NIGERIA

Law and Practice

Contributed by:
Theophilus Emuwa, Jibrin Dasun, Perpetua Onyeukwu and Tubosiya Ibama
ÆLEX

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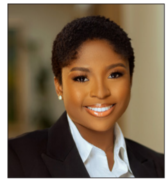
ǼLEX is a full-service commercial and litigation law firm with offices in Nigeria and Ghana. It provides tax advisory and litigation services for a wide range of multinational and local companies across the oil and gas, shipping, aviation, manufacturing, and financial services sectors. The firm has been involved in a number of ground-breaking tax cases in the tax tribunal and courts in Nigeria. ǼLEX has successfully handled tax disputes on behalf of major multinational companies on various upstream tax issues, such as the deductibility of expenses, tax incentives, capital and investment allowances, and transfer pricing.

Authors

Theophilus Emuwa is a partner at ÆLEX and head of the firm's taxation practice. He has over three decades of experience and is widely acknowledged as one of Nigeria's leading tax lawyers. He has advised a wide range of multinational and local companies, cutting across the oil and gas, shipping, aviation, and manufacturing sectors on all aspects of the Nigerian tax regime. He was the Pioneer Chair of the Tax Committee of the Nigerian Bar Association's Section on Business Law; a fellow of the Chartered Institute of Taxation of Nigeria; the Vice Chair of the Nigerian Branch of the International Fiscal Association; and a member of the Permanent Scientific Committee of the International Fiscal Association. Theophilus is highly recommended by many directories, including Chambers Global.

Jibrin Dasun is a senior associate in the taxation practice at ǼLEX. Jibrin regularly advises both local and foreign clients on Nigerian taxes, including companies income tax, petroleum profits tax, hydrocarbon tax, personal income tax, capital gains tax, customs duties, stamp duties and VAT. He also advises a broad range of clients on the regulatory and exchange control issues that affect inward investment, repatriation of profits and capital. Jibrin is a Chartered Tax Practitioner in Nigeria and an international tax affiliate of the Chartered Institute of Taxation (CIOT) of the United Kingdom. He holds the CIOT's Advanced Diploma in International Taxation. Jibrin is also a member of the International Fiscal Association and the Taxes Committee of the International Bar Association.

Perpetua Onyeukwu is an associate in the tax practice group of ÆLEX. Her practice focuses on corporate and individual taxation, indirect, transactional, and international tax. She regularly advises on the income tax regime for companies and individuals, including withholding tax, capital gains tax, stamp duties, excise duty, VAT and double tax treaties. She also routinely advises on tax compliance, tax-efficient structuring of transactions, tax and exchange control issues impacting inbound and outbound investments by foreign and multinational companies in Nigeria, and tax implications of labour and employment-related issues, including employee stock and option plans and payroll tax. Perpetua is a chartered tax practitioner in Nigeria and a member of the International Fiscal Association, Nigerian Bar Association, and International Bar Association.



Tubosiya Ibama is an associate in the taxation practice at ÆLEX. She regularly advises local and foreign clients on various tax (direct and indirect) issues affecting inbound and outbound investments. She also routinely represents several MNEs and local companies in tax disputes regarding all aspects of the Nigerian tax regime. She is a member of the Nigerian Bar Association and the International Bar Association.

ÆLEX

4th Floor, Marble House
1 Kingsway Road
P.O. Box 52901
Falomo
Ikoyi, Lagos
Nigeria

Tel: +234 703 413 6930
Fax: +234 1 4617 092
Email: lagos@aelex.com
Web: www.aelex.com

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1. Types of Business Entities, Their Residence and Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Generally, a corporate form is adopted by businesses seeking long-term success, commonly the private limited liability company (ltd) corporate structure. An ltd may have one shareholder but cannot have more than 50 shareholders and must restrict the transfer of its shares. There is also the public limited liability company (plc), which can have any number of shareholders, from two upwards. A plc is the required form for companies listed on the stock exchange.

