

1. Tax Alert ? **Personal Income Tax Residency Rules**

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Personal Income Tax Residency Rules

The controversy over which State Government is the relevant tax authority authorised to collect Personal Income Tax where the tax payer resides in one State but works in another State, or where the tax payer works in more than two State, during each year of tax assessment, has not abated with the passing into Law of the Personal Income Tax (Amendment) Act, 2011, Act No. 20 ("PITA Amendment").

Section 2 (1) (A) and (2) of the Personal Income Tax Act, CAP P8, Laws of the Federation of Nigeria, 2004 ("PITA") provides that Personal Income Tax shall be paid for each year of assessment on the total income of every individual based on the State where the tax payer resides, in the relevant year of personal income tax assessment, and not based on where the individual tax payer works or carries on business.

The individuals excluded from the above PAYEE Residency Rule include Itinerant workers, persons employed in the Nigerian Armed Forces and Police other than in a civilian capacity, employees in the Nigerian Foreign Service, residents of the Federal Capital Territory, Abuja and Nigerians residing outside Nigeria but deriving income or profit from Nigeria. With the exception of itinerant workers who work from place to place, all other persons mentioned in this exception to the Residency Rule are obligated to fulfil their tax obligations to the Federal Government of Nigeria (represented by the Federal Inland Revenue Service).

Tax Payee and Multiple Residences

An individual tax payer's place of residence under the Personal Income Tax Act is the place where such an individual lives or uses as his residence most frequently in Nigeria. A tax payer's residence does not include his hotel room, vest-room or office place at which he may be temporarily lodging.

However, for individuals with multiple residences, Section 32 of the Personal Income Tax (Amendment) Act, 2011 has amended the First Schedule to the principal Personal Income Tax Act ? which is on the determination of individual tax payer's residence - by inserting a new sub-paragraph (d) after paragraph 1(c). The new sub-paragraph 1(d) provides that "in the case of an individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational site is situated : provided that operational site shall include Oil Terminals, Oil Platforms, Flow Stations, Factories, Quarries, Construction Sites with a minimum of 50 workers, etc."

Itinerant Workers

An itinerant worker is an individual who moves from one place to another place in the performance of his employment contract or in the provision of services.

Section 31 of the Personal Income Tax (Amendment) Act, 2011 amended the description of a Itinerant worker in Section 108 of the Personal Income Tax Act to now include individuals, irrespective of their status, who work at any time in any State during a year of tax assessment for wages, salaries or livelihood, by working in more than one such State, but works for a minimum of twenty (20) days in at least three (3) calendar months of every year of the personal income tax assessment in at least one of such States.

Section 2 (b) of the Personal Income Tax (Amendment) Act, 2011 has now inserted a new subsection 1(A) to the principal Personal Income Tax Act, and the insertion now authorises the relevant tax authority in the State where the itinerant tax payer works for a minimum of twenty (20) days in at least three (3) months of the relevant year of assessment to collect Personal Income Tax from the itinerant worker.

Conclusion

The ability of the various State Governments and the Federal Government to properly apply the residence rule, and the itinerate workers rule, will be gravely hampered by the lack of a reliable public data on the residence and movement of tax payers and their place of work, at each given tax assessment and payment period. Building reliable public and private data bases that are interconnected is therefore very crucial to minimising tax avoidance practices in Nigeria.

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