

Taxing Non-Resident Companies (including Persons Engaged in Shipping and Air Transport Business) Under the Tax Reform Acts

DECONSTRUCTING THE TAX REFORM ACTS SERIES

OLAP Tax Newsletter

INTRODUCTION

A nation's long-term prosperity is intrinsically linked to its ability to generate sustainable revenue. While the attraction of foreign investment, the stimulation of economic growth, and the promotion of a business-friendly environment are critical policy objectives, they ultimately serve the broader aim of fostering a prosperous populace which, in turn, contributes to government revenue through an equitable and efficient taxation system.

To this end, it is imperative that a government maintains a robust fiscal framework that not only incentivizes foreign participation in its economy but also ensures that non-resident companies (**NRCs**) are taxed fairly. Striking this balance is essential to prevent base erosion and revenue leakages, while still positioning the country as a competitive and attractive investment destination.

It is against this backdrop that Nigeria's recent tax reform Acts have been enacted. These reforms introduce salient provisions specifically designed to enhance the fair taxation of NRCs, thereby aligning Nigeria's tax regime with global best practices.

In this edition of our Deconstructing the Tax Reform Acts series, we examine the emerging tax regime for NRCs under the Nigeria Tax Act, as well as the Nigeria Tax Administration Act. We will delve into the newly introduced provisions, explore the associated compliance obligations, highlight relevant incentive provisions, and provide critical insights for all relevant stakeholders.

MATERIAL CHANGES TO THE TAXATION REGIME OF NON-RESIDENT PERSONS UNDER THE TAX REFORM ACTS

The Nigeria Tax Act 2025, (the **NTA**) introduces a more expansive as well as organized framework for the taxation of NRCs in Nigeria. Under the CITA framework, section 13(2) addressed the instances where the profits of an NRC would be subject to tax in Nigeria. These provisions defined the taxable nexus, including scenarios where profits were subject to **full income taxation** (such as where the NRC had a fixed base of business in Nigeria), as well as any specific instances where withholding tax (**WHT**) served as the final tax (e.g., for technical, management, consultancy, or professional services furnished from outside Nigeria). However, the CITA framework did not comprehensively address all instances where an NRC's profits would be liable to tax in Nigeria. Critically, fundamental concepts essential for non-resident taxation, such as Permanent Establishments (**PE**), were conspicuously absent from the CITA.

The NTA addresses these shortcomings by not only significantly expanding the scope of taxable activities for NRCs but provides a more comprehensive and coherent framework for their taxation. In the paragraphs that follow, we will examine these key developments in greater detail and consider their practical implications.

TAXABILITY OF NON-RESIDENT INCOME

The NTA provides that gains derived by an NRC from the disposal of chargeable asset are liable to tax in Nigeria where the gain relates to;

- (a) trade business or profession carried on by the NRC in Nigeria; and
- (b) any asset located in Nigeria or deemed to be located in Nigeria¹.

Section 17(3) of the NTA provides three instances where the profits of an NRC will be subject to taxation in Nigeria, as follows:

Permanent Establishment or Significant Economic Presence:

The profits of an NRC will be taxable in Nigeria where it has a PE in Nigeria or a Significant Economic Presence (SEP), to the extent that profits are attributable to the PE or SEP².

As previously noted, this development is particularly significant, as while the concept of an SEP has existed under the CITA through the Finance Act 2019, the notion of a PE represents a novel introduction under the NTA. Historically, the concept of PE was confined to the domain of Double Tax Treaties (DTTs) and did not feature in Nigeria's substantive tax legislation. Under the erstwhile CITA, reference was made instead to a "fixed base" and other related thresholds. These parameters have now been consolidated under the broader and expanded definition of PE in the NTA and will be discussed even further below.

Permanent Establishments Under the NTA

Under the NTA a PE will be created under the following circumstances:

a. Physical Place of Business:

Here, the NRC maintains a place in Nigeria through which its business is wholly or partly carried on, or where such a place is at its disposal for business purposes³. Notably, the NTA replaces "fixed base" with "a place" and defines it broadly to mean any location in Nigeria, whether owned, rented, leased or otherwise available for the use of the person, irrespective of the length of time it is used⁴. While this provision draws inspiration from existing DTTs between Nigeria and its treaty partners, it introduces key developments that merit close attention.

