be applicable where the non-resident beneficial owner of the income carries on a business in Nigeria through a PE and the income is connected to that PE.

4.2.3. Application of Treaty WHT Rate to Rental Income

Rental incomes are covered under two separate Articles in the tax treaties as follows:

- 1) The Article on Income from Immovable Property – this Article of the treaties covers rental income derived from the direct use, letting, or use in any other form of immovable property, such as land, building, plantation and forestry, including royalties for the exploitation of mineral deposits and other natural resources. The treaty WHT rate is not applicable in the source country in respect of income derived from these properties. For example, where a non-resident derived rental income from a building situated in Nigeria, a treaty WHT rate will not be applicable on such income.
- 2) The Article on Royalties – the definition of “Royalties” in some tax treaties includes income from lease of equipment (i.e. the right to use, industrial, commercial or scientific equipment). The treaty WHT rate applicable to “Royalties” in the tax treaty will also be applicable to the rental income from lease of equipment. For example, where a non-resident derived rental income from the lease of aircraft, ship, machinery or oil rig to a resident of Nigeria, the treaty WHT rate on royalties will be applicable to such rental income.

4.3. Treaty Rate of Nigerian Tax for Non-Residents Operating in International Transport

The Article on “International Traffic” or “International Transport” in the DTAs between Nigeria and other countries moderates the provision of Section 14 of CITA. The Article deals with the sharing of taxing right between Nigeria and the treaty partner on the income from shipping and air transport. The Article covers income from international shipping and air transport, but for neighbouring countries, the Article may also cover income from boats, trains and road vehicles operated in international traffic. In any case, the scope of coverage may be identified from the definition of international traffic in the Article on General Definitions in the Agreement. While the general rule in tax treaties is to give the exclusive or sole taxing right to the resident or home country of the airline or shipping company, in most of Nigeria’s DTAs, the Article moderates the provision of Section 14 of CITA as follows:

- 1) Where there is reciprocity in international traffic between Nigeria and the home country of the foreign airline or shipping company i.e. where any Nigerian airline or shipping company also operate to the home country of the foreign airline or shipping company in the year of assessment, then the foreign airline or shipping company will not pay tax at all in Nigeria in that year of assessment. In such a case, each country will tax its own airline or shipping company.

2) Where there is no reciprocity, that is, no Nigerian airline or shipping company operate to the other treaty country in a year of assessment, then the tax payable by the foreign airline or shipping company in Nigeria in that year of assessment shall be at the rate specified in the respective DTAs. The rate of Nigerian tax on total revenues (earnings) in situations of non-reciprocity range from 1% to 1.5%, depending on the DTA. Only the DTAs with the United Kingdom, Italy and China are exempted from this rule, where no tax is payable in the source country, even when there is no reciprocity (each country will tax its own airline or shipping company in all cases).

Below is the applicable rate of tax in the source country when there is no reciprocity in each of the Nigerian DTAs:

S/N	Country	Rate of Tax on Earnings in the Source State
1	Canada	1%
2	Pakistan	1%
3	Belgium	1%
4	France	1%
5	Romania	1%
6	Netherlands	1%
7	United Kingdom	N/A
8	China	N/A
9	South Africa	1%
10	Italy	N/A
11	Philippines	1.5%
12	Czech	1%
13	Slovakia	1%
14	Singapore	1%

It should be noted that the above rules are not applicable to airline or shipping companies (whether local or foreign) operating local routes within Nigeria. Their profits are taxable in Nigeria like any other Nigerian company.

4.4 Access to a More Effective Dispute Resolution Mechanism Through Mutual Agreement Procedure

Whenever there is a dispute between a resident taxpayer and the tax authority of either Nigeria or her treaty partner regarding the interpretation or application of tax treaty provisions regarding the taxation of income of that taxpayer, the DTA provides the taxpayer with access to an easy dispute resolution mechanism through Mutual Agreement Procedure (MAP). The Competent Authority (CA) of Nigeria is required to interact with the CAs of the other treaty country with a view to resolving disputes arising from the interpretation or application of the

tax treaty provisions through mutual agreement and avoiding taxation which is not in accordance with the treaty. The Service has published a Guideline on the access to MAP. The MAP Guidelines may be downloaded on FIRS website: <https://www.firs.gov.ng/TaxResources/TreatyRelatedGuidelinesandCirculars>.

