TAXATION AND FISCAL REGULATIONS IN NIGERIA

INTRODUCTION

The Nigerian Tax System has undergone significant changes in recent times. The Tax Laws are being reviewed with the aim of repelling obsolete provisions and simplifying the main ones. Under current Nigerian law, taxation is enforced by the 3 tiers of Government, i.e. Federal, State, and Local Government with each having its sphere clearly spelt out in the Taxes and Levies (approved list for Collection) Decree, 1998. Of importance at this juncture however are tax regulations pertaining to investors both foreign and local.

The importance of tax regulations cannot be over-emphasized, as most transactions with any Ministry, department, or government agency cannot be concluded without evidence of tax clearance. i.e. a Tax Clearance Certificate certifying that all taxes due for the three immediately preceding years of assessment have been settled in full.

LIST OF APPROVED TAXES AND LEVIES FOR THE THREE TIERS OF GOVERNMENT

A list of taxes and levies for collection by the three tiers of government has been approved by government and published by the Joint Tax Board (J.T.B.) as follows:

(A) Taxes collectible by the Federal Government

- (1) Companies income tax;
- (2) Withholding tax on companies;
- (3) Petroleum Profit Tax;
- (4) Value-added tax (VAT);
- (5) Education tax;
- (6) Capital gains tax - Abuja residents and corporate bodies;
- (7) Stamp duties involving a corporate entity;

(8) Personal income tax in respect of:
- Armed forces personnel;
- Police personnel;
- Residents of Abuja FCT;
- External Affairs officers; and
- Non-residents.

(B) Taxes/Levies Collectible by State Governments

(1) Personal income tax:
- Pay-As-You-Earn (PAYE);
- Direct (self and government) assessment;
- Withholding tax (individuals only);

(2) Capital gains tax;
(3) Stamp duties (instruments executed by individuals);
(4) Pools betting, lotteries, gaming and casino taxes;
(5) Road taxes;
(6) Business premises registration and renewal levy;
- urban areas (as defined by each state):
  - maximum of N 10,000 for registration and N5 ,000 for the renewal per annum
- rural areas
- registration N2,000 per annum
- renewal N 1,000 per annum

(7) Development levy (individuals only) not more than N100 per annum on all taxable individuals;
(8) Naming of street registration fee in state capitals
(9) Right of occupancy fees in state capitals;
(10) Rates in markets where state finances are involved.

(C) Taxes/Levies Collectible by Local Governments

(1) Shops and kiosks rates;
(2) Tenement rates;
(3) On and off liquor licence;
(4) Slaughter slab fees;

(5) Marriage, birth and death registration fees;
(6) Naming of street registration fee (excluding state capitals):
(7) Right of occupancy fees (excluding state capitals);
(8) Market/motor park fees (excluding market where state finance are involved);
(9) Domestic animal licence;
(10) Bicycle, truck, canoe, wheelbarrow and cart fees;
(11) Cattle tax;
(12) Merriment and road closure fees;
(13) Radio/television (other than radio/tv transmitter) licences and vehicle radio licence (to be imposed by the local government in which the car is registered);
(14) Wrong parking charges;
(15) Public convenience, sewage and refuse disposal fees;
(16) Customary, burial ground and religious places permits; and
(17) Signboard/advertisement permit.

SOME OF THE RELEVANT TAX REGULATIONS AND FISCAL ISSUES IN NIGERIA

These are categorised as Follows:

TRANSACTION TAXES

a. **Capital Gains Tax**

This accrues on an actual year basis and it pertains to all gains accruing to a taxpayer from the sale or lease or other transfer of proprietary rights in a chargeable interest which are subject to a capital gains tax of 10%, such chargeable assets may be corporeal or incorporeal and it does not matter that such asset is not situated in Nigeria. Where however the taxpayer is a non-resident company or individual the tax will only be levied on the amount received or brought into Nigeria.

Computation of capital gains tax is done by deducting from the sum received or receivable from the cost of acquisition to the person realizing the chargeable gain plus expenditure incurred on the improvement or expenses incidental to the realization of the asset.

b. **Value Added Tax (VAT)**

This was introduced by the VAT decree No. 2 of 1993, to replace the old sales tax. It is a consumption tax levied at each stage of the consumption chain, and is borne by the final consumer. It requires a taxable person upon registering with the Federal Board of Inland Revenue to charge and collect VAT at a flat rate of 5% of all invoiced amounts of taxable goods and services.

VAT paid by a business on purchases is known as input tax, which is recovered from VAT charged on company's sales, known as output tax. If output exceeds input in any particular month the excess is remitted to the Federal Board Of Inland Revenue (FBIR) but where input exceeds output the taxpayer is entitled to a refund of the excess from FBIR though in practice this is not always possible.

A Taxpayer however has the option of recovering excess input from excess output of a subsequent period. It should be stated at this point that recoverable input is limited to VAT on goods imported directly for resale and goods that form the stock-in-trade used for the direct production of any new product on which the output VAT is charged.

c. **Education Tax**

An education tax of 2% of assessable profits is imposed on all companies incorporated in Nigeria. This tax is viewed as a social obligation placed on all companies in ensuring that they contribute their own quota in developing educational facilities in the country.

d. **Petroleum Profits Tax**

Nigerian law by virtue of the Petroleum Profits Tax Act requires all companies engaged in the extraction and transportation of petroleum to pay tax. The taxable income of a petroleum company comprises proceeds from the sale of oil and related substances used by the company in its own refineries plus any other income of the company incidental to and arising from its petroleum operations.

