

# THE NIGERIAN TAX BILL AND TAX OBLIGATIONS OF NON-RESIDENT SHIPPING OPERATORS



LAGOS | ABUJA | CALABAR



[www.advocaat-law.com](http://www.advocaat-law.com)



Advocaat Law Practice



advocaatlawpractice

## INTRODUCTION

The Nigerian government has recently introduced a series of tax reform bills, including the Nigerian Tax Bill 2024 (the "Bill"), which aims to streamline and unify the tax system and to ensure that all forms of income, transactions, and instruments are taxed under a single, coherent framework<sup>1</sup>. A key focus of these reforms is ensuring that Non-Resident Companies (NRCs), particularly those involved in shipping operations within Nigeria, pay their fair share of taxes. This is particularly relevant given the complexities of cross-border operations that have historically allowed many NRCs to avoid full tax compliance.



This short write-up there aims to highlight the tax obligations imposed on NRCs under the new tax regime as stipulated in the Bill.

### DEFINITION OF NON-RESIDENT COMPANY UNDER THE BILL?

The Bill defines a non-resident company as any entity not formed, registered, or incorporated under Nigerian law and whose central or effective management is not based within the country<sup>2</sup>. This definition has significant tax implications. While resident companies are subject to tax on their worldwide income, non-resident companies are taxed solely on income and gains derived from Nigerian sources<sup>3</sup>.

The Bill further introduces the concept of a permanent establishment, which signifies a taxable presence of a non-resident entity within Nigeria. This includes scenarios where a company conducts business through a physical location or operates through an authorized representative within the country<sup>4</sup>.

A non-resident company with a permanent establishment in Nigeria is liable for taxes on profits attributable to that establishment. Moreover, the bill recognizes the concept of a "significant economic presence," which can trigger tax obligations for non-resident companies that may not have a physical presence in Nigeria but engage in substantial business activities within the country<sup>5</sup>.

### AGELONG ISSUE OF TAX REMITTANCES FROM NON-RESIDENT COMPANIES

The Federal Inland Revenue Service (FIRS), in its role as the government agency in Nigeria responsible for assessing, collecting, and accounting for taxes and other revenues accruing to the Federal Government of Nigeria, faces significant challenges in taxing NRCs operating in Nigeria. These challenges stem from the complex nature of international shipping operations, making it difficult to accurately determine the portion of their global profits attributable to Nigerian activities.

Existing tax laws can be described as containing unclear provisions, particularly regarding the interaction with external tax regimes, creating loopholes that NRCs can exploit to minimize their tax liabilities. This, coupled with a lack of clarity in tax regulations and difficulties in tracking the financial activities of these international companies, has led to widespread non-

<sup>1</sup> Section 1 – Nigerian Tax Bill 2024

<sup>2</sup> Section 203 – Nigerian Tax Bill 2024

<sup>3</sup> Section 203 – Nigerian Tax Bill 2024

<sup>4</sup> Section 17 (2) – Nigerian Tax Bill 2024

<sup>5</sup> Section 17 – Nigerian Tax Bill 2024

compliance and even tax evasion by some NRCs.

Furthermore, the FIRS faces challenges in verifying the accuracy of financial statements submitted by NRCs. While the requirement for audited financial statements has been relaxed, ensuring the reliability of the alternative gross revenue statements certified by company directors remains crucial. Determining the taxable income of NRCs also presents difficulties, as applying various profit calculation methods consistently and fairly across different companies can be complex.

The limited capacity and expertise within Nigeria to handle the intricacies of international shipping and air transport regulations pose another significant hurdle. This lack of local capacity hinders the FIRS' ability to effectively audit and assess the tax liabilities of these complex global businesses.

## **TAX OBLIGATIONS OF NON-RESIDENT SHIPPING COMPANIES UNDER THE NIGERIAN TAX BILL 2024**



### **A. Taxation of Profits**

Under the Bill, Non-resident shipping companies are liable to taxes on profits generated from transporting passengers, livestock, or goods originating or loaded within Nigeria<sup>6</sup>.

<sup>6</sup> Section 18 – Nigerian Tax Bill, 2024

<sup>7</sup> Section 18 (3) – Nigerian Tax Bill, 2024

<sup>8</sup> Section 18 (6) – Nigerian Tax Bill, 2024

The bill outlines two methods for calculating taxable profits. If the tax authority in the company's home country employs a similar profit assessment method, Nigeria may utilize the profit or loss figures determined by that country. Alternatively, in the absence of a comparable basis, the total profit is calculated by multiplying the Nigerian turnover by a predetermined profit margin<sup>7</sup>.

### **B. Minimum Tax and Reporting Requirements**

Regardless of the profit calculation method, non-resident shipping companies are subject to a minimum tax of 2% on their gross revenue from Nigerian operations. This minimum tax is calculated, assessed, and paid on a monthly basis<sup>8</sup>. While audited financial statements are no longer mandatory, companies must submit detailed gross revenue statements certified by a director and an external auditor, along with supporting contract agreements<sup>9</sup>. This ensures accurate reporting of income.

### **C. Compliance and Enforcement**

Regulatory agencies within the shipping sector are responsible for enforcing compliance, which includes requiring evidence of income tax filings for the previous year, verifying tax clearance certificates for the preceding three years, and ensuring evidence of tax declarations and payments for the intended carriage or shipment<sup>10</sup>. Compliance with these requirements is essential for

<sup>9</sup> Section 18 (7) – Nigerian Tax Bill, 2024

<sup>10</sup> Section 18 (9) – Nigerian Tax Bill, 2024

conducting business in Nigeria and obtaining necessary approvals and permits.

#### **D. Taxation of Other Income and Services**

Income from activities such as vessel or container leasing, non-freight operations, or other incidental income falls outside the specific shipping provisions and is taxable under other relevant sections of the Bill<sup>11</sup>. Services consumed within a free zone within Nigeria's customs territory are subject to applicable transaction taxes<sup>12</sup>. Similarly, services provided to and consumed by individuals within Nigeria are also taxable.

#### **CONCLUSION**

The Nigerian Tax Bill 2024 when passed into Law will impose some legal obligations on Non-Resident Companies shipping companies. This article has highlighted what the tax obligations are and it is hoped that the companies will be abreast of their obligations in order not to run afoul of the Nigerian government.

It is pertinent that Non-Resident shipping companies consult legal practitioners with astute knowledge and expertise in Taxation and other related matters for proper guidance on the subject.

#### **CONTACTS**



**OLADAPO ADEMOLA**

[oladapo.ademola@advocaat-law.com](mailto:oladapo.ademola@advocaat-law.com)



**EDWIN EKWEALOR**

[edwin.ekwealor@advocaat-law.com](mailto:edwin.ekwealor@advocaat-law.com)

---

<sup>11</sup> Section 18 (8) – Nigerian Tax Bill 2024

<sup>12</sup> Section 144 – Nigerian Tax Bill 2024