INTERNATIONAL

TAXES IN AFRICA & MIDDLE EAST

2024

5rd EDITION

24, Rue de Londres - 75009 Paris - France
Tel: +33 (0) 1 44 15 95 23 - www.eaiinternational.org

Nigeria

Capital city :
Abuja

Language :
English

GDP/capita 2023 :
USD 5,862

Telephone code :
+234

Area :
923,763 km²

Political system :
Presidential

Currency :
Naira (NGN)

National day :
1 October

Population :
226,455,272

ISO Code :
NGA

Nigeria

The changes cover a new infrastructure levy for specific companies with an annual turnover of NGN100,000,000 and above, and a proposal to assess gas-flaring companies on a higher income tax rate. It also discloses the authorized companies to withhold value added tax.and mandatory submission of regulatory approval of qualifying capital expenditure to claim capital allowance.

1. Corporate taxation

1.1 Taxes on entities

In Nigeria, incorporated entities are companies subject to Companies Income Tax on their profits from all sources. There is no group taxation but the pro- fits of a company is subject to corporation tax. A company may also be liable to Value Added Tax on the supply of VATable goods and services. All companies, are within the scope of Nigeria's Corporation Tax.

1.2 Residence and non-residence

Resident company is any company incorporated under the Companies and Allied Matters Act in Nigeria. Resident companies are liable to Companies Income Tax on their worldwide income subject to relief for taxes suffered overseas under the provisions of a relevant Double Taxation Treaty where eligible.

A non-resident company (NRC) is a company that is incorporated outside Nigeria but derives income or profits from Nigeria. Non-resident entities are liable to Companies Income Tax on Nigerian-sourced income. A foreign company with a significant economic presence (SEP) in Nigeria will also be subject to income tax. The SEP rule covers digital transactions and services rendered by an NRC. For companies with SEP, the Federal Inland Revenue Service may apply a deemed tax rate on the turnover that is attributable to the company's activities in Nigeria. The local tax authority has specific filing requirements for a non-resident company. However, a foreign company that earns income on which withholding tax is the final charge will be exempt from filing an income tax return. This rule will hold where the NRC does not have a fixed base or SEP in Nigeria.

1.3 Tax year and filing

The fiscal year in Nigeria is from 1 January to 31 December but companies will file a return based on their financial year. A company must file its income tax return by 6 months after the financial year-endexcept for a new corporation. For a new company, the due date is the earlier of 18 months from the date of incorporation or 6 months after the end of its accounting period. Companies operating in the upstream petroleum industry will file income returns on an actual year basis while other companies will follow a preceding year basis.

Nigeria's corporate tax structure uses a self-assessment system whereby a taxpayer will calculate the correct tax liability, pay the self-assessed amount, and file returns on or before the due date without demand from the tax authority.

1.4 Taxable profit

The taxable profit is the entity's accounting profit; subject to tax adjustments. Profits for Corporation Tax purposes include profits accruing in, derived from, brought into, or received in Nigeria. It also includes dividends, interest, rent, royalties, fees, dues, and allowances.

Expenses that are "wholly, reasonably, exclusively and necessarily" incurred for the company's operations may be deductible against turnover. Also, there are limited deductions for donations to approved charity bodies and the COVID-19 fund.

Some expenses are prohibited by statute. Specifically, no deduction is permitted for depreciation and amortization. Capital allowances for qualifying capital expenditure often serves as an alternative to depreciation. FIRS require a taxpayer to present the certificate of acceptance of fixed assets on qualifying capital expenditure before a claim for capital allowance is allowable.
Nigeria has anti-avoidance provisions for the thin capitalization of companieswhere the borrowing cost to finance a company is deemed as excessive. There are also transfer pricing regulations for cross-border transactions and related party transactions.

A provision can be made for bad and doubtful debts but only on a specific basis.

1.5 Group income and group taxation

Nigerian tax laws do not contain provisions for consolidating accounts for group taxation.

1.6 Losses

Tax losses may be used to offset profits arising from the same trade in the subsequent year and the unutilized amount can be carried forward indefinitely.

1.7 Exemptions

Entities that are exempt from corporate taxation include companies formed to promote sporting activities and a small company. A small company is an incorporated entity with an annual turnover of NGN 25,000,000 and below. Others are cooperative societies, friendly societies, trade unions, and a company operating in an export processing zone or free trade zone or with a pioneer status. Export profits brought into Nigeria through government-approved channels and invested in raw materials, spare parts, plants, and machinery are also exempt from companies' income tax (CIT).

