



TAXATION OF NON-RESIDENT COMPANIES IN NIGERIA  
BY  
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## OVERVIEW

- Introduction
- Conceptual clarification & Scope
- Taxation of Nigerian Company
- Legal Framework for taxation of NRCs
  - CITA - WHT - VAT
- Case Laws
- Issues Arising



## INTRODUCTION

- There are emerging opportunities for lawyers in taxation.
- Commendation for IBA ICLE for seeking to position lawyers.
- Refresher course for tax lawyers or those with background in taxation.  
Deep dive into taxation – Certainly Not Taxation 101.
- Focus is on the legal framework for taxation of NRCs in Nigeria – key issues. (A NRC comes to you and what to know its tax treatment).
- Recent developments
- Findings, Conclusion and Recommendations.



## OBJECTIVES

- Conceptual clarification between NRC and related terms
- Know the policy, legal and administrative framework for taxation of NRC under CITA & VAT
- Basis of liability – why and in what circumstances?
- Key issues arising from the perspective of rights and liability
- Evolutionary trends.



## CONCEPTUAL CLARIFICATION

A NRC is a foreign company (registered/formed/incorporated under the law of another country).

Being a foreign company, it ordinarily has no obligation to have a physical presence in Nigeria. C/f section – CAMA on the requirement of a registered office for every company registered in Nigeria.

**The questions are:** Why should a NRC be liable to tax in Nigeria ? In what circumstances? What are the administrative constraints for the NRC and the tax authority? How can they be surmounted?

### Out of Scope:

- Taxation of Digital Economy
- Transfer Pricing
- International Taxation & Double Taxation.



## GENERAL BASIS OF LIABILITY TO TAXATION

Generally, taxation is an attribute of sovereignty.

Derivation of income from a country (Source) – taxation being an attribute of sovereignty subject to exemption on policy on other considerations. Mere presence of a foreign company in Nigeria without more therefore does not create tax liability.

Linkage with the country (Nexus) – residence, nationality, domicile etc - protection

Remittance on income derived elsewhere into the country – formed part of the economy.

Principle of territoriality – ***Bowcher v Lawson***

Government of ***India v Taylor***

Governments adopt a combination of the above approaches (against the background that there are different type and sources of income), enter into bi-lateral agreements and while securing their gates from base erosion.



## GENERAL BASIS OF LIABILITY TO TAXATION – CONT'D

Thus, Section 9(1) CITA subject the following “profits” from the following sources to tax:

- a. Trade or business (for whatever period of time);
- b. rent or any premium;
- c. dividends, interests, royalties, discount, charges or annuities
- d. any source of annual profits or gain not falling within the preceding categories;
- e. any amount deemed to be income or profit under a provision of this Act.
- f. fees, dues and allowances (wherever paid) for services rendered;
- g. profits or gains arising from acquisition and disposal of short-term money instruments like Federal Government Securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.



## TAXATION OF NIGERIAN COMPANY UNDER CITA

- Nigerian companies are liable to CIT on its global (worldwide) income. **See sections 9(1) & 13(1).**
- Section 9(1) subject to tax profits of of “any company” accruing in, derived from, brought into or received in Nigeria”
- Potential leakage where a foreign company is not remitted. See *Karam v Commissioner for Income Tax*. (12 W.A.C.A. 331). Held that the appellant’s income derived from Nigeria but not remitted to Ghana was not liable to pay Ghanaian income tax.
- Section 13(1) provides that “the profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen or whether or not they have been brought into or received in Nigeria.
- A Nigerian company has physical presence (registered office) have obligation to self-assess, file return and are subject to audit for time to time.





# **TAXATION OF NIGERIAN COMPANY UNDER CITA**

## **Legal Framework:**

**Companies Income Tax Act 2004**, section 9(1), 13(2)(a) –(d), 30, as amended by Finance Act 2019, 2020, 2021 & 2023.

**Companies Income Tax (Significant Economic Presence Order) 2020.**

**FIRS Circular No: 2022/12 on Taxation Of Non-Residents In Nigeria, dated 11 April 2022**

Section 78-81 CITA in respect of:

- Specific legal basis is made in PITA, CITA & PPTA for:
  - Rent - S.79 CITA
  - Dividend - S.80 CITA
  - Interests – S.78 CITA
- A general power is vested in the Minister of Finance to extend WTH to other forms of payment and specify the rates. S.81 CITA.
- Pursuant to this power WHT has been extended to an array of payments.



# Companies Income Tax [Rates, Etc. of Tax Deducted at Source (Withholding Tax) [Regulations] 1997,

## Other payments subject to WHT

Taxes are now withheld from corporate bodies and individuals at the rates stated below against the following transactions:

Transactions/ payments	CITA rates
Commission	10%
Consultancy fees	10%
Technical fees	10%
Management fees	10%
Directors fees	10%
Building construction	10%
Contract of supplies	10%



Section 30 (1) provides:

***Service's power to assess and charge on turn-over of trade or business***

(1) Notwithstanding section 40 of this Act, where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations of the business are carried on outside Nigeria) it appears to the Service that for any year of assessment, the trade or business produces either no assessable profits or assessable profits which in the opinion of the Service are less than might be expected to arise from that trade or business or, as the case may be, the true amount of the assessable profits of the company cannot be ascertained, the Service may, in respect of that trade or business, and notwithstanding any other provisions of this Act if the company is a—

In practice FIRS adopts 6% as the fair percentage, NRCs who believe that 6% is not a fair representation of the tax payable would need to demonstrate this to the FIRS.



## TAXATION OF NON-RESIDENT COMPANIES UNDER VALUE ADDED TAX

VAT a tax on the supply of goods and/or services at the rate of 7.5%.

**Section 8 (1)** obligates taxable persons to register with the FIRS within 6 months of commencement of business.

**Section 10 (2)** provides that a non-resident companies shall include VAT in its invoice and the person to whom the goods and services are supplied to in Nigeria shall remit the tax in the currency of the transaction.

Pre-2019, NRCs were only required to register for tax when they “carried on business” in Nigeria. The VATA did not clarify what the phrase “*carrying on business*” meant but, in the Nigerian Supreme Court judgment in the case of *CITEC International Estates Limited v Edicomsa International Inc. & Associates*, to “carry on business” was held to mean to conduct, prosecute, or continue a particular vocation or business as a continuous operation or as a permanent occupation. As such, during



## **TAXATION OF NON-RESIDENT COMPANIES UNDER VALUE ADDED TAX – CONT'D**

this time, from this case, it was inferred that if an NRC made a supply of goods or services in Nigeria more than once, and the supply is repetitive, the NRC is likely to be considered as “carrying on business” in Nigeria. However, because of the ambiguity surrounding the interpretation of the phrase the VAT status of many NRCs was unclear and debatable.

The FA2020 took this a step further by specifically requiring non-resident persons (which also includes companies) that make taxable supplies to Nigeria to register for tax with the FIRS and obtain a tax identification number, section 10(1) of the VATA as amended.

The combined effect of the above amendments saw an influx of tax registrations by NRCs who were hitherto outside the tax net because of the ambiguity surrounding the requirement for registering for tax under the VATA.



# DECIDED CASES

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**THANKS!**

