



5 minutes read

## Introduction

Any company in Nigeria, whether resident or non-resident (*foreign company*), is subject to taxation if its income falls within the scope of the Companies Incomes Tax Act. It is important to note that Nigerian tax laws do not exempt the income of a branch of a business or company from taxation. While a Nigerian company is taxed on its worldwide income, a non-resident enterprise is taxed in Nigeria on profits earned from business or commerce conducted in Nigeria. That is to say, the company's branches in other countries are not required to pay taxes in Nigeria.

For any business operating in Nigeria, understanding tax regulations is essential to ensuring compliance and preventing any potential legal problems.

## Definition of Non-Resident

Non-resident companies are companies that are not based in Nigeria but maintain a presence and carry out operations within the country. Section 105 of CITA defines a non-resident company as any company or corporation established by or under any law in force in any territory or country outside Nigeria.

A non-resident company is not registered or incorporated in Nigeria but generates revenue from business operations in Nigeria. The income that these businesses generate from their operations in Nigeria is taxed. Exemption from registration in Nigeria does not include tax exemption on non-resident companies.

## Taxation Laws for Non-Resident Companies

**Companies Income Tax Act:** The Companies Income Tax Act (CITA) regulates Nigerian taxation laws for non-resident corporations. Companies that conduct business in Nigeria but do not reside there must pay taxes on their profits. Generally, these taxes are calculated using the company's revenue from Nigerian sources.

**Finance Act 2020:** The Finance Act 2020 made amendments to the taxation of non-resident companies, highlighting the necessity of filing tax returns in Nigeria and providing clarification on the procedures and requirements for foreign companies that generate profits or are subject to Nigerian taxes.

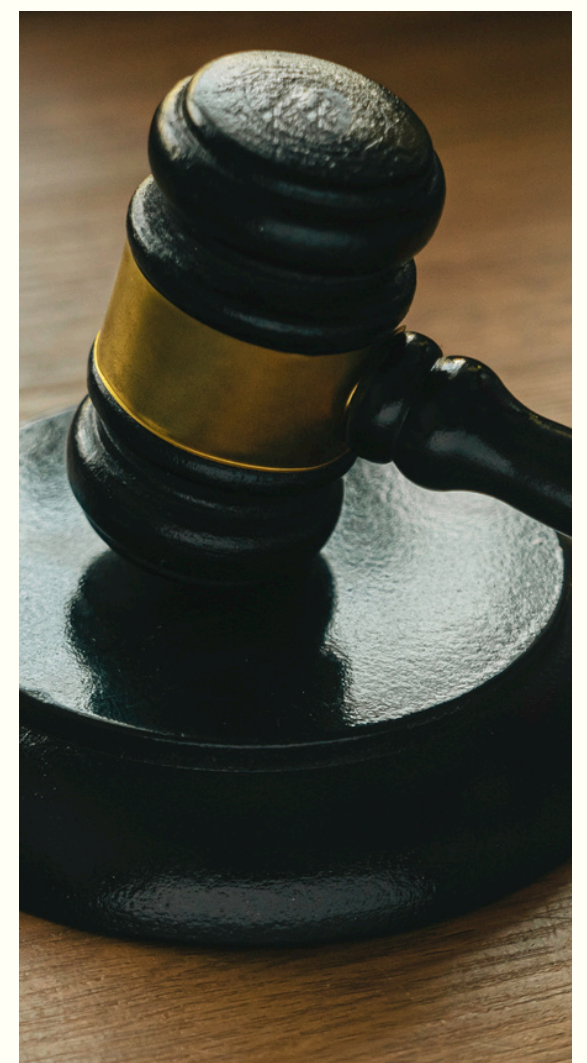
## Tax Liability of Non-Resident Companies in Nigeria

In Nigeria, all companies, whether resident or non-resident, are liable to Companies Income Tax (CIT) on earnings made inside, originating from, importing into, or receiving from Nigeria.