4.5 Non-Discrimination of Nigerian Citizens on Taxation Matters

By the operation of the Article on Non-Discrimination in the DTAs, citizens or nationals of Nigeria should not be subjected in the other treaty country to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens or nationals of that other treaty country are or may be subjected to in the same circumstances, especially, with respect to residence rule. Likewise, citizens or nationals of Nigeria's treaty partners are entitled to tax treatments in Nigeria similar to that applicable to Nigerians.

Where a Nigerian has suffered discrimination in taxation matters in any of the countries that has tax treaty with Nigeria, such Nigerian may apply to the CA of Nigeria (or the CA of the Treaty Partner where the treaty so provides) for redress through the MAP.

5.0 Procedures for Claiming Treaty Benefits in Nigeria

Where a taxpayer has met all the criteria for eligibility for tax treaty benefits as contained in paragraphs 3.1 and 3.2 of this Circular, that person may apply for such benefits in line with the following procedures:

5.1. Completion of Certificate of Residence

There are two types of certificates of residence available on the FIRS website <https://www.firs.gov.ng/TaxResources/TreatyRelatedForms>.

- 1) Certificate of Residence for Nigerian residents, which is to be completed by a Nigerian resident seeking to make treaty claims in another country that has treaty with Nigeria. The certificate is to be endorsed by the FIRS on behalf of the CA before it is submitted to the tax authority of the country where the claim is to be made.
- 2) Certificate of Residence for non-residents, which is to be completed by a non-resident seeking to access treaty benefits from Nigeria. The certificate is to be duly endorsed by the tax authority of the country of residence of the non-resident taxpayer.

5.2. Submission of Formal Application to the Relevant Tax Authority

A taxpayer, to claim treaty benefits, must submit a formal application, addressed to the Executive Chairman FIRS, for the attention of the Director, Tax Policy and Advisory Department (the authorised competent authority in tax treaties matters), with the following documents attached:

- 1) Duly completed Certificate of Residence with official stamp/seal of relevant revenue authority;
- 2) For Nigerian residents seeking credit relief for foreign tax paid, evidence of foreign tax paid, issued to the taxpayer by the revenue authority of the treaty partner e.g. payment receipt, tax clearance certificate, WHT credit note etc.;
For non-resident claiming relief or treaty WHT, evidence to support the income on which the treaty rate is being sought e.g. copy of contract agreement with a Nigerian resident in the case of royalties and fees for technical service, evidence of shareholding in the case of dividend or loan agreement in the case of interest.

5.3 Submission of Claim for Tax Credit

After receiving an approval or ruling for claim of tax treaty benefit from the Federal Inland Revenue Service, the taxpayer should:

- 1) in the case of a foreign tax credit relief, reflect the applicable credit in their tax computations in the self-assessment returns, to be submitted with a copy of the approval or ruling to the appropriate FIRS field office or the State Board of Internal Revenue (SBIR), as the case may be.
- 2) in the case of foreign airlines or shipping companies that are subject to a tax rule in Nigeria that is different from Section 14 of the Companies Income Tax Act Cap. C21 LFN 2004 (as amended), reflect the applicable tax rule in their tax computations in the self-assessment returns, to be submitted with a copy of the approval or ruling to the appropriate FIRS field office.
- 3) in the case of WHT treaty rate, submit a copy of the approval or ruling to the WHT collecting agent (e.g. Government ministries, departments, agencies and parastatals, companies, statutory bodies, institutions and other withholding tax (WHT) collecting agents of FIRS etc.), to reflect the rate in the WHT deduction.

6.0 Further Enquiries

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

Executive Chairman,
Federal Inland Revenue Service,
Revenue House, No 20 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
Revenue House, No 15 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

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