The ltd and the plc are the commonly adopted corporate entities in regulated business sectors like banking and finance, insurance, oil and gas, and capital markets. The unlimited liability company is also available, which features unlimited liability for shareholders, but it is rarely used. There is also the limited by guarantee corporate form, which is a non-profit sharing corporate structure used to promote charitable objects. Limited liability partnerships (LLPs) have now been recognised as having separate legal personality from the partners but are not transparent for tax purposes in Nigeria.

Some activities can only be carried on through a corporate vehicle, including banking, insurance, and crude oil exploration and production.

Regarding their tax treatment, tax arises at the corporate level for all corporate structures, including LLPs.

1.2 Transparent Entities

The following transparent entities are recognised by Nigerian law:

- general partnerships;
- limited partnerships; and
- sole proprietorships.

Many small-scale businesses and petty traders carry on business as partnerships or sole proprietorships.

1.3 Determining Residence of Incorporated Businesses

The tax residence of incorporated businesses is based on the place of incorporation. The income of transparent entities (general partnership, sole proprietorship, and limited partnership) is taxed in their owners' hands, and their tax liability is not affected by their place of residence.

Nigerian companies are subject to income tax on their worldwide profits. Therefore, the profits of a Nigerian company are deemed to accrue in Nigeria, regardless of where they actually arise.

A non-resident company is liable to tax on its income derived from Nigeria, that is, income attributable to its Nigerian operations. The profits of a non-resident company are deemed to be derived from Nigeria (and therefore taxable in Nigeria) in the following instances.

- The company has a fixed base of business in Nigeria, and to the extent that the profits are attributable to the fixed base.
- The company does not have this fixed base in Nigeria but habitually operates a trade or business through a person authorised to conclude contracts on its behalf, to the extent that the profits are attributable to the trade or business carried on through that person.
- The company's trade or business activity involves a turnkey project (single contract for surveys, deliveries, construction, or installa-

tion), and the profits are attributable to that contract.

- The trade, business, or activity is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and that other person in their commercial or financial relations, which the tax authority deems artificial or fictitious, so much of the profits adjusted by the tax authority to reflect an arm's length transaction.
- The company transmits, emits or receives signals, messages and data of any kind in Nigeria by cable, radio, electromagnetic systems, or any other electronic or wireless apparatus, in respect of any activity including electronic commerce, online payment platforms, electronic data storage and online advertisements, to the extent that the company has a significant economic presence (SEP) in Nigeria and profit can be attributed to such activity. Pursuant to the Companies Income Tax (Significant Economic Presence) Order 2020 (the SEP Order), a non-resident company will be deemed to have a SEP in Nigeria where it:
  (a) derives gross turnover or income of more than NGN25 million or its equivalent in other currencies from any or a combination of (i) streaming or downloading services of digital contents to persons in Nigeria, (ii) transmitting data collected on Nigerian users which has been generated from the users' activities on a digital interface (including website or mobile applications), (iii) providing goods or services, directly or indirectly, through a digital platform to Nigeria, or (iv) provides intermediation services through a digital platform linking foreign suppliers with customers in Nigeria;
  (b) uses a Nigerian domain name or registers a website address in Nigeria; or
  (c) has a purposeful and sustained interaction with persons in Nigeria through a digital page or platform customised to target persons in Nigeria, including pricing the products in naira or providing billing or payment options in naira.
- The company receives payments from a person resident in Nigeria, or from a fixed base or an agent of a non-resident company, as compensation for the provision of technical, professional, management or consultancy services, excluding:
  (a) payments by a company to an employee under a contract of employment;
  (b) payments for teaching in, or by, an educational institution; and
  (c) payments "by a foreign fixed base of a Nigerian company".

1.4 Tax Rates

"Small" businesses (ie, those with a turnover of less than NGN25 million) are exempt from CIT, while "medium-sized" companies (turnover between NGN25 million and NGN100 million) pay CIT at the rate of 20%, and "large" companies (turnover above NGN100 million) pay CIT at the standard rate of 30%.

In addition to the CIT, a hydrocarbon tax (HT) of 15% is payable for operations in onshore and shallow waters pursuant to a Petroleum Prospecting Licence (PPL) and 30% in respect of operations in onshore and shallow waters pursuant to a Petroleum Mining Lease (PML).

