

INTRODUCTION

Private equity is capital raised privately, mainly from pension funds, endowments, development finance institutions, family offices and high-net-worth individuals, and invested in businesses that are not traded on a public exchange. Investors in these funds expect a return, usually from the proceeds of selling the investment at exit, from dividends paid while the investment is held, or from interest on shareholder loans. For most private equity funds, the exit strategy is where the real value is realised, so structuring the funds to maximise returns is an important exit strategy consideration.

The Nigeria Tax Act 2025 (the "NTA"), which came into force on 1st January 2026, repealed the Capital Gains Tax Act. The NTA included gains on the disposal of assets as part of income for both companies and individuals. Capital gains are now treated as income and are charged at the rate of 30% for companies and at the applicable tax rate for individuals. Also, offshore disposals that indirectly transfer interest in Nigerian companies or assets are now expressly within the Nigerian tax net. The exemptions and reliefs applicable to share disposals have also been revised. This article considers how the changes introduced by the NTA alter the economics of exiting a Nigerian investment and the implications for private equity returns.

THE ECONOMICS OF EXIT TAXATION

Before the NTA, capital gains were charged at a flat rate of 10% under section 2(1) of the repealed Capital Gains Tax Act ("CGTA").[1] Gains on the disposal of shares were wholly exempt[2] until the Finance Act 2021 brought share disposals into the taxation net from 2022.[3] Even then, gains on share disposal were exempt where aggregate proceeds were below ₦100 million in a 12 consecutive months period, or where the gains were reinvested in Nigerian shares within the same year of assessment.[4]

Furthermore, the CGTA taxed only disposals of shares in Nigerian companies. A non-resident private equity fund that sold its interest in an offshore holding company, which in turn owned shares in a Nigerian entity, was generally outside the scope of the CGTA. Private equity returns were maximised by being structured through holding companies registered outside Nigeria, such that upon disposal of

[1] Capital Gains Tax Act (Cap. C1, LFN 2004), now repealed
[2] Section 30(1) CGTA
[3] Section 2(2) Finance Act 2021
[4] Section 2(2)(a) (b) Finance Act 2021

the holding companies' shares, capital gains tax will not arise because the shares disposed of were not shares of a Nigerian entity.

Other returns from the private equity, such as dividends, were subject to withholding tax at 10% under section 80 of the Companies Income Tax Act.[5] For non-residents, the deduction was final[6], and for Nigerian corporate shareholders, the dividend is treated as franked investment income, not subject to further tax.[7]

Following the Nigerian tax reforms of 2025 that introduced the NTA, gains from disposal of assets are income[8] and companies pay tax on those chargeable gains at 30%[9], the same rate as companies' income tax. Individuals pay at their progressive personal income tax rates. Small companies[10] are taxed at zero per cent[11] and since income now includes capital gains, they are liable for zero per cent tax on their income.

INDIRECT TRANSFERS AND OFFSHORE EXITS

The NTA taxes non-residents on gains from assets not just located in Nigeria, but also deemed to be located in Nigeria.[12] Shares of a non-resident company are deemed to be located in Nigeria if, at any time during the 365 days before disposal, more than half of their value is derived directly or indirectly from Nigerian assets.[13] The deemed location of shares of a non-resident implies that any disposal of the shares that meets the threshold within the timeline set by the NTA may be subject to Nigerian tax on chargeable gains under the NTA.

Additionally, section 47 of the NTA provides that gains on a non-resident's disposal of shares are chargeable where the disposal changes the ownership structure or group membership of a Nigerian company, or the ownership of an asset in Nigeria. This means that a non-resident's sale of shares in a foreign company may attract Nigerian tax on the resulting gain if the sale changes the ownership structure or group membership of a Nigerian company, even though no shares in the Nigerian company was disposed

Sections 46(f) and 47 of the NTA both appear to address indirect transfers by non-residents, albeit through different mechanisms. Section 46(f) deems shares in a foreign entity to be located in Nigeria where, at any time in the 365 days before the disposal, more than 50% of their value derives from Nigerian assets. A non-resident whose shares fall below that threshold throughout the period will not, on this provision alone, be treated as disposing of a Nigerian asset. Section 47, however, makes gains on a non-resident's share disposal chargeable wherever the disposal changes the ownership structure of a Nigerian company, without having recourse to the threshold and timeline provided for in section 46(f).

