

TAX OFFICE FOR NON-RESIDENT PERSONS COMMENCES OPERATIONS AND VAT FILING AND COLLECTION SYSTEM BECOMES AUTOMATED IN NIGERIA

I. Non-Resident Taxpayers' Office

In a Public Notice published in October 2019, the Federal Inland Revenue Service ("FIRS") informed the tax-paying public (particularly non-resident taxpayers) of the establishment of the **Non-Resident Persons' Tax Office** ("NRPTO") in Nigeria. The NRPTO, which finally commenced full operations on January 1, 2020, was necessitated by the decision of the FIRS to devote specialized attention to the tax needs of taxable non-resident persons.

The FIRS recently issued a Public Notice titled "**Commencement of Operations by the NRPTO**" (the "**Follow-up Notice**") to provide more information on the operation of the NRPTO. The FIRS in the Follow up Notice advised that the NRPTO now has responsibility for all tax matters relating to non-resident persons. For this purpose, all tax files and Tax Identification Numbers (TIN) of existing non-resident taxpayers had been relocated to the NRPTO.



The NRPTO is domiciled within the International Tax Department of the office of the FIRS in Ikoyi, Lagos.

With effect from the date of the commencement of full operations:

- NRPTO shall solely be responsible for opening tax files for new non-resident taxpayers;
- All tax affairs of non-resident persons (individuals or corporates) are to be handled by NRPTO;
- All non-resident persons are required to regularize their outstanding tax obligations with the NRPTO;

- All correspondence or applications in respect of tax compliance obligations (such as taxpayer registration, filing of tax returns, payment processing, tax audit etc.) are to be addressed to the NRPTO. Same applies to issues of tax clearance, tax refund, and tax treaty benefits and the like; and
- All persons inviting non-resident persons for sports, music, movie, cultural and other entertainment events are required to notify the NRPTO, prior to the hosting of such event.



According to the Follow-up Notice, a non-resident person refers to a *foreign company* as defined by the Companies Income Tax Act¹ (as amended) (“CITA”) or an *individual* as defined by the Personal Income Tax Act² (as amended) (“PITA”). For the avoidance of doubt, “foreign company” under the CITA means “any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria”³ while an “individual”, is defined by the PITA to include “a corporation sole and a body of individuals but does not include a

¹ Cap C21, Laws of the Federation of Nigeria, 2004

² Cap P8, Laws of the Federation of Nigeria, 2004

³ Section 105(1), CITA

company, partnership, community, family, trustee or executor, or any body of trustees or executors”⁴.

II. Automated VAT Collection System

In another development the FIRS, in a Public Notice titled: **Automated Value Added Tax (VAT) Filing & Collection System (“VAT Automation Notice”)**, has informed the general public that, with effect from April 1, 2020, the system for the filing and collection of Value Added Tax (“VAT”) will be automated.

The new automated VAT system will be implemented in Branded Shops, Super Stores, General Supermarkets, Standard Restaurants, and Eateries nationwide.



As stated in the VAT Automation Notice, the automation of the VAT is intended to enable efficient and seamless collection and remittance of VAT on all Vatable transactions in the wholesale / retail sector. Besides, the automation policy is expected to facilitate direct audit/reconciliation of all

⁴ Section 108, PITA

VAT transactions and improve compliance with relevant tax laws.

By this notice, the affected businesses are expected to take necessary steps to connect to the FIRS e-VAT platform, for access and timely compliance. Furthermore, they are required to reflect certain information on all transactions / sales receipts issued to customers. These include TIN (FIRS or Joint Tax Board-approved), print date, goods / products description and the standard 7.5% VAT amount applicable.

Commentary

The establishment and commencement of operation of the NRPTO, is no doubt in furtherance of the FIRS' resolve to tackle tax avoidance strategies, employed by multinationals who exploit gaps and mismatches in tax rules to artificially reduce tax base; by shifting profit from higher jurisdictions to low or no-tax locations where there is little or no economic activity.

