

INTRODUCTION

A Nigerian startup seeking to raise capital from international investors may find itself having to make an important corporate restructuring decision before its next funding round: should it access funding directly?, or should it establish an offshore holding company as the investment vehicle? Increasingly, founders are opting for the latter. Some businesses seeking access to international venture capital have adopted offshore holding company structures, often through a process known as an offshore flip. [1] The attraction is understandable. International investors often prefer to invest through corporate structures with which they are familiar, particularly where these offer established shareholder protections, flexible financing instruments, predictable governance arrangements and clearer pathways to exit. For Nigerian founders, an offshore parent company can serve as a gateway to international capital, rather than merely a means of relocating the legal ownership of their businesses. Nevertheless, the growing adoption of these structures also raises questions about value creation, ownership, regulatory oversight and the extent to which Nigerian businesses should be subject to the tax consequences of arrangements established outside the country.

These considerations have become important following the introduction of the Nigeria Tax Act 2025 ('NTA'). The revised tax framework brings renewed attention to the treatment of income flowing from Nigerian companies to foreign holding entities, the conditions for accessing double taxation treaty benefits and the potential Nigerian tax exposure arising from indirect transfers of interests in Nigerian assets. For founders, private equity funds and international investors, the critical consideration is whether an offshore holding company structure can withstand scrutiny under Nigerian tax law while serving its intended commercial purpose. This article examines the tax and legal considerations that should inform the use of offshore holding companies in cross-border private equity investments, with particular emphasis on withholding taxes, treaty entitlement and indirect transfers.

PRIVATE EQUITY: DRIVING BUSINESS GROWTH AND ECONOMIC DEVELOPMENT IN NIGERIA.

Private equity is an investment in which private equity firms raise capital to acquire and manage privately held companies or to make publicly traded companies private, aiming to improve performance and exit after several years at a profit. Private equity plays a vital role in Nigeria's

[1] An offshore flip is legal and corporate restructuring process where an existing domestic company creates a new parent holding company in a foreign jurisdiction.

economic growth by providing essential capital to businesses, fostering innovation, and driving job creation. In recent years, Nigeria's private equity market has continued to attract growing global interest, fuelled by a dynamic technology ecosystem and an increasing number of high-growth startups.[2] According to market research, the average deal size in Nigeria's private equity market was estimated at US$68.28 million in 2025.[3]

Notably, private equity has also boosted the fintech revolution by backing firms that are revolutionising digital payments and bringing millions of unbanked Nigerians into the formal financial system.[4] Beyond fintech, investments in the energy sector, agriculture, and healthcare are helping to build the foundational infrastructure necessary for sustainable future growth, while also improving essential services for the population. Through these focused efforts, private equity continues to be a vital force in shaping Nigeria's economic development.

WITHHOLDING TAXES: TAX IMPLICATIONS DURING THE INVESTMENT HOLDING PERIOD

An important consideration in cross-border private equity investments is the tax treatment of income generated by Nigerian portfolio companies and subsequently received or distributed by the fund and its investors. During the investment holding period, returns may arise through dividends, interest on shareholder loans, royalties and payments for management, technical or consultancy services. These payments may attract withholding tax ('WHT') under Nigerian domestic law, depending on their nature and the applicable statutory provisions. In this regard, the Deduction of Tax at Source (Withholding) Regulations 2024 remains relevant, subject to applicable transitional and implementation provisions.

For regulatory purposes, the Investments and Securities Act 2025 ('ISA 2025') expressly brings private equity funds within the statutory framework governing collective investment schemes ('CISs').[5] The ISA 2025 empowers the Securities and Exchange Commission ('SEC') to recognise different legal structures through which such schemes may be constituted. Private equity funds fall within the broader regulatory framework for CIS and, where authorised by the SEC, are subject to the applicable tax treatment of authorised CIS under the NTA.