[5] Section 80(2) Companies Income Tax Act (Cap C21 LFN 2004) ("CITA"), now repealed
[6] Section 80(4) CITA
[7] Section 80(3) CITA
[8] Section 3 NTA
[9] Section 56(b) NTA
[10] Section 202 of the NTA defines a small company as a company that earns gross turnover of ₦50,000,000 or less per annum with total fixed assets not exceeding ₦250,000,000, provided that any business providing professional services shall not be classified as a small company.
[11] Section 56(a) NTA
[12] Section 17(2)(b)(c) NTA
[13] Section 46(f) NTA

TRANSACTION DOCUMENTATION

By taxing companies' gains at the same 30% rate as their income, and by closing off the offshore route that once allowed investors to exit with minimal Nigerian tax liability, the NTA has changed the cost of exiting in ways transaction parties may not be able to avoid. What the parties can control, however, is the allocation of that cost, and that allocation is principally determined by the transaction documents.

The key tax risks are the seller's liability for tax on the gain realised from the sale and any tax liabilities of the target company that relate to the period before completion. The transaction documents should clearly allocate responsibility for each. Tax on the seller's gain is ordinarily a seller risk. However, a buyer may be concerned that a non-resident seller could dispose of its investment and fail to discharge any Nigerian tax liability arising from the transaction. To address that risk, the parties may agree that part of the purchase price will be retained in escrow or withheld pending resolution of the seller's tax position, or the buyer may obtain a specific tax indemnity from the seller.

Regarding the target company's pre-completion tax liabilities, the buyer should seek warranties that the target has duly filed all required tax returns and paid all taxes due, together with a tax covenant or indemnity under which the seller agrees to reimburse the buyer for any pre-completion tax liability that is subsequently assessed or discovered.

EXEMPTIONS AND REINVESTMENT

The NTA offers some tax incentives and exemptions to taxpayers. Section 163(1) of the NTA contains a list of income tax exemptions. Where the gains accruing are from the disposal of assets in a labelled startup[14], they will be exempt from income tax, provided that the assets are held in Nigeria for a minimum of 24 months.[15] This exemption applies to angel investors, venture capitalists, private equity fund, accelerators and incubators.

Additionally, the NTA exempts the chargeable assets of a taxpayer where disposal proceeds are below ₦150 million in aggregate, and the chargeable gains do not exceed ₦10 million in any 12 consecutive months; where shares are transferred between an approved borrower and lender in a regulated securities lending transaction, or where proceeds are reinvested in acquiring shares in Nigerian companies within the same year of assessment.[16] The threshold will be relieving for retail investors, whose proceeds are below the threshold. Where there are transfers within regulated securities lending arrangements, their chargeable asset will be exempt from the income tax.

The NTA provides for reinvestment relief. No tax is payable if the disposal proceeds are reinvested, within the same year of assessment, in shares of the same or another Nigerian company. If only part of the proceeds is reinvested, tax is charged proportionately on the remainder.[17]

The tax cost of an exit is largely fixed by decisions taken at acquisition. Investors should ascertain whether their holding jurisdiction has a treaty with Nigeria that limits its taxing rights. For pan-African platforms, they should consider how much of the private equity fund's value comes from Nigeria now and how that will change as businesses grow or are sold.

[14] Labelled Startup status is obtained pursuant to the Nigeria Startup Act, 2022
[15] Section 163(1)(m) NTA
[16] Section 34(1)(i)(ii)(iii) NTA
[17] Section 34(1)(iii) NTA

CONCLUSION

The Nigeria Tax Act has turned exit tax from a secondary consideration into one of the central drivers of private equity returns in Nigeria. Taken together, the 30% income tax rate for companies, which now includes capital gains as income, and taxing rights that now follow value offshore, can absorb a substantial part of private equity returns. The response begins at acquisition. Investors should stress-test valuations under the new rate, assess their exposure to the indirect transfer rules on both sections 46(f) and 47 of the NTA, and revisit holding structures. They should also consider whether their fund can make use of reinvestment relief, and make sure that transaction documents allocate tax risk expressly.

CONTACTS



OLA ALOKOLARO
ola.alokolaro@advocaat-law.com



GRACE EREWELE
grace.erewele@advocaat-law.com



WHITNEY AGBO
whitney.agbo@advocaat-law.com



KHAIRAT BAKARE
khairat.bakare@advocaat-law.com



MIRACLE IKANI
miracle.ikani@advocaat-law.com



AYOOLUWA ADEKOJE
ayooluwa.adekoje@advocaat-law.com

LAGOS OFFICE
13 Norman Williams Street
Off Keffi Street, Ikoyi
Lagos Nigeria

ABUJA OFFICE
Nigerian National Merit Award House Enspire
1st Floor Room 3
Plot 22 Aguiyi Ironsi Way Maitama Abuja
Nigeria

CALABAR
Akom Building
15 Murtala Mohammed Highway Calabar
Cross River
Nigeria

TELEPHONE: (LOS)+234 02014547932 (ABJ)+234 8105340496

EMAIL: info@advocaat-law.com WEBSITE: www.advocaat-law.com