



FEDERAL INLAND REVENUE SERVICE

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INFORMATION CIRCULAR

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Subject: **TAXATION OF NON-RESIDENTS IN NIGERIA**

This circular is issued for the information of the general public, taxpayers, taxpayers' representatives or advisers, and, in particular, taxable persons not resident in Nigeria. This Circular withdraws and replaces FIRS Information Circular No. 2021/07 of 3rd June 2021.

1.0 Introduction

The purpose of the circular is to provide a general description of the application of the Nigerian tax laws to non-residents (individuals or corporate) and in particular the extent of their liability to Nigerian taxes, as well as the payment procedure.

2.0 Concept of Residence

The concept of residence determines the extent to which the income of a person is liable to tax in a jurisdiction. Any person (individual or corporate), who is a resident of Nigeria, is assessable to tax on the worldwide income. Consequently, such a person is liable to tax on the income or profits "**accruing in, derived from, brought into, or received in Nigeria.**"

For the purposes of income tax in Nigeria, a person may be resident, non-resident, or possess dual residence.

2.1 Resident Individual

An individual is tax-resident in Nigeria throughout an assessment year if that individual:

- (i) is domiciled in Nigeria;

- (ii) sojourns in Nigeria for a period or periods, in all, amounting to an aggregate of 183 days or more in a 12-month period (inclusive of annual leave or temporary period of absence);
- (iii) has a permanent place available for his domestic use in any part of Nigeria; or
- (iv) serves as a diplomat or diplomatic agent of Nigeria in another country.

2.1.1 Resident Individual and Liability to Tax

A resident individual is liable to tax in Nigeria on all income derived from both inside and outside Nigeria, in particular:

- (i) The profit of a trade, profession or vocation carried on in or outside Nigeria, regardless of the period for which such a trade, profession or vocation has been carried on.
- (ii) Employment income, including compensations, bonuses, premiums and benefits, irrespective of where the income is earned or the employment is exercised and whether or not the income is brought into or received in Nigeria.
- (iii) Interest, dividend, rent, royalty, discount, annuity, winnings, etc., wherever they arose.

2.2 Resident Companies

A company is resident in Nigeria if it is incorporated, constituted or registered under any law in Nigeria.

2.2.1 Resident Company and Liability to Tax

According to Section 13(1) of the Companies Income Tax Act (CITA) CAP. C21, LFN 2004 (as amended), the profits of a Nigerian company are liable to tax in Nigeria irrespective of where the profits have arisen and whether or not they have been brought into or received in Nigeria. As such, the failure of a Nigerian company to repatriate profits made from abroad does not prevent such profits from being taxed in Nigeria.

3.0 Non-Residents

A non-resident company or individual is liable to tax on only the profit or income derived from Nigeria.

3.1 Non-Resident Individual

A non-resident individual is a person who:

- (i) is not domiciled in Nigeria;
- (ii) has not been in Nigeria for a period or periods, in all, amounting to an aggregate of 183 days or more in a 12-month period (inclusive of annual leave or temporary period of absence);
- (iii) does not have a permanent place available for his domestic use in any part of Nigeria; or
- (iv) is not a diplomat or diplomatic agent of Nigeria in another country.

3.1.1 Liability to Tax in Nigeria by Non-Resident Individual

The following income of a non-resident individual is taxable in Nigeria.

- a) **Income from trade, business, vocation, or profession** – A non-resident individual becomes liable to tax from the day he commences a trade, business, vocation, or profession in Nigeria.
- b) **Employment income,**
 - 1) where an employment is exercised in Nigeria, the non-resident individual will be liable to tax on the employment income, irrespective of the number of days spent in Nigeria.
 - 2) where the employment is not exercised in Nigeria, the non-resident individual will be liable to tax on the employment income, only if:
 - i. the individual has spent 183 days in Nigeria; or
 - ii. the employer is in Nigeria, or has a fixed base in Nigeria which bears the expense; or
 - iii. the employer is one of the Governments in Nigeria; or
 - iv. the individual is in an employment as a seafarer or is performing stand-by duty on board a ship in Nigeria. This provision does not apply to any person holding such employment in the Nigerian Navy or the Nigerian Ports Authority).

Note:

- a. Where the duties of the employment are wholly or partly performed in Nigeria, employment income derived during any period of leave or temporary absence from Nigeria is liable to tax in Nigeria.

- b. The period of temporary absence will count for the purposes of determining the 183 days' threshold of the person's residence status in Nigeria.

3.1.2 Diplomats

The income of an individual who is a diplomat or consular officer is liable to tax only in the home country in line with the Vienna Convention. Therefore, the salaries and official emoluments of this class of individuals, working as diplomats of foreign governments in Nigeria, are not taxable in Nigeria. However, any income or profit from trade, profession, employment, etc. that may accrue to a diplomat or consular officer in Nigeria, other than his official emolument as a diplomat, is liable to tax in Nigeria.

Nigerian diplomats serving abroad come under the same rule. Their official emoluments are not taxable in the host countries; as their emoluments (as diplomats in Nigerian missions abroad) are taxable in Nigeria.

A diplomat is as designated pursuant to the Diplomatic Immunities and Privileges Act Cap D9 Laws of the Federation of Nigeria 2004 (as amended to date) and other extant laws.