1.8 Rates

CIT rate depends on the turnover of a company. Small entities have a rate of 0% while medium-sized companies will apply a rate of 20%. Large companies will pay CIT at a rate of 30%.

The minimum tax rate is 0.5% of the total turnover minus franked investment income. A lower minimum tax rate of 0.25% applies for any two years of assessment from 1 January 2019 to 31 December 2021. Small companies, agricultural businesses, and companies in their first four calendar years of operations are exempt from the minimum tax.

1.9 Withholding tax

Withholding tax is payable on specific transactions at the rates below:

	WHT rate (%)	
Transaction	Company	Individual
Dividends, interest, rent, hire of equipment	10	10
Director’s fees	N/A	10
Royalties, commission, consultancy, technical, management fees, service fees	10	5
Construction (roads, buildings, and bridges)	2.5	5
Contracts other than sales in the ordinary course of business	5	5

The due date for filing WHT is 21 days following the month of the transaction. The penalty for non-compliance is 10% of the unpaid sum.

1.10 Double tax relief

Relief on foreign income will normally be available under the terms of a relevant Double Taxation Treaty between Nigeria and the treaty partner.

Dividends, interest, rents, and royalties earned abroad and brought into Nigeria through government-approved channels are exempt from Nigerian tax.

2. Hydrocarbon tax

2.1 Introduction

In addition to CIT, companies engaged in upstream operations also pay hydrocarbon tax (HCT). HCT shall apply to crude oil, field condensates, natural gas liquids derived from associated gas, and produced in the field upstream of the measurement points. Hydrocarbon tax and companies income tax will replace Petroleum Profit Tax.

2.2 Rates

The HCT rate is 30% of the chargeable profit for a Petroleum Mining Lease and 15% of the chargeable profit for a Petroleum Prospecting License.
There may be additional tax payable where the chargeable tax calculated is less than the expected tax on the crude oil. For exports, sales proceed is the number of barrels of crude oil determined at the measurement point multiplied by the fiscal oil price per barrel.

Deductible expenses and Incentives

A chargeable profit is the profit of the company after deducting expenses and recognizing certain incentives. They include;

- drilling expenditure of the first exploration well and the first two appraisal wells in the same field;
- decommission and abandonment contributions to an approved fund by the Commission, provided the balance is subject to HCT at the end of useful life where the lessee receives the surplus;
- contribution to host communities' development trusts and related sum;
- there is no stamp duties and capital gains tax when a company involved in more than one stream separates operations;
- acquisition costs of petroleum rights are eligible for annual allowance at 20% with a balance of 1% in the final year until the asset is disposed.

Consolidation of costs for companies' income tax purposes is allowed. However, consolidation of the costs and taxes for HCT is allowed only for assets in which the company holds licenses and leases.

Tax filing

Companies involved in upstream petroleum operations will file CIT and HCT returns on an actual year basis.
Returns of the estimated hydrocarbon tax is due two months after the commencement of an accounting period. The currency for calculating and remitting hydrocarbon tax is US Dollars.

HCT is payable in equal monthly installments and a single float payment. The first payment is payable in the third month of the accounting period while the balance is due on the last day of the month. A final installment of tax is payable on or before the due date of filing the self-assessment.

3. Tertiary Education Tax

Rate

Resident companies in Nigeria will pay tertiary education tax (TET) at the rate of 2.5% of the assessable profit. Non-resident companies and unincorporated businesses such as sole proprietorship are exempt from TET.

Tax filing

Tertiary education tax (TET) return is payable within 30 days of an assessment notice from the Federal Inland Revenue (FIRS). In practice, many companies pay TET on a self-assessment basis together with their companies income tax (CIT).

4. Personal income taxation

4.1 Taxes on income

Personal Income Tax in Nigeria covers the taxation of employees, sole traders, individuals, partners, communities, families, trustees. Income Tax is chargeable on salary, wages, fees, allowance, gain, or profit arising from employment.

Employment income is liable to tax when a person becomes a resident. Taxation of employment income is generally paid under a "Pay As You Earn" system of withholding tax. The employer is the authorized agent for withholding and remitting the appropriate PAYE tax to the relevant tax authority.

The profit of a trade, profession, or vocation is liable to tax in Nigeria regardless of the period such a trade, profession, or vocation has been carried on.

4.2 Residence and non-residence

Residence in Nigeria is determined according to a set of residency rules. The residency rule ascertains whether the income of a taxpayer is liable to Nigerian tax. A person will be a tax resident if the employee works fully (or partially) in Nigeria or the employer is in Nigeria or the employer has a fixed base in Nigeria. A non-resident person may be taxable in Nigeria except the employee stayed less than 183 days in any period of 12-month, the employer is not resident in Nigeria, the non-resident employer bears the employee cost, and the employee has paid tax in another country. A non-resident person with a significant economic presence in Nigeria will also be taxable in Nigeria.

