Nigeria Country Profile

Africa Tax Centre: 2020 Fiscal Guide

May 2021

2020 Key tax factors for efficient cross-border business and investment involving Nigeria

AU Member State

Yes.

Double Tax Treaties

With the following countries, territories and jurisdictions:

Belgium Canada China France	Pakistan Romania South Africa The Netherlands
United Kingdom Italy (Air and Shipping only) Philippines Czech	Slovakia Singapore Spain

Most important forms of doing business

Sole Proprietorship, Partnership and Incorporated Company

Legal entity capital requirements

The minimum capital requirement is ₦100,000 (US$244.50) for private companies and ₦2,000,000 (US$4,889.98[1]) for public companies
I&E Exchange Rate:" ₦409.00 to US$1

Residence

A company is resident in Nigeria if it is incorporated by the Corporate Affairs Commission. Resident companies are taxed on their worldwide income, whilst Non-Resident Companies (NRCs) are subject to tax only on profits accrued in or derived from Nigeria, to the extent that the profits are attributable to operations in Nigeria. Further, NRCs whose activities constitute a Significant Economic Presence (SEP) in Nigeria are subject to income tax on profit attributable to such activities in Nigeria. However, withholding tax (WHT) will be the final tax for such a NRC that derives profit from the provision of technical, management, consultancy, or professional services to persons resident in Nigeria, provided it does not have a fixed base, or engages in any other trade or business, in the country as defined by the Companies Income Tax (CIT) Act.

Compliance requirements for CIT purposes

Every company (including an NRC doing business in Nigeria) is required to prepare and file CIT on self-assessment basis with the Federal Inland Revenue Service (FIRS), within 6 months after the end of its accounting period. However, in the case of a new company, the returns are to be filed within 18 months from the date of incorporation, or 6 months after its first accounting period, whichever occurs first.

Corporate income tax rate

CIT Rates	%
Large Companies (over ₦100 million turnover)	30%
Medium Companies (₦25 million to ₦100 million turnover)	20%
Small Companies (less than ₦25 million turnover)	0%

Resident companies are also liable to pay Tertiary Education Tax at 2% of their assessable profits.

[1] I&E Exchange Rate:" ₦409.00 to US$1

Withholding Tax (WHT) rates

Type of Payment	Individual Beneficiary	Corporate Beneficiary
Rent, Dividend and Interest*	10%	10%
Royalty*	5%	10%
Commissions, Consultancy, Technical and Management fees	5%	10%
Construction	5%	2.5%
Contracts and Agency Arrangements**	5%	5%
Directors Fees	10%	N/A

* a reduced WHT rate of 7.5% will apply to qualifying beneficiaries from a treaty country.
**Covers all forms of supplies, deliverables or the like through competitive bidding, tenders, local purchase orders, agency or other similar arrangements, whether oral or written. It does not, however, extend to contract for the outright sale and purchase of goods and property in the ordinary course of business.

Branch withholding tax: Not applicable.

Holding rules

Dividend received from resident/non-resident subsidiaries
Dividend distributed by a resident subsidiary is subject to WHT at 10%. Such dividend is treated as franked investment income and exempt from further income tax.

Dividends received from non-resident subsidiaries, and brought into Nigeria through Government approved channels, are exempt from WHT and CIT.

Capital gains obtained from resident/non-resident subsidiaries
Capital gains Tax (CGT) is levied on capital gains accruing on disposal of assets, irrespective of whether the asset is situated in Nigeria or not. Where a qualifying asset located outside Nigeria (as defined in the CGT Act) is disposed of by a NRC, CGT will only be payable on the portion of the gain which is *brought into* or *received in* Nigeria. However, ships and aircraft owned by NRCs will be deemed to be located outside Nigeria only when they are *"used in international traffic"*.

Transactions that are subject to income tax are usually excluded from the scope of CGT, as are gains of exempt organisations and institutions. Further, gains on disposal of stocks, shares and Nigerian government securities are exempt from CGT.

CGT rate is currently 10%.

Tax losses

Tax losses can be carried forward indefinitely. No carry-back is allowed. However, a company cannot offset the loss from one trade/ business against the profit from another trade or business.