3.1.3 Nigerians Working Abroad in International Organisations

Such Nigerians fall under two categories for income tax purposes, that is:

- (i) individuals posted to and working in international organisations (located outside Nigeria) as diplomats – their official emoluments as diplomats are wholly taxable in Nigeria; or
- (ii) individuals working abroad in international organisations in their own individual capacities (not as Nigerian diplomats) – their emoluments from the employment are wholly taxable in the country of residence. If they earn other income from Nigeria, such income may be taxed in Nigeria.

Note: Nigerian citizens (whether or not they are diplomats) working in foreign embassies or International Organisations located in Nigeria are liable to tax in Nigeria.

3.2 Non-Resident Company

A "non-resident company", "company other than a Nigerian company" or

“foreign company” means “any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria” (see Section 105 of CITA).

3.2.1 Tax Liability of Non-Resident Companies in Nigeria

Every company, resident or non-resident, is liable to companies income tax (CIT) in Nigeria where the profits accrue in or are derived from, brought into or received in Nigeria.

Note: exemption from incorporation does not confer tax exemption on any company.

In accordance with the provisions of section 13(2) of CITA, a non-resident company is taxable in Nigeria if any of the following conditions is met:

- i) the non-resident company has a fixed base (i.e. a place of business) in Nigeria to the extent that the profit is attributable to the fixed base;
- ii) the non-resident company habitually operates a trade or business through a person in Nigeria or maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company;
- iii) the non-resident company does not have physical presence in Nigeria but derives income from Nigeria through digital activities to the extent that it has a “significant economic presence” in Nigeria;
- iv) the trade or business or activities of the non-resident involves a single contract for surveys, deliveries, installations or construction;
- v) the trade or business of the non-resident involves the remote provision of technical, management, consultancy or professional services to a Nigerian resident;
- vi) the trade or business or activities is between the company and a related party, which is considered not to be at arm’s length.

3.2.2 Passive Income

Where dividends, interests, royalties or rents accrue in Nigeria to a non-resident, such income is liable to tax in Nigeria.

In line with the provisions of the relevant tax laws, the payer of the dividends, interests, royalties or rent is required to deduct tax on the income and pay same to the relevant tax authority. The tax, when deducted from the income accruing

to a non-resident, is the final tax; as such, the non-resident recipient or beneficial owner shall not be liable to further tax in Nigeria on such income. However, in the case of a treaty situation and where the income is attributable to the non-resident's permanent establishment in Nigeria, tax shall apply based on the provisions of the tax treaty.

The rates at which tax is deducted are stated in paragraph 7.0 of this Circular.

3.2.3 Treatment of Business Expenses

For the purposes of ascertaining the amount of taxable profits, expenses to be deducted from income are only those proven to have been incurred wholly, reasonably, exclusively and necessarily for the production of the income in Nigeria. In addition, only those expenses that are specifically allowed by the relevant tax law shall be allowed as a deduction in arriving at the assessable profits of the Nigerian operation.

Notional costs are not allowed for deduction from the income of Nigerian operations for tax purposes. Notional costs include but not limited to:

- a) inputted interest i.e. interest on fund not being a loan directly or specifically obtained for the Nigerian operation
- b) head office charges;
- c) royalty due to related persons;
- d) fees or other similar payments in return for the use of patents or other rights owned by a member of the MNE group;
- e) commission or management fees charged by the head office or a member of the MNE group for services rendered to the Nigerian operation;
- f) interest on moneys lent by the head office or a member of the MNE group to the Nigerian operations.

All expenses that are attributed to the Nigerian operations should be supported by adequate documentation and should be in line with the Transfer Pricing Regulation 2018. No tax deduction will be granted for notional costs, i.e. costs that are not incurred or based on speculative estimates. Allocation of joint cost to the Nigerian operations must satisfy the wholly, reasonably, exclusively and necessarily (WREN) principle and supported by all relevant documents to justify its deduction.

Specific expense limitation rules in CITA would also apply, to the extent required by CITA.

As such, only the following expenses are allowable deduction in arriving at the taxable profits of the company's Nigerian operations:

- i. actual expenses incurred by the Nigerian operations in the production of the income;
- ii. reimbursement of actual expenses incurred by the company on behalf of the Nigerian operation; and
- iii. interest payment to the company, where the foreign enterprise is a bank.

3.2.4 Profits or Income "Deemed" derived from Nigeria

The key issues to consider in determining whether or not a non-resident company's income or profits are derived from Nigeria include whether or not the non-resident company:

- a) has a "fixed base" in Nigeria;
- b) carries on business activities in Nigeria through an agent authorised by the company to (i) carry on the trade or business, or (ii) maintain stock of goods from which goods or merchandise are delivered, on its behalf;
- c) derives income from Nigeria through digital activities to the extent that it has a significant economic presence in Nigeria;
- d) executes a single contract for surveys, deliveries, installations or construction in Nigeria; or
- e) carries on business involving the provision of services of a technical, management, consultancy or professional nature to persons resident in Nigeria;

Each of these specific circumstances will be treated in turn.

3.2.4.1 Fixed Base

If a non-resident company has a "**fixed base**" from which it carries on its business or trade in Nigeria, the profits from such activities is derived from Nigeria.