Companies that opt not to convert their Oil Prospecting Licence (OPL) or Oil Mining Lease (OML) to PPL or PML, respectively, will continue to be taxed under the Petroleum Profits Tax Act until their OPL or OML expires. The Petroleum Profits Tax (PPT) rates vary between 50% and

85%, depending on the nature of the company's operations. Also, a special PPT rate of 65.75% applies to a company in the first five years during which the sale of chargeable oil under a programme of continuous production has not started, and all pre-production capitalised costs have not been fully amortised.

The taxable income of non-corporate businesses and transparent entities is assessed in their owners' hands.

Individual employees are allowed a consolidated relief allowance of 20% of gross income plus either NGN200,000 or 1% of gross income, whichever is higher. The balance of the income after the relief will be taxed in accordance with the graduated tax rates set out below.

- First NGN300,000 – 7%;
- NGN300,001-600,000 – 11%;
- NGN600,001-1,100,000 – 15%;
- NGN1,100,001-1,600,000 – 19%;
- NGN1,600,001-3,200,000 – 21%; and
- NGN3,200,001 and over – 24%.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

Taxable profits are arrived at by aggregating all trading income and then deducting exempt income, allowable expenses, capital allowance (at annually specified rates) and carried-forward losses. Allowable expenses are limited to expenses that are "wholly, exclusively, necessarily and reasonably" incurred in making profits. The test for deductibility does not include reasonableness for petroleum companies who pay PPT. For capital expenditure, deduction is only up to the capital allowance rate for each item.

Profits are taxed on an accrual basis, and tax is paid on a preceding-year basis, except for tax on profits from petroleum operations, which is paid, on a current year basis, in monthly instalments based on projected profits, with a reconciliation made at the end of the tax year to reflect actual profits.

2.2 Special Incentives for Technology Investments

The Nigeria Startup Act provides the following tax incentives to start-ups licenced by the National Information Technology Development Agency:

- 100% capital allowance deduction in respect of expenditure on research and development;
- 20% tax credit for expenditure on research and development, in addition to capital allowance (up to 95% in the first year) instead of depreciation;
- 30% investment tax credit for an investor in a licensed start-up;
- capital gains tax exemption on gains arising from the disposal of the shares of a licensed start-up provided that the shares have been held for a minimum of 24 months; and
- reduced withholding tax rate of 5% on payments to foreign companies that provide technical, consulting, professional, or management services to a licensed start-up, which is the final tax.

See **2.7 Capital Gains Taxation** in respect of capital gains tax payable upon disposal of shares generally.

There are no special incentives for a patent box.

2.3 Other Special Incentives

Interest on long-term foreign loans with repayment periods above seven years (with a two-year grace period), between five and seven years (with a grace period of not less than 18 months), and between two and four years (with a grace period of not less than 12 months) enjoy 70%, 40%, and 10% tax exemption, respectively.

Venture capital companies that invest in venture capital projects and provide at least 25% of the total project cost enjoy:

- a 50% withholding tax reduction on dividends received from project companies;
- capital allowance on their equity investments in project companies; and
- gains arising from the disposal of such shares held for up to five years, between six and ten years, and between 11 and 15 years enjoy capital gains tax exemption of 100%, 75%, and 25% respectively. There is no exemption for shares held above 15 years.

Oil and Gas Companies

Companies subject to the PPTA that have executed a production sharing contract with the Nigerian National Petroleum Corporation enjoy an investment tax credit (ITC) or an investment tax allowance (ITA) of 50% of their qualifying expenditure. The ITA is deductible from revenue in arriving at taxable profits. The ITC operates as a full tax credit and does not result in a reduction of qualifying capital expenditure for the purposes of calculating capital allowances. Upon conversion to the PIA regime, ITA and ITC no longer apply.

There are also special incentives available to oil companies to encourage gas utilisation or the development of gas delivery infrastructure. Companies liable to PPT can offset their gas-related capital allowance against their oil production profits. Companies liable to hydrocarbon tax can offset the costs of producing associated gas upstream of the measurement point from their crude oil production profits.

