Nigeria

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Key facts

Main tax rates

- Corporate tax rate: 30 percent
- VAT standard rate: 5 percent
- Personal income tax top rate: progressive bands up to 25 percent

Population/GDP

Population: 150 million
GDP: US$ 220b (2008)

Currency

Naira, here abbreviated to NGN (exchange rate currently approximately NGN 160 to US$ 1)

Membership of economic groups

Economic Community of West African States (ECOWAS)

Major industries

Oil and gas, agriculture, banking and telcommunications

Website of tax/finance authority

www.firs.gov.ng/

Introduction

The Federal Republic of Nigeria consists of 36 states and a federal capital territory (Abuja). It is governed through a federal constitution. The federal system means that in addition to federal taxes, there are state and local government taxes. The states have responsibility for the assessment and collection of personal income tax payable on the income of individuals resident in their states. They also collect capital gains tax on the profits derived by individuals from disposal of assets located in their jurisdiction. The local governments are responsible for miscellaneous taxes, such as tenement rates.

Oil is the mainstay of the economy. Its current crude oil production capacity is approximately 2 million barrels per day. The oil and gas sector accounts for 40 percent of GDP, and provides 80 percent of the government's total revenue and more than 90 percent of its exports. Nigeria also has significant natural gas reserves, estimated to be 166 trillion standard cubic feet, but the gas industry remains relatively underexploited.

As commercial branches of foreign companies are not permissible, except in very limited circumstances, foreign investors wishing to operate in Nigeria would necessarily have do so by incorporating in Nigeria. Foreign companies may however establish representative offices.

Recent developments

The tax authorities have been intensifying efforts at tax collection, and making efforts to strengthen the administration of taxes.

At the end of 2007, the government issued a tax policy paper, signalling that the future direction would be to streamline the number of taxes, reduce income tax rates and increase VAT from the current 5 percent. Recent attempts to increase VAT were however very strongly resisted by the public, causing the government to withdraw its introduction.

Corporate taxes

General outline

The income of companies is assessed under the Companies Income Tax Act Cap 60 Laws of the Federation of Nigeria. Petroleum companies are taxed under the Petroleum Profits Tax Act 1959. The capital gains of companies are taxed under separate tax legislation.

Generally, corporate income tax is charged on the income of a Nigerian company if it accrues in, is derived from, is brought into or received in Nigeria. The profits of Nigerian companies are therefore chargeable to tax irrespective of where they arise or whether or not they are remitted to Nigeria. On the other hand, the profits of foreign companies are taxed only to the extent that they are attributable to operations in Nigeria. The distinction between a foreign and Nigerian company is based merely on incorporation; a company is Nigerian if incorporated in Nigeria under domestic law, whilst a foreign company is one that is established outside Nigeria under the law in force in the foreign country.

The sources of taxable profits include a trade or business, rent or premiums from the granting of rights to occupy property, dividends, interest and royalties, discounts or annuities and service fees are treated as taxable under the Companies Income Tax Act.

Tax incentives

- The corporate tax is 20 percent for companies engaged in manufacturing or agricultural production whose turnover does not exceed NGN 1 million, in the assessment year in which the company commenced business and the following two years of assessment. On application, this period may be extended by a further two years.
- *Pioneer status*: In the event of "pioneer status" being granted, a company may enjoy a tax holiday of between three and five years. Such status is only granted to companies involved in pioneer or infant industries. Pioneer companies are not, however, exempt from capital gains tax. Activities for which pioneer status may be granted are specifically set out in a regularly updated list.
- There would be withholding tax on foreign loans granted for periods of over seven years, with grace periods of two years or more.
- Interest on loans made by banks for the purposes of an agricultural trade or business, the fabrication of local plant and machinery, or working capital for an eligible cottage industry will be exempt from tax, provided the moratorium is not less than 18 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted.
- Companies established in the Onne Free Trade Zone are granted tax free status in relation to activities carried on within the free zone.
- The profits of export-oriented enterprises operating in an export free zone will, subject to certain conditions, be exempt from tax for the first three years.
- The profits of any Nigerian company in respect of goods exported from Nigeria, provided that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts, and the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, are exempt.
- Income from dividends, interest, rent, royalties, fees, commission earned from abroad and brought into Nigeria by a Nigerian resident, provided that such income is brought into Nigeria in convertible currency and paid into a domiciliary account in a bank approved by the government, would be exempt.
- There are a number of incentives available for upstream gas utilisation operations, the main ones being either:
  - 35 percent investment allowance on qualifying capital expenditure (in addition to normal tax depreciation), or
  - Three-year tax holiday, which can be extended by the Minister of Petroleum for two more years, together with tax free dividends during the tax holiday.

Corporate tax rates

The corporate tax rate is 30 percent and there is a further 2 percent education tax.