The term "**fixed base**" refers to the physical presence of the non-resident company in Nigeria. It refers to situations where any of the business activities of that company is carried on at a particular location in Nigeria which is available for its use. It is a specific place where trade or business activities including

construction, services of a managerial, professional, technical, or consultancy in nature, etc. are rendered or carried out in Nigeria, regardless of the degree or time of such activity. The key consideration is that the space is available for the use of the non-resident company. It is immaterial whether the space is owned, rented, mobile or available to other companies. Whether there is a formal or legal right to use the facility is not a requirement and does not count. Examples of fixed base include facilities such as *a factory, an office, a branch, a workshop, a mine, gas or oil well, a space, an equipment, sales outlet, a hotel, mobile kiosk, physician's consulting room, building, construction or installation sites, etc.*;

However, the followings shall not constitute fixed base for a foreign company in Nigeria:

- (i) facilities used **solely** for storage or display of goods or merchandise;
- (ii) facilities used **solely** for the collection of information.

The use of the word "**solely**" in the law indicates that the facilities are used exclusively as a warehouse, showroom or representative office. However, where a facility used as a warehouse or showroom is also used for sale, delivery or other activities, then that facility will qualify as a fixed base of the non-resident company. The profits attributable to the fixed place is taxable in Nigeria. In the same vein, a representative office that is also used for initiating or securing orders, negotiation of terms or conditions of a contract or sales, furnishing of services etc. will qualify as a fixed base.

Illustration 1

Sweet Home Inc. has a representative branch office in Nigeria for the display of its products. However, a new office manager, who is not familiar with the business process of the company, sold one of the products on display.

Treatment

Where the activity of the branch is restricted solely to the display of the company's products in Nigeria, the branch will retain the status of a representative office and will not be held liable to Nigerian tax.

However, the sale by the office manager would change the status of the branch to a sales-outlet, thus transforming it to a fixed base in Nigeria.

3.2.4.2 Agency Relationships

Where a non-resident company carries out trade or business activities in Nigeria through an authorised person, who does so on its behalf or on behalf of any of

its associated or related companies, the profits made by that non-resident company from such trade or business activities are derived from Nigeria; and thus, liable to tax in Nigeria. The tax on the profit of the non-resident is distinct from the tax payable by the agent in respect of its business activities as an agent. The issue of whether the agent is dependent or independent is not envisaged in the law; the key considerations are that the agent is authorised and the activity is carried out on behalf of its principal.

Also, "carrying on a trade or business" is not limited to the conclusion of a whole transaction cycle but encompasses any activity that will contribute to the conclusion of a trade or business, such as initiation or securing orders, negotiation of terms of the business, rendering services, maintenance of stock of goods or merchandise from which deliveries are made, etc.

Illustration 2

Sweet Home Inc., a non-resident company, has an agent in Nigeria which secures customers on its behalf for a commission.

Treatment

The agent would be treated as an agent of Sweet Home Inc. in Nigeria, and the profits of Sweet Home Inc. which is attributable to the trade conducted by the agent on its behalf is taxable in Nigeria. The agent is equally liable to tax in respect of commission derived from its agency activities.

Illustration 3

Sweet Home Inc., a non-resident company, has an agent in Nigeria that maintains a stock of goods in Nigeria on its behalf, from which the agent regularly delivers to customers. The agent does not carry on any other trade or business activities for the company, like securing of contracts or orders.

Treatment

The profits attributable to the business conducted through the agent is taxable in Nigeria, even where the agent does not carry on any other activity, like securing of contracts or orders for Sweet Home Inc.

3.2.4.3 Digital Activities

Where a non-resident company remotely carries on a trade or business activity in Nigeria using digital or electronic means (including satellite), without a physical presence in Nigeria, the profits from such trade or business would be attributable to and taxable in Nigeria.

A non-resident company carrying on business via electronic or digital channels is only subject to tax if it has significant economic presence in Nigeria i.e. fulfils any one of the following conditions:

- a) the non-resident company derives aggregate gross turnover or income of more than ₦25 million (or its equivalent in other currencies) in that year, from any or combination of the following-
 - i) streaming or downloading services of digital contents, including but not limited to movies, videos, music, applications, games and e-books to any person in Nigeria; or
 - ii) transmission of data collected about Nigerian users which has been generated from such users' activities on a digital interface including website or mobile applications; or
 - iii) provision of goods or services other than services referred to in paragraph 3.2.4.5. of this Circular, directly or indirectly through a digital platform to Nigeria; or
 - iv) provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria;
- b) the non-resident company uses a Nigerian domain name (.ng or similar extensions) or registers a website address in Nigeria; or
- c) the non-resident company has a purposeful and sustained interaction with persons in Nigeria by customising its digital page or platform to target persons in Nigeria, including reflecting the prices of its products or services in Nigerian currency or providing options for billing or payment in Nigerian currency.

Where any of the above conditions exist, the non-resident company will be required to compute and pay the tax in line with the relevant provisions of CITA and file its returns in line with Section 55 of the Act.

3.2.4.4 Profits from a Single Contract

Where a non-resident company undertakes any contract in Nigeria and the contract involves surveys, deliveries, installations or construction, the profits from that contract are derived from Nigeria and liable to Nigerian tax. This

means that though part of the contract may have been executed offshore, the whole contract sum is deemed derived from Nigeria. The contract sum from a single contract of surveys, deliveries, installations or construction shall not be split between “in-country” and “out-of-country” component for tax purposes. The total contract sum is wholly taxable in Nigeria and the contract need not be repetitive.