By virtue of section 13(2) of CITA, a non-resident company is taxable in Nigeria if any of the following conditions is met:

1. the non-resident company has a fixed base (i.e. a place of business) in Nigeria to the extent that the profit is attributable to the fixed base;
2. the non-resident company habitually operates a trade or business through a person in Nigeria or maintains a stock of goods or merchandise in Nigeria from

- which deliveries are regularly made by a person on behalf of the company;
3. the non-resident company does not have a physical presence in Nigeria but derives income from Nigeria through digital activities to the extent that it has a "significant economic presence" in Nigeria;
4. the trade or business, or activities of the non-resident involves a single contract for surveys, deliveries, installations, or construction;
5. the trade or business of the non-resident involves the remote provision of technical, management, consultancy or professional services to a Nigerian resident;
6. the trade or business or activities is between the company and a related party, which is considered not to be at arm's length.





## Passive Income

If a non-resident company receives dividends, interests, royalties, or rents from Nigeria, they are liable to tax in Nigeria.

Nevertheless, in the event of a treaty arrangement and where the income is attributable to the non-resident's permanent establishment in Nigeria, the tax will be applied in accordance with the terms of the tax treaty.

## Profits or Income "Deemed" derived from Nigeria

The following are the main factors to take into account when considering whether or not a non-resident company's income or profits are derived from Nigeria:

1. has a "fixed base" in Nigeria;
2. carries on business activities in Nigeria through an agent authorized by the company to (i) carry on the trade or business, or (ii) maintain stock of goods from which goods or merchandise are delivered, on its behalf;
3. derives income from Nigeria through digital activities to the extent that it has a significant economic presence in Nigeria;
4. executes a single contract for surveys, deliveries, installations or construction in Nigeria; or
5. carries on business involving the provision of services of a technical, management, consultancy or professional nature to persons resident in Nigeria.

## Permanent Establishment in Tax Treaties

A non-resident company which resides in a country with which Nigeria has a Tax Treaty is liable to tax based on the provisions of the Tax Treaty. Under tax treaties, a company resident in one jurisdiction is only liable to tax in the other jurisdiction if it has a Permanent Establishment (PE) in that other jurisdiction. As such, if a company that is a resident of Nigeria's treaty partner has a PE in Nigeria, it is liable to Nigerian tax on the profits attributable to that PE in Nigeria. In a tax treaty circumstances, the business profits of a non-resident company will not be liable to income tax in Nigeria in the absence of a PE. The profits of the PE that is taxable in Nigeria will be determined in line with the attribution rules in the respective Tax Treaties.

## Filing of Returns and Payment of Tax by Non-Residents

Sections 55 of CITA and 41 of PITA call for the filing of self-assessment returns by "every person" (including persons not liable to tax or companies exempt from incorporation in Nigeria). The requirement to file tax returns is regardless of the tax status of the person in Nigeria. For instance, companies exempted from income tax or non-resident companies operating in Nigeria are still required to file tax returns with or without notice from the Service in every year of assessment. Income tax assessment is made in the currency of the transaction.

Failure to file returns constitutes an offense and is liable to penalties under the tax laws. The relevant tax authority may appoint any person as an agent for the purpose of recovering tax due, including penalties. The agent so appointed is required to retain tax due from any money due to the taxable person and remit same to the relevant tax authority.

## Exemption of Non-Resident Companies to Tax

The existing tax laws, the peculiarities of the transaction, and the tax treaties between the relevant countries determine how non-resident companies in Nigeria are treated and what exemptions they are granted.

The following conditions may apply to non-resident companies tax exemptions:

- **No Permanent Establishment:** If a non-resident company does not have a fixed base or permanent establishment in Nigeria, it may be not subject to taxation.
- **Tax Treaties:** Provisions for preventing double taxation are frequently found in bilateral tax treaties between nations. Certain forms of income received by non-resident companies may be eligible for tax exemptions or reduced tax rates under these treaties.
- **Limited Duration and activities:** Non-resident companies may be exempted from taxation based on the time frame of the transaction or business activities.
- **Sovereign Wealth Funds and Diplomatic Entities:** Under some international agreements, non-resident companies that qualify as diplomatic enterprises or sovereign wealth funds may be exempted from paying taxes.