Under the Companies Income Tax Act (CITA), companies engaged in the business of gas utilisation in downstream operations can enjoy either:

- an initial tax-free period of three years, renewable for another two years, and after the tax-free period, an annual allowance of 90% for investment in plant and machinery, and an additional 15% investment allowance; or
- an annual allowance of 90% for investment in plant and machinery and an additional investment allowance of 35%.

The shareholders also enjoy tax-free dividends during the tax-free period where the investment was in foreign currency or imported plant and machinery during the period was not less than 30% of the equity share capital of the company. Companies that enjoy the tax-free period above cannot enjoy any gas utilisation incentives in any other legislation.

These incentives have led to considerable investment in gas utilisation projects.

Pioneer Industry

A company engaged in a “pioneer industry” or a “pioneer product”, as designated by the government of the day, may apply for “pioneer status”, which, when granted, entitles it to:

- a three-year tax holiday, which may be extended for two further terms of one year each or one further term of two years;

- relief from withholding tax on dividends paid to its shareholders during the tax holiday; and
- the postponement of the deduction of capital allowance until the end of the tax holiday.

Approved enterprises operating within a free trade zone are exempt from all federal, state, and local government taxes, levies, and rates.

2.4 Basic Rules on Loss Relief

Loss carry back is not permitted, but all companies can carry tax losses forward indefinitely. Income losses cannot be used to offset capital gains and vice versa.

2.5 Imposed Limits on Deduction of Interest

Existing anti-avoidance provisions allow the tax authority to disallow/reduce the interest charged between related parties where such interest is not reflective of the arm's length principle.

In addition, there are thin capitalisation rules whereby the tax-deductibility of interest expense on a foreign-party loan is limited to 30% of EBITDA in any given tax year. Deductible interest expense not fully utilised can be carried forward for a maximum of five years.

2.6 Basic Rules on Consolidated Tax Grouping

Nigerian law does not permit tax grouping; each company within a group is individually taxable in Nigeria. Consequently, losses suffered by one member of a group of companies cannot be utilised to reduce the tax liability of another company within the group but can be carried forward and set off against the future profits of the company that incurred them.

2.7 Capital Gains Taxation

A 10% capital gains tax is payable on chargeable gains arising from the disposal of chargeable assets. All forms of property are chargeable assets under Nigerian law, regardless of where they are located, including foreign currency, securities, digital assets, debts, and incorporeal property generally. For the purposes of computing capital gains tax, losses incurred upon the disposal of a chargeable asset will be deductible against chargeable gains arising from the same class of asset and can be carried forward for a maximum of five years.

Gains arising from the disposal of the following are exempt from capital gains tax:

- private motor vehicles;
- securities issued by the Nigerian government;
- disposal of shares worth less than NGN100 million in a year;
- decorations awarded for valour or gallant conduct;
- life assurance policies;
- chattels sold for NGN1,000 or less;
- assets acquired by way of a gift which are subsequently disposed of by way of gift;
- investment in superannuation funds, statutory provident funds and retirement benefit schemes;
- assets devolving upon death;
- compensation for loss of office up to NGN10 million;
- securities in a unit trust scheme, provided the proceeds are re-invested;
- gains arising from the acquisition of the shares of a company as the result of a merger, takeover, or acquisition, provided that no cash payment is made in respect of the shares acquired;
- gains accruing to local government councils and statutory corporations; and

- gains accruing from the disposal of chargeable assets by ecclesiastical, charitable, or educational institutions of a public character, statutory or registered friendly societies and registered co-operative societies and trade unions, provided that such gains do not arise from the disposal of assets acquired in connection with any trade or business, nor from the disposal of an interest possessed by the corporation in a trade or business carried on by some other person, and are applied purely for the purposes of the organisation, institution or society.

CGT is not payable where the proceeds from the disposal of the shares in a Nigerian company are utilised to acquire shares in the same or other Nigerian companies in the year of the disposal of the shares.

Where the proceeds from the disposal of an asset are used to finance the acquisition of a similar asset, the person making such disposal may apply to be treated as if the transaction has resulted in neither a gain nor a loss. Where the consideration received upon disposal of such asset exceeds the consideration paid for the acquisition of the replacement asset, the amount of that excess will be subject to capital gains tax.

