



Boundaries: Taxation of Nigerian Residents Providing Varying Services Remotely or Non-Residents

Introduction

When Covid-19 made landfall in Nigeria in Q1 2020, many Nigerians -for the first time in their professional careers had a taste of remote work. However, this had been a norm in some sectors like the Information Technology (IT), Data Analysis, Copy Writing Industry and the like. The new reality is that remote or location irrelevant work arrangements leveraging technology has become more common place, a situation that is likely to assume increasing dimension in the years to come; especially as they obviate or minimise expatriate mobility costs.¹ However, whilst associated regulatory issues with “offshoring” may be presumed to insignificant, this may not always be the case.

This article examines, ‘high level’, the tax issues surrounding the gains and profit earned from the provision of such services to non-residents regardless of the existence of an employer-employee relationship.

Basis of Taxation

The basis for the imposition and collection of tax in Nigeria is two-fold, to wit: residence and source. The Source basis of taxation grants taxing right to the tax authority of the country or jurisdiction where the income is derived from; while the Residence basis ascribes taxing right to the country of residence of the person with taxable income. In Nigeria under the **Personal Income Tax Act (PITA)**,² the residence and source basis are also applicable. **Per section 2(1)(b)(iv) PITA**, a non-resident is liable to tax on any income or profit derived from Nigeria (source basis), and under **section 2(1)(a) PITA**, a Nigerian resident is subject to tax on his/her total income.³

Imposition of Tax

PITA imposes tax on the income of individuals, and tax is payable for each year of assessment on the aggregate amount of the income of every taxable person **from a source inside or outside Nigeria** including, “(a) gain or profit from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised; (b) any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses,



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premiums, benefits allowed, given or granted to any temporary or permanent employee.”⁴

In essence, any person resident in Nigeria for tax purposes is taxable by the relevant tax authority (RTA) on his/her world-wide earnings; subject however, to certain exceptions (considered later on in this article), as well as the provisions of applicable **Double Taxation Agreements (DTAs)**.

Residency as a Basis of Personal Income Taxation in Nigeria

Section 108 PITA states that in relation to an individual, the RTA for a year of assessment (YoA) is the tax authority of the territory in which the individual is deemed to be resident in that year.

PIT, which is determinable from the table in Sixth Schedule PITA, is to be paid in each YoA on the total income of every individual deemed to be resident for that year in the relevant State.⁵ Hence, although PITA is a federal legislation, its administration is within the purview of States in Nigeria, and thus the RTA for the purposes of PIT is the State Boards of Internal Revenue (SBIRs). However, for residents of the Federal Capital Territory, Abuja, the RTA is the Federal Capital Territory Internal Revenue Service (FCT-IRS), and not the Federal Inland Revenue Service.⁶



¹See generally, Chuks Okoriekwe, ‘Digital Disruption of the Workplace – Legal Issues on Artificial Intelligence, Robotics and Automated Systems (AIRAS) in Nigeria’, LeLaw Thought Leadership, May 2018: https://lelawlegal.com/add111pdfs/Chuks_Okoriekwe_-_Digital_Disruption_of_the_Workplace.pdf (accessed 30.08.2021).

²Cap. P8, Laws of the Federation of Nigeria (LFN) 2004 as amended.

³For some discussion, see Afolabi Elebiju and Gabriel Fatokunbo, ‘Remittances: Legal Regulatory and Commercial Issues in Diaspora Transactions’, LeLaw Thought Leadership, February 2020, p.4: <https://lelawlegal.com/add111pdfs/REMITTANCES.pdf> (accessed 29.08.2021); and Chuks Okoriekwe, ‘Options: Plugging Nigeria’s Perennial Revenue Gap Through Diaspora Taxation’, LeLaw Thought Leadership, August 2019, p.4: <https://lelawlegal.com/add111pdfs/Chuks-Okoriekwe-Options-Plugging-Nigerias-Perennial-Revenue-Gap-through-Diaspora-Taxation1.pdf> (accessed 30.08.2021).

⁴See generally section 3 PITA.

⁵Section 2(1)(a) PITA.

⁶The FCT-IRS was established pursuant to the **Federal Capital Territory Internal Revenue Service Act, No. 10 of 2015**. The PIT jurisdiction of the FIRS is restricted to persons employed in any of the Armed Forces, the Police and the Nigerian foreign service in addition to non-residents who derive income or profit from Nigeria, a la section 2(b)(ii) PITA.



Determination of Tax Residency

It is submitted on the authority of **sections 2 and 108 PITA** that in Nigerian tax jurisprudence, it is the taxpayers deemed place of residence that counts for PIT purposes. It is salutary to state at this point that although PIT is collected by the RTA of an individual's deemed place of residence, **PITA** fails to define “deemed place of residence”.