Income from each of the activities (survey, construction, installation or delivery) listed in section 13(2)(d) of CITA or any of the combinations is taxable in Nigeria, as each activity constitutes a complete economic transaction and need not be interrelated.

Illustration 4

XYZ Limited is a non-resident company that successfully bid, and was awarded a contract by a Nigerian agency to procure and install telecommunication equipment in one of its provinces. According to the contract terms, components of the contract would need to be executed offshore. XYZ Limited therefore, subcontracts that part of the contract to its sister company MOQ Limited resident in country M and that part was executed in country M.

Treatment

The contract above is between the Nigerian agency and XYZ Limited regardless of its sub-contracting arrangement with MOQ limited. The total contract sum will be liable to income tax in Nigeria notwithstanding the part that was subcontracted to MOQ Limited and executed in country M.

Illustration 5

Y Co is an oil servicing company located in Country Y and has a subsidiary in Nigeria, Y Subco. The companies were awarded a joint contract by an Oil Company in Nigeria, Z Limited, to construct a pipeline for transporting its crude. In the contract document, 70% of the contract value was to be executed by Y Co in Country Y, without any physical visit to Nigeria, while 30% of the contract value will be executed by Y Subco in Nigeria. The 70% foreign component was denominated in USD, while the 30% local component was denominated in Naira.

Treatment

The total contract sum will be liable to income tax in Nigeria, notwithstanding that the contract was issued to two companies and a part of the contract is

executed in country Y. Where separate contracts were issued to each of the companies instead of a joint contract, the outcome will still be the same. That is, each contract will constitute a single contract to the relevant contractor, and the sum in each contract will be liable to income tax in Nigeria in the hand of that contractor.

3.2.4.5 Provision of Certain Services by Non-Resident Persons

In line with Section 13(2)(e) of CITA and Section 6A of PITA, where a non-resident (company or individual) remotely provides management, consultancy, professional or technical services (including advertising services, training, or the provision of personnel) to a person in Nigeria (individual or company) and the services are performed outside Nigeria, the non-resident derives profit from Nigeria and that profit would be taxable in Nigeria, to the extent that the income is earned or the payment is received or receivable from: a) a person resident in Nigeria; or

b) a fixed base or an agent of a company, other than a Nigerian company in Nigeria.

In line with the WHT Regulations, the applicable withholding tax rate is 5%, where the payment is made to an individual or entity covered under PITA, while the rate is 10% for payments made to companies or other persons covered under CITA.

The Nigerian company or person to whom such service is rendered in Nigeria, its fixed base or agent in Nigeria will be required to deduct the tax at source and remit same to FIRS. The withholding tax so deducted and remitted shall be the final tax payable by the non-resident in Nigeria on income earned from remote provision of management, consultancy, professional, advertising or technical services. Any other income earned from Nigeria by the non-resident shall be taxable in accordance with provisions of section 13(2)(a) to (d) of CITA or Section 6 of PITA.

However, a payment made to a non-resident company or individual for services rendered remotely will not be taxable in Nigeria if the payment is made:

- a) to an employee of the person making the payment under a contract of employment; or
- b) for teaching in an educational institution or for teaching by an educational institution; or

c) by a foreign fixed base of a Nigerian resident (company or individual).

NOTE:

1. The exemption for teaching in an educational institution shall not cover a situation where an educational institution was used merely as a venue for teaching; that is, the training was not organised by that institution.
2. The exemption for payment by a foreign fixed base or PE of a Nigerian company shall not include payments made on behalf of the Nigerian company which is reimbursable by the Nigerian company or deductible in computing the assessable profits of the Nigerian company. The exemption shall only cover situations where the fixed base wholly or partly carries out the business of the Nigerian company, earns its income and the payments are a deductible expense of the fixed base or PE.

Illustration 6

Adam Bolton, a resident of UTTR, offers Advisory Services to clients world-wide. Mr Bolton entered a contract to provide legal advisory services to a Nigerian client, MOQ Partners. The service contract requires that the service be delivered via electronic channels without physical presence of Mr Bolton or his representative in Nigeria.

Treatment

Sections 6A and 73 of PITA and the Withholding Tax Regulations S. I. 9 of 1997 provide for WHT deductions on payments made to any person in respect of any service of a technical, management, consultancy or professional nature. Accordingly, MOQ Partners is required to make a 5% deduction at source from the service fee due to Adam Bolton and remit same to FIRS.

NOTE:

1. FIRS is the relevant tax authority for the taxation of non-residents (individuals and companies) that derives income from Nigeria.
2. Sections 13(2)(e) and 81 of CITA and the Withholding Tax Regulations S. I. 10 of 1997 will apply where the taxpayer is a company. As such the withholding tax rate is 10% except where a tax treaty provides otherwise.

Illustration 7

ABC Ltd is a Nigerian company that manufactures tricycles in its factory in Nigeria for sale to the Nigerian market. The company has established a representative office in Country X to specifically handle all legal issues on behalf of the company. The staff in the representative office are responsible for procuring lawyers on behalf of the Nigerian company and negotiating their terms of engagement, including their professional fees. The professional fees of the lawyers are paid by the representative office from their bank account in Country X but reimbursed from the account of ABC Ltd domiciled in Nigeria.