2.8 Other Taxes Payable by an Incorporated Business

VAT is levied on the supply of all goods and services, with a few exceptions, at the rate of 7.5% and is collected by the supplier and remitted to the tax authority. However, oil and gas companies, including oil service companies, ministries, departments and agencies of governments, deposit money banks, and select telecommunications companies must withhold the VAT on the invoices from their suppliers and remit it to the FIRS.

A non-resident company supplying taxable services to a resident is required to charge, collect and remit VAT to the FIRS. Where the non-resident company fails so to do, the FIRS will demand the VAT from the resident. The Finance Act 2023 amended the VAT Act and introduced:

- a VAT anti-avoidance rule empowering the FIRS to make necessary adjustments to counteract the effect of any artificial or fictitious transaction; and
- the requirement for an importer of goods purchased online from a non-resident supplier to provide proof of the registration of the non-resident supplier with the FIRS in order to avoid paying VAT at the port and to prevent delay.

A taxpayer can recover VAT incurred in acquiring stock-in-trade or inventory, but not VAT incurred on overhead and administration expenses, or on capital assets.

Lagos State levies a 5% consumption tax on services by hotels, restaurants and event centres.

Stamp duty is paid on most instruments, including electronic instruments. The rates differ for various instruments and can be as high as 6% of the value of the underlying transaction.

2.9 Incorporated Businesses and Notable Taxes

The following taxes or levies are notable:

- an Information Technology levy of 1% of profit before tax is payable by specified companies with a turnover of NGN100 million and above;
- a levy of 0.005% of the net profit of a company is payable annually to the Nigeria Police Trust Fund;

- an oil and gas company is required to pay 3% of its annual budget to the Niger Delta Development Commission for tackling ecological problems in the Niger Delta, where most of Nigeria's oil is produced;
- an oil and gas company is required to pay 3% of its annual operating expenditure for the preceding financial year to the Host Community Trust Fund established for the benefit of the community hosting the company's operations;
- a NASENI levy of 0.25% of profit before tax of companies engaged in banking, mobile telecommunication, ICT, aviation, maritime, and oil and gas with a turnover of NGN100 million and above; the levy, when paid, is tax-deductible for the company's income tax purposes; and
- a tertiary education tax (TET) under the Tertiary Education Trust Fund (Establishment, etc) Act 2011 is payable by Nigerian companies other than a company with a gross turnover of NGN25 million or less; the TET rate is currently 3%.

Payroll Taxes

An employer is required to:

- contribute 10% of employees' monthly basic salary to be paid into a retirement savings account with an approved Pension Fund Administrator pursuant to the Pension Reform Act, while employees are required to make a corresponding contribution of 8%;
- make a minimum monthly contribution of 1% of its monthly payroll under the Employees' Compensation Act;
- deduct 2.5% of employees' monthly basic salary for remittance to the Federal Mortgage Bank of Nigeria as National Housing Fund contribution within one month after the deduction; and
- contribute 1% of its annual payroll cost to the Industrial Training Fund in compliance with the Industrial Training Fund Act.

3. Division of Tax Base Between Corporations and Non-corporate Businesses

3.1 Closely Held Local Businesses

Closely held local businesses commonly operate in corporate form, using the structure of a private company limited by shares.

3.2 Individual Rates and Corporate Rates

See **1.4 Tax Rates**.

3.3 Accumulating Earnings for Investment Purposes

Where it appears to the FIRS that a Nigerian company controlled by not more than five persons has not distributed profits to its shareholders with a view to reducing the aggregate of the tax chargeable in Nigeria, the FIRS may direct the undistributed profits to be treated as distributed and taxable in the hands of the shareholders in proportion to their shares.

3.4 Sales of Shares by Individuals in Closely Held Corporations

There are no special rules on the taxation of dividends from, or gains on, the sale of shares in closely held corporations.

Dividends to individuals are subject to a withholding tax of 10%. The tax withheld on dividends is the final tax payable.