First, the definition eliminates any explicit time threshold for establishing a PE, implying that even short-term use of a place of business may give rise to a taxable presence. Second, the phrase "at its disposal" indicates a lower bar for establishing a taxable presence, focusing on control or access to a place for business, rather than mere physical occupation. As such, the threshold for triggering a PE under this limb is considerably lower than under the former "fixed base" rule in the repealed CITA.

b. Authorised Agent

An NRC will create a PE in Nigeria where it operates a trade or business through a person in Nigeria who is:

- I. authorised to conduct on its behalf, or
- II. authorised to conduct on behalf of some other persons controlled by it; or which have a controlling interest in it⁵.

In other words, where a foreign entity engages in commercial activities in Nigeria through an authorised agent or representative who habitually exercises authority to act on its behalf, or on behalf of related entities within the same group, it will be deemed to have a PE in Nigeria.

c. Maintenance of a Stock of Goods

Section 17(9)(a)(iii) NTA provides that an NRC will form a PE in Nigeria where it maintains a stock of goods or merchandise in Nigeria, from which deliveries are made by a person on its behalf. This means that if an NRC stores inventory in Nigeria and a person (such as a local agent or distributor), regularly delivers those goods to customers on its behalf, the NRC will be regarded as having a PE in Nigeria. Consequently, the income attributable to such activities will be subject to Nigerian income tax, as the arrangement reflects a sustained commercial presence in the country.

d. Contract Arrangements for Turnkey Projects:

Under the CITA, the profits of an NRC could be deemed to be derived from Nigeria where it carries out a single contract involving surveys, deliveries, installations, or construction in Nigeria. The NTA significantly expands the scope and interpretation of this basis for establishing a PE. Under the NTA, a PE will be deemed to exist where an NRC, either solely

1. Section 17(2) of the Nigeria Tax Act, 2025
 2. Section 17(3)(a) Nigeria Tax Act, 2025.
 3. Section 17(9)(a)(i) Nigeria Tax Act 2025.
 4. A place includes: (a) a place of management; (b) a branch; (c) a sales outlet; (d) an office; (e) a factory; (f) a workshop; (g) a mine, crude oil well etc. (h) facility, vessel or any installation used for natural resources exploration; (i) building, construction or installation site; and (j) any place for performing supervisory activities
 5. Section 17(9)(a)(ii) Nigeria Tax Act 2025



or jointly with any other person, undertakes any project in Nigeria involving surveys, design, delivery, construction, assembly, installation, commissioning, decommissioning, or any supervisory activity related to such works. Notably, this applies regardless of whether the activities are split across multiple entities, performed by related or unrelated parties, or partially executed outside Nigeria.

The NTA provision includes design, commissioning, decommissioning, and supervision, which were not expressly covered under CITA. This broadens the types of contracts and project roles that could trigger a PE. Additionally, the NTA allows for the aggregation of activities carried out by multiple parties, thereby preventing the artificial splitting of contracts, to avoid tax liability. This means that the use of split contract arrangements for turnkey projects to optimize tax may no longer prevent the creation of a taxable presence in Nigeria for the offshore component of the split arrangement. Finally, under this provision, a taxable presence may be established even if part of the project is executed outside Nigeria, provided it relates to a Nigerian project.

The NTA seems to codify the spirit in the decision of the Court of Appeal in *Saipem Contracting Nigeria Limited v FIRS*⁶, where it was held that the fact that a contract has off-shore and on-shore components does not derogate it from being a single contract⁷. Essentially, the court held that where the offshore and onshore components of a contract are so closely connected and interdependent that the contract cannot be fully performed without their joint execution, the contract should be treated as a single, indivisible agreement, regardless of its distinct components.

e. Furnishing of Services:

The NTA introduces a broader basis for determining whether an NRC has a PE. Under the NTA, an NRC will be deemed to have a PE in Nigeria where it furnishes any service in Nigeria, through employees, agents, subcontractors or any other

persons engaged for that purpose. This introduction is clearly expansive. This means that a PE will be established in instances where, for example, a foreign company provides engineering or advisory services to a Nigerian client by deploying its staff or local subcontractors to carry out the work on ground in Nigeria, even if the company has no physical office or registered presence in the country. In such cases, the income attributable to those services may become subject to tax in Nigeria on the basis that a taxable presence has been created.