Treatment

The representative office in country X does not constitute a separate entity, trade or business from ABC Ltd for tax purposes. Consequently, engagements and payments made by the representative office are actually carried out by ABC Ltd. As such, "reimbursements" made from ABC Ltd to the representative office with respect to the professional fees are mere intra-company transfers, which are not subject to withholding tax, as both accounts belong to ABC Ltd in substance. However, the professional fees paid to the lawyers would be liable to withholding tax pursuant to CITA, even when made by the representative office, as these are payments made by ABC Ltd to third-party service providers in Country X. The fees are allowable for deduction in determining the assessable profits of ABC Ltd, if they are wholly, exclusively, reasonably and necessarily incurred in producing the profits of ABC Ltd chargeable to tax in Nigeria.

NOTE

Where a Nigerian Company or a Non-Resident Company has entered into **any agreement** in respect of any service, including service to be rendered by a representative office, such company shall comply with the provisions of section 12 of CITA.

3.2.5 Fixed Base for Individuals

Sections 6, 6A & 7 of PITA have conditions for taxing the profits of an individual in business, which are similar to those explained in sub-paragraphs 3.2.4.1 to 3.2.4.6. In other words, the profits of a non-resident individual carrying on a trade or business in Nigeria are derived from Nigeria and therefore liable to Nigerian tax, where:

- i) the non-resident has a fixed base in Nigeria to the extent that the profit is attributable to the fixed base;

- ii) the non-resident or any of his associates habitually operates a trade or business through a person in Nigeria;
- iii) the trade or business or activities involves a single contract for surveys, deliveries, installations or construction;
- iv) The non-resident person provides technical, management, consultancy or professional services remotely to Nigerian residents;

3.2.6 Difference between a Nigerian Branch of a Non-Resident Company and Nigerian Subsidiary of a Non-Resident Company

A Nigerian branch of a foreign entity is considered as a fixed base of the non-resident company under Section 13(2) of CITA or PE under the tax treaties. On the other hand, a Nigerian subsidiary of a non-resident company is a resident of Nigeria and operates as a separate legal entity from the parent. Such a subsidiary company is liable to tax in Nigeria on its worldwide income.

Unlike a branch, the presence of a subsidiary of a foreign parent company in Nigeria does not in itself create a taxable presence for that parent company in Nigeria. However, the foreign parent company will be liable to tax in Nigeria where any of its profits is derived from Nigeria through the subsidiary company. For example, where the foreign company:

- i. uses the premises or facilities of the subsidiary for its own business to the extent that the premises or facilities of the subsidiary constitutes its fixed base or PE;
- ii. authorises the subsidiary to wholly or partly carry out its business in Nigeria on its behalf to the extent that the subsidiary company is deemed to be its agent; or
- iii. carries on business jointly with the subsidiary or any other entity in Nigeria.

3.2.7 Permanent Establishment in Tax Treaties

A non-resident company which is a resident of a country with which Nigeria has a **Tax Treaty** is liable to tax based on the provisions of the Tax Treaty. Under tax treaties, a company resident in one jurisdiction is only liable to tax in the other jurisdiction if it has a Permanent Establishment (PE) in that other jurisdiction. As such, if a company that is a resident of Nigeria's treaty partner has a PE in Nigeria, it is liable to Nigerian tax on the profits attributable to that PE in Nigeria. In a tax treaty situation, business profits of a non-resident company will not be liable to income tax in Nigeria in the absence of a PE.

The profits of the PE that is taxable in Nigeria will be determined in line with the attribution rules in the respective Tax Treaties.

3.2.7.1 Meaning of “Permanent Establishment”

The term **“permanent establishment”** is generally defined in Nigerian Tax Treaties as **“a fixed place of business through which the business of an enterprise is wholly or partly carried on”**. It signifies the physical presence of the business of a treaty partner in the other treaty partner’s jurisdiction.

The interpretation of the concept of PE requires that the following conditions are fulfilled:

- a) that the fixed place of business meets the following two critical components:
 - i. a specific geographical location (the “location test”); and
 - ii. a certain degree of permanence (the “duration test”), which may be from 30 days to 12 months depending on the provisions of the respective Tax Treaty or nature of activity;
- b) that it is a place of business i.e. any premises, facilities or installation etc. used for carrying on the business activity;
- c) that it is the business of the foreign enterprise that is being carried on at the fixed place, either wholly or partly.

Examples of PE includes:

- i. a place of management;
- ii. a branch;
- iii. an office;
- iv. a factory;
- v. a workshop;
- vi. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- vii. an exploration site;
- viii. a sales outlet;
- ix. an equipment or plant; or
- x. a building site, a construction, assembly or installation project or supervisory activities in connection therewith.

3.2.7.2 Other Forms of Permanent Establishment

In addition to a “fixed place of business”, the following will also constitute a PE under the Nigerian Tax Treaties:

- i. the furnishing of services through an employee(s) or other persons;
- ii. a dependent agent in Nigeria, which habitually concludes contracts, business or habitually plays the principal role leading to the conclusion of contracts or business either in its name or in the name of the foreign company and the contracts are routinely concluded;
- iii. a closely related person (company, individual etc.) to the foreign company, which may be independent, but acts exclusively or almost exclusively on behalf of the foreign company; or
- iv. a foreign insurance company that collects premium or insures risks situated in Nigeria.

