



TAXATION OF NON-NATIONALS WITH A TEMPORARY WORK PERMIT

The Lagos State internal Revenue Service (LIRS) is issuing this Public Notice to all employers, company owners or their representatives, employees, high net worth individuals and other members of the public.

Definition

A "Non-National with a Temporary Work Permit" (TWP) is an individual who is a national of another country with a visa which allows him/her to work in Nigeria.

Legal basis

Section 10(1) of the Personal Income Tax Act (PITA) provides 3 conditions that jointly must be met before a non-resident employee is exempted from income tax in Nigeria. While section 6 stipulates that the taxable income for an independent contractor is the income that is attributable to their presence or that of their agent in Nigeria.

Compliance Requirements

Employees

1. A non-national employee who pays income tax in a country that has a double taxation treaty with Nigeria will become liable to tax in Nigeria after 183 days or once he/she becomes taxable in Nigeria in accordance with the tax treaty.
2. Non-national employees that are not liable to tax in a country that has a double taxation treaty with Nigeria will become liable to tax in Nigeria from the first day they arrive into Nigeria as they would not meet the three conditions as stated in Section 10(1).

Independent contractors

3. A non-national independent contractor will be subject to tax in Nigeria where:
 - a. He or she has a fixed base in Nigeria from where he carries on his business. Mixed base is created when the contractor requires a work permit other than a business visa. Also, if he or she shifts profits from a Nigeria business using uncommercial pricing that is not supported by transfer pricing documentation.
 - b. He or she is involved in a contract that includes components of installation or construction work in Nigeria and of the individual has a warehouse from which he makes deliveries to customers.

However, where the independent contractor is a resident of a country that has a Double Taxation Treaty with Nigeria, relief will be granted in line with the treaty.

For further enquiries, please call **00700-CALLLIRS (0700 2255 5477)** or visit **www.lirs.gov.ng**

Thank You

Signed
Ayodele Subair
Executive Chairman
Lagos Internal Revenue Service



1. TAXATION OF NON-NATIONALS WITH TEMPORARY WORK PERMIT (TWP)

Definition

Employees: These are individuals employed by a business, either full time or part-time to work exclusively for that business during the term of the contract. From a tax perspective, the business is expected to deduct and remit PAYE on all employees' salaries.

Independent contractors: These are individuals that are contracted by a business to supply goods or services or to do work according to the contractor's own processes and methods and are not precluded from acting for another business during the term of the contract. From a tax perspective, the business is expected to deduct and remit WHT on contractors' payments. The independent contractor is then expected to file an annual return of his/her tax liability and use the WHT as a credit for partial or full payment of his or her taxes otherwise the independent contractor will be considered as an employee of the company.

Legal Basis

Section 10(1) of the Personal Income Tax Act (PITA) provides 3 conditions that jointly must be met before a non-resident employee is exempted from income tax in Nigeria. While section 6 stipulates that the taxable income for an independent contractor is the income that is attributable to Nigeria.

Objective

This explanatory note provides guidance on the taxation of non-nationals who come to Nigeria on TWPs and reside in Lagos State. A TWP is the type of visa granted to non-nationals who come to work in Nigeria on a short period of ninety days or less. The Visa allows the non-national to work on projects or special assignments. This explanatory note also clarifies the impact of DTAs, based on the 2011 amendments, for the taxation of short-term assignees. The guidelines cover employees and independent contractors.

Compliance Requirements

Taxability of non-nationals that are employees:

1. Taxability of non-nationals who are employed by businesses that are residents of Countries that have a Double Taxation Treaty (DTT) with Nigeria

A non-national from a double tax treaty country will become liable to tax in Nigeria after 183 days or once he/she becomes taxable in Nigeria in accordance with the double tax treaties on the remuneration of the work performed in Nigeria. This is only the case if the person is working for a foreign employer.

2. Taxability of non-nationals who are employed by businesses that are residents of Countries that do not have a Double Taxation Treaty (DTT) with Nigeria

Section 10(1) (a) of the Personal Income Tax Act states that:

the gain or profit from an employment shall be deemed to be derived from Nigeria if the duties of the employment are wholly or partly performed in Nigeria, unless:

the duties are performed on behalf of an employer who is in a country other than Nigeria; and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria,

the employee is not in Nigeria for a period or periods amounting to an aggregate of 183 days (inclusive annual leave or temporary period of absence or more in any twelve-month period commencing in a calendar year and ending either within that same year or the following year; and

the remuneration of the employee is liable to tax in that other country under the provisions of the avoidance of double taxation treaty with that other country.

The above three conditions (i), (ii) and (iii) must be jointly met for the non-national employee to be exempt from tax. The use of the conjunction "AND", means that the employee must meet all conditions to be exempt from tax in Nigeria.

Therefore, non-nationals that are employed by businesses that are resident in a country that does not have a double taxation treaty with Nigeria will become liable to tax in Nigeria from the first day they arrive into Nigeria as they would not meet the three conditions above. However, only their income/remuneration for services performed in Nigeria will be taxable.

Note that the double taxation treaty requirement is with the employer's country of residence rather than the employee's country of residence as clearly indicated in condition (i).



Taxability of independent contractors that are non-nationals

Section 6(1) of the Personal income Tax Act imposes tax on independent contractors as follows:

Where an individual, an executor, a trustee, outside Nigeria carries on a trade or business of which only part of the operations are carried out in Nigeria, the gains or profits of the trade or business shall be deemed to be derived from Nigeria to the extent to which such gains or profits are not attributable to that part of the operations carried on outside Nigeria: Provided that -

- a. the individual, executor or trustee does not have a fixed base in Nigeria from which he carries on such trade or business;
- b. the individual, executor or trustee does not habitually Operate a trade or business through a person in Nigeria authorised to conclude contracts on his behalf or on behalf of some other persons related to him or both of whom are controlled by some other person or does not habitually maintain a stock of goods or merchandise in Nigeria from which deliveries are regularly made on his behalf;
- c. the trade or business in Nigeria does not involve a single contract for surveys, deliveries, installations or construction;
- d. the trade or business is not between persons both of whom are controlled by some other person and such that conditions are made or imposed between such persons in their commercial or financial relations which in the opinion of the relevant tax authority is deemed to be artificial or fictitious.

Based on the above, an independent contractor will be subject to tax in Nigeria if:

- I. He or she has a fixed base in Nigeria from where he carries on his business. A fixed base is created when the contractor requires a work permit other than a business visa.

if the individual has a warehouse from which he makes deliveries to customers, his income will be assessable to tax.

- II. He or she is involved in a contract that includes components of installation or construction work in Nigeria.
- III. He or she shifts profits from 3 Nigeria business using uncommercial pricing that is not supported by transfer pricing documentation.

The above conditions are in line with international principles of taxation with clear peculiarities. However, where the independent contractor is a resident of a country that has a Double Taxation Treaty with Nigeria, relief will be granted in line with the treaty.

Note that the principles outlined in this clarification letter also applies to an employee or contractor that comes into Nigeria using a Subject To Regularisation (STR) visa or a re-entry visa or on account of being married to a Nigerian. The principles of taxation would still apply whether the individual is working in Nigeria with or without a valid visa