A resident person will be liable to tax on the income accruing in, derived from, brought into, or received in Nigeria. A non-resident person becomes liable to tax from the day (s)he commences a trade, business, vocation, or profession in Nigeria.

4.3 Tax year and filing

The tax year is from 1 January to 31 December.
In general, every employer must file an annual employer tax return by 31 January of the year following.

The tax return system for PIT is one of "self-assessment". Penalty for late submission is NGN 500,000 for corporate bodies and NGN 50,000 for individuals.

4.4 Taxable income

Income is separated into the following categories:

- employment;
- self-employment;
- savings and investments, including dividends and property rental income;
- unearned income

Employment income includes all wages, salaries, benefits, and these sources are generally also subject to the Pay as You Earn regime for deducting income tax at source. Non-cash benefits provided to an employee are taxable income.

Pension contributions of an employee to an approved fund are allowable deductions. Reimbursable expenses paid to an employee are tax-free if the employee does not derive any benefit or gain from the inflow.

Self-employment income is subject to income tax on the business profits of the individual. Partnership profits are subject to income tax on each partner's share of profits.

4.5 Losses

Tax losses may be used to offset profits arising from the same trade in the subsequent year and the unutilized amount can be carried forward indefinitely.

4.6 Exemptions

Persons earning an annual minimum wage or below are exempt from personal income tax. The list of exempt income also includes the income of government officials, diplomats and local government institutions.

4.7 Allowances and rates

Consolidated relief allowance is available to taxable persons against the taxable income for a tax year. Other tax-free allowances are life insurance premium for self or spouse, contributions to the national housing fund (NHF), pension fund, national health insurance scheme (NHIS), and gratuity. Allowable expenses for an unincorporated entity include items that are wholly, reasonably, exclusively, and necessarily incurred for the business.

PIT rate is on a graduated scale from 7% to 24% of taxable income. The annual taxable income band starts from the first NGN 300,000 to above NGN 3,200,000. The minimum tax rate is 1% of gross income but the rule does not apply to individuals with an annual income of NGN 360,000 and below.

4.8 Social security

Pension contributions to an approved pension fund are exempt from Personal Income Tax. Pension contributions are tax-deductible against an individual's taxable income. An employer and employee will contribute a minimum of 10% and 8% respectively of basic, housing, and transport allowances.

The rate for NHIS contribution is 5% (employee) and 10% (employer) of basic salary. Employee contribution to NHF is 2.5% of basic salary.

Employer contribution to Industrial Training Fund is 1% of annual payroll cost. Mandatory for employers with a minimum of 5 employees or an annual turnover of NGN 50,000,000.

Employer will contribute a percentage of payroll cost to the Nigeria Social Insurance Trust Fund (NSITF).

4.9 Partnerships

Income from a partnership business is taxed directly in the hands of the individual partner and not on the partnership itself. Also, partnerships are required to file tax returns annually disclosing the income and tax paid for each partner.

5. Value Added Tax

5.1 Registration

Upon commencement of a business, a taxable person is required to register for Value Added Tax (VAT) with the Federal Inland Revenue Service. Businesses with an annual turnover of NGN 25,000,000 and below are exempt from VAT. VAT compliance is optional for businesses in this category.

5.2 Rates

The Value Added Tax (VAT) rate is 7.5% on the supply of VATable goods and services except zero-rated or exempt items.

Exempt items

- non-oil exports;
- goods and services purchased by diplomats;
- goods purchased for humanitarian donor-funded projects.

5.3 Exemption

Items exempt are non-oil exports, goods and services purchased by diplomats, and goods purchased for humanitarian donor-funded projects.

Zero-rated items include medical and pharmaceutical products, basic food items, educational books and materials, baby products, all exported services, services rendered by unit micro-finance banks and mortgage institutions, shared passenger road transport service, and commercial airline tickets. Renewable energy equipment is also a zero-rated item.

5.4 Non-resident company

A non-resident company that provides a taxable supply of goods or services to a person in Nigeria must comply with the full VAT obligations such as registration, issuing of VAT invoice, filing of returns. If necessary, the NRP may appoint a representative in Nigeria to assist with the tax obligations.

5.5 Deduction of VAT at source

Government agencies, oil and gas companies, specific telecommunication companies such as MTN and Airtel, all money deposit Banks are required to deduct VAT at source on the amount payable and remit same to the FIRS. Local businesses can withhold and remit VAT on amounts payable to agents, dealers, distributors, and retailers.