It is crucial to note the implications of the foregoing. The provision of services within Nigeria by an NRC through an employee, agent or subcontractor will establish a PE for that NRC in Nigeria. Consequently, the NRC will be subject to full income tax on all profits attributable to its Nigerian operations, rather than the final withholding tax (WHT) that would otherwise apply if the services were rendered outside Nigeria. Further, the scope of the provision is deliberately expansive: it does not limit the nature of services to technical, management, consultancy, or professional services, but instead applies to all forms of services, encompassing a wide range of commercial activities.

In summary, foreign entities providing services in Nigeria through any form of local presence or personnel must now carefully assess their potential tax exposure, as the threshold for creating a taxable nexus under the NTA has been substantially lowered.

02 Significant Economic Presence under the NTA

Under the NTA, an NRC is deemed to have a SEP in Nigeria when they transmit, emit, or send signals, sounds, messages, images, or data of any kind by cable, radio, electromagnetic systems, or any other electronic or wireless apparatus to Nigeria in respect of any activity⁸.

It is critical to note that an NRC shall not be regarded as having a PE or SEP in Nigeria solely because it employs individuals who are resident in Nigeria, provided that the duties of such employees are not performed primarily for customers in Nigeria⁹.

6. [2019] 5 NWLR (pt 1664) 78, at 118-119 paras. B-D

7. The court held that where the offshore component of a contract is intimately related, intertwined and interwoven with the onshore components, that without the collaborative execution of the components the contract cannot be fully and duly executed, notwithstanding the various components, it is a single contract.

8. Section 17(9)(b) Nigeria Tax Act 2025. These activities include, but are not limited to, electronic commerce, application store, high-frequency trading, electronic data storage, online adverts, participative network platform, online payments, supply of user-data, search engines, digital content services, online gaming, cloud computing, and online teaching services, provided that profit can be attributed to such activity.

9. Section 17(9)(c) Nigeria Tax Act, 2025

 **Payment Made to an NRC**

Section 17(3)(b) of the NTA provides that an NRC will be subject to tax in Nigeria where a payment is made by a Nigerian resident or the Nigerian PE of an NRC in respect of services rendered from outside Nigeria, effectively broadening the scope of the CITA regime.

Under CITA, an NRC was only deemed to have a taxable presence in Nigeria where it rendered technical, management, consultancy, or professional services outside Nigeria to a person resident in Nigeria, and to the extent that it had a SEP in Nigeria. The NTA has now eliminated this limitation on the type of services. As a result, any service rendered by an NRC from outside Nigeria to a Nigerian resident or to the Nigerian PE of another NRC may now give rise to Nigerian tax liability on the profits attributable to that service, irrespective of the nature of the service provided.

That said, the NTA carves out three key exceptions where payments for remote services will not be taxable in Nigeria:

1. under a contract of employment;
2. for teaching services provided by or to an educational institution; or
3. by the foreign PE of a Nigerian resident, where the expense is borne by that foreign PE.

Notably, withholding tax (**WHT**) will apply as a final tax on the profits arising from such taxable service payments unless the NRC has a PE or SEP in Nigeria.

 **Insurance Premiums**

Finally, the profits derived by an NRC from Nigeria will be subject to tax where a payment is made to the NRC by a Nigerian resident or the Nigerian PE of another NRC, in respect of insurance premiums or risks insured from within Nigeria. This means that where a Nigerian company pays premiums to a foreign insurer for covering risks located in Nigeria, such payments may give rise to a Nigerian tax liability on the part of the foreign insurer. Although this rule is now expressly codified in the NTA, it is not entirely novel. A similar position had previously been outlined in the FIRS Information Circular on the Taxation of Non-Residents in Nigeria (the Circular)¹⁰. However, a key distinction arises in how the NTA treats such transactions.

Under the Circular, the receipt of insurance premiums by an NRC was deemed to create a PE, thereby subjecting the NRC to full income tax in Nigeria. Where the attributable profits could not be determined, the FIRS applied a deemed profit assessment. In contrast, the NTA provides that WHT will apply as a final tax on such payments, unless the NRC has a PE or SEP in Nigeria to which the insurance transaction is attributable. In such cases, the NRC may then become subject to full income taxation on the profits derived from Nigeria¹¹.



ASCERTAINMENT OF PROFITS

The income, profits, or gains of a non-resident person attributable to its **PE**, in Nigeria shall be determined subject to the following conditions:

- The PE is deemed to have the same credit rating as its parent non-resident company¹²; and
- It is also deemed to have equity and loan capital as it could reasonably be expected to have¹³.

