TAX IMPLICATIONS OF THE DIFFERENT WORKFORCE ENGAGEMENT FORMS IN NIGERIA:
KEY CONSIDERATIONS FOR IMMIGRATION CLIENTS

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As global businesses expand into emerging markets, understanding the local tax implications of the various forms of workforce engagement becomes essential. Nigeria, one of the largest economies in Africa, presents vast opportunities for international businesses and professionals. However, navigating its tax landscape requires a thorough understanding of the forms of workforce engagement and their corresponding tax obligations. This article explores the tax implications of different forms of workforce engagement in Nigeria.

From a legal perspective, there are two broad categories of workforce in Nigeria: "Workers" and "Employees". Workers are employees who perform manual labour or clerical work and employees are persons who perform administrative, technical, professional, or executive functions[1]. Organizations engage these employees in different forms and the tax implications for their engagement is determined by the form in which they are engaged.

The major forms of workforce engagement in Nigeria and their tax implications are as follows:

1. Employees engaged under an employment contract

Employment contracts are agreements (oral or written) between an employer and an employee, outlining the terms and conditions of employment. Employees engaged under an employment contract are entitled to receive other compensation aside from their basic salary. Such compensation includes transportation allowance, housing allowance, leave allowance, telephone subsidy, retirement benefits, annual bonuses and compensation for loss of office[2].

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[1] Section 91 of the Labour Act.

[2] The Labour Act is limited in scope as it applies only to workers. Section 1(2) of the Labour Act provides that an employer may provide food, dwelling place or any other allowance or privilege as part of a worker's remuneration if the food, dwelling place, allowance or privilege is

The salaries of this category of employees are subject to Pay-As-You-Earn (PAYE) tax, which is deducted at source by the employer and remitted to the relevant tax authorities of the residential place of the tax payer on or before the 10th day of the succeeding month after salary payment. The tax rates are progressive, ranging from 7% to 24% depending on the employee's income level[3].

2. Independent contractors and consultants

Independent contractors are self-employed individuals or entities engaged by a company to provide specific services without being on the employer's payroll. Unlike employees engaged under an employment contract, independent contractors and consultants are not entitled to receive allowances or payments aside from the remuneration agreed with the employer for the specific service or project. Employers are required to deduct Withholding Tax at 5% of the independent contractor’s remuneration and remit same to the tax authorities not later than the 21st or the 30th day of the month following the month of payment in the case of remittance to the Federal or relevant State Internal Revenue Service respectively[4].

3. Temporary staff

Temporary staff include casual workers, and other contract staff who are hired for a specific period or project, often through a staffing agency. The allowances payable to a temporary staff depends on the staff’s contract with the employer or the employer’s contract with the staffing agency who engaged the staff. The staffing agency is typically responsible for the PAYE tax deductions for such temporary staff. However, if the temporary staff are directly hired by the employer, the employer must deduct and remit the PAYE tax. Temporary staff are subject to the same progressive tax rates as regular employees.

4. Interns and trainees

Interns and trainees are usually students or recent graduates gaining practical experience in their field of study. Interns and trainees may or may not receive a stipend. If they are paid stipends or allowances and if such stipends or allowances are not intended to cover for any sums or expenses that they incur in the performance of their duties to the company and from which they are not intended to make profit, the company must deduct PAYE tax from their stipends[5]. Unpaid interns and trainees are generally not subject to tax, but companies must ensure compliance with local labor laws regarding internships and training programs.

The Personal Income Tax (Amendment) Act (PITA) bestows the administration of PAYE Tax on the State Internal Revenue Service (SIRS) of the employee’s residence. For employees resident in the Federal Capital Territory, the PAYE tax is administered by the Federal Inland Revenue Services (FIRS). Please note that PAYE tax cannot be deducted from the remuneration of employees who do not earn more than the minimum wage in Nigeria.

prescribed by law, by a collective agreement or by an arbitration award because it is customary or desirable in view of the nature of the industry or occupation in which the worker is engaged but an employer cannot give to a worker any intoxicating liquor or noxious drug by way of remuneration. The terms and conditions of employment of non-workers including allowances payable to them are primarily subject to the terms of their respective contracts of employment.

[3] The sixth schedule of the Personal Income Tax (Amendment) Act 2011.

[4] The Withholding Tax Regulations 2024

[5] Section 3(b) of the Personal Income Tax (Amendment) Act 2011.

The PAYE tax is deductible from any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted to any temporary or permanent employee[6].

KEY CONSIDERATIONS FOR EXPATRIATE EMPLOYEES

For expatriates looking to work or establish businesses in Nigeria, understanding the different forms of workforce engagement is important. This is because the nature of workforce engagement determines the tax compliance obligations required of the employer. Here are some key considerations in order to manage tax exposures:

- **Appropriate Designation of Staff:** Employers who wrongly designate full-time employees as contractors will be deemed to have defaulted from their tax compliance obligations as tax authorities are authorized to review the nature of workforce relationships and determine their appropriate form based on their best of judgment. It is important that employers accurately designate their workforce and remit taxes as appropriate to avoid payment of penalties and interest on unremitted taxes.

- **Compliance and Reporting:** expatriate employees must ensure compliance with Nigerian tax laws including the Personal Income Tax (Amendment) Act 2011, the Capital Gains Tax Act (as amended), the Withholding Tax Regulations 2024, and the Finance Act 2023. Timely remittance of taxes and accurate reporting is required. Non-compliance will result in penalties and interest on unremitted taxes.

- **Double Taxation Treaties:** Nigeria is a signatory to several double taxation treaties (DTTs) with various countries (Nigeria has double tax treaties with Belgium, Canada, China, Czech Republic, France, the Netherlands, Pakistan, Philippines, Romania, Singapore, Slovakia, South Africa, Spain, Sweden, and the United Kingdom) to prevent double taxation of income. Expatriate employees should leverage these treaties to minimize their tax exposure.

[6] Section 3(b) of the Personal Income Tax (Amendment) Act 2011

- **Local Expertise:** Engaging local tax experts and legal advisors can help navigate the complexities of Nigerian tax laws and ensure full compliance with all tax obligations.
- **Work Permit Requirements:** expatriate employees should be aware of work permit requirements and ensure that all necessary permits and registrations are obtained before taking up employment in Nigeria. Failure to do so can result in fines and deportation.
- **Cultural Considerations:** Understanding and respecting local cultural norms and business practices can enhance relationships with local stakeholders and facilitate smoother operations.

CONCLUSION

Understanding the tax implications of the various forms of workforce engagement in Nigeria is critical for expatriate employees and international businesses operating in the country. The nature of workforce engagement determines the tax compliance obligations of the employer. By staying informed and compliant with local tax regulations, businesses and professionals can avoid legal issues and optimize their operations within Nigeria. For potential investors and their respective employees that may be transferred to Nigeria on an assignment, this knowledge is essential to ensure successful market entry into Nigeria and compliant business operations.

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