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Taxing Employment Income of Non-Resident Remote Workers

Background

One of the ways through which the Nigeria Tax Act, 2025 (the "NTA") works towards creating a more efficient tax system is by clarifying the tax obligations on non-resident individuals ("NRIs") employed by Nigerian residents.

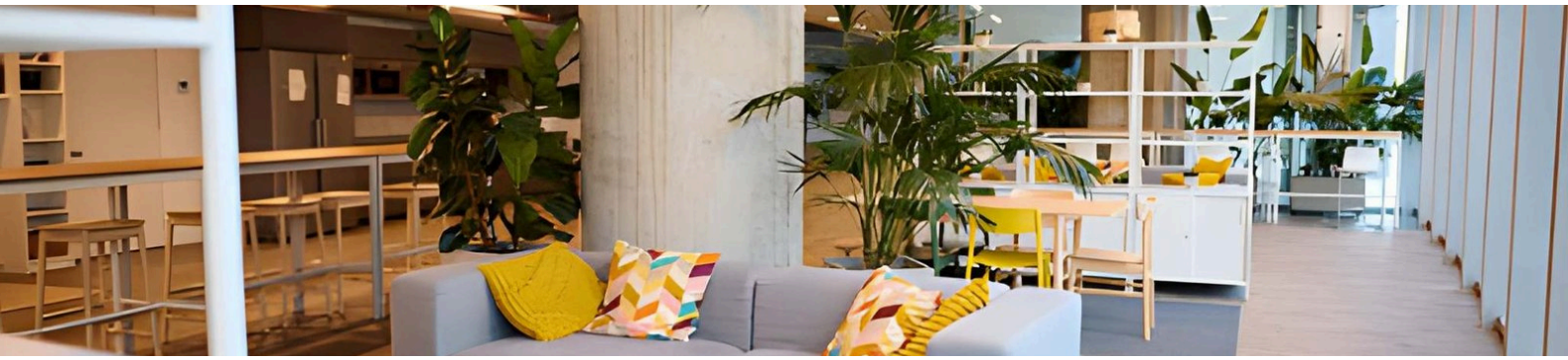
Previously, under section 10 of the now-repealed Personal Income Tax Act, 2004 (as amended) ("PITA"), employment income for work wholly or partly performed in Nigeria was deemed to be liable to tax in Nigeria. Under this provision, foreigners employed by Nigerian residents or employers with fixed bases in Nigeria were liable to personal income tax on that salary, regardless of whether they were physically present in Nigeria or not. Contemporary tax legislations, particularly the NTA, now seek to distinguish between employment services performed physically in Nigeria and those performed remotely.

Introduction

To adequately appreciate this discourse, some key concepts must be assessed in their respective legal contexts under the new tax laws namely: employment income, non-resident individuals, and remote work, to name a few.

Employment income refers to remuneration (in cash or benefits-in-kind), which is received by an individual for work performed under an employer-employee relationship. Section 12 of the NTA stipulates that the income, gains or profits of individuals resident in Nigeria are deemed to accrue in Nigeria and are chargeable to tax in Nigeria wherever they arise, and whether or not the income, profits or gains have been brought into or received in Nigeria. The implication here is that tax would be imposed on employment income deemed to have "accrued in or be derived from Nigeria".

On another note, key attributes of non-resident individuals are stated under Section 202 of the NTA to include individuals not domiciled in Nigeria and who sojourn in Nigeria for less than 183 days in a 12-month period inclusive of annual leave or a temporary period of absence, among other attributes. Additionally, 'remote work' relates to a flexible work arrangement where employees perform their job duties outside of a traditional, centralised office, such as from home, a coworking space, or other locations. Modern technological advancements have made remote work arrangements more feasible, guaranteeing that job functions can now be effectively performed from outside the employer's home country.



Relevant NTA Provisions

The bone of contention is whether the NTA imposes a duty to remit income taxes on non-resident individuals working remotely for Nigerian employers. Section 13(1)(b) of the NTA generally provides that employment income would be deemed to be derived from [and thus taxable in] Nigeria where the duties of the employment are wholly or partly performed in Nigeria and the remuneration is paid by, or on behalf of, an employer who is a resident of Nigeria. Section 13(2) of the NTA goes further to exempt NRIs employed by start-ups or employers engaged in technology-driven services or creative arts. This gives the impression that all other NRIs are liable to income tax in Nigeria when they work for Nigerian companies.

Conversely, section 17(3)(b)(i) of the NTA excludes payments to NRIs under a contract of employment from liability to tax, where they furnish services to Nigerian employers from outside Nigeria. This exemption is granted on the backdrop of section 17(3)(b), which imposes tax on the profits derived by NRIs from services paid for by Nigerian residents.

Accordingly, there seems to be a conflict between the above-referenced provisions on the tax obligations of NRIs who are employed by Nigerian residents. While section 13 suggests that locally employed NRIs have to pay taxes on their employment income, section 17 stipulates that the opposite is true.

Application

Despite the seeming contradiction described above, there appears to be some disparity in the wording of both provisions, which can be used to draw a distinction between both.

Section 13 appears to strictly relate to employment duties that are "wholly or partly performed in Nigeria". The inference to draw here is that only employment duties that are performed "physically" in Nigeria would be construed as falling under the scope of this provision. This would mean that NRIs who work remotely for Nigerian employers would be covered by section 17 and thus be exempted.

Having said that, making that determination would require a relatively liberal reading of section 13. It would be crucial to establish that "whole or part performance in Nigeria" equates to "physical performance in Nigeria". Detractors would argue that if the draftsman intended this, they would have stated same clearly.

It is trite in law that tax legislations are interpreted using the literal rule. The statement by Rowlatt J in *Cape Brandy Syndicate v IRC*[1] is instructive on this point: "In a taxing Act, one has to merely look merely at what is clearly said. There is no room for any intendment.

There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in; nothing is to be implied. One has to look fairly at the language used."

Further, Lord Blackburn in *Coltness Iron Company v Black*[2] opines that no tax can be imposed on a tax subject without words in an Act of Parliament clearly showing an intention to lay a burden on them. Therefore, the amenability of a person to tax is subject to the clear provisions of the relevant tax laws. Determining the "clear provision of the tax law" would require the application of the appropriate rule of interpretation.

Finally, the *Contra Fiscum* rule has nearly achieved "clichéd status" in tax law. The Latin expression, which roughly translates to, 'when in doubt, do not tax', simply means that when there is any ambiguity in tax legislation, the ambiguous provision must be interpreted in a manner that favours the taxpayer. By extension, where a provision is capable of two reasonable constructions, the court will adopt the construction that imposes the smaller burden on the taxpayer.

1 (1921) 2 KB 403
2 (1881) 6 App. Cas. 315.

Nigerian courts have also adopted this rule in determining tax disputes. In NB Plc v. Abia State Board of Internal Revenue[3] the court chose to resolve a conflict in the PITA in favour of the taxpayers, thereby reducing their tax burden. In this vein, NRIs, who work remotely for Nigerian employers, would be deemed to be exempted from Nigerian tax obligations, under the NTA.

Conclusion and Recommendation

Despite the seeming contradictions in the NTA, there is considerable judicial precedents on how Nigerian courts can best resolve same using the relevant legal rules of interpretation. Nevertheless, it would be beneficial to have the Nigeria Revenue Service provide clarity on the tax obligations of non-resident remote workers before resulting disputes would require Nigerian courts to rule on same.

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