However, the Court of Appeal (CoA) in **Ecodrill Nigeria Limited v. Akwa Ibom Board of Internal Revenue**⁷ provided clarity per Nweze JCA, (as he then was) thus:

“Instructively, there is no specific provision in the PITA that, expressly, or pin-pointedly defines the term “deemed residence”...the term “deemed residence” could be inferred from a harmonious and community interpretation of sub-paragraphs 10(1)(a)(ii) and paragraph 3 to the First Schedule to the PITA; paragraph 4(3) of the second schedule to the PITA; and paragraph 6(2) of the Third Schedule to the PITA. From these provisions, we deduce that a person is deemed to be resident in Nigeria for a year of assessment if s/he is in Nigeria for a period(s) amounting to 183 days or more in a twelve-month period commencing in the calendar year and ending either in the same year or the following month.” (Emphasis supplied).

This means that an individual is expected to pay tax to the tax authority of the State where he/she spends a total of 183 days or more in a twelve-month period. However, the question that must be asked is: the applicable RTA for an individual who though resident in Nigeria, fails to spend a minimum of 183 days in any State in Nigeria?

For purposes of determining residence, a “remote worker” is classified as being under Nigerian employment, **per Paragraph**

(Para) 1, First Schedule PITA;⁸ Also, **PITA** gives the term “employment” a very wide definition, whereby **section 3(2)(d) PITA** defines employment as: “‘employment’ includes any service rendered by any person in return for any gains or profits.” This means that individuals providing services to non-resident individuals and businesses are deemed to be under employment.

Categorisation of Income Earned from Remote Work

Bearing in mind the sweeping definition of employment above, **section 10(1)(a) PITA** states essentially that gain or profit from any employment, the duties of which are wholly or partly performed in Nigeria, shall be **deemed to be derived from Nigeria** unless - (i) the duties are performed for a non-resident individual; (ii) the employee is not in Nigeria for a period of up to 183 days in a twelve month period; and (iii) the remuneration of the employee is liable to tax in the source country under its **DTA** with Nigeria. **All these conditions must co-exist for the income to be deemed to be derived from outside Nigeria.**

Again, **section 10(3) PITA** provides that: “The gain or profit from any employment exercised in Nigeria shall be deemed to be derived from Nigeria whether the gains or profits from the employment are received in Nigeria or not.”

These provisions, without any doubt, are wide enough to cover Nigerian residents who provide services for non-resident individuals and businesses.

Payment of Tax

Nigerians in paid employment are normally subjected to tax, in the first instance, through the Pay-As-You-Earn (PAYE) system where the employer deducts and remits tax on behalf of the employee to the RTA.

However, the practical impossibility of getting non-residents to register in Nigeria for PAYE purposes means that individuals earning income from remote work must self-assess themselves, taking into cognisance the consolidated relief allowance under **Sixth Schedule PITA** and other exemptions pursuant to **section 19(1) PITA**. For the sake of emphasis, the RTA is the tax authority of any State in Nigeria where he/she spends a minimum of 183 days in a 12-month period.⁹

It is instructive to note that where the individual does not spend a minimum of 183 days in any State in Nigeria, the law provides no solution. However, it is submitted that the RTA should be that of the State where the individual has a place available for his domestic use or the place closet to his/her place of work if he/she had more than one place of residence before taking up the “foreign” employment.¹⁰



⁷11 ALL NTC 13, 33.

⁸Para 1 is the Interpretation Clause of **First Schedule PITA**, providing that “‘foreign employment’ means an employment the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria.”

⁹This position is also supported by the **DTAs** which all allocate taxing right in this situation to the Country of residence of the individual. See for Instance, **Articles 14 and 15 Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains**, 1987: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/500337/nigeria-dt_-_in_force.pdf (accessed 29.08.2021).

¹⁰Para 3, **First Schedule PITA**.

Is There Tax Exemption for Remote Workers?

As stated earlier, **section 1(a) PITA** imposes tax on the income of individuals and in setting out the income chargeable to tax, **section 3(1) PITA** states that “subject to the provisions of this Act, tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year, **from a source inside or outside Nigeria**” (Emphasis supplied).

