Tax Updates

NRS Releases Nine (9) Circulars to Guide Implementation of The Tax Reform Acts

Oluwasanmi Afolayan
oafolayan@krestonpedabo.com
Senior Manager, Tax Advisory

Fidelis Chukwu
fchukwu@krestonpedabo.com
Partner, Tax Advisory

Chief Editor

Killian Khanoba
kkhanoba@krestonpedabo.com
Senior Partner, Tax Compliance & Advisory

Publisher

Albert Folorunsho
afolorunsho@krestonpedabo.com
Managing Consultant
Kreston Pedabo

For enquiries: technical@krestonpedabo.com

PKC/TECH/26/08/12/006

1.0 Background

The Nigeria Revenue Service (NRS) recently issued nine (9) Information Circulars, six months post-commencement of the Nigeria Tax Reform Acts. The Circulars provide administrative guidance on the interpretation and implementation of key provisions of the new tax laws.

2.0 Key Highlights of the Circulars

The Circulars cover a broad range of matters including those carried forward from the repealed laws as well as new introductions into the Nigerian tax system. This newsletter highlights mainly the contents of the Circulars in respect of the new tax provisions contained in the Nigeria Tax Act (NTA) and the Nigeria Tax Administration Act (NTAA).

2.1 Ascertainment of Chargeable Gains

- Chargeable gains accruing to companies are taxable as income under the NTA at the income tax rate of 30%.
- Where capital allowances have been claimed on a business asset, the gain upon disposal is computed as the disposal proceeds less the tax written down value of the asset and allowable expenses. On the other hand, where no capital allowances have been claimed on an asset, the gain is computed as disposal proceeds less the historical cost of acquisition and allowable expenses.
- Chargeable gains are to be classified as 'Other Income' for tax computation purposes.
- Where disposal proceeds are received over a period exceeding 12 months, the gain is recognised proportionately over the instalment period.
- Transitional arrangements from the erstwhile CGT regime to the new tax regime under the Nigeria Tax Act (NTA) are as follows:

  » Gains arising from the disposal of assets from 1 July to 30 November 2025 are expected to be assessed and filed under the old CGT regime not later than 31 December 2025.

  » Gains arising from the disposal of assets in December 2025 are expected to have been filed on or before 30 June 2026.

  » Gains arising from the disposal of assets from 1 January 2026 are fully subject to the provisions of the NTA.

» Where payment instalment is for a period less than 18 months, and parts of the instalment payments extend beyond 31 December 2025, the provisions of the old CGT Act will apply to instalment payments made from 1 January 2026.

» Where payment instalment is for a period more than 18 months, and parts of the instalment payments extend beyond 31 December 2025, the provisions of the NTA will apply to instalment payments made from 1 January 2026.

2.2 Ascertainment of Income Tax of Companies and Development Levy

- The total profits of a company for any year of assessment is the total assessable profits from all sources, including chargeable gains from the disposal of assets, less chargeable loss for the year, losses brought forward and capital allowances incurred by the company.
- Loss from disposal of chargeable assets is deductible from assessable profits.
- Chargeable loss from the disposal of virtual assets may only be deducted from gain derived from disposal of virtual assets, and any unrecouped loss may be recouped from chargeable gains from the same asset in subsequent years.
- Where Value Added Tax (VAT) or import duty due on a Qualifying Capital Expenditure (QCE), capital allowance will be granted only to the extent to which VAT or import duty has been charged or paid.
- In computing the company's assessable profit for income tax purposes, chargeable gains ascertained from the disposal of virtual assets and other chargeable assets should be added to the adjusted profit from trade or business.
- Companies enjoying Economic Development Tax Incentive (EDTI) may deduct the portion of capital allowance attributable to priority activities only from assessable profits of priority business, and vice-versa.
- Transitional rules for claim of capital allowance are as follows:

» **Where the useful life of an asset under CITA is less than NTA:** Capital allowance may be claimed in respect of the number of years under NTA, less the number of years for which allowance has previously been claimed under CITA.

» **Where the useful life of an asset under CITA is more than or equal under NTA:** A single one-off allowance is granted for the residue, provided that 1% notional amount of the QCE is recorded until the asset is disposed of.

- **Where capital allowance is fully utilised under CITA:** No more capital allowance is granted on the notional amount retained in the books.

- A 4% Development Levy is imposed on a company's assessable profits, except for small companies, non-resident companies, and assessable profits computed for Hydrocarbon Tax.
- Non-resident entities are subject to income tax in Nigeria on share of profits received from a Nigerian partnership, other than partnerships engaged in petroleum operations in Nigeria.

