Taxation
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NIGERIAN TAX ISSUES

INDIVIDUAL TAX RESIDENCY AND IMPLICATIONS UNDER THE TAX REFORM ACTS

Background

The fact that the new tax reform laws are predicted to improve Nigeria's tax competitiveness indicates that there is a real need for an evaluation of the subject of tax residency. Whether it is owning a home in Lagos or Abuja, or enjoying extended stays for business and family connections, time spent in Nigeria can be positively remarkable and etched in the memory for a long time.

However, it is crucial for this presence to be intentional and carefully managed. Spending significant time in Nigeria for investment, tourism, or other reasons can, if not properly advised, occasion unexpected and unsavoury tax consequences. Once a person becomes resident in Nigeria for tax purposes, they are generally taxable on their worldwide income, regardless of where the income arises or is received.[2] Proper planning ensures that one enjoys all the value Nigeria offers while maintaining tax compliance and achieving tax efficiency.

This article is the third of the series and addresses the question of tax residency using the provisions of the tax reform laws, considering that the current regime expires in less than 80 days.

Introduction

An individual's tax residency naturally leans towards the subject of personal income tax (PIT). Such PIT provisions are principally codified in *** **chapter six**, **sections 144 – 158** of the **Nigeria Tax Act 2025** ("**NTA**"); and in a few sections of the **Nigeria Tax Administration Act**

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1 **Associate, Tax, Real Estate, and Succession, SPA Ajibade & Co., Lagos, Nigeria.**
2 Section 12 of the *Nigeria Tax Act*.

2025. The laws introduce more explicit and formal criteria for determining residency or non-residency for tax purposes.

Determining Individual Tax Residency

General Tax-Residency Rules

Similar to the manner of filing income tax returns, residency is determined on a yearly basis. An individual will be regarded as resident in Nigeria for a particular year of assessment if they:[3]

a. Stay or sojourn in Nigeria for 183 days or more within the 12-month period covered by the year of assessment; or

b. Serve as a diplomat, diplomatic agent, or government employee of Nigeria posted abroad; or

c. Have a permanent home available in Nigeria for his domestic use;

d. Have a place of habitual abode in Nigeria; or;

e. Are a Nigerian who earns income from employment or business exercised wholly or partly in Nigeria; or

f. Have substantial economic and immediate family ties in Nigeria.

It is immediately deducible that the tax reform laws have slightly widened the scope of individual tax residency. For instance, tax residency will no longer be dependent on such factors as an intention to reside. Once a person has a permanent home available in Nigeria for his domestic use or habitual abode, tax residency is established.

Also, the law now specifically mentions “substantial economic or immediate family ties” as a factor, which indicates that the presence of family members (e.g., spouse, dependents) or economic interests in Nigeria can significantly contribute to the determination of one’s tax-residency.

Tax-Residency Rules for Foreign Employment

Foreign employment refers to a job where the work or job description is executed entirely outside Nigeria, except for brief visits to Nigeria, or where the work is done in Nigeria for a foreign employer.

For an individual who holds or commences a foreign employment on the first day of January in a particular year of assessment, or who first becomes liable to income tax in Nigeria for that

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[3] Section 202 of the NTA, especially juxtaposing the definitions of “resident individual” and “non-resident individual”.

year by reason of his entering that employment during that year, determination of tax residency will flow along the two lines below:

a. If all an individual's work duties are carried out outside Nigeria, then the individual will be considered resident in that foreign territory (that is, the location of the employer's main office).

b. If an individual's work duties are carried out in Nigeria (despite employer being foreign, e.g., remote work), then the individual will be considered resident in Nigeria, precisely, either in the place of residence[4] within Nigeria or the place of usual residence (where a fixed home cannot be established).[5]

The implication of the above provision on foreign employment is that while the current provision[6] had only one rule – an individual's tax residency is the country where the employer's main office is located, regardless of the site of performance of foreign employment duties, the tax reform provisions correctively split the rule into two logically distinct situations to reflect the reality of digital technology and remote work.

To illustrate, Ms. Balenta Dorime works in Nigeria for a Swedish company (foreign employment). If her duties are wholly performed in Sweden, her tax residency will be the Swedish main office of her employer. Conversely, if her duties are performed in Nigeria, she will be tax-resident in Nigeria.

The general tax-residency and foreign employment rules above are specific to the country or national jurisdiction whose laws and exercise of authority would affect an individual for tax purposes. The rules explained hereunder dig deeper into the relevant tax authority (internal revenue service of a state or the Nigeria Revenue Service [NRS]) which would collect the applicable personal income tax of an individual who is determined to be tax-resident in Nigeria.

Tax-Residency Rules for Nigerian Employment

On the flip side, the current tax residency provision for Nigerian employment remains untouched by the tax reform laws. Nigerian employment refers to any job which does not qualify as a foreign employment, and whose duties or job description are executed wholly or partly in Nigeria.

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4 "Place of residence" in this context refers to a place available for an individual's domestic use in Nigeria on a relevant day, and does not include any hotel, rest house or other place at which he is temporarily lodging unless no permanent place is available for his use on that day. See, Paragraph 12 of the Twelfth Schedule to the NTA.

5 Paragraph 1 of the Twelfth (12th) Schedule to the NTA.

6 Paragraph 2 of the First (1st) Schedule to the *Personal Income Tax Act* (as amended) (PITA).

Thus, an individual who holds or commences a Nigerian employment on the first day of January in a particular year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, will be deemed to be a tax-resident of the territory where they reside or principally reside on that day.

Also, where the individual is on leave from the Nigerian employment on 1 January, they are deemed resident by reference to their place or principal place of residence immediately before the leave commences.