Minimum taxation:
This applies when a company makes a loss and has no tax payable or the tax computed is less than the minimum tax. The current minimum tax rate is 0.5% of gross turnover of a company less any franked investment income. However, to alleviate the impact of COVID-19 pandemic on business, the Federal Government has through Finance Act, 2020 temporarily reduced the minimum tax rate by 50% to 0.25%. The reduced rate will apply to years of assessment falling due between 1 January 2020 and 31 December 2021.

Tax consolidation rules/Group relief rules

For tax purposes, a company would be recognised as part of a group if such company has been a member of such group for a minimum 365 days prior to the date of any reorganization to enable it to qualify for tax reliefs. Consequently, the sale or transfer of a business to a Nigerian company, for the purpose of reorganisation, is exempt from CGT to the extent that the parties have been related for 365 consecutive days prior to the date of reorganisation, and the assets acquired under the transaction would not be disposed of within 365 days following the date of the transaction.

Tax consolidation rules/Group relief rules (cont.)

Companies within a group are also required to transfer assets at tax written down value for CIT purposes, subject to the minimum holding requirement. Further, such assets will not be entitled to initial allowance upon transfer. The FIRS may also impose any conditions it sees fit on either or both the companies directly affected in a reorganization within a group.

Registration duties

Stamp duties are imposed at the rate of 0.75% of the issued share capital at incorporation of a company, or on registration of new shares. The amount of filing fees that are payable to the Corporate Affairs Commission will depend on the company's share capital.[2]

Transfer duties

On the transfer of shares: None.

On the transfer of land and buildings: Stamp duties are imposed at the rate of 1.5% of the value of the consideration for sale or transfer of property.
Stamp duties: are applicable, however, the rate depends on the type of contract.

Real estate taxes: Land Use Charge is imposed on residential, commercial, and vacant properties at different rates by some State Governments, while other States charge tenement rates in lieu thereof. Using Lagos State as an example, the Land Use Charge rates based on the assessed value of each property are detailed below:

Classification	Annual rate (%)
Owner-occupied residential property	0.0394
Industrial premises of manufacturing concerns	0.132
Residential property / private school (owner & 3rd party)	0.132
Residential property (without owner in residence)	0.394
Commercial property (used by occupier for business purposes)	0.394
Vacant properties and open empty Land	0.0394
Agricultural land	0.01

Controlled Foreign Company rules

There are no specific Controlled Foreign Company rules in Nigeria.
General anti-abuse legislation: Not applicable

Transfer pricing (TP) rules

General transfer pricing rules
The FIRS' revised Income Tax (Transfer Pricing) Regulations, 2018 repealed the Income Tax (Transfer Pricing) Regulations, 2012 and commenced on 12 March 2018. The Regulations requires that transactions between related parties be conducted at arm's length.

To satisfy this requirement, taxpayers are required to provide documentation sufficient to verify that the pricing of controlled transactions is consistent with the arm's length principle. In addition, taxpayers are obligated to complete and file TP declaration and disclosure forms with the FIRS in respect of their related-party transactions, at the time of filing their tax returns. TP policies and contemporaneous documentation are to be submitted to the FIRS when requested.

Though the new Regulations retained the scope of the defunct 2012 Regulations, it introduced some major changes, such as significant administrative penalties for non-compliance, provisions addressing procurement arrangements, safe harbour, connected persons, capital-rich-low-function companies, intragroup services and intangibles, transfer pricing documentation.

[2] Fees-1.pdf (cac.gov.ng)