The taxable income of a petroleum company is subject to tax at 85%, but this percentage is lowered to 65.75% during the first 5 years of operation. Where oil companies operate under production sharing contracts they will be liable to tax at a rate of 50%.

There are however some concessions granted petroleum companies known as, Capital Allowance and Petroleum Investment Allowance; the former is deducted in arriving at the taxable income and entails expenditure on equipment, pipelines, and storage facilities, buildings and drilling costs, these are referred to as qualifying assets. The applicable rate of Capital Allowance for any year is of 20% of the cost of the qualifying assets applied on a straight-line basis for the first 4 years and 19% for the 5th year. The latter is regarded as an addition to capital allowance and covers allowance in respect of new investments in assets for petroleum exploration; it is available in the accounting period in which the assets are first used.

It must be stated that the deduction of Capital Allowance is restricted, so that for any accounting period, the tax on the company should not be less than 15% of the tax which would have been assessable had no capital allowances been granted the company.

e. **Nigerian Social Investment Trust Fund (NSITF)**

This is governed by the NSITF Act, and requires everybody employed in a Nigerian incorporated company to contribute a certain percentage of their salary to the fund. This contribution is based on the assumption that the maximum basic salary in Nigeria is N48, 000 per annum; Expatriates are excluded from this requirement where they can show proof of a similar contribution in their home country. The rate of contributions is defined as follows, where the contributor is an employee, 2.5% of his salary subject to a maximum of N 1,200 per annum; Where the contributor is an employer, 5% of basic salary subject.

f. Stamp Duties

The administrations of stamp a duty, which is jointly carried out by the state and Federal authorities, depending on the type and nature of thedocument. Stamp duties are regarded as transaction taxes, and the rates chargeable would depend on the classification of the document. Some documents attract stamp duties on flat rate basis while others are assessed individually.

h. **Withholding Tax**

Nigerian law subjects certain activities and services to Withholding Tax. This basically means that where during transactions in any of the specified activities or services, a payment is due from one person to another, the person making the payment is expected to deduct tax at the applicable rate and remit it to the relevant tax authority. This should be done not later than 30 days after the deduction. This provision can be found in sections 68 to 72 of the Personal Income Tax Decree No. 104 of 1993; Sections 60 to 64 of the Company Income Tax Act (as amended), and Section 51(a) of the Petroleum Profits Tax Act (as amended).

Some of these activities and Services and their current applicable rates include:

Payment	% Corporation	% Individual/Partnership
Rent	10	10

Construction	5	5
Dividend	10	10
Royalties	10	5
Commission	10	5
Professional Fees	10	5
Technical Fees	10	5
Consultancy Fees	10	5

i. Double Taxation Agreements/Treaties

Nigeria has a number of tax treaties referred to as “Double Taxation” Agreements with a number of countries. This is to ensure that the tax payable in Nigeria on the profits of a Nigerian company being remitted into the country are reduced by the amount of “foreign Tax” paid abroad and vice versa. In the last few years, Nigeria has entered into double taxation agreements with a number of countries.

These agreements are entered into with a view to affording relief from double taxation in relation to taxes imposed on profit taxable in Nigeria and any taxes of similar character imposed by the laws of the country concerned. Where an overseas company receives profits from Nigeria that have already been taxed in Nigeria. Some of these countries include the UK, France, The Netherlands, Belgium, Canada and Pakistan.

j. Personal Income Tax

The legal basis for this tax is found in the provisions of the Personal Income Tax Decree [now Act]. 104 of 1993. Every taxpayer in Nigeria is liable to pay tax on the aggregate amount of his income whether derived from within or outside Nigeria, the salaries, wages, fees, allowances, and other gains or benefits, given or granted to an employee are chargeable to tax. The Employers of labour are deemed to be agents of the tax authority for the purposes of remitting taxes deducted from salaries due to employees. However residency of the Taxpayer determines the extent of a taxpayer’s liability in Nigeria. A person’s place of residence for this purpose is defined as a place available for his domestic use in Nigeria on a relevant day, excluding hotels and rest houses. A person is deemed resident in Nigeria if he resides in Nigeria for 183 days in any 12month period, expatriates holding residence permits are liable to tax in Nigeria even if they reside in the country for less than 183days in any 12-month period. Once residence can be established, the relevant tax authority of the territory is the tax Authority in which the taxpayer has his place of residence or principal place of business. The following are however exempted from tax: -

- Medical or Dental expenses incurred by the employee;
- Retirement gratuities and compensation loss of office;
- The cost of passage to or from Nigeria incurred by the employee;
- Interest on loans for developing an owner-occupied residential house;
- Leave allowance, which is computed as 10% of annual basic salary subject to a maximum of N7, 500 per annum.

k. **Companies Income Tax**

This Tax is payable for each year of assessment of the profits of any company at a rate of 30%. These include profits accruing in, derived form brought into or received from a trade, business or investment. Also companies paying dividends to its shareholders are first obliged to pay tax on its profits at the companies tax rate. Generally, in Nigeria Company dividends or other company distribution whether or not of a capital nature made by a Nigerian is liable to tax at source of 10%. However dividends paid in the form of bonus share or scrip shares to individual shareholders are not subject to tax. Also where a company is a shareholder in another company then such dividends are excluded from the profits of the company for the purposes of computation of the tax.

12.3. **Conclusion**

With the present policy of liberalization of the Nigerian Economy being vigorously pursued by the Federal Government, Nigeria is fast becoming an investors haven albeit with a few teething problems. What is required for the foreign investor however is a careful approach to the following areas:

- Proper enterprise set-up.
- Procurement of necessary permits and approvals.
- Access to the best professional advice.