3.2.8 Taxation of Professionals Under the Tax Treaties

The provisions of the tax treaties require that income from vocational and professional services (such as lawyers, architects, doctors, accountants, etc.) are only taxable in Nigeria where the service provider has a fixed base or permanent establishment in Nigeria depending on the Tax Treaty. Fixed base generally has the same meaning as permanent establishment.

4.0 Turnover Basis of Taxation

Section 30 of CITA and Section 7 of the Personal Income Tax Act (PITA) enables the FIRS to assess a company or individual to tax based on its turnover. The profit assessable to tax under this regime is ascertained by applying **a fair and reasonable percentage** on the turnover. By government’s policy, the Service adopts **20%** as a fair and reasonable percentage.

4.1 Application of the Turnover Basis of Taxation

The turnover basis of assessment is applicable to a trade or business carried on in whole or in part in Nigeria when the following conditions exist:

- (i) the trade or business has produced no assessable profits; or
- (ii) the assessable profits produced appear less than might be expected to arise from such a trade or business; or
- (iii) the true amount of the assessable profits of the company cannot be readily ascertained.

The same tax treatment applies to both residents and non-residents when the above conditions prevail.

4.2 The Turnover that is Subject to Tax

For the purposes of section 30 of CITA and section 7 of PITA, this taxing rule shall apply to the gross turnover of the non-resident company or individual that is attributable to Nigeria. The gross turnover, in this regard, does not include income derived from jurisdictions other than Nigeria. However, it entails that all income derived from Nigeria is included without deduction of any sum by way of cost, expenses or charges.

The steps involved are to:

- a) establish that the company or individual has derived revenue from Nigeria.
- b) determine the turnover (revenue) attributable to the Nigerian operations.
- c) apply the rate considered fair and reasonable to the turnover from the Nigerian operations.

Under the turnover basis of assessment, all costs, expenses and charges, including capital allowances for the year, are treated as having been granted.

Illustration 8

ABC SPA, a company resident in Country A had a contract for the construction of a fuel depot in Nigeria. The contract sum was \$70m, broken into Nigerian and foreign components of \$50m and \$20m respectively.

Treatment

The example above relates to a single contract for construction, which is covered under Section 13(2) (c) of CITA. The splitting of the contract into local and offshore components is disregarded for the purpose of determining the tax liability of the company in Nigeria. Consequently, the income from the whole contract is derived from Nigeria and the company is liable to tax in Nigeria on the income.

Where turnover assessment is adopted, a fair and reasonable percentage will be applied on the \$70m contract sum to arrive at the total profit.

The depot owner is required to deduct WHT of 5% on the \$70m contract sum and not just on the \$50m Nigerian component.

The tax position will appear thus:

Turnover (attributable to Nigeria)	<u>\$70m</u>
Fair & Reasonable Profit (20%)	<u>\$14m</u>
Company Income Tax (30%)	\$4.2m
<u>Less:</u> Withholding Tax (5%)	<u>\$3.5m</u>
Additional Tax Due	<u>\$0.7m</u>

Illustration 9

ZYZ Ltd is a non-resident Non-Life insurance company that regularly collects premiums from policies it booked in Nigeria. Its agency agreement and pattern of operation in Nigeria shows that the risks are insured and the premiums collected by an agent in Nigeria. The premium income generated by the agent on behalf of the company in the year amounted to ~~N~~900m.

Treatment

The agreement and the pattern of operations indicates that the insurance company habitually operates a trade or business in Nigeria through an agent who has authority to contract business for the principal.

The whole premium income earned by the company through the agent is attributable to Nigeria. Where the profits arising from the Nigerian business operations cannot be determined in line with Section 16 of CITA, a fair and reasonable percentage (currently 20%) of the ~~N~~900m will be assessed and charged to tax in Nigeria.

Illustration 10

A non-resident company has a single contract for the construction of a satellite station in Nigeria. The contract price for the construction work is \$350m.

Treatment

The profits from the contract is derived from Nigeria in line with Section 13(2) (d) of CITA. In addition to 5% withholding tax deduction by the client, the contractor is liable to file tax returns in Nigeria and pay tax on the profits derived

from the contract. If the assessment has to be based on turnover, then the tax officer will determine the total profit on a fair and reasonable percentage of turnover (i.e. contract revenue).

4.3 Turnover Basis of Assessment for Non-resident companies subject to tax in Nigeria under S.13(2)(c) CITA and the SEP Order 2020.

The application of turnover basis of assessment also applies to companies that derive income from Nigeria in line with paragraph 3.2.4.3 of this Circular. Where any of the conditions in paragraph 4.1 above apply, the company will be assessed to tax on a fair and reasonable percentage of the turnover of the company from its activities in Nigeria.

In determining the fair and reasonable percentage, the Service may, at its discretion, adopt either of the following, depending on the financial information of the company that is available to the Service:

1. the profitability ratio or profit margin of the company, determined on the basis of the ratio of its earnings before interest, tax, depreciation and amortisation (EBITDA) to its global turnover, as may be obtained from its financial statement;
2. the profitability ratio or profit margin of the group to which the company belongs, determined on the basis of the ratio of the profit before tax (PBT) of the group to the group's turnover, as disclosed in the consolidated financial statement of the group;
3. a fair and reasonable percentage of 20% that has been adopted by the Service in line with government policy; or
4. Any other basis that the Service may consider fair and reasonable.