This is the introduction of the separate entity principle for the purpose of avoiding profit shifting, as seen in other jurisdictions. In other words, by deeming the PE to have the same credit rating as its parent, this provision aims to ensure that the PE is not artificially assigned a higher risk profile that could justify excessive interest payments, which will lead to high interest deductions, thereby curbing profit shifting through inflated financing costs. Similarly, requiring the PE to have a reasonable level of equity and loan capital, as expected under section 191 of the NTA, establishes an arm's length capital structure, preventing the under-capitalisation of the PE.

10. Information Circular 2022/12. Dated 11 April 2022.

11. Section 17(4) Nigeria Tax Act 2025.

12. Section 17(5)(a) of the Nigeria Tax Act 2025.

13. Section 17(5)(b) of the Nigeria Tax Act 2025.



In addition to the above, the NTA provides that the taxable profits arising to the PE shall include income from:

- ❑ direct sales to Nigeria, by the NRC or its connected persons, of goods and services similar to those offered through the PE; and
- ❑ the provision of services or business activities in Nigeria by the NRC or its connected persons that are similar to those of the PE¹⁴.

No deduction shall be allowed for royalties, fees, or similar payments made by the PE to the NRC or its connected persons, except where such payments are reimbursements of actual expenses¹⁵.

Where the total profits attributable to a PE or a SEP in Nigeria cannot be determined using the foregoing attribution rules, such profits shall be computed by applying the profit margin of the NRC to the total income generated from Nigeria¹⁶.

If the profits so attributed are lower than the amount resulting from applying the NRC's profit margin to its Nigerian-sourced income, the higher amount, based on the profit margin, shall be deemed the total profits attributable to the PE or SEP¹⁷.

Notwithstanding the above, the minimum tax payable in such cases shall not be less than:

- the WHT already deducted at source under the NTA; or
- where WHT is not applicable, 4% of the total income generated from Nigeria¹⁸.

NON-RESIDENT SHIPPING COMPANIES & AIRLINES

There are no significant changes between the provisions under the CITA and the NTA. Generally, NRCs engaged in the transport of goods by sea or air, shall be liable to tax in

Nigeria on profits arising from the carriage of goods, passengers, livestock etc. loaded into an aircraft or ship in Nigeria excluding goods brought to Nigeria for the purpose of transshipment. That said, the NTA builds upon the framework established by CITA for non-resident shipping and air transport companies, introducing updates that aim to enhance clarity, administrative efficiency, and potentially broaden enforcement. While these changes are not drastic, they are salient and are scrutinised in the following paragraphs:



Refined Rules For Profit Ascertainment:

The NTA provides a more specific alternative for ascertaining the total profits of the NRC, when the global ratios cannot be applied. The CITA regime, particularly in section 14, provided for the application of global ratios (such as the global adjusted profit ratio and global depreciation ratio) to apportion profits to Nigerian-sourced revenue. However, where these methods could not be satisfactorily applied, the law simply allowed the FIRS to determine a "fair percentage" of the turnover attributable to Nigerian operations.

The NTA, while retaining the use of global ratios as the primary method for ascertaining profits, introduces two alternative methods for determining total profits. These are:

- the Profit Margin Method: under this method, the total profit is the amount resulting from multiplying the turnover generated by the profit margin¹⁹.
- Fair Percentage Method: similar to the CITA regime, the NTA retains the fair percentage method, allowing profits to be computed on the direction of the NRS on a fair percentage of the gross revenue from Nigerian operations.



Frequency of Minimum Tax Payment:

Under the extant CITA, specifically Section 14(4), a minimum tax of 2% of the full sum receivable from Nigerian-sourced sea or air transport operations was imposed for any year of assessment. This implied an annual assessment and payment framework, without explicitly mandating a more frequent collection. In contrast, the NTA while retaining the 2% minimum tax, now explicitly stipulates that this minimum tax "shall be computed, assessed and paid on monthly basis".