Section 19 PITA expressly exempts from tax, all the income specified in its **Third Schedule**. Interestingly, **Para 29, Third Schedule PITA** exempts income earned from outside Nigeria by a temporary guest, lecturer, teacher, nurse, and other professional and brought into Nigeria from tax provided that such income is deposited in a domiciliary account in an authorised Bank in Nigeria.¹¹

PITA, however, does not define the word “professional”. In Nigeria, it seems that whether or not an occupation/vocation qualifies as a “profession” is dependent on whether the practice or entry into same is statutorily regulated. That is, whether there exists a legislation stating it as such.¹² For example, **Para 1, Schedule, Professional Bodies (Special Provisions) Act**¹³ which vests the Federal Government with power to allow foreigners practice certain professions in Nigeria, lists “Law, Medicine, Dentistry, Midwifery and Nursing, Engineering, Surveying, Architecture, Accountancy and any other Technological or Scientific Discipline” as professions.¹⁴ Furthermore, the **Black’s Law Dictionary** defines the term “professional” as “a person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.”¹⁵



On a clear and dispassionate reading of the provisions of **PITA**,¹⁶ it is humbly submitted that Nigerian residents engaged in remote work for non-residents will not enjoy this exemption. This is because the income earned from such employment is deemed to be derived from Nigeria and not from abroad. **Thus, the answer to the question above is in the negative.**

Conclusion

The difference in PAYE remittances vs self-assessment in all the States in Nigeria lays bare the difficulties facing tax authorities in Nigeria as regards tax collection from persons outside the scope of the PAYE system.

However, **the duty to pay tax is not voluntary** nor necessarily subject to a request by the RTA, although the latter might be the case where there is compliance default. Thus, individuals who are resident in Nigeria and earn income or gain from offering services to non-residents, are not thereby shielded from tax liability. Since compliance is cheaper to the taxpayer than non-compliance, it is apt that such workers make effort to carry out their civic responsibility without coercion. This is moreso that it would be quite challenging for the RTAs to assess, in every YoA, every resident to tax.¹⁷

Undoubtedly post Covid-19, offshoring and remote working arrangements will be on the increase. The Nigerian Revenue is likely to pay closer attention to income from these arrangements, especially those in foreign currency which could translate into potential significant revenue, in order to prevent tax value leakage. Again there would be no surprises here, as Nigeria has given strong signal of its intent to no longer ignore digital taxation *vide* the recent **Finance Act 2020** amendments.¹⁸

According to the Igbo proverb popularised by the revered Chinua Achebe of blessed memory in his classic **‘Things Fall Apart’**, since the hunters have learnt to shoot without missing it is imperative that the birds, (the RTAs) also learns to fly without perching!

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Thank you for reading this article. Although we hope you find it informative, please note that same is not legal advice, and must not be construed as such. However, if you have any enquiries, please contact the authors, Afolabi Elebiju at: a.elebiju@lelawlegal.com, Chimezirim Echendu at: c.echendu@lelawlegal.com or via LeLaw Office email: info@lelawlegal.com.

¹¹Income earned from abroad by an author, sportsman, playwright, musician, artist and brought into Nigeria is exempt from tax provided that such income is brought in foreign currencies and paid into a domiciliary account in an authorised bank in Nigeria per **Para 31, Third Schedule, PITA**.

¹²See for example, **section 23 Computer Professionals (Registration Council of Nigeria) Act Cap. C22, LFN 2004** which defines “profession” as “the profession of using computerised machinery and other techniques related thereto.” See also, the **Medical and Dental Practitioners Act, Cap. M8, LFN 2004; Legal Practitioners Act, Cap. L11, LFN 2004; Institute of Chartered Accountants Act, Cap. I11, LFN 2004**.

¹³Cap. P33, LFN 2004.

¹⁴Obviously this list is not exhaustive of professions in Nigeria, especially as new professions could emerge in the future in line with technological developments. For example data privacy is now a profession globally.

¹⁵Bryan A. Garner (ed.), **‘Black’s Law Dictionary’** (Thomson Reuters, 9th ed., 2009), p.1329.

¹⁶Particularly **sections 3(2)(d), 10(1) and (3) and Para 1, First Schedule PITA**.

¹⁷Failure to furnish returns under **PITA** attracts a criminal sanction and a tax defaulter apart from paying a fine of ₦5,000 in the first instance and ₦100 for every day in which the failure continues, can also be sentenced to six months in prison if he/she defaults in paying the fines per **section 94 PITA**. And with advancement and automation in technology including innovations like the Bank Verification Number (BVN) and Tax Identification Number (TIN), it is only a matter of time before the RTAs are able to fully deploy technology to accurately capture all those within the tax net.

¹⁸**Section 13(2)(c) Companies Income Tax Act, Cap. C21, LFN 2004** extends Nigeria’s taxing rights to non-resident companies that have a sustained economic interaction with Nigerian residents.