As recently announced to the public by the Chairman of FIRS, in order to address the challenge of domestic tax base erosion and profit shifting (BEPS), Nigeria's tax administration will be reformed in four unique areas: (i) Rebuilding the institutional framework of the FIRS (ii) Collaborating with stakeholders (iii) Building a customer or taxpayer-centric institution (iv) Making the FIRS a data-centric institution. The objectives of the NRPTO aptly reflect all of these goals.

In our opinion, to the extent that the NRPTO will help streamline and simplify compliance matters for taxable foreign companies and non-resident individuals, the specialized tax office is a good step in the right direction.



Non-resident companies and individuals with business interest in Nigeria should endeavour to take steps and or seek necessary professional advice on registering/regularizing their tax positions with the NRPTO, without delay. This should also be of special interest to employers of non-resident persons. For general guidance on options for effective management of the tax affairs of individuals and corporate entities without breaching the law, see the [Special Issue of our Grey Matter Tax Digest on "Examining the limits of tax planning & management in Nigeria"](#).

Similarly, we note that the automation of the system for filing and collection of VAT will make compliance much more seamless for the target businesses nationwide. It will also boost tax revenue for the Government, as it seeks to ensure implementation of the new VAT rate of 7.5%, prescribed in the

Finance Act, 2019 earlier discussed in our [Tax Alert 06](#).



However, with the inclusion of “Standard Restaurants” and “Eateries” in the list of the target businesses, it is not clear whether restaurants and eateries in Lagos State are to be affected, given an October 2019 decision of the Federal High Court (“FHC”), Lagos Division⁵; which affirmed the validity and enforceability of the consumption tax imposed and chargeable by the Lagos State Government on goods and services supplied in hotels, restaurants, and event centers in the state; and declared the provisions of the Value Added Tax Act⁶ which imposes VAT on the supply of all non-exempt goods and services in Nigeria, inapplicable to goods and services supplied by and in hotels, restaurants and event

⁵ The Registered Trustees of *Hotel Owners and Managers Association of Lagos (suing for itself and on behalf of all its members) v Attorney-General of Lagos State & Federal Inland Revenue Service* – Unreported judgment delivered by Hon. Justice R. M. Aikawa of the FHC on October 3, 2019 in Suit No: FHC/L/CS/360/2018.

⁶ Cap. V1, Laws of the Federation of Nigeria, 2004

centers in Lagos State; as well as restricted the FIRS from charging and collecting same.

In line with our commentary on the FHC decision in our [Tax Alert 08](#), it is not inconceivable that the FIRS will continue to impose and collect VAT in relation to the supply of goods and services consumed in restaurants and eateries in Lagos State, until the final determination of its appeal against the FHC decision.

Hence, all the affected businesses are enjoined to seek necessary professional advice and take steps towards complying with the VAT automation policy of the FIRS, before the April 1, 2020 effective date.

We continue to monitor the application/implementation of the above Notices and will highlight any significant developments as they unfold.

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo.

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EDITORIAL TEAM

Ken Etim
(Managing Partner)

ketim@banwo-ighodalo.com

Abimbola Akeredolu, SAN, FCI Arb.
(Partner)

aakeredolu@banwo-ighodalo.com

Azeezah Muse-Sadiq
(Partner)

asadiq@banwo-ighodalo.com

Kemi Ajayi
(Chief Operating Officer)

kajayi@banwo-ighodalo.com

Oluwatoba Oguntuase
(Practice Support Lawyer)

ooguntuase@banwo-ighodalo.com

Emmanuel Onyeabor
(Associate)

EOnyeabor@banwo-ighodalo.com

Enquiries:

taxteam@banwo-ighodalo.com

OUR OFFICES

48, AWOLOWO ROAD, SOUTH WEST IKOYI
LAGOS, NIGERIA

AFRI-INVESTMENT HOUSE
50, AGUIYI-IRONS STREET, MAITAMA
ABUJA, NIGERIA

234 9060003561-2;
8050875883; 8092714452; 9020524921
(ABUJA - 09 2912127)

BANWIGHO@BANWO-IGHODALO.COM

WWW.BANWO-IGHODALO.COM