Gains arising from the disposal of shares in a Nigerian company for an aggregate sum of NGN100 million or more in any 12 consecutive months is subject to CGT at 10%. However, if the proceeds are utilised to acquire the shares in the same or other Nigerian companies in the year of disposal of the shares, CGT is not payable.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

There are no special rules on the taxation of dividends from, or gains on, the sale of shares in publicly traded corporations.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

Withholding tax of 10% applies to interest, dividends, royalties and rents. This withholding tax is treated as the final tax when the payment is due to a non-Nigerian company.

Where dividends are paid to a Nigerian company, such dividend is treated as franked investment income and is not subject to further tax.

Relief in the form of withholding tax exemptions is available on outbound payments where:

- the payment of dividends is satisfied by an issue of shares of the company paying the dividends;
- dividends are paid by a pioneer company exempted from tax under the Industrial Development (Income Tax Relief) Act; or
- dividends are paid by an enterprise operating within a free zone.

4.2 Primary Tax Treaty Countries

Many investors use vehicles set up in the United Kingdom and the Netherlands.

4.3 Use of Treaty Country Entities by Non-treaty Country Residents

The FIRS will challenge the use of treaty country entities by non-treaty country residents if it is of the view that the use of the treaty country entity was designed to take advantage of the treaty or abuse its provisions.

4.4 Transfer Pricing Issues

The availability of local comparables is one of the biggest transfer pricing challenges for inbound investors operating through a local corporation; transfer pricing compliance requirements is another. This is because the FIRS has imposed a minimum of NGN10 million as a penalty for each failure to declare relevant group information, to disclose related-party transaction(s) or to maintain contemporaneous transfer pricing documentation, where required.

4.5 Related-Party Limited Risk Distribution Arrangements

The local tax authorities challenge the use of related-party limited risk distribution arrangements for the sale of goods or the provision of services locally if they determine that the arrangement provides a tax advantage and has not been made on arm's length terms.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

OECD Standards

The transfer pricing standards of the OECD and those of the UN apply in Nigeria unless they conflict with the local standards. The local transfer pricing standards conflict with the OECD standards in two major regards:

- in addition to requiring the arm's length test in respect of royalty payments, the Income

Tax (Transfer Pricing) Regulations 2018 (TP Regulations) provide that, for the transfer of rights in an intangible amongst connected parties, any amount that exceeds 5% of the EBITDA derived from the commercial activity conducted using the intangible is not tax-deductible; and
- the TP Regulations also provide that, for exports, the related-party price will be the sale price for tax purposes if it is higher than the quoted price. For imports, the quoted price will be the sale price for tax purposes if the related-party price is higher than the quoted price.

4.7 International Transfer Pricing Disputes

There is no published data regarding the use of the Mutual Agreement Procedure (MAP) by Nigeria's competent authorities to resolve international transfer pricing disputes. However, it is unlikely that Nigeria's competent authority will often resolve international transfer pricing disputes via MAPs initiated by Nigerian residents, given Nigeria's status as an import-dependent nation and its low-tax treaty network.

The FIRS is open to resolving tax disputes through the MAP process. In 2018, the FIRS issued the Guidelines on MAP in Nigeria to guide Nigerian residents seeking to initiate the MAP process regarding tax disputes, including transfer pricing disputes involving a treaty partner. By the combined provision of these guidelines and the TP Regulations, where a Nigerian resident initiates a MAP in respect of a transfer pricing adjustment made by the tax authorities of a treaty partner, the FIRS will allow a corresponding adjustment where it agrees that the adjustment done by the tax authorities of the treaty partner is consistent with the arm's length principle. If the FIRS does not agree that the adjustment by the tax authorities of the treaty partner is consistent with the arm's length principle, Nigeria's competent authority will initiate the MAP.

5. Key Features of Taxation of Non-local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

The TP Regulations do not make provisions for compensating adjustments. Therefore, the OECD and UN standards would apply.

5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-local Corporations

Unless granted a special exemption, branch operations by non-local corporations are not permitted in Nigeria. As such, non-local corporations seeking to carry on business in Nigeria must set up a subsidiary for that purpose. There are separate rules for the taxation of local branches of non-local corporations that carry on the business of transport by sea or air and the business of transmission of messages by cable or any form of wireless apparatus.