The NTA adopts a generally uniform tax framework for authorised CIS, irrespective of their commercial form. Where a CIS is structured as a trust, its income is assessed at the trustee level as if the trustees were carrying on business as an investment company. For this purpose, the interests of unit holders are treated analogously to shares, while profits available for distribution are treated as dividends. In determining taxable income, deductions are permitted for expenses properly incurred in the operation of the scheme, including management fees, trustee fees and remuneration paid to fund managers.[6]

At the fund level, WHT deducted from income earned by a CIS is treated as an advance payment of income tax, to the extent that the income does not constitute franked investment income. The WHT

[2] Africa Business insider, " Top 10 counties leading Africa's Start up ecosystem in 2025 https://africa.businessinsider.com/local/lifestyle/top-10-countries-leading-africas-startup-ecosystem-in-2025/bcx273r
[3] Private Equity - Nigeria | Statista Market Forecast
[4] The African Tech Startups Funding Report 2025 https://disruptafrica.com.www500.your-server.de/wp-content/uploads/2026/02/The-African-Tech-Startups-Funding-Report-2025.pdf
[5] Section 150 of the ISA 2025 broadens the definition of a CIS to cover open- and closed-ended pooled investment vehicles, including those offered exclusively to qualified investors, while section 151 empowers the Securities and Exchange Commission (SEC) to recognise different legal structures through which such schemes may be constituted.
[6] Section 63(2), NTA 2025

may be credited against the income tax payable by the CIS. [7]The NTA also provides an income tax exemption for dividends distributed by an authorised CIS to its unit holders. This exemption is relevant to the distribution of investment returns through the fund structure.[8]

These provisions should, however, be distinguished from the tax treatment of payments made directly by Nigerian portfolio companies to offshore investors or holding companies outside an authorised CIS structure. Section 51(2) of the Nigeria Tax Administration Act 2025 ('NTAA') provides that WHT deducted and remitted in respect of specified payments, including dividends, interest, rent and royalties, constitutes the final tax due from a non-resident recipient. Consequently, where a foreign holding company receives such payments directly from a Nigerian portfolio company, the applicable WHT may represent its final Nigerian tax liability on that income, subject to any available relief under an applicable double taxation agreement.

TREATY ENTITLEMENT AND ACCESS TO TAX BENEFITS

For cross-border private equity investments, access to double taxation relief is an important consideration when determining the appropriate holding structure. Where investment income is subject to tax in both Nigeria and the jurisdiction in which the foreign investor or holding company is resident, the resulting tax exposure may reduce the returns available for distribution or reinvestment. The NTA addresses this through both unilateral foreign tax credits[9] and relief available under double taxation agreements ('DTAs')[10].

A Nigerian tax resident who earns income or profits from outside Nigeria and pays tax on that income in the source country may claim a credit against the Nigerian tax payable on the same income.[11] This provision offers unilateral relief even where Nigeria does not have a double taxation agreement with the source country, provided the statutory conditions are satisfied.

The NTA recognises Nigeria's existing double taxation agreements and provides that such agreements operate to eliminate double taxation in respect of income taxes covered by the relevant treaty.[12] Foreign tax paid to a treaty partner may be credited against the Nigerian tax payable on the corresponding income or profits.[13] The credit is, however, limited to the lower of the foreign tax paid and the Nigerian tax attributable to that income.[14] A claim for the credit must also be made within two years after the end of the relevant year of assessment.

For private equity investors, treaty access is relevant where an offshore holding company receives dividends, interest or royalties from a Nigerian portfolio company. The availability of treaty relief may reduce the applicable withholding tax burden, depending on the provisions of the relevant treaty and the nature of the payment. However, incorporation in a treaty jurisdiction does not, by itself, guarantee

[7] Section 63(3), NTA 2025
[8] Section 63(4), NTA 2025
[9] Section 122(2) of the NTA, 2025- The foreign tax paid to a treaty partner in accordance with the agreement, and in respect of income or profits chargeable to income tax in Nigeria may be allowed as a credit against tax payable
[10] Nigeria has DTTs with Belgium, Canada, China, Czech Republic, France, the Netherlands, Pakistan, the Philippines, Romania, Singapore, Slovakia, South Africa, Spain, Sweden, and the United Kingdom.
[11] Section 120 NTA
[12] Section 121 NTA 2025
[13] Section 122, NTA 2025
[14] Section 120(2) NTA 2025

access to treaty benefits. The NTA requires a non-resident claiming treaty benefits to be a resident of the relevant treaty partner and the beneficial owner of the income in respect of which relief is sought.[15]