Illustration 11

BSC, a non- resident company, has a streaming platform with over 40 million subscribers in Nigeria. For the year ended 2021, BSC Company has neglected to file its tax returns and fulfil its other tax obligations in Nigeria, insisting it has no physical presence in Nigeria. FIRS has obtained the financial statement of the company from the internet and ascertained that its earnings before interest, tax, depreciation and amortisation (EBITDA) was USD 38 million and global turnover was USD 140 million. The Service also established, through strategic intelligence, data mining and analysis, that BSC generated N80 million turnover from Nigeria.

Treatment

BSC derived profits from subscriptions in Nigeria in line with Section 13(2)(c) of CITA and the SEP Order. As such the company is obliged to file tax returns for the year 2021 in line with S.55(1A) and pay tax on the profits derived from Nigeria. However, since the company did not file its returns in Nigeria, the true amount of the assessable profits of the company in Nigeria cannot be readily ascertained by FIRS. The Service will therefore assess the company on a fair and reasonable percentage.

The fair and reasonable percentage to be applied to the company shall be computed as follows:

EBITDA of the company				USD 38 million
Global Turnover				USD 140 million
Profitability ratio/profit margin	=	38 million	X 100%	
		140 million		= 27.14%

The fair and reasonable percentage as determined by the Service based on the company's information available to it is 27.14%

The tax payable by the company under the turnover basis of assessment is computed as follows:

		<u>₦'000</u>
Turnover in Nigeria		<u>80,000</u>
Total Profits (N80,000,000 X 27.14%)		<u>₦21,712</u>
Tax Payable (N21,712,000 X 30%)		<u>₦6,513.6</u>

Alternatively:

Fair and reasonable profitability percentage of turnover	=	<u>27.14%</u>
Proportion payable as tax (27.14% X 30%)	=	<u>8.142%</u>
Turnover in Nigeria		<u>₦80,000,000</u>
Tax Payable (N80,000,000 X 8.142%)		<u>₦6,513,600</u>

Penalty for late filing of income tax returns shall be in accordance with Section 55(3) of CITA. In addition, the provisions of the VAT Act as it relates to penalty for non-compliance shall apply.

Illustration 12

WYZ.net, a non-resident company and a member of WYZ group, provides online adverts, real estate and electronic sales to Nigeria through its online platform.

The trade of WYZ in Nigeria is similar to the global activities of WYZ group. The Company disclosed in its tax returns filed for the year 2021 that it made N50 million revenue in Nigeria through its platform. However, the company filed a loss position for its operations in Nigeria and paid the minimum tax at 0.25% of turnover. The review of the financial statement included in the tax returns revealed 11% profitability or profit margin for WYZ group (computed on the basis of the group's PBT).

Treatment

In the above illustration, WYZ has no assessable profits from its trade in Nigeria, considering that the trade or business of the group produces 11% profitability ratio or profit margin). WYZ.net has in the opinion of the Service filed an inadequate return on its trade in Nigeria through its platform. Thus, the Service will assess the company to tax based on a fair and reasonable percentage that might be expected to arise from such trade or business, in this instance, 11% of the turnover in Nigeria.

The tax payable by the company under the turnover basis of assessment is computed as follows:

	<u>₦'000</u>
Turnover in Nigeria	₦50,000
Total Profits (N50,000,000 X 11%)	₦5,500
Tax Payable (N5,500,000 X 30%)	₦1,650

Alternatively:

Fair and reasonable profitability percentage of turnover	=	11%
Proportion payable as tax (11% X 30%)	=	3.3%
Turnover in Nigeria		₦50,000,000
Tax Payable (N50,000,000 X 3.3%)		₦1,650
Less Minimum Tax paid.		

Illustration 13

TARZ is one of the non-resident companies providing digital ride-sharing intermediation services to drivers in Nigeria through its online platform. Its income in Nigeria is from the commission it receives on each successful trip from the independent drivers using its platform to connect with riders.

TARZ assessed and disclosed in its tax returns filed for the year 2021, that it made N60 million turnover from Nigeria through its platform with assessable/total profits of N1.8 million of which it paid tax at 30%. Having

reviewed the returns filed by the taxpayer, the Service observed that the profitability ratio of the company is lower than that of other companies engaged in similar trade or business in Nigeria.

In arriving at this position, the Service carried out the necessary audit procedures, information, document and records' verification and benchmarking of TARZ's net profit margin with that of similar businesses, using a commercial database, which showed 24% profitability as against the 3% declared by TARZ. Thus, the assessable profits disclosed by the company appears less than might be expected to arise from such a trade or business.

Treatment

The Service will apply the turnover basis of assessment under Section 30 of CITA. Considering that the profitability ratio of the company is lower than that of other companies engaged in similar trade or business, the Service may adopt:

1. The fair and reasonable percentage of 20% that has been adopted by the Service in line with government policy; or
2. the average net profit margin or profitability ratio of similar businesses as determined using the commercial benchmarking database.

In adopting the net profit margin as benchmarked from the commercial database, the fair and reasonable percentage to be applied to the company shall be computed as follows:

Turnover in Nigeria	<u>N'000</u>
	<u>N60,000</u>
Total Profits (N60,000,000 X 24%)	<u>N14,400</u>
Tax Payable (N14,400 X 30%)	<u>N4,320</u>

Alternatively:

Fair and reasonable profitability percentage of turnover	=	<u>24%</u>
Proportion payable as tax (24% X 30%)	=	<u>7.2%</u>
Turnover in Nigeria		<u>N60,000,000</u>
Tax Payable (N60,000,000 X 7.2%)		<u>N4,320</u>

5.0 Airlines and Shipping

Refer to FIRS Information Circular on *Taxation of Companies Engaged in Shipping, Air Transport and Cable Undertakings*, which is available at <https://www.firs.gov.ng/TaxResources>.