5.3 Capital Gains of Non-residents

Capital gains of non-residents from the sale of shares of a local entity for aggregate proceeds of NGN100 million or more in any 12 consecutive months are subject to CGT at 10%. However, if in the year of disposal of the shares, the proceeds are reinvested in shares of Nigerian companies, CGT is not payable.

CGT is not payable on gains from the sale of shares of a non-local holding company that directly owns the stock of a local company.

5.4 Change of Control Provisions
There are no change of control provisions that would trigger tax or duty charges for indirect disposals of holdings.

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates
Generally, formulas are not used to determine the taxable income of foreign-owned local affiliates except in the following industries:

- transport (by sea or air); and
- cable undertakings.

Where the data required to apply the formula is not available, the FIRS is entitled to tax on a turnover basis. In practice, 20% of turnover is deemed as profit, which is then taxed at the income tax rate of 30%, resulting in an effective tax of 6% of turnover.

5.6 Deductions for Payments by Local Affiliates
Payments by local affiliates to non-local affiliates are deductible only to the extent that the payments are consistent with the arm's length principle. Also, certain agreements between local affiliates and non-local affiliates are required to be registered with the National Office for Technology Acquisition and Promotion. Failure to register such agreements with NOTAP hinders the local affiliates' ability to remit payments pursuant to the agreements through authorised dealers.

5.7 Constraints on Related-Party Borrowing
Related-party borrowing must comply with the arm's length principle. The thin capitalisation rules discussed under **2.5 Imposed Limits on Deduction of Interest** will also apply.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations
The foreign income of a local corporation is not exempt from corporate tax, as a Nigerian company is taxed on its worldwide income. However, because dividends, interest, rents and royalties earned abroad and brought into Nigeria through the commercial banks are exempt from tax, the foreign income of a local corporation is effectively exempt from corporate tax.

6.2 Non-deductible Local Expenses
Expenses that are attributable to foreign income would be deductible to the extent that they were incurred wholly, exclusively, necessarily and reasonably for the purposes of making a company's profits.

6.3 Taxation on Dividends From Foreign Subsidiaries
Dividends earned from foreign subsidiaries of local corporations would be subject to income tax unless they were brought into Nigeria through any of the commercial banks. Such dividends would enjoy any relief in an applicable double tax treaty where the dividends are not brought into Nigeria through any commercial banks.

6.4 Use of Intangibles by Non-local Subsidiaries
There are no rules imposing tax on the transfer of intangibles developed by local corporations to non-local subsidiaries for use in their business. However, the FIRS can rely on the general anti-avoidance provisions in the law to attribute a profit to the local corporation if it considers that the terms of the transfer of the intangibles do not reflect the arm's length principle.

6.5 Taxation of Income of Non-local Subsidiaries Under Controlled Foreign Corporation-Type Rules

Nigeria does not have CFC rules.

6.6 Rules Related to the Substance of Non-local Affiliates

Rules related to the substance of non-local affiliates do not apply in Nigeria.

6.7 Taxation on Gain on the Sale of Shares in Non-local Affiliates

Local corporations are not taxed on gains on the sale of shares of non-local affiliates, unless the gains are received in, or brought into, Nigeria.

7. Anti-avoidance

7.1 Overarching Anti-avoidance Provisions

There are anti-avoidance provisions in the various tax laws, which empower the tax authorities to make necessary adjustments to counteract any tax reduction that would result from transactions that are considered artificial. The tax authorities may deem any transaction artificial if they find that its terms have not been effected or, if it is a transaction between related parties, or its terms do not reflect the arm's length principle.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

There is no fixed audit cycle, but large corporates are typically audited annually.

9. BEPS

9.1 Recommended Changes

In response to BEPS, Nigeria has refused to agree to the Two-Pillar solution introduced by the OECD. However, Nigeria has signed the following instruments:

- the Multilateral Convention to Implement Tax Treaty-related Measures to Prevent Base Erosion and Profit Shifting;
- the Multilateral Competent Authority Agreement for the Common Reporting Standard; and
- the Multilateral Competent Authority Agreement for the Automatic Exchange of Country-by-Country Reports.