This requirement has important implications for offshore holding structures commonly used in private equity transactions. Where a holding company is established principally as an intermediary to obtain treaty benefits, without genuinely owning or exercising control over the relevant income, its entitlement to relief may be challenged. This concern is reinforced by Section 121(6), which seeks to prevent treaty-shopping arrangements and other forms of abuse designed to secure reduced or non-taxation for persons who are not residents of the treaty partner.

TAXATION OF INDIRECT TRANSFERS IN CROSS-BORDER EQUITY TRANSACTIONS

A significant development under the NTA is the expansion of Nigeria's taxing rights over gains arising from indirect transfers of interests in Nigerian companies and assets. Traditionally, investors can dispose shares in an offshore holding company without directly transferring shares in its Nigerian subsidiary. However, where the value of the offshore entity is substantially derived from Nigerian assets or operations, such a disposal may now trigger Nigerian capital gains tax ('CGT').[16]

Sections 46(f) and 46(g) of the NTA establish the circumstances in which shares or interests in a foreign entity may be treated as situated in Nigeria for tax purposes. In particular, section 46(f) addresses situations where, within the 365 days preceding the disposal, more than 50% of the value of the shares or interests disposed is derived, directly or indirectly through one or more interposed entities resulting in the change in direct or indirect ownership structure of a Nigerian entity, or from immovable property or other chargeable assets situated in Nigeria[17]. Section 46(g) further addresses interests in entities connected to Nigeria, including Nigerian companies and entities holding interests in Nigerian companies or assets, as specified in the provision.

Section 47 complements these provisions by addressing the indirect transfer of ownership of Nigerian companies and assets. It provides that where a non-resident disposes of an interest in shares, resulting in a change in the ownership structure of a Nigerian company or membership of its group, or disposes of an interest in an asset situated in Nigeria, the relevant asset may be deemed to be situated in Nigeria for tax purposes. Consequently, a disposal undertaken offshore may fall within Nigeria's tax jurisdiction even where the transaction does not involve the direct transfer of shares in a Nigerian company.

These provisions have important implications for cross-border private equity transactions, for those involving offshore holding companies. For instance, where a private equity fund holds its investment in a Nigerian portfolio company through a foreign holding company, the disposal of shares in that foreign holding company may attract Nigerian CGT where the statutory conditions are satisfied. The fact that the transaction is executed between foreign parties or that the shares disposed are issued by a foreign entity does not, by itself, exclude the transaction from Nigerian tax exposure.

[15] Section 121(7), NTA 2025

[16] Under the NTA, the CGT rate for companies has increased from 10% to 30%, aligning it with the corporate income tax rate and supporting a more unified tax framework for the treatment of gains and income

[17] Section 17(2) of the NTA provides that gains derived by a non-resident from the disposal of chargeable assets are taxable in Nigeria where the asset is located in Nigeria; or the asset is deemed to be located in Nigeria

CONCLUSION AND RECOMMENDATIONS

The NTA has introduced important tax considerations for cross-border private equity investments, regarding withholding tax on cross-border payments, access to double taxation treaty benefits and the taxation of indirect transfers. These reforms require investors to look beyond the immediate commercial advantages of offshore holding structures and consider their tax implications throughout the investment lifecycle.

Although offshore structures offer benefits such as investor familiarity, fundraising flexibility and exit opportunities, their tax efficiency depends on more than the jurisdiction of incorporation. Access to treaty benefits requires compliance with applicable residence and beneficial ownership requirements, while indirect disposals of foreign holding companies may trigger Nigerian capital gains tax where the statutory conditions are met. Private equity sponsors and investors should undertake a comprehensive tax review when establishing or restructuring offshore holding arrangements. This should cover applicable withholding tax rates, treaty eligibility, economic substance, exposure to indirect transfer provisions and appropriate tax allocation and indemnity provisions in transaction documents.

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