14. Section 17(5)(c) of the Nigeria Tax Act 2025

15. Section 17(7) of the Nigeria Tax Act 2025

16. Section 17(6) of the Nigeria Tax Act, 2025

17. Section 17(7) of the Nigeria Tax Act, 2025

18. Section 17(8) of the Nigeria Tax Act, 2025

19. Section 17(9)(e) of the Nigeria Tax Act defines the "profit margin" of a person to be the proportion of the earnings before interest and tax (EBIT) to income or revenue in its published audited financial statement, and in the case of persons that have no published financial statements for the period or are not required to publish financial statements, the profit margin as may be

Expanded Regulatory Mandate for Tax Compliance
Evidence:

In addition to requiring evidence of previous tax filings and Tax Clearance Certificates, under CITA, the NTA also mandates regulatory agencies to require **"evidence of tax declaration and payment in respect of the intended carriage or shipment"** as a condition for carrying on business or obtaining approvals/permits.

TAX RATES FOR NON-RESIDENT COMPANIES

The tax rates for companies generally under the NTA is 30%, except for small companies that are liable to tax at the rate of zero percent. NRCs are exempt from the payment of the 4% Development Levy charged on assessable profits of Nigerian companies.

Where the income tax paid by an NRC that is either a subsidiary of a Nigerian company or a member of a multinational group of a Nigerian company in any year yields less than the 15% minimum effective tax rate, the Nigerian parent company of such an NRC shall recompute and pay an additional tax that makes the NRC's income tax, equal to the minimum effective tax rate²⁰.

PASSIVE INCOME EARNED BY NON-RESIDENT PERSONS FROM NIGERIA

Dividend, interest, rent, royalty, directors' fee and payment to entertainers and sportspersons, the tax, when paid over to the relevant tax authority, shall be the final tax due from a non-resident recipient of the payment.

COMPLIANCE REQUIREMENT FOR NON-RESIDENT PERSONS

An NRC, like all other taxpayers, that supplies taxable goods or services to any person in Nigeria or derives income from Nigeria are required to register for tax in Nigeria and obtain a tax identification (Tax ID)²¹.

Where the income derived by the NRC is only passive income, such NRC may not be required to register for tax in Nigeria but may be required to supply certain information to the Nigerian Revenue Service (NRS)²².

An NRC deriving profits from Nigeria shall submit its returns to the NRS. The returns shall contain;

- A. the company's full financial statement attested to by a certified Nigerian accountant;
- B. tax computation schedules based on the profits attributable to Nigerian operations;
- C. true and correct statement containing profit from every source in Nigeria;
- D. duly completed self-assessment forms;
- E. evidence of the payment of tax due;
- F. computation of effective tax rate.



ADDITIONAL COMPLIANCE REQUIREMENT FOR COMPANIES IN SHIPPING AND AIR TRANSPORT BUSINESS

An NRC engaged in shipping and air transport business in Nigeria shall be required to:

- file monthly returns and evidence of payment of tax in relation to its carriage of goods and persons from Nigeria
- returns should contain detailed gross revenue statement of its Nigerian operations for the month (including invoices to customers)
- these returns shall be filed not later than the 21st day of the following month²⁴.

DEEMED ASSESSMENT FOR NON-RESIDENT

- Where the activities of an NRC produces no assessable profit, or less assessable profit than expected, or the true assessable profit cannot be determined, the tax authorities shall tax such non-resident person based on the profit derived from applying the profit margin of the person/comparable companies on the turnover generated in Nigeria.

20. Section 6(3) Nigeria Tax Act, 2025
 21. Section 6(1) Nigeria Tax Administration Act, 2025
 22. Section 6(1) Nigeria Tax Administration Act, 2025
 23. Section 11(2) Nigeria Tax Administration Act, 2025
 24. Section 21 Nigeria Tax Administration Act, 2025

CONCLUSION

The tax reform Acts have introduced a more comprehensive framework for taxing NRCs in Nigeria. By expanding the definitions of PEs and SEPs, and by clarifying profit attribution and minimum tax thresholds, the new regime seeks to align Nigeria's tax system with global best practices and digital economy realities.

As the implementation date fast approaches, NRCs engaging with the Nigerian market, physically or remotely, must proactively assess their structures, contracts, and compliance obligations to mitigate exposure and ensure alignment with the new regime.

FOR MORE INFORMATION, PLEASE CONTACT :



Olamide Obajimi
Partner
oobajimi@olaniwunajayi.net



Celestina Nwabueze
Managing Associate
cnwabueze@olaniwunajayi.net



Mayowa Olusegun
Senior Associate
molusegun@olaniwunajayi.net



Obehi Irabor
Associate
oirabor@olaniwunajayi.net



Anastasia Nwoye
Associate
anwoye@olaniwunajayi.net



Victor Nnebe
Associate
vnnebe@olaniwunajayi.net