5.6 Self-account provision

Where the supplier is exempt from (or fails to charge) VAT, a taxable person who receives goods or services in Nigeria will withhold and remit the amount to the revenue authority.

5.7 Tax returns

A duly completed VAT return must be submitted on or before the 21st day of the month following the month of the transaction. The penalties for non-compliance are;

- Failure to register, submit returns, inform FIRS of change of address or permanent cessation of trade: Penalty of NGN 50,000 for the first month of default and NGN 25,000 per subsequent month of default.
- Failure to remit tax: Unpaid sum plus a penalty of 10% and interest at minimum rediscount rate (CBN).

5.8 Deregistration

A taxable person that permanently ceases trade is required to notify FIRS of its intention to deregister for tax purposes within 90 days of cessation of business.

6. Other taxes

Additional tax and related laws include:

- capital Gains Tax;
- stamp Duty;
- consumption tax;
- industrial Development (Income Tax Relief) Act;
- information Technology (IT) Levy;
- custom and excise duties;
- Nigeria Police Trust Fund Levy;
- Niger Delta Development Commission Levy;
- Host Communities Development Trust Fund;
- local taxes.

6.1 Capital Gains Tax (CGT)

CGT is payable on chargeable gains arising from the disposal of chargeable assets. The CGT law applies a rate of 10% applies to individuals and companies. Foreign currency and property are chargeable assets. Other chargeable assets include options, debts, and incorporeal property excluding private motor vehicles. Gains exempt from capital gains tax include compensation for loss of employment above NGN 10,000,000 and acquisition of company shares as a result of a merger, takeover, or acquisition, provided that no cash payment is made for the shares acquired. Investment in superannuation funds, statutory provident funds, and retirement benefit schemes is also exempt from CGT.

6.2 Stamp Duty

Stamp duty is the tax payable on documents as a form of agreement or transaction between two or more persons. The rate could be fixed or variable depending on the type of transaction. Transactions that require stamp duty in Nigeria include incorporation of companies, increase in the authorized share capital of a company, and conveyance of property.

6.3 Consumption Tax

The Hotel Occupancy and Restaurant Consumption Law impose consumption tax at 5% on the value of goods and services consumed in hotels, restaurants and event Centre. Consumption tax is payable to the relevant State Internal Revenue Service.

6.4 Information Technology (IT) Levy

IT levy is payable by certain companies with an annual turnover of NGN 100,000,000 and above. Companies covered are GSM service providers, telecommunications companies, cyber companies, internet service providers, pension managers, and related companies, insurance companies, banks, and other financial institutions.
The rate is 1% of profit before tax and the levy is a deductible expense in a companies' income tax computation. FIRS is the relevant tax authority for the IT levy.

6.5 Industrial Development (Income Tax Relief) Act [IDITRA]

IDITRA is the legislation for income tax exemption on approved industries or products. Companies with a pioneer status will obtain a tax holiday from income tax for an initial period of three years, extendable for one or two additional years.

6.6 Custom and Excise Duties

Customs duties are payable on goods coming into Nigeria from 5% to 35% of import value. Excise duty is a charge on the production, sale, or use of certain locally produced goods. Excise duty on non-alcoholic, carbonated, and sweetened beverages is NGN 10 per litre.

6.7 Nigeria Police Trust Fund Levy

An annual levy of 0.005% of a company's net profit is payable to the Nigeria Police Trust Fund. The contribution will be used to improve security services in the country.

6.8 Niger Delta Development Commission Levy (NDDC)

Niger Delta is a major region for oil production in Nigeria which is fraught with ecological problems. Oil and gas companies are thus required to pay 3% of their annual budget to the NDDC. Contributions to NDDC will be used to solve ecological problems in the region.

6.9 Host Communities Development Trust Fund

Upstream petroleum companies will contribute 3% of the preceding year's annual operating expenses to a Host Communities Development Trust Fund. The fund is to finance projects for the development of the host communities.

6.10 Local levies and rates

Each local government area in 36 states of the country and 1 Federal Capital Territory can collect local levies and rates. Local levies and rates include motor vehicle licenses, and shops and kiosks rates. There are no provincial and local taxes on income.

Maureen OMODIAGBE

Contact

Bomes Resources Consulting (BRC)
Plot 18 Ejiofor Okeke Crescent,
Divine Estate, Amuwo-Odofin
Lagos State, Nigeria
www.bomesresourcesconsulting.com
+234 805 500 1271
maureen@bomesresourcesconsulting.com
Maureen Omodiagbe