## Assessment and Compliance

### Turnover Assessment

The Federal Inland Revenue Service (FIRS) may charge tax on turnover for non-resident companies, deeming a percentage of turnover as profit subject to a 30% tax rate.

### Tax Returns

Non-resident companies with significant economic presence (SEP) in Nigeria are required to register for income taxes, prepare financial statements, determine profits attributable to Nigerian activities, and file annual tax returns with the FIRS.





Section 55 of the Companies Income Tax Act (CITA) as amended by Finance Act, 2020 set specific procedure and requirement for foreign companies that derive profit or are otherwise taxable in Nigeria to file tax returns with the Nigerian tax authorities. The Finance Act, 2020 amendment also removed the ambiguities in the law and emphasized the obligation of non-resident companies to file tax return in the form and manner prescribed by the Federal Inland Revenue Service. By the provision of the CITA, non-resident companies are required to file their tax returns in Nigeria by submitting the following:

1. The company's full audited financial statements and the financial statement of the company's Nigerian operations, attested by an independent Chartered or Certified Accountant in Nigeria;
2. Tax computation schedules based on the profits attributable to the company's Nigerian operations;
3. A true and correct statement, in writing, containing the amount of profits from each and every source in Nigeria; and
4. Duly completed Companies Income Tax Self-Assessment forms.

However, where Withholding Tax (WHT) is the final tax in respect of all the transactions entered into by a foreign company, the company would not have any obligation to file the company's income tax return in Nigeria in respect of that year.

### Significant Economic Presence (SEP) Rules

Section 13(2) (c), (e) and (4) of the Companies Income Tax Act as amended by Section 4 of the Finance Act provides that the profits of a company other than a Nigerian company from any trade or business shall be deemed to be 'derived from' or 'taxable' in Nigeria.

The FA 2019 expanded the scope of services captured under the SEP to include companies engaged in electronic businesses including online payment platforms; provision of technical, management, consultancy or professional services in Nigeria. These activities shall be subject to tax in Nigeria in line with the SEP rules. The Companies Income Tax (Significant Economic Presence) Order, 2020 sets out, amongst other things, the criteria for determining non-resident companies with significant economic presence. The SEP order states that a non-Nigerian company shall have a significant economic presence in Nigeria where it derives gross turnover or income of more than ₦25 million or its equivalent in other currencies.

This implies that non-resident companies with SEP are required to register for income taxes, prepare financial statements in respect of the income generated from Nigeria; determine the profits that are attributable to their activities in Nigeria, and file annual tax returns to the Federal Inland Revenue Service as provided by CITA. Also,

Nigerian companies that transact with non-resident companies are required to deduct withholding tax ("WHT") from payments made for services provided by the non-Nigerian companies and remit same to FIRS.

### Double Taxation Agreements

Nigeria has double taxation agreements with a number of nations to prevent paying taxes twice on income received by non-resident companies. These agreements guarantee that the same income is not subject to double taxation, once in Nigeria then again in the country of origin of the business.

### Conclusion

Non-resident companies operating in Nigeria are liable to pay taxes on profits generated from their operations within the country. The Companies Income Tax Act and its amendments stipulate the tax liability, exemptions, turnover assessment, and compliance requirements for these companies.

Any business wishing to conduct business in Nigeria must understand the taxation of non-resident companies within the country. Companies can ensure compliance and stay out of legal consequences by adhering to the rules and guidelines issued by Nigeria's tax authorities.



**Disclaimer:** The content of this article is to provide information to the subject matter. Kindly seek the opinion or services of a professional tax advisor.

*Federal Inland Revenue Service, Circular No. 2021/07, Taxation of Non-Residents In Nigeria, June 3, 2021.*

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