Nigeria has also put the following guidelines in place to give effect to the above instruments:

- the Income Tax (Common Reporting Standard) Regulations, 2019;
- the Income Tax (Country-by-Country Reporting) Regulations, 2018;
- the Guidelines on Country-by-Country Reporting in Nigeria, 2018;
- the Guidelines on the Appropriate Use of Country-by-Country Reports, 2018; and
- the Guidelines on the Mutual Agreement Procedure (MAP) in Nigeria.

9.2 Government Attitudes

The Nigerian government is keen on eliminating BEPS, as shown by its signing, domestication and active enforcement of anti-BEPs instruments. By implementing anti-BEPS measures, Nigeria seeks to eliminate double non-taxation, expand its revenue base and grow its economy.

The tax-to-GDP ratio of Nigeria is amongst the lowest in the world, and the government expects that the BEPS plans will increase revenue from taxation.

9.3 Profile of International Tax

International tax does not have a high public profile in Nigeria.

9.4 Competitive Tax Policy Objective

Despite its low tax-to-GDP ratio, Nigeria has competitive tax policies aimed at increasing foreign and local participation in the economy, including the exemption from all taxes granted to entities operating in the tax-free zones, the five-year income tax holiday granted to entities in several industries, and the tax exemption of all foreign-earned passive income brought into Nigeria through any of the commercial banks. On 8 August 2023, President Bola Tinubu inaugurated the Presidential Fiscal Policy & Tax Reforms Committee (the "Committee") to review and redesign Nigeria's fiscal system with respect to revenue mobilisation, quality of government spending and sustainable debt management. The Committee is expected to identify relevant measures to make Nigeria an attractive destination for investment and facilitate inclusive economic growth.

9.5 Features of the Competitive Tax System

The lack of anti-fragmentation rules and the lack of CFC rules in the domestic tax legislation are features of the Nigerian tax regime that are vulnerable to the BEPS action plans. See the incentives discussed under **2.3 Other Special Incentives**.

9.6 Proposals for Dealing With Hybrid Instruments

Nigeria does not have domestic legislation to deal with hybrid instruments. However, once Nigeria ratifies the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS, Article 3 thereof will apply to deal with transparent entities resident in tax treaty countries.

9.7 Territorial Tax Regime

Nigerian companies are taxed on their worldwide income. However, a Nigerian company's foreign-earned dividend, interest, rent and royalty income are exempt from tax if brought into Nigeria through a commercial bank.

9.8 Controlled Foreign Corporation Proposals

There are no proposals to implement CFC rules.

9.9 Anti-avoidance Rules

Nigeria has anti-avoidance rules in some of its tax treaties and has indicated its intention to adopt the "principal purpose test" and the competent authority tiebreaker provisions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.

9.10 Transfer Pricing Changes

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and the United Nations Practical Manual on Transfer Pricing for Developing Countries, and all future updates, apply in Nigeria unless they conflict with the TP Regulations, in which case the latter will prevail.

9.11 Transparency and Country-by-Country Reporting

Nigeria favours the OECD proposals for transparency and country-by-country reporting and, amongst others, has signed the Convention on Mutual Administrative Assistance in Tax Matters, the Country-by-Country Multilateral Competent Authority Agreement, and the Common Reporting Standards Multilateral Competent Authority Agreement.

9.12 Taxation of Digital Economy Businesses

Foreign companies with a digital presence in Nigeria are subject to CIT; see **1.3 Determining Residence of Incorporated Businesses**.

Payments to non-resident individuals who remotely provide technical, professional, consultancy and management services to Nigerian residents attract a final withholding tax of 10%. For individuals, a final withholding tax of 5% applies.

9.13 Digital Taxation

See **9.12 Taxation of Digital Economy Businesses**.

9.14 Taxation of Offshore IP

Withholding tax of 10% (which is the final tax) applies to all offshore royalty payments. There are no special rules for IP owners in a tax haven.