2.3 Estimated Tax Regime Applicable to Companies Engaged in Midstream LNG Activities.

- Midstream LNG companies are required to file estimated tax returns within two months of the commencement of each accounting period.
- The estimated returns are subject to review and validation by the tax authority, who may resort to determining estimates on a Best of Judgement basis where the company fails to provide its estimates.
- Estimated tax is payable in 12 equal monthly instalments thus:

  - first instalment due no later than the third month of the accounting period.
  - subsequent instalments due on or before the last day of each month.
  - final instalment due not later than the due date of filing annual returns.

- Failure to file the estimated returns on the due date attracts a penalty of ₦10 million on the first day of default and ₦2 million for each subsequent day, and any other sum or sanction prescribed.
- Transitional Issues:

  - The obligation to file estimated returns is effective from the 2026 accounting period.
  - Companies with December year-end are expected to have filed their estimated returns by 28 February 2026, with payment starting from March 2026.

2.4 Taxation of Non-Resident Shipping and Air Transport Companies

- Profits derived by non-resident shipping and airline companies from the carriage of passengers and cargo loaded in Nigeria are subject to income tax, while passengers or cargo brought into Nigeria solely for trans-shipment are exempt.
- Freight profit attributable to Nigerian operations is taxable using the Global Adjusted Profit Ratio or the Global Depreciation Ratio, where there is similar tax treatment in the residence country.
- Where there is no similar treatment in the residence country, total profit in Nigeria is determined either by the ratio of Earnings Before Interest and Tax (EBIT) to total income or revenue (profit margin) to the turnover attributable to Nigeria; or by applying a fair percentage to the gross revenue derived in Nigeria. The 'fair' percentage is not specified in the Circular.
- Where these ratios cannot be satisfactorily applied, the taxable profits attributable to Nigeria are determined by applying the company's EBIT margin to its Nigerian turnover.
- Minimum tax is 2% of the revenue receivable from carriage of passengers or cargo from Nigeria.
- Monthly tax returns must be filed not later than the 21st day of the following month on freight income; and annual tax returns with respect to freight and non-freight income earned from Nigeria.
- To accompany the monthly returns is the tax computation schedule charged at 2% of gross revenue, in part-fulfilment of its tax obligations for the year of assessment.
- Annual returns are to be accompanied by full audited financial statements covering the global operations of the foreign company alongside the separate financial statements of the Nigerian operations certified by a Nigerian accountant, amongst other documents.
- Non-freight income such as charter fee in the case of time or bareboat charter is subject to tax in Nigeria in line with the domestic laws including deduction of Withholding Tax (WHT), subject to treaty provisions where the residence country has a tax treaty with Nigeria.
- Taxation of non-resident crew members in Nigeria is triggered where the employment is wholly or partly exercised in Nigeria, and the income is not taxable in the residence country of such crew member.
- Where the payer is a resident individual, tax is to be deducted tax at the point of payment, but subject to refund upon presentation of evidence of taxation in residence country.
- Non-resident shipping companies require Tax Clearance Certificates in order to repatriate funds out of Nigeria.

2.5 Deduction of Value Added Tax (VAT) at Source

- Where both the supplier and purchaser are appointed as VAT withholding agents, the purchaser is responsible for withholding and remitting the VAT.
- Where a non-resident supplier appointed by the NRS fails to collect and remit VAT, the Nigerian appointed agent must do so.
- VAT withheld at source must be reported separately and remitted by the 14th day of the following month in the currency of transaction.
- Suppliers whose output VAT has been withheld are entitled to recover qualifying input VAT.

2.6 Changes in VAT Administration

- Input VAT is recoverable on taxable goods, services, intangible assets and capital assets, subject to the conditions prescribed under the NTA.
- Excess input VAT may be offset against output VAT in subsequent months or refunded upon taxpayer's application for refund.
- Taxable persons must record and report taxable supplies through the Electronic Fiscal System (EFS) and maintain records of all transactions processed through the EFS.
- Failure to use the EFS attracts an administrative penalty of ₦200,000, plus 100% of the tax due, and applicable interest.

2.7 Administration of Stamp Duties

- The NRS has jurisdiction where a company is a party to a dutiable instrument, while the States' Internal Revenue Service will administer stamp duties on instruments executed strictly between individuals or partnership, or unincorporated business.
- All dutiable instruments executed in Nigeria must be stamped within 30 days of execution.