There is a minimum tax, and this is based on turnover. Where turnover is NGN 0.5 million or less, the minimum tax is the higher of 0.5 percent of gross profits, 0.5 percent of net assets, 0.25 percent of turnover or 0.25 percent of paid up capital. Where the turnover exceeds NGN 0.5 million, then there would be an additional tax of 0.125 percent of the amount of the turnover in excess of NGN 0.5 million.

The petroleum profits tax rate is generally 85 percent, but there are some exceptions. Companies which have not yet commenced to make a sale or bulk disposal of chargeable oil under a programme of continuous production and sales will pay tax at the rate of 65.75 percent until their pre-production costs are fully amortised. Also 65.7 percent applies during the first five years of production for new companies entering into production sharing contracts.

Capital gains taxes

Capital gains are taxed at 10 percent. Capital losses arising from the disposal of an asset cannot be set off against a capital gain arising from another disposal.

There is nil tax on the sale of stocks and shares in companies.

Position of losses

Under the Corporate Income Tax Act, losses may be carried forward indefinitely.

Group treatment

The tax laws do not permit group tax consolidation or intra-group offset of losses.

Withholding taxes

The actual rates for most items are shown in Table 1.

Position of resident companies

Companies incorporated in Nigeria are subject to tax on their worldwide income, and the withholding tax suffered is creditable against the corporate tax liability.

Position of non-resident companies

Non-resident companies are subject to tax on their income attributable to Nigeria. The trade or business profits of such companies are deemed to be derived from Nigeria if the relevant company:

- Has a fixed base of business in Nigeria, to the extent that the profit is attributable to the fixed base;
- Does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised to conclude contracts on its behalf or on behalf of some other companies controlled by it or which have controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profits are attributable to the business or trade or activities carried on through that person; and
- Carries on a trade or business or activity that involves a single contract for surveys, deliveries, installation or construction, that profit from that contract.

A fixed base does not include: facilities used solely for storage or display of goods or facilities used solely for the collection of information.

Withholding taxes suffered by non-residents represent the final tax liability for the non-residents.

Dividends, interest, royalties and rent

Dividends

Dividends paid by a Nigerian company are, as indicated in the table below, subject to a withholding tax of 10 percent deducted at source. This includes dividends paid by one Nigerian company to another. However, dividends received by resident companies are regarded as franked investment income and are not included in taxable income of the recipient companies. Upon redistribution of the profits, the redistributing company may offset the withholding tax paid on the received dividends against the withholding tax on redistributed profits. Where double tax treaties apply, the withholding tax rate is 7.5 percent.

It is important to note however that as a result of a specific provision in the Companies Income Tax Act dividends paid out of profits which have not been subject to tax (such as income that was tax exempt under some of the available incentives) may effectively be subject to tax at the normal corporate tax rates when declared.

Interest

Interest is subject to withholding tax of 10 percent. In the case of non-residents this would represent the final tax. Where double tax treaties apply, the rate is 7.5 percent.

Royalties

Royalties are subject to withholding tax of 10 percent. In the case of non-residents this would represent the final tax. Where double tax treaties apply, the rate is 7.5 percent.

Rent

Gross rental income earned from leasing out real property is taxed at a final withholding rate of 10 percent. Rent for these purposes includes payments made for the use or hire of equipment or of movable/immovable property, and payments for the charter of vessels, ship or aircraft.

Indirect taxes

VAT/GST: main and reduced rates, exemptions

VAT is payable at 5 percent on taxable supplies of goods and services supplied in Nigeria by a taxable person, and on the importation of goods into Nigeria by persons whether or not they are taxable persons. There are significant limitations on the extent to which input tax may be credited against output tax. Also, government agencies and oil companies making payments under contracts are required to deduct VAT at source.

Other indirect taxes

Custom duties are chargeable on different products and are assessed with reference to the prevailing harmonised commodity and coding system which is reviewed from time to time. They are levied on imports and exports, at specific rates or *ad valorem* depending on the type of goods. Certain goods may be exempt, if essential for economic development or imported by the government for government use, whilst the rates for some others may be penal.

Excise duties are also charged on manufactured products

Personal taxes

The basis of liability for personal income tax is residence. A person is considered resident in Nigeria if he/she:

- Is domiciled in Nigeria;
- Is physically in Nigeria for at least 183 days in any 365-day period; or
- Serves as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria.

Personal income tax is imposed under the Personal Income Tax Act and is calculated for each year of assessment on the aggregate amounts of the income of every taxable person, for that year, made up of the following:

- Gains or profits from any trade, business, profession or vocation for whatever period of time it may have been carried on by the taxable person;
- Dividends, interests or discounts;
- Any pension, charge or annuity; and
- The gains or profits including any premiums arising from a right granted to any other person for the use or occupation of any property.

The relevant tax authority of the territory is the tax authority in the State in which the taxpayer has his place of residence or principal place of business.