6.0 Remittance of Funds Out of Nigeria

Remittance of funds out of Nigeria requires a Clearance Certificate issued by the Service. The certificate is to show that relevant tax has been paid on the income from which the fund is generated or that the income is not liable to Nigerian tax.

It is an offence for remittance to be made without obtaining the relevant Clearance Certificate.

7.0 Withholding Tax

(a) Passive Income (Companies and Individuals)

The applicable withholding tax rates for the various passive incomes are:

SN	Transactions	Companies	Individuals
i.	Interest	10%	10%
ii.	Dividend	10%	10%
iii.	Rent (including hire charges)	10%	10%
iv.	Royalties	10%	5%

Withholding tax is the final tax paid in respect of passive income received by non-residents.

As regards non-resident companies from treaty countries, the applicable WHT rates are as specified in the respective Tax Treaties. The WHT rates commonly agreed to range from 7.5% to 10%.

WHT rates specified in some Tax Treaties executed before 1999 have rates that are above 10%. The WHT rate applicable with respect to those Tax Treaties is 7.5% as specified in Nigeria's 1999 Budget.

Further Clarifications on how to access treaty WHT rates and other treaty benefits is provided in FIRS' Information Circular on the *Claim of Tax Treaties Benefits in Nigeria* at:

b) **Contracts and Services**

The applicable WHT rates for contracts and services performed by companies or individuals are as follows:

SN	Transactions	Companies	Individuals
i.	Management services	10%	5%
ii.	Commission	10%	5%
iii.	Consultancy and professional services	10%	5%
iv.	Technical services	10%	5%
v.	Contracts for construction of roads, bridges, buildings or power plants	2.5%	5%
vi.	All other contracts for construction works	5%	5%
vii.	Contract of supplies and agency arrangements	5%	5%
viii.	Directors' fees	-	10%

Withholding tax is deducted and remitted in the currency of transaction.

8.0 Capital Gains Tax (CGT)

The taxation of gains accruing from disposal of assets is administered under the Capital Gains Tax Act. A non-resident company that realises capital gains from the disposal of chargeable assets is liable to CGT at the rate of 10%.

CGT returns are to be filed twice a year with due dates of 30th June and 31st December. As such, every non-resident person (company, partnership, executor, trustee, community, family and individual) that have disposed a chargeable asset is required to, not later than 30th June and 31st December of that year, compute the capital gains tax, pay the tax computed and file self assessment return in a manner prescribed by FIRS. The procedure for the filing of returns and payment of CGT is contained in FIRS Information Circular on

Clarifications on the Provisions of Capital Gains Tax Act, which is available at <https://www.firs.gov.ng/TaxResources>.

Gains arising from the disposal of securities, stocks and shares of the Nigerian Government is exempt from CGT in Nigeria.

9.0 Tax Jurisdiction

The following is the summary of tax authorities that have jurisdiction to collect taxes in Nigeria:

9.1 Local Jurisdiction

S/N	PERSONS	RELEVANT TAX AUTHORITY
i.	Non-resident individuals	FIRS
ii.	Non-resident Companies	FIRS
iii.	Foreign Diplomats accredited to Nigeria	Tax Authority of home country
iv.	Nigerian Diplomats serving abroad	FIRS
v.	Nigerians working in Embassies and International Organisations located in Nigeria	Tax authority of State of residence in Nigeria
vi.	Nigerians with diplomatic status working in International Organisations	FIRS

9.2 International Jurisdiction

For incomes arising in or derived from Nigeria, Nigeria has the first right to tax. For incomes brought into Nigeria, relief will be granted for tax payable in the country where the income arose (where applicable).

10.0 Filing of Returns and Payment of Tax by Non-Residents

Sections 55 of CITA and 41 of PITA call for the filing of self-assessment returns by "every person" (including persons not liable to tax or companies exempt from incorporation in Nigeria). The requirement to file tax returns is regardless of the tax status of the person in Nigeria. For instance, companies exempted from income tax or non-resident companies operating in Nigeria are still required to file tax returns with or without notice from the Service in every year of assessment. Income tax assessment is made in the currency of transaction.

Failure to file returns constitutes an offence and is liable to penalties under the tax laws. The relevant tax authority may appoint any person as an agent for the purpose of recovering tax due, including penalties. The agent so appointed is required to retain tax due from any money due to the taxable person and remit same to the relevant tax authority.

Further explanations and clarifications on the procedure for filing tax returns in Nigeria by non-resident companies are provided in FIRS' *"Guidelines for Filing Income Tax Returns by Foreign Companies"*.

11.0 Amendment or Revision of the Circular

The Service may at any time withdraw or replace this Circular, or publish an amended or updated version.

12.0 Enquiries

Any request for further information or clarifications on this Information Circular should be directed to the:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House,15,
Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
Revenue House Annex 4,
12, Sokode Crescent, Wuse
Zone 5, Abuja.

Or

Email: tpld@firs.gov.ng