- Agreements and contracts generally attract a fixed stamp duty of ₦1,000, except where the contract value is below ₦1 million or relates to employment, hire of labour, sale of goods, or hire-purchase.
- Failure to stamp a dutiable instrument within the prescribed period attracts a penalty of 10% of the unpaid duty, plus interest at the prevailing CBN Monetary Policy Rate.

2.8 Tax Refund Administration

- Tax refund may either take the form of refund of excess tax or erroneous remittance by taxpayer, or refund for banks in the event of the latter's over-remittance, multiple remittance, wrong remittance or error of transposition when remitting taxes to the NRS.
- Banks are not allowed to offset over-remittance against future tax collections.
- Refund claims arising from excess payment of tax by a taxpayer is subject to a tax refund audit, while claims by banks are subject to a desk review to confirm validity of the claim.
- Refund claims for stamp duty will not be considered except for cases of double or over payment as a stamp duty certificate is confirmation that the payer has gotten value for the duty paid.
- Application for refund of tax paid in foreign currency will be considered and upon approval, made in Naira at the prevailing rate in which the remittance of the amount to be refunded were made.
- Application for refund will be discontinued or suspended where a taxpayer has fully utilised its WHT credit notes.
- Before any refund is paid to a taxpayer, the NRS will recover all outstanding tax liabilities, if any, from refundable amount irrespective of the tax type that generated the refund. The balance remaining thereafter is paid to the taxpayer as refund.
- Timeline for processing refunds is only triggered where the application is valid, that is, containing all prescribed information and supporting documents.
- Fraudulent VAT refund claims attract a penalty of 100% of the amount refunded, plus interest at the prevailing CBN Monetary Policy Rate, while fraudulent claims relating to other taxes attract a 50% penalty, plus applicable interest.

2.9 Claim of Tax Treaty Benefits and Unilateral Credit Relief

- Foreign tax credit claims must be made within two (2) years after the end of the year of assessment in which the foreign tax was paid. Adjustments to under-claimed or over-claimed credits may also be made within two (2) years of the determination.
- Reduced treaty WHT rates apply only where the relevant treaty conditions are satisfied.
- Domestic WHT rates contained in the local laws continue to apply where payments are attributable to a permanent establishment (PE) or fixed base in Nigeria, regardless of the treaty provisions.
- For non-resident companies in treaty countries operating in international traffic, and loading passengers or cargo from Nigeria, the taxing right of Nigeria depends on the nuances contained in the specific Double Tax Agreement (DTA).
- The DTAs with the UK, China and Italy totally exempt the profits of shipping & airline NRCs from tax in Nigeria and vice versa, DTAs with Czech Republic and Slovakia align with the provisions of the domestic laws, while the other 11 DTAs require reciprocity in order to grant an exemption in the source country.
- Where there is no reciprocity, a minimum tax of 1% - 1.5% is imposed on the non-resident entity in Nigeria.
- NRCs which intend to claim treaty benefits in Nigeria are required to apply to the NRS, in line with laid down procedure, accompanied with requisite documentation.

Our Comments

The Circulars released by the NRS are long overdue. The enactment of the Tax Reform Acts, particularly the NTA and the NTAA launched Nigeria into an unguided new tax regime which required careful navigation by the tax authorities and the taxpayers alike.

Six (6) months later, nine (9) circulars have been released to the public to guide both substantive and procedural areas of the new tax laws. While these Circulars are not law, they aim to reduce uncertainty for taxpayers and attempt to shed some light on NRS' interpretation of key provisions and its administrative expectations for taxpayers.

It is therefore recommended that taxpayers get acquainted with the contents of the Circulars and determine the impact of same on their businesses and tax obligations. More importantly, we recommend that tax practitioners be engaged to provide better clarity in respect of tax obligations, especially in reconciling the provisions of the laws, and the expectations of the tax authorities.

Finally, we urge taxpayers to continue to monitor further directives from the NRS and ensure proactive rather than reactive measures towards tax compliance which will be key to managing compliance risks and avoiding the stiff penalties under the new tax regime.

KRESTON PEDABO

Lagos Offices:

67, Norman Williams Street
SouthWest, Ikoyi
Lagos - Nigeria
Tel: 01-2919041; 0808 820 8747

27, Alhaji Bashorun Street
SouthWest, Ikoyi
Lagos - Nigeria

info@krestonpedabo.com
www.krestonpedabo.com

Abuja Office:

Ground Floor, Amb. Albert
Osakwe House
1473, Inner Block Street
Central Business District
Abuja FCT - Nigeria

Tel: 0706 546 89824