Transfer pricing (TP) rules	Documentation requirement Country-by-Country Report (CbCR), Master File, Local File, and annual TP Declaration & TP Disclosure Forms. The CbCR Regulations requires Multinational Enterprises (MNE) Groups headquartered in Nigeria with a consolidated revenue of ₦160 billion or above to file CbCR with the FIRS annually. Nigerian resident members of MNE Groups, headquartered outside Nigeria, are required to notify the FIRS of the identity and tax jurisdiction of the entity that will be responsible for filing the CbC report, where the Group has a consolidated revenue of EUR750 million or near equivalent in the domestic currency of the jurisdiction of the Ultimate Parent Entity (UPE) or surrogate parent entity. However, where the CbCR Regulations has not been implemented in the jurisdiction where the UPE is tax resident, the Nigerian entity is required to file the CbCR. The due date for filing the CbCR report is not later than one year after the end of the accounting period to which the report relates. The CbCR Regulations also imposes stiff penalties for non-compliance.
Thin capitalization rules	Nigeria has no specific thin capitalisation rules. Thus, there are no ratios which may limit the amount of debt that may be applied to fund a company. However, Finance Act, 2019 introduced an interest deductibility rule limiting the amount of interest expense deductible by a Nigerian company in any tax year on debts issued by a foreign connected person to 30% of Earnings Before Interest, Tax, Depreciation and Amortization.
General Anti-Avoidance rules (GAAR)	General anti-avoidance rules in Nigeria's tax legislation include: o *Minimum tax* – This applies when a company makes a loss and has no tax payable or the tax computed is less than the minimum tax. o *Excess dividend tax (EDT)* – This applies where a company pays dividend from its accounting profits and has no total profit or total profit which is less than the dividend paid out. However, dividends paid from franked investment income, after-tax profits, tax-exempt income and distributions made by Real Estate Investment Companies are exempted from the EDT rule. o Adjustment to transactions which the FIRS deems artificial or fictitious, upon which tax will become payable o *Treatment of undistributed profits*: The undistributed profits of a Nigerian company controlled by not more than five persons will be deemed as distributed where the profits if distributed would not be detrimental to the company's business. Consequently, such distribution will subject to WHT.
Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions/Anti-Hybrid rules	Qualifying participations (at least 5 percent of the equity of the subsidiary) Not applicable Deductible dividends of foreign subsidiaries Dividends received from non-resident subsidiaries, brought into Nigeria through Government approved channels are exempt from WHT and CIT Restrictions on the deductibility of interest and royalties Interest paid to foreign related parties are restricted to 30% of a company's Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA) in the accounting period. Excess interest expense is disallowed in the current tax year but can be carried forward and treated as tax-deductible for a maximum of five tax years. Hybrid arrangements: Not applicable
Advance Ruling system	In January 2020, the Nigerian Customs Service (NCS) launched the national advance ruling program for trade facilitation, in line with the framework of the EU-World Customs Organisation Programme for Harmonised System in Africa. This allowed the NCS to align its existing system to the relevant international standards, including creating an adequate legal framework, revising some of the existing practices, and updating certain elements of the national tariff classification work infrastructure.

Advance Ruling system (cont.)	Taxpayers are also at liberty to submit their transactions to the FIRS for advance tax ruling. However, the FIRS will only be bound by its ruling if the full facts are disclosed by the taxpayer and the transaction is executed in line with the disclosure.
IP/ R&D incentives	For qualifying R&D expenditure, 95% of the capital allowance is claimed as initial allowance in the year the expenditure is incurred. No subsequent annual allowance exists for qualifying R&D expenditure. A registered trademark expires after seven (7) years and may be renewed from time to time. A patent expires after twenty (20) years from the date of registration, while a design is effective in the first instance for five (5) years but renewable for two (2) consecutive periods of five (5) years each.
Other incentives	Investment incentives - General i. Income in the form of interest earned from Federal Government short-term securities is exempted from CIT and PIT. Coupons paid on bonds issued by the Federal, State and Local governments, and corporate bodies are also exempted from the taxes. ii. Proceeds from the disposal of the bonds and securities listed in (ii) above are exempted from VAT. iii. Investment allowance of 10%, which is an uplift, on qualifying expenditure on plant, machinery and equipment. iv. Rural investment allowance of between 15% and 100% of the cost incurred in providing facilities/infrastructure in rural areas. v. Capital allowance of 95% in the first year in respect of plant and machinery purchased to replace old ones. vi. Tax exemption of between 10% and 70% of the interest earned on foreign loans advanced to companies in any industry, where the terms and tenor 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: i. Exemption from income tax for three years with a possible extension for another two years. ii. 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 after the pioneer period. iii. Tax-free dividends during the holiday period. iv. Losses in the relief period may be set off against profits after the end of the period. Incentives for the agricultural sector i. Companies engaged in agricultural trade or business are not liable to minimum tax. ii. Exemption from restriction of capital allowance claimable by companies to $66^2/_3$% of assessable profit. iii. Tax exemption of the interest earned from agricultural loans, provided the moratorium is not less than 12 months and the rate of interest is not more than the base lending rate at the time of the loan. iv. Exemption from income tax for an initial of five years with a possible extension of three years based on satisfactory performance of agricultural production. Export and mining enterprises incentives i. A wholly-export-oriented company established outside an export processing zone (EPZ) is exempt from CIT 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.

