TAXATION OF EXPATRIATES IN NIGERIA

This article examines in a very general way the existing framework for the taxation of expatriates in Nigeria. It considers in brief the applicable tax rate, the portion of the expatriate income that is actually subject to tax, how the tax is calculated, when an expatriate would be deemed resident in Nigeria and how the tax filing is carried out.

It is a general overview of the regime of expatriate taxation in Nigeria and not intended to provide legal advice. Where required, specific advice should be sought from seasoned tax practitioners including solicitors and/or accountants.

1. **Introduction.**

The relevant legislation which regulates taxation matters for individuals in Nigeria is the Personal Income Tax Act ("PITA"). There are no special provisions in PITA for expatriates. The provisions as they relate to individuals who are deemed resident in Nigeria apply to both local and expatriates employees in Nigeria. The tax rate is progressive with a top marginal rate of 25%. Below is an income tax table illustrating the rate of tax.

Income Tax Table

Income to be taxed	Rate of tax
First N30,000	5%
Next N30,000	10%
Next N50,000	15%
Next N50,000	20%
Over N160,000	25%

The progressive rate of tax is also applicable where an employee is assessed to tax on a deemed income basis.

Residence in Nigeria.

Generally, an employee is regarded as resident in Nigeria throughout an assessment year if he is domiciled in Nigeria for a period of 183 days or more in any 12 month period. However, expatriates who have a permanent residence permit in Nigeria are liable to tax in Nigeria even if they spend less than 183 days in Nigeria.

2. **<u>Deemed Income Assessment</u>**

Taxation generally focuses on a taxpayer's earned income. In other words this is the income actually earned by a taxpayer (Actual Income). However, under the provisions of PITA the relevant tax authority (Various State Inland Revenue Services) has the power, where they have reason to believe that the taxable income is understated, to use their discretion to determine on a best of judgment basis ,what is the tax liability where none or insufficient tax has been paid. This is the basis of the deemed income assessment. In practice, the Revenue has a minimum amount which an expatriate is deemed to earn depending on the expatriate's nationality and industry.

Where however, an expatriate can prove his actual income with valid documents, the Revenue will be left with no option other than to accept the expatriate's actual income as the basis of assessment even where this is lesser than the deemed income as determined by the Revenue. The onus is on the expatriate's employers not to give the Revenue any basis to challenge the validity or otherwise of the documents presented as proof of the expatriate's employment. It appears though that some companies in practice prefer their expatriates to be assessed on a deemed income basis.

The documents necessary to establish actual income include but are not limited to the following:
Contract of Employment of the Expatriate
Travel passport of the Expatriate
Expatriate Quota Position granted to the company
Monthly quota returns for the company.

3. **<u>The taxable income</u>**

In accordance with the provisions of PITA, any salary, wage, fee, allowance, gratuity, compensation, bonus, premium, benefit or other gains, profits and perquisites allowed, given or granted by any person to an employee categorized as either cash paid to employee or expenses incurred by the employer for the employee's benefit is taxable.

However, in calculating the actual taxable income of an employee, PITA allows certain deductible tax reliefs and allowances as follows:

• Personal Allowance	N5,000 + 20% of earned income.
• Additional Personal Allowance	N3,000 or 20% of earned income whichever is higher
• Children Allowance	N2,500 per child. Subject to a maximum of 4 children.
• Dependent Relative	Maximum of 2 at N2,000 each.
• Life assurance premium	Actual premium paid.
• Retirement Benefits Schemes	Actual amount contributed.
• Compensation for loss of office	Actual amount paid
• Annual interest paid on loan for An owner occupier residential house	Actual amount of interest paid.

What will ultimately amount to an employee's taxable income is dependent on the basis of calculating the income accruing to an employee. Where the deemed income basis is used as the basis of assessment, the employee is only entitled to deduct personal allowance as tax relief. On the other hand, if the employee is assessed to income tax on the basis of his actual income, he may be able to take advantage of the above reliefs. Where however a consolidated payment structure is adopted in the payment of an employee's salary/emolument, the above reliefs would not be applicable notwithstanding that the employee is assessed to tax on an actual income basis.

Please note however that the following reliefs are not automatic, the employee would have to apply to the revenue authorities before they can be deducted.

a) Premium paid on life assurance
b) Interest paid on loan for owner occupier residential house
c) Children allowance
d) Dependent relative allowance.

The following payments are however non-taxable:

Non-taxable emoluments payable to the employee

- Reimbursement to the employee of expenses incurred by him in the performance of his duties.
- Medical and dental expenses.
- Cost of traveling / passage to or from Nigeria.
- Compensation for loss of employment

- Rent allowance – maximum of N150,000 per annum
- Transport allowance of not more than N20,000 per annum.
- Meal allowance – maximum of 5,000 per annum
- Utility allowance – maximum of 10,000 per annum
- Relocation allowance includes reasonable removal expenses and temporary subsistence allowance incurred by the company for the benefit of the employee due to a change in the employee's employment, which requires such an employee to change his place of residence.
- Leave allowance – maximum of 10% per annum
- Cost of uniform, overall or protective clothing.

The above will not apply to assessment based on deemed income or where a consolidated payment structure is adopted.

4. **<u>How is the tax calculated?</u>**

The tax is calculated progressively based on the income tax table above. For instance, if we assume an expatriate salary of N20,000,000 (Twenty Million Naira) per annum. The applicable tax would be calculated as follows:

Taxable Income	Rate of Tax	Tax Payable	Taxable Income	Tax Payable
First 30,000	5%	NI,500	30,000	I,500
Next 30,000	10%	N3,000	60,000	4,500
Next 50,000	15%	7,500	110,000	12,000
Next 50,000	20%	10,000	160,000	22,000
Over 160,000	25%			

Based on the above rate, the first N160,000 attracts a tax payment of N22,000. The first N160,000 is then deducted out of N20,000,000, the remainder N19,840,000 is then taxed at 25%. The tax payable on an annual income of N20,000,000 will be 25% of 19,840,000 + 22,000 = N4,982,000. In order to arrive at the employee's monthly tax liability this figure is then divided by 12.

Please note that the above scenario has not taken into consideration the possibility of deductible reliefs. Where the employee intends to take advantage of the allowable reliefs under PITA, the relevant reliefs are first deducted to arrive at the taxable income before applying the calculation above.

5. **When is the Tax Filing Due?**

The employer is expected to deduct tax from the emoluments of his expatriate employees and remit to the relevant tax authority within six months of commencing business. Remittances are done monthly while the filing is done annually. Remittances are expected before the 10^{th} day of the following month. The way this works in practice is that the employee fills a form (Form A) at the beginning of the year which will show the employee's expected revenue. Monthly remittances are then paid against the expected income. If there is any change in the employee's emoluments, a new Form A is filled and submitted.

Where an employer fails to make proper deduction or fails to account properly for deductions made, the employer commits an offence and is liable on conviction to a penalty of the total sum of taxes due and ten percent per annum.

Where an employer fails to deduct taxes or to account for deduction made, the employer shall be liable to the relevant authority for the sums lost. Furthermore, where an employer fails to collect and pay tax or fails to submit returns to the relevant tax authority, such employer commits an offence and is liable on conviction to a penalty of N5,000.

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FURTHER INFORMATION

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