Domicile and residency requirements

As indicated above, residency determines the extent to which a person would be liable for tax in Nigeria. Residence is defined as a place available for the person's domestic use in Nigeria on a relevant day, excluding hotels and rest houses. Expatriates holding residence permits are liable to tax in Nigeria even if they reside in the country for less than 183 days in any 12-month period. Non-residents are taxed only on income earned in Nigeria.

Main rates and bands

The main rates and bands are shown in Table 2.

Dividends

Dividends received are subject to tax as normal income, and tax withheld at source would be creditable against the tax liability.

Social security/national insurance payments

Private sector employers are required to contribute 6.5 percent of the gross salary of its employees (on income up to NGN 528,000 per annum) into the Social Insurance Trust Fund. The employee also pays 3.5 percent of the gross salary into the fund. This does not apply to public servants nor to foreign employees who are under employment in Nigeria for less than six years and contribute into the social security scheme of another country.

Employers (with more than five employees) and employees are each required to contribute 7.5 percent of the employee's emoluments into a retirement savings account with a pension fund administrator. The employer may elect to contribute the total 15 percent. Employers are also required to maintain a life insurance policy in favour of the employee for a minimum of three times the annual emoluments of the employee. Retirement benefits paid under the Pension Reform Act are tax exempt.

Employees are required to pay 2.5 percent of their basic pay into the National Housing Fund.

Transfer pricing and anti-avoidance rules

Transfer pricing rules (documentation requirements, APAs, etc.)

There are no specific documentation requirements. Also the tax authorities do not give advance rulings nor enter into advance pricing agreements. However, the tax authority will regard transactions between related parties as artificial or fictitious if the transactions had not been made at arm's length. In such cases, the tax authority may disregard the transaction or adjust the tax liability.

Anti-avoidance provisions

There are a few tax avoidance rules. The tax liability of a company may be adjusted in cases where a transaction of the company, which reduces or would reduce the amount of any tax payable, is considered to be artificial or fictitious. These would include, as mentioned above, transactions that do not appear to have been carried out at arm's length.

If it appears that the business has produced no assessable profits for the year, or where those produced are less than could have been expected, or where such profits cannot readily be ascertained, then tax may be assessed on that company on the basis of turnover.

Thin capitalisation/other interest deductibility rules

There are no specific thin capitalisation limits but interest on loans between connected parties is required to be at market rates. In the case of oil companies, under the Petroleum Taxes Act, interest deduction on loans between related parties is limited to LIBOR.

Controlled Foreign Company (CFC) rules

There are no specific anti tax haven or controlled foreign company rules in Nigeria.

Tax treaties

Nigeria has signed tax treaties with Belgium, Canada, Czech Republic, France, Netherlands, Pakistan, Romania, Slovakia and the United Kingdom.

Although there is no domestic law in support, in practice the payments of dividends, royalties interest and fees to countries with which Nigeria has concluded a double taxation treaty are subject to a rate of 7.5 percent.

Miscellaneous taxes

Taxes on payroll

Employers are required to withhold tax on the employee's salary and pay the same over to the tax authority within 14 days from the end of each month.

1 percent of annual payroll must be paid to the Industrial Training Fund by an employer employing 25 or more staff.

Taxes on capital

Stamp duty is payable on the share capital of the subsidiary upon incorporation. There are no other taxes on capital.

Taxes on property

Property taxes are assessed by state governments. The Land Use Tax is a unification of ground rents, tenement rents and neighbourhood improvement rates, imposed on real property. For Lagos the rates are:

Commercial property	0.375%
Residential property/commercial	0.125%
Owner-occupied residential property	0.0375%

Also, as earlier indicated, capital gains tax is levied at a rate of 10% on the gains realised from the disposal of real property.

Other taxes

Education tax (see section on corporate tax rates) is levied at 2 percent on the assessable profits of companies.

Information technology tax is levied at 1 percent on the gross profit of digital mobile operators and all telecommunication companies, pension managers, internet service providers, cyber-companies and all financial institutions, including insurance companies whose income is above one hundred million naira (NGN 100,000,000.00).

Many documents are subject to stamp duty (see also section on taxes on capital above) at fixed rates or *ad valorem* depending on the type of document and these are listed in the Schedule to the Stamp Duties Act. The transfers of shares or stocks are exempt from stamp duty.

Table 1 Withholding tax rates

Type of payment	*Made to*	
	Companies (%)	*Individuals (%)*
Dividends	10	10
Management fees	10	5
Bond interest, royalties	10	5
Interest	10	10
Rent	10	10
Royalties	10	5
Consultancy and technical service fees	10	5
Commission	10	5
Construction contracts	5	5
Income from all aspects of building and other civil works construction	5	5
Income from contracts other than outright sale and purchase of goods and property in the ordinary course of business	5	5
Directors' fees	10	10

Table 2 Personal tax rates

Taxable income (NGN)	*Rate (%)*
First 30,000	5
Next 30,000	10
Next 50,000	15
Next 50,000	20
Over 160,000	25