To illustrate, Ms. Balenta Dorime lives in Lagos and works for a company based in Lagos as of 1 January 2025. She will be deemed resident in Lagos for 2025. Conversely, if Ms. Dorime moves from Lagos to Kano in April 2025 to start a new job there, for the 2025 year of assessment, she will be deemed resident in Kano State.

More so, if Ms. Dorime works in Lagos State but travels to The Maldives for a 3-month leave starting December 2024, then she will still be deemed resident in Lagos State for 2025.

This provision continues to cover employees of Nigerian businesses or establishments, and foreign nationals working physically in Nigeria for Nigerian employers.

Tax-Residency Rules for Partnership Business

The tax residency of an active partner will be the Nigerian territory (state or Federal Capital Territory [FCT]) where the partnership business office is located. That of a dormant partner is categorized along two (2) lines. For a dormant partner living in Nigeria, his tax residence will be the territory in Nigeria of usual residence.

Conversely, a dormant partner who does not live in any Nigerian territory will be deemed a non-resident person and will have his tax affairs handled not by a state but by the Nigeria Revenue Service (NRS).

Tax-Residency Rules for Pension Income Earners

These rules are stratified into three (3) facets:

a. A pensioner with a place of residence in Nigeria.

b. A pensioner with no place of residence, but having pension earnings traceable to one identifiable source.

c. A pensioner with no place of residence but having pension earnings traceable to multiple or mixed sources.

These strata will be addressed seriatim:

A pensioner with a place of residence in Nigeria

A retiree who earns Nigerian pension and lives somewhere in Nigeria on 1 January of a particular year of assessment will be deemed tax-resident in the territory (state or FCT) where he lives.

A pensioner with no place of residence in Nigeria, but having pension earnings traceable to one identifiable source

A retiree who earns pension traceable to one identifiable source but does not reside in Nigeria, on 1 January of a particular year of assessment will have his tax-residency determined by type of pension earning. If it is a pension earning paid by the government of any Nigerian territory, then the retiree will be deemed tax-resident in the territory of the government paying the pension. By extension, if it is a pension earning paid by the Federal Government of Nigeria, then the retiree will be subject to the exclusive tax authority of the NRS.

Conversely, if it is a pension earning paid by a private company or business entity, then the retiree will be deemed tax-resident where the pension-paying body's Nigerian office is located.

A pensioner with no place of residence in Nigeria but having complex pension earnings or pension traceable to multiple or mixed sources

If a retiree:

a. receives pension from more than one Nigerian state and/or the Federal Government of Nigeria, or

b. receives multiple pension earnings from different territories, or

c. has hybrid pension earnings comprising government and private entity pensions,

The complexity of his pension earnings makes it unclear which state internal revenue service should handle his tax affairs. In this case, the retiree will be treated as a non-resident person and have his tax affairs handled by the NRS.

Tax-Residency Rules for Other Categories of Earned Income

This heading applies to earned income which does not fall under any of the categories expressly listed in the tax reform laws (such as self-employed professionals, traders, and artisans). As a general rule, persons under this category will be treated as tax-resident for the relevant year in the state or territory where they live or mainly live on 1 January of the year.

However, where an individual commences the business or profession (from which he derives such earning) during the year (rather than 1 January) and had no Nigerian residence on that date, such individual would be deemed to be tax-resident in the state where he first settles or lives after commencing the business.

More so, in any other situation where an individual had no Nigerian residence or main residence, such individual would be deemed to be tax-resident in any Nigerian state or territory from which their earned income arises. Where it arises from multiple states, any of the states in question can treat such individual as tax-resident in such state.

Tax-Residency Rules for Unearned Income

The tax reform laws address this subject from three perspectives, to wit:

a. An individual who lives in Nigeria and receives only unearned income from Nigeria.

b. An individual who does not live anywhere in Nigeria (e.g. abroad), but receives all his passive income coming from one state in Nigeria.

c. An individual who does not live anywhere in Nigeria but receives unearned income from multiple states or territories in Nigeria.

An individual who lives in Nigeria and receives only unearned income from Nigeria

Here, the individual will be deemed to be tax-resident in the state or territory where he has a place or main place of residence on 1 January of the relevant year.

An individual who does not live anywhere in Nigeria (e.g. abroad), but receives all his passive income coming from one state in Nigeria

Here, the individual will be deemed to be tax-resident in the state or territory from which his unearned income arises.

An individual who does not live anywhere in Nigeria but receives unearned income from multiple states or territories in Nigeria

Here, the individual will be deemed to be tax-resident in the state or territory from which any part of the unearned income arises. In essence, the tax authorities are clothed with discretion to pick one of these territories as the tax residence.

Where any of the ingredients above is absent, Nigeria tax residency cannot be established. For such individuals, only income derived from Nigeria (such as rent from Nigerian property, dividends from shareholding, etc.) will be taxable in Nigeria to the extent of its being derived from Nigeria.

Dual Tax Residency

It is legally possible for an individual to be regarded as tax-resident both in Nigeria and in another country, within the same year. This is known as dual tax residency. Where this occurs, reliefs may be available under specific Double Taxation Treaties / Agreements (DTTs / DTAs) between Nigeria and the other country within which an individual is also tax-resident.

Essentially, DTTs prevent the double or multiple taxation of the same income by adopting such mechanisms as foreign tax credits, exclusive taxing rights, and a few others.

Conclusion

Nigeria continues to offer significant opportunities for work, investment, and family ties. However, with these come important tax issues and obligations that border on tax residency.

A proactive approach to tax residency and planning will always make a significant economic difference. We strongly recommend professional advice for, including but not limited to, expatriates, returning Nigerians, and internationally mobile individuals.

What is next? Agriculture? Construction? Haulage? Stay tuned to our internet publishing space for our next article in this tax reform series.

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