Other incentives (cont.)

ii. Plant, machinery, equipment and accessories imported exclusively for mining operations in Nigeria are exempted from customs duties.
iii. A new company engaged in the mining of solid minerals will enjoy a tax holiday of three years while wholly-export companies with turnover of less than ₦1 million are subjected to CIT at 20% in the first five years. However, such companies will now be eligible for income tax exemption applicable to companies with less than ₦25million turnover introduced by Finance Act, 2019
iv. Free trade zones and EPZs are designated from time to time and enterprises operating in such designated zones enjoy tax exemption and liberalized exchange control measures.

Incentives for the power sector

i. A three (3) year income tax holiday, with possible renewal for additional two (2) years.
ii. Accelerated capital allowances after the tax- free period in the form of a 90% annual allowance with 10% retention for investment in plant and machinery.
iii. An additional investment allowance (uplift on the cost of the asset) of 15 per cent which does not reduce the value of the asset.
iv. Tax-free dividends during the tax-free period where the investment for the business was made in foreign currency.
v. Plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations are VAT-exempt.
vi. The Customs, Excise Tariff, etc. (Consolidated) Act exempts from custom duties, "any machinery, equipment or spare part imported into Nigeria by an industrial establishment engaged in the exploration, processing or power generation through the utilization of Nigerian gas, for its operation".
vii. Zero duty on the importation of equipment and machinery.
viii. The List of Pioneer Industries and Products includes electricity power generation, transmission and distribution as a pioneer industry. However, companies enjoying gas utilization incentives in respect of their qualifying capital expenditure are ineligible for any other tax incentive, including the Pioneer Status Incentive on the same investment.
ix. WHT on power plant construction contracts is reduced from 5 per cent to 2.5 per cent

Incentives for Real Estate Investment Companies

Finance Act, 2019 introduced specialized rules for the taxation of real estate investment companies (REICs) in Nigeria.
Prior to the enactment of the Act, real estate investment schemes were exposed to multiple levels of taxation, arising from receipt and subsequent redistribution of dividends and rent to investors, making them less attractive to investors.
To manage the double tax exposure, Finance Act 2019 introduced the following incentives for REICs:

i. Granting pass-through status to REICs.
ii. Exemption of dividend and rental income received by REICs on behalf of their shareholders from CIT, provided that a minimum of 75% of the dividend or rental income earned is distributed within 12 months of the end of the financial year in which the income was earned. Any income earned by a REIC other than those collected on behalf of investors is liable to income tax.
iii. Exemption of rental and dividend income distributed by a REIC to its shareholders from excess dividend tax.
iv. Dividends or mandatory payments made by a REIC to its shareholders and are duly approved by the Securities and Exchange are deductible for income tax purposes.
v. Exemption of dividends received by a REIC from WHT provided it meets the requirements in (ii) above.

VAT	VAT is a consumption tax levied on the supply of all goods and services supplied in or imported into Nigeria, except those specifically exempted from the tax by the VAT Act and VAT (Modification Order) 2020. The standard rate is 7.5%, however, companies with an annual turnover of ₦25,000,000 or less are exempted from registering for VAT, charging VAT, and rendering monthly VAT returns. 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: i. Non-resident companies ii. Persons supplying goods and services to companies operating in the oil and gas industry iii. Persons supplying goods and services to government ministries and parastatals.
Other relevant points of attention	Not Applicable
COVID-19 Resources	An overview of tax developments being reported globally by KPMG member firms in response to the Novel Coronavirus (COVID-19) is available here. For further insight into the potential tax, legal and mobility implications of COVID- 19, please